HUMAN RIGHTS DEFENDER
OF THE REPUBLIC OF ARMENIA

ANNUAL REPORT 2006

OF THE HUMAN RIGHTS DEFENDER OF THE REPUBLIC OF ARMENIA

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ON
ACTIVITIES OF
THE REPUBLIC OF ARMENIA'S
HUMAN RIGHTS DEFENDER
AND
VIOLATIONS OF HUMAN RIGHTS
AND FUNDAMENTAL FREEDOMS
IN ARMENIA
2006

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Yerevan, 2007

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RA Human Rights Defender
A. Harutyunyan

In the result of constitutional amendments, Human Rights Defender's Office was mandated as a constitutional institution.

On February 17, 2005, National Assembly of RA by the votes of more than 3/5 of the total number of deputies elected Doctor of Law, Professor Armen Harutyunyan as a first parliamentary Human Rights Defender of RA.

Human Rights Defender is an independent official, whose main mission is to prevent and restore human rights and fundamental freedoms violated by the state and local self-governing bodies or their officials.

The letters of complaint, addressed to the Defender, are various and concern almost all spheres of functioning of state and local self-governing bodies.

The actuality of the report is determined also by the circumstance that for the first time are separated the analysis of the statutory- legal act that leads to the human rights violations and the analysis of detached provisions, as well as the shortcoming in law enforcement practices.

This report aims to raise a list of questions that are peculiar to the post soviet countries and exist in our country. The inattention of these issues can be an obstacle on our way of creation of the democracy and rule of law in our state.

TABLE OF CONTENT

INTRODUCTION

Paragraph 1 of Article 17 of the Republic of Armenia's (RA) "Law on human rights defender" stipulates that during the first quarter of every year the Defender submits to RA President, legislative, executive and judicial powers a report that documents its activities and details violations of human rights and fundamental freedoms in the country during the previous year. During the spring session the report is presented to the RA National Assembly, the report is then also presented to media and pertinent non-governmental organizations.

The content and structure of the 2006 report reflect the desire to provide the public with a holistic understanding of its activities as well as an informed analysis of the country's violations of human and citizen's rights and freedoms. Given that RA is a newly independent state that lacks well-established democratic traditions, the annual analysis of human rights protection and the state of protection receives special attention.

Section 1 presents the activities performed by the human rights defender in 2006: activities related to registered complaints and those who made them; activities aimed at the re-establishment of human rights; activities aimed at the improvement of legislation; development of information and public relations; cooperation with non-governmental organizations; international cooperation; activities of the expert council.

The following sections of the report provide information about violations of human rights and fundamental freedoms and attempt to identify and comprehensively analyze the reasons for those violations. This analysis gives grounds for identifying two main reasons for human rights violations by public and local self-governing bodies and their officials (hereafter referred to as public bodies).

First, there are the shortfalls of public bodies during the formulation of legislation. These include existing shortcomings of present legislation as a result of delayed adoption of sub-legislation, gaps in normative-legal acts, and uncertain or contradictory statutes.

The constitutional amendments of November 27, 2005 have greatly contributed to the reinforcement of the constitutional-legal status of human and citizen's rights in Armenia, creating favorable conditions for citizens to stand up for

their rights and freedoms. However, it is apparent that although those constitutional norms are clearly functioning, their effective enforcement is directly related to how well the requirements of the norms are being represented within current legislation. Thus, the constitutional stipulation of rights is no guarantee that they will be enforced in practice.

Experience shows that there are many cases when public body activities result in human rights being violated despite those activities being in full compliance with the provisions of legal acts. There are also many cases when vague or contradictory formulations of individual provisions of legal acts-as well as gaps in legislation-enable the public bodies to interpret those provisions in the way they choose, which also leads to human rights violations. Moreover, flaws in existing legislation also lead to a massive violation of human rights.

Given these inconsistencies, for the first time, the annual report devotes a complete section to the analysis of normative-legal acts that lead to violation of human rights and their individual provisions (Section 2). This section also presents activities of the Defender that aim to improve existing laws and sub-legislation.

The second group of reasons for human rights violations is linked with inadequate legal practice. As in previous years, this portion of the report (Section 3) presents information on human rights by individual groups of public bodies. This permits not only a comprehensive presentation of the state of protection and defense of individual human rights, but also provides a specific assessment about the activities of public bodies in their respective fields and identifies the most typical human rights violations (and the conditions contributing to them).

Section 4 presents information about the state of protection and defense of the rights of the most vulnerable groups in society and relevant legislative provisions are analyzed in direct relation to legal practice.

SECTION 1.

MAIN SCOPE OF THE DEFENDER'S ACTIVITIES

1.1. Activities Related to Registered Complaints and Those Who Made Them

1.1.1. Statistical Analysis of Registered Complaints

From February 20th to December 30th, 2006, the RA human rights defender registered 2687 complaints from 6567 people, of which 1247 were in written form (103 of those were petitions submitted by a total of 3983 people), and 1440 were in verbal form. Table 1 compares registered complaints to the Defender in 2005 with those in 2006.

Table 1: Quantitative picture of the registered complaints

	Total		Average monthly			
	2005 /12 months/	2006 /10 months/	2005	2006	Difference	% relation
Total	2640	2687	220	269	+49	122,2%
Written	1551	1247	129	125	-4	96 %
Verbal	998	1440	83	144	+61	173%
From individuals	4264	6567	355	656	+301	184%

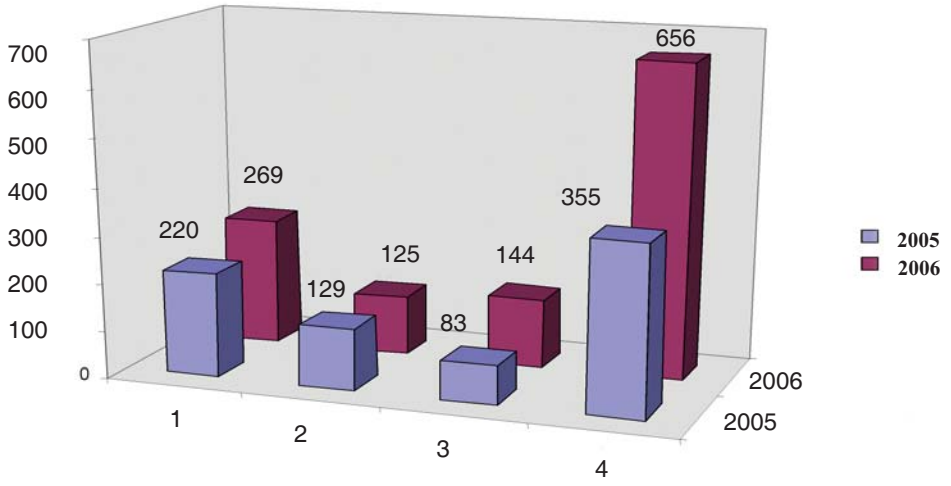
Most of the complaints received by the human rights defender staff during 2004-2005 were complaints against non-public bodies. In 2006, such complaints were excluded, taking into account the fact that the human rights defender should exclusively deal with human rights and freedoms violations committed by public and local self-governing bodies and officials (see Paragraph 2 of Article 83.1 of RA Constitution).

Table 1 shows that the average monthly proportion of registered complaints addressed to the Defender in 2006, compared to the previous year, has increased by 22.2%, the number of written complaints has decreased by 4 and verbal complaints have increased by 73%. There has also been an 84% increase of the number of individuals who registered a complaint to the Defender.

In 2006, registered complaints were received from all administrative regions (*marzes*) of RA, as shown below.

Diagramme 1 shows the quantitative comparison of application-complaints addressed to the Defender in 2005 and 2006 - according to the average monthly figures.

Diagramme 1



1 - Total
2 - Including in written
3 - Including in a verbal form
4 - From individuals

Table 2: Breakdown of written complaints by administrative-territorial regions

		2005 (for the 10 months 01.03-31.12)		2006 /for 10 months/	
	Name of marz	**Number**	**%**	**Number**	**%**
1.	**Yerevan**	798	60.6	772	61.9
2.	**Shirak**	94	7.1	96	7.7
3.	**Lori**	93	7.1	83	6.7
4.	**Kotayk**	56	4.3	62	5.0
5.	**Gegharkunik**	54	4.1	46	3.6
6.	**Ararat**	57	4.3	40	3.2
7.	**Armavir**	46	3.6	33	2.6
8.	**Syunik**	29	2.2	29	2.3
9.	**Tavush**	27	2.1	27	2.2
10.	**Aragatsotn**	20	1.5	22	1.8
11.	**Vayots Dzor**	19	1.4	16	1.3
12.	**Unknown** [1]	23	1.7	21	1.7
	Total	1316	100	1247	100

The table shows that in both 2005 and 2006 the majority of registered written complaints addressed to the Defender were received from Yerevan. It also indicates that between 2005 and 2006 the proportion of complaints received from Yerevan, Shirak, Kotayk, Syunik, Tavush and Aragatsotn marzes increased, while those received from Lori, Gegharkunik, Ararat, Armavir and Vayots Dzor marzes decreased.

As in previous years, the activities of the Defender's institution reveal that the small number of complaints received from *marzes* in 2006 (compared to the high number from Yerevan) does not suggest a high level of human rights protection in the marzes; it simply reflects the ambivalent attitude of marz populations towards the law and human rights, which itself stems from the indifference of the public bodies towards the upholding and protection of human rights and the difficult accessibility of the Defender's institution. Indeed, this data confirms the need to establish representative offices of the Defender in each *marz*.

According to Article 11 of RA "Law on human rights defender", the Defender familiarizes itself with all registered complaints and, as a result of investigations, makes a decision within a month of the complaint being registered. The complaint may be accepted for consideration; the applicant may be presented with the opportunities they have for the protec-

[1] Those registering complaints who did not wish to reveal their place of residence.

tion of their human rights and fundamental freedoms; and (upon the applicant's consent) the complaint may be assigned to those public or local self-governing bodies that have the jurisdiction to settle or reject the case. Table 3 shows the outcome of written complaints in 2006.

Quantitative and percentage picture of the written application-complaints by the administrative-territorial entities of Armenia

Diagramme 2.

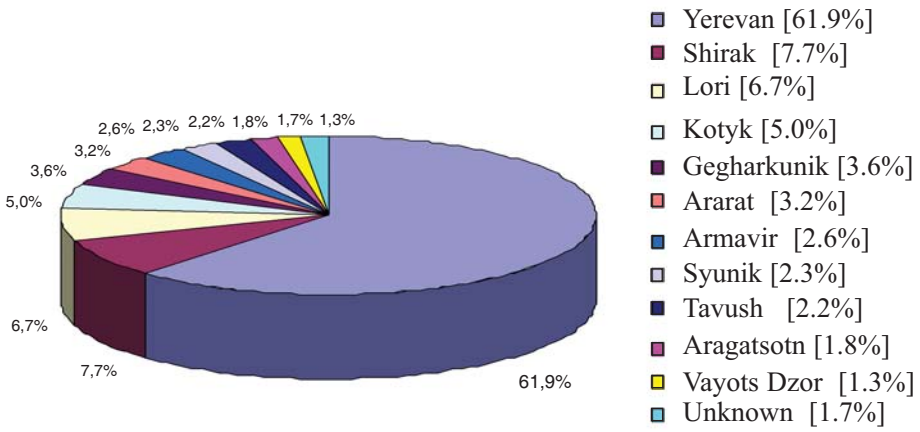


Table 3: Decisions regarding registered written complaints

		2006 /for 10 months/	
	Decision	**Number**	**%**
1.	Received for consideration	455	36.5
2.	Opportunities for protection of rights presented	171	13.7
3.	Assigned to the consideration of other bodies	85	6.8
4.	Rejected	490	39.3
5.	Consideration terminated upon request of the applicant	15	1.2
6.	Still under consideration as of 31.12.2006	31	2.5

It should be noted that, according to paragraph 1 of Article 10 of the RA "Law on human rights defender", the Defender should not consider complaints that will be settled purely in legal form and should terminate consideration of a case if the stakeholder files a case in court after consideration begins. According to paragraph 2 of the same article of the law, the Defender may turn down the consideration of anonymous complaints and those complaints that were submitted one year after the day the applicant learnt (or should have learnt) about the violation of his rights and freedoms; it may also dismiss complaints that it does not consider to be a violation of human rights and fundamental freedoms.

If the complaint can be dealt with by another public body or official (that had not considered the given case), then upon the consent of the person making the complaint, the Defender can assign the case to that body, retaining supervision over its consideration. In this case the applicant is informed that the complaint is handed over to another official (paragraph 3 of Article 10 of the law).

When a decision is taken to reject consideration, the applicant receives relevant legal advice regarding the case consideration process.

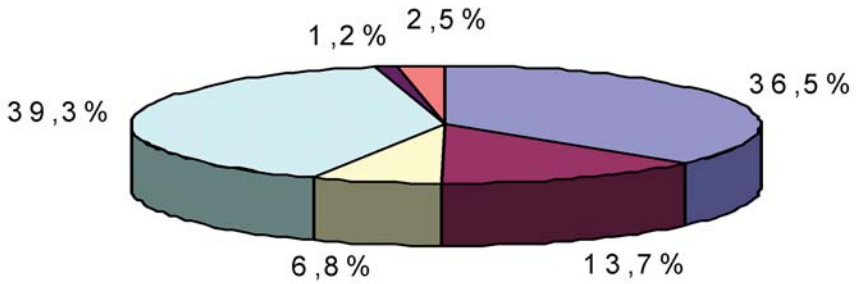
As shown above, in 2006, around half of complaints registered were addressed to the Defender in verbal form. They were received by the Defender himself or by authorized members of his staff during visits to the *marzes*, public institutions and organizations, as well as in the office of the Defender or as a result of organizing advisory activities to citizens by phone. As in previous years, the experience of the Defender's institution shows that a propor-

tion of the people making verbal complaints avoids submitting a written complaint and withholds their name, surname, and address because they fear that a formal complaint might have a negative impact on them.

In 2006 the Defender received written complaints against almost all public bodies, as Table 4 shows.

Decisions made on the written application-complaints

Diagramme 3



Received for consideration [36.5%]

Possibilities of the right's protection presented [13.7%]

Assigned to the consideration of other bodies [6.8%]

Not accepted for consideration [39.3%]

Consideration terminated upon request of the applicant [1.2%]

Under consideration as by 31.12.2006 [2.5%]

Table 4: Written complaints registered against public bodies

	Name of public body	2006 (for 10 months) number of complaints registered
1.	Courts	159
2.	Yerevan Municipality	120
3.	Police	114
4.	RA Ministry of Justice	88
5.	District Municipalities of Yerevan	78
6.	Prosecution	
7.	RA Ministry of Labor and Social Issues	76
8.	Offices of Governors	51
9.	RA Ministry of Defense	41
10.	Municipalities (except for Yerevan)	40
11.	State Committee of Real Estate Cadastre adjacent to the RA Government	39
12.	Rural municipalities	27
13.	RA State Fund of Social Insurance	23
14.	RA Ministry of Territorial Administration	22
15.	RA Ministry of Education and Science	21
16.	RA Ministry of Health care	16
17.	RA Government	14

It can be seen that the majority of complaints in 2006 were against the courts, Yerevan Municipality and the police.

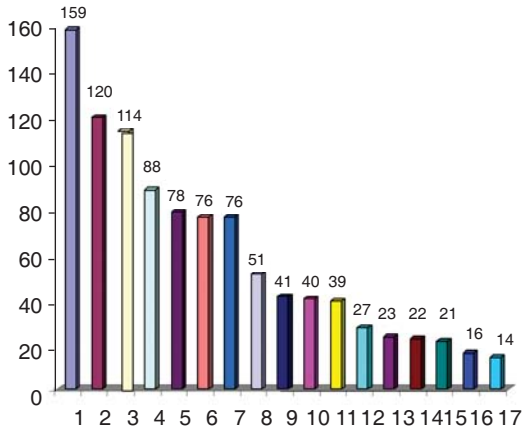
There were also between 1 to 8 complaints registered against the following bodies: Staff of the RA President; Staff of the RA National Assembly; RA National Security Service; The RA Ministry of Finance and Economy; The RA Ministry of Nature Protection; The RA Ministry of Transport and Communication; The RA Ministry of Trade and Economic Development; The RA Ministry of Culture and Youth Issues, as well as State Customs Committee; Department of State Property management; Public Utilities Regulatory Commission; State Committee of Water Economy; State Tax Service; Banks; and the com-

mission dealing with issues of parole that replaces punishment not yet meted out with milder punishment. In 2006, the Defender received a total of 242 written complaints against these aforementioned bodies and others.

Thus, it seems that there was no area of human rights in which a complaint was not submitted.

Written application-complaints as by public bodies

Diagramme 4.



- Courts [159]
- Yerevan Municipality [120]
- Police [114]
- RA Ministry of Justice [88]
- District Municipalities of Yerevan [78]
- Prosecution [76]
- RA Ministry of Labor and Social Issues [76]
- Offices of Governors [51]
- RA Ministry of Defense [41]
- Municipalities (except for Yerevan) [40]
- State Committee of Real Estate Cadastre adjacent to the RA Government [39]
- Rural municipalities [27]
- RA State Fund of Social Insurance [23]
- RA Ministry of Territorial Administration [22]
- RA Ministry of Education and Science [21]
- RA Ministry of Health care care [16]
- RA Government [14]

1.1.2. Consultations

One of the human rights defender's spheres of activity is to provide consultations for citizens. There are two types of consultation in the activities of the Defender: mandatory and those performed at the initiative of the Defender. The first is administered in the cases and forms established by the RA "Law on human rights defender", while the latter is administered in cases and forms established by the Defender to address the legal negation of citizens and disseminate knowledge on human rights.

In 2006, mandatory consultations were administered along the following lines, as envisaged by RA "Law on human rights defender":

1. Give advice regarding appealing decisions and judgments of courts (paragraph 2 of paragraph 1 of Article 7 of the Law);
2. Present to the applicant possibilities of the protection of his/her human rights and fundamental freedoms (paragraph 2 of paragraph 1 of Article 11 of the Law);
3. If the Defender decides to decline a complaint s/he shall explain to the complainant the relevant statutory procedure for that (paragraph 2 of Article 11 of the Law).

While each of the types of advice envisaged by the law has its own specific procedure and content, the uniting factor for each is that the Defender clarifies the real or presumed violations of the applicant's rights and freedoms by the activities (or inactivity) of the public bodies. The specifics are as follows:

1. According to clause 2 of paragraph 1 of Article 7 of the law, the Defender cannot intervene in judicial processes. However, he is entitled to make suggestions or give advice to the applicant about the decision of the court and the appeal process. The decision of a court is considered justified when: (i) the facts relevant to the given case are appropriately represented in it, whether they are confirmed by sufficient evidence or do not require proof; and (ii) when it contains thorough conclusions from the court based on the proven facts.

It should be noted that legal grounds are only one of the requirements required for the court decision, which is intrinsically linked with the legal requirements submitted to the judicial case. The essence of this is that the ruling of the court should accurately maintain the norms of judicial and material law that relate to the given legal relations, should be based on laws regulating similar relations, or stem from general principles and objectives of the legislation.

Taking into account the above guidelines, the Defender gave advice not only relating to how justifiable court rulings were but also about the potential for appeal. **Advice on appealing against court decisions, rulings or sentence justifications included:**

- clarification of the content of laws that stipulate the procedure of appeals against court decisions and other normative legal acts;
- analysis of the specific situation and a forecast of the possible outcome of appealing against the ruling of the court.

2. According to Article 11 of the law, the Defender may present to the complainant their prospects for protecting their rights and freedoms. **Presentation of the possibilities for the protection of the applicant's rights and freedoms included:**

- clarification of laws and other legal acts that regulate the disputable elements of the complaint;
- analysis of the specific disputable situation and discussion of possible options for settlement of the dispute.

3. Paragraph 2 of Article 11 of the law envisages that if the Defender decides to decline a complaint s/he shall explain to the complainant the relevant statutory procedure for that.

If the decision regarding the presentation of possibilities for protecting the rights and freedoms of the applicant is made when the applicant is undecided about the actual content of the material-legal claims submitted to the public bodies, then clarification entails advice on the national (and mandatory for Armenia) and international legal documents that seek to ensure fundamental rights and freedoms.

Clarification of the procedure envisaged by the law for consideration of the complaint included:

- providing accessibility of information about legal acts stipulating procedures to ensure human rights and freedoms;
- providing advice to those people interested in the issues of appealing against the activities (or inactivity) of public bodies.

In 2006, the applications addressed to the Defender that sought advice on how to appeal against court decisions, verdicts or justifications of verdicts, as well as the complaints against public bodies, can be divided into three main groups: the first group related to matters of ensuring civil, political and socio-economic rights; the second group related to the rights of military servicemen, as well as criminal authorities; the third group related to clarification of international-legal means of protecting human rights and freedoms.

There was a high level of consultation on issues concerning protection of socio-economic rights.

The social rights mentioned in the applications were mainly of "monetary" nature-their realization is, therefore, often linked with the economic potential of the state; only civil and political rights are of a truly subjective nature-and these are safeguarded by comprehensive legal protection.

In 2006, the number of consultations given to citizens on pension right issues increased. In their applications to the Defender, some complained that they could not receive the unpaid pensions of their parents. There were also many pension-related complaints in which citizens told of the violation of their rights to receive 'special' pensions.

In some applications citizens have requested the assistance of the Defender to receive honour payments given to participants of 'the Great Patriotic War'. In their applications they have informed that while they were not participants of the war, their status equals those who fought and, therefore, they should be entitled to the payments.

As an individual subgroup, one can identify advice given on property rights. The

Defender also received complaints about the district offices of State Cadastre of Real Estate of the RA Government (hereafter referred to as Cadastre)-against the activities or inactivity of their officials. For example, the refusal of the Cadastre to register property rights after the relevant decision of the Mayor, as well as legalization of facilities constructed without permission or registration.

The bulk of the complaints addressed to the Defender in the socio-economic category came from 'entitled' people being excluded from the list of people who can receive compensation for the deposits invested in the State Bank of Armenian SSR of USSR Savings Bank.

According to decisions made by the Defender, citizens were given all the information they needed-for many, this included information about the right to education.

In this group, consultations on the rights of refugees also form a distinctive group.

Regarding the issues mentioned above, the Defender has given citizens the clarification they needed.

Consultations with the rights of military servicemen and criminal authorities can be classified into certain sub-groups.

First are cases in which applicants received relevant advice regarding opportunities for protecting their rights and freedoms, but in filing a criminal case relating to the information on the crime, they were unjustifiably rejected (according to the applicants).

Second, clarification was given regarding violations of rights and freedoms by prosecution bodies within the pre-trial process as well as by the court (i.e. issues relating to court supervision over pre-trial procedure).

Third, consultations were connected with the activities of the independent commission (established by the decree of the RA President) that deals with issues of parole, by replacing unserved sentences with milder ones.

A range of clarification was also needed in regard to military service in RA Armed Forces; RA Military Prosecution; activities or inactivity of the military recruitment committees; and the rights and freedoms of military servicemen and members of their families.

In addition to the above, applicants were also advised on the opportunities they have to protect their rights and freedoms in terms of receiving citizenship, receiving a passport, and military registration of RA citizens residing overseas.

In 2006, at the initiative of the Defender, consultations were provided in the following ways:

1. verbal consultations with citizens when they approached the staff of the human rights defender to register a complaint;
2. verbal consultations with citizens by phone;
3. verbal consultations with citizens during field trips of the Defender or his authorized staff.

These types of consultations provided complainants with both verbal advice and other forms of legal remedies. They were carried out during working days at the office of the staff of the Defender, while consultations with citizens in the field were provided accord-

ing to the schedule of the Defender's trips.

In 2006, at the initiative of the Defender, consultations provided information on the following issues:

- Civil and civil procedures legislation;
- Labor legislation;
- Social security legislation;
- Family legislation;
- Financial and tax legislation;
- Criminal and criminal procedures legislation;
- Pardon and amnesty, parole, penitentiary procedure, as well as other issues.

1.1.3. Receiving Complaints

In 2006, the Defender paid special attention to improving how citizens were received in order to serve the following objectives:

a) facilitate direct interaction between the Defender and the population;

b) promote a quick response by the Defender's staff to the applications of the citizens.

In 2006, the staff of the Defender addressed the following key issues to provide a personal approach to citizens with complaints:

- organization of the procedure to receive and register complaints from citizens in compliance with established requirements;
- provision of adequate legal aid;
- adequate and punctual consideration by the relevant subdivisions of the Defender's staff of applications received and preparation of the Defender's decisions under those subdivisions;
- informing citizens on the decisions made on their applications;
- measures aimed at the enforcement of the decisions made and supervision over the enforcement of those decisions;
- regular analysis of the citizens' complaints to identify and eliminate the causes of the violations of citizens' rights.

In 2006, complaints were received at the initiative of the citizens, of the Defender himself, and on referral from the chief of staff or other staff entitled to submit to the Defender draft decisions for consideration.

Citizens were immediately received by the Defender in the following cases:

- request of the applicant;
- during field visits;
- at the initiative of the Defender;
- on the report of a specialist regarding a pending case.

To receive citizens in the new premises of the Defender, a special place was allocated-reception-equipped with the necessary equipment and communication devices. In some individual cases, citizens were received in the offices of the authorities responsible for registering the complaint. Where possible, issues that could be solved while receiving the complaint were given appropriate legal aid.

Guided by the requirements of the RA "Law on human rights defender" the staff in charge of the reception:

- Accepted written applications if the issues identified by the visitors required additional studies or double-checks. Staff members explained to the visitors the reasons that the request could not be settled during reception and clarified the order and terms for their applications' consideration. If, for some reason, visitors failed to record their request on paper, then the persons in charge of reception provided them with relevant assistance.
- If the content of applications appeared such that their consideration was beyond the jurisdiction of the Defender, then staff explained to the applicants that a decision might be made not to consider them. If, in any case, the applicants insisted on registering their complaint, then it was accepted.

In 2006, in order to better organize how citizens' complaints were received in person and via correspondence, the Defender ensured the implementation of the following:

- support to the Defender in matters which are within the scope of his jurisdiction;
- organization and implementation of a personalized reception process;
- acceptance of written applications addressed to the Defender;
- clarification of the procedure by which to apply to the Defender;
- clarification for the applicant about the means and forms of protecting human rights and freedoms;
- informing the Defender about large-scale or severe violations of human and citizen's rights, including analysis of media reports.

Along with the reception in his office, in 2006 the Defender organized receptions in marz centers as well.

1.1.4. Visits and Studies

In 2006, the Defender monitored the activities of public bodies by visiting and studying public institutions and organizations. In some cases this resulted in some public bodies being forced not only to review current legal practice but also to undertake measures to improve legislation.

To conduct these supervisory activities, the RA "Law on human rights defender" provides for the use of two major types of visits to public institutions and organizations:

- those based on a complaint about violation of rights and freedoms;
- those taken at the personal initiative of the Defender.

According to clause 1 of paragraph 1 of Article 18 of the law, after deciding to accept a complaint for consideration, the Defender is entitled to gain unhindered access to any public institution or organization (including military units, places of forced detention of people, including places of preliminary detention and deprivation of liberty) in order to study the matters identified in the complaint.

The law also stipulates that the Defender or his representative are entitled to gain unhindered access to military units, preliminary detention or penitentiaries, as well as other places of coercive detention in order to accept applications from people that are being held there (clause 2 of paragraph 1 of Article 8 of the law).

The first of the aforementioned types of visit is intended to be a one-off supervisory measure to respond to a complaint about human rights violations. The second is intended to comprise of regular programmatic studies of the activities of public organizations and institutions, as well as non-programmatic studies when there is information about violations of human rights.

In 2006, based on the results of visits made by the Defender or his representatives, certain reference documents were developed containing:

- notes about specific violations of rights and obligations;
- recommendations to eliminate cases of human rights and freedoms violations identified during the studies and prevent their repetition;
- recommendations to the Defender to submit motions established by law to sanction officials guilty of human rights and freedoms violations.

The human rights defender has considered the results of all these forms of supervision.

For programmatic supervision, a plan was devised to present a schedule of supervisory activities and a list of participating members. The representatives of the Defender that conducted non-programmatic studies informed the relevant institution's management about the circumstances that led to the investigation. But no schedule was developed during non-programmatic supervision.

The representatives of the Defender present to the relevant bodies the reasons why it necessary to conduct the monitoring, indicating the extent of supervisory measures, facts on violation of human rights, and sources of information regarding those facts.

In 2006, the human rights defender and his representatives regularly visited penitentiary institutions, places of detainees, military units, mental hospitals, retirement homes, orphanages, and other public institutions and organizations. In these institutions, the Defender focused on:

- facts about human rights violations;
- cases of abuse on behalf of the administration and the personnel;
- restrictions of fundamental human rights;
- maintenance of only a minimum level of social services guaranteed by the state;
- presence of discriminatory attitude towards those under the "guardianship" of institutions receiving social services guaranteed by the state;
- other indicators that show how effectively the institution is fulfilling its functions.

In general, all visits aimed to identify facts relating to violations of human rights. At the same time, the visits of the Defender or his representatives enabled them to assess the activities of the public bodies in the relevant areas, as well as to identify the most typical violations of human rights and the factors that contributed to them.

1.1.5. Quick Response

Quick response to complaints has a special role among the human rights defender's activities: it is a vital guarantee ensuring the implementation of the Defender's powers. It seeks to identify, warn about and prevent possible violations-or activities that create the danger of human rights and freedoms being violated by public bodies.

The quick response is triggered when verbal and written complaints are received concerning the violation of human rights and freedoms that cannot be delayed. Thus, places where human rights and freedoms are most endangered (penitentiary institutions, places of detainees, military units, mental hospitals, retirement homes, orphanages, other public institutions and organizations) are visited. Analysis shows that the quick response really only serves its objective in cases when the visit to a certain institution is conducted without prior notice to the officials of the given bodies.

The quick response visit is implemented by the Defender's staff-those groups that deal with restoring rights relating to criminal procedures and military servicemen as well as those restoring civil and political rights. In response to each visit, the Defender's staff organizes feedback discussions, chaired by the Defender.

During visits to penitentiary institutions and places of detention, the preconditions for keeping arrested people, detainees, as well as people sentenced to deprivation of liberty, rights and freedoms were studied against the requirements of the RA Criminal Procedures Code, Penitentiary Code, RA "Law on keeping arrested and detained people" and other legal acts. Information in personal files was also examined. Individual consultations were organized with the persons that had submitted a complaint to the Defender beforehand, as well as with the arrested, detained and sentenced people that wished to meet the staff of the Defender during the visit. By the end of the visit, any issues identified were submitted to the manager of the director of the institution or his deputy and relevant clarifications were requested. When appropriate, impromptu joint discussions were also held to explore ways of solving existing problems.

Visits to police departments were precipitated by the need to investigate whether the provision of rights and freedoms of detained people were being implemented according to the court actions envisaged by RA Criminal Procedures Code and RA "Law on Police". When violations were identified, immediate measures were undertaken to eliminate them.

During the visits to military units there were meetings with the commanders, as well as with servicemen, for a fixed period. The rights and obligations of the latter were explained

to them and if they wished to have individual meetings, they were arranged so that each of them could receive legal advice on matters that concerned them.

The abovementioned details show that the quick response has an important role in safeguarding the natural implementation of the Defender's activities-it contributes to an unbiased enforcement of those legislative frameworks that provide the country's protection of human rights and freedoms, as well as the establishment of social justice principles.

1.2. Activities to Restore Human Rights

1.2.1. The Defender's Means of Influence

The main means of influence given to the Defender, as envisaged by RA "Law on human rights defender", **is a written decision - a recommendation,** made by the Defender as a result of the considered complaint. This decision, according to clause 1 of paragraph 1 of Article 15 of the law, advises the relevant public or local self-governing bodies (or its official) to eliminate the actions (or inactivity) seen to be violating human rights and freedoms; it also notes steps that need to be taken in order to restore those rights and freedoms. In 2006, such recommendations were made in all places where violations were identified.

These decisions are not the Defender's only means of influence-when the Defender comes across massive violations of human rights and freedoms, the Defender may address relevant **'applications'** to the public bodies. He can also write **official letters** to express his position on various issues being tackled on behalf of citizens (see, for example, Annex 6).

Another important measure applied by the Defender is his **right to petition** for authorized bodies to sanction or bring to criminal justice the official whose decisions or activities (inactivity) violated human rights and freedoms and (or) the requirement of the RA "Law on human rights defender) (clause 5 of paragraph 1 of Article 15 of the law). In 2006, on the basis of decisions detailing identified violations and petitions for the sanctioning of relevant officials, a range of Armenia's police servicemen were disciplined.

The need for such actions arose when, while considering a complaint, the Defender discovered elements of administrative, disciplinary and criminal offences. The applicants may not even have known about it, may not personally have turned to the relevant authorities, or the offence might be the result of massive violations of human rights. The intervention of the Defender-especially in the latter case-is particularly urgent.

The RA human rights defender also reserves the rights to apply to RA Constitutional Court. In 2006, the Defender needed to use this means of influence on two occasions (see Annexes 8 and 9). Both of these Defender's pleas were satisfied.

On the basis of studies and analysis of information related to human rights and freedoms, the Defender is entitled (according to Article 16 of the Law) to forward clarifications and recommendations of an advisory nature to public administration bodies in order to conclude studies. In 2006 the Defender used this means of influence as well.

According to paragraph 3 of Article 7 of the Law, the Defender reserves the right to: be present at the sessions of the Government of the Republic of Armenia-as well as other public administration bodies-and make a speech if matters concerning human rights and fundamental freedoms are being discussed; present to those sessions issues concerning the violation of human rights and freedoms by the bodies subject to them and other officials, as well as the requirements of the RA "Law on human rights defender".

Paragraph 4 of the same article envisages that the Defender is also entitled to: be present at those sessions of the RA National Assembly that are considered to relate to matters of human rights and fundamental freedoms; make presentations in those sessions according to the procedure established by the RA "Law on Regulations of the National Assembly of the Republic of Armenia", when they consider the.

In 2006, the Defender also used means of influence to counter human rights violations.

1.2.2. Cases with Positive Outcomes

The activities of the human rights defender institution do not replace those of other institutions that are responsible for protecting citizens' rights. Similarly, the decisions of the Defender do not terminate the implementation of legal acts adopted by public bodies. Being a mediator between the citizen and the authorities, the Defender serves as an "arbiter" whose instructions are followed only due to its high reputation. Indeed, the following points witness to the effectiveness of the Defender's activities:

1. acceptance of Defender's instructions by relevant officials and their firm and resolute fulfillment;
2. lack of applications complaining about issues that have already been investigated and addressed by relevant measures to restore those violated rights;
3. implementation of specific actions by public administration bodies to restore citizens' rights and sanctioning of guilty persons - in response to the annual and special reports of the Defender;
4. citizens' trusting attitude towards the Defender's institution - expressed by the annual increase of the number of complaints registered;
5. regular coverage of the Defender's activities in the media;
6. effective preventive activities of the Defender that avoided cases of human rights violations;
7. determination of the Defender to restore the violated rights and freedoms;
8. constructive cooperation with non-governmental organizations and international institutions;
9. increase in citizens' sense of justice, resulting from the Defender's educational and awareness activities.

Nevertheless, the key indicator of how effective the Defender's activities are is whether human and citizen's rights were restored. During 10 months of 2006, as a result of the

Defender's activities, there were 243 cases of restored rights. These cases include violated rights restored prior to the Defender's decision as a result of cooperation with public bodies, as well as those restored after decisions, when the case was presented to the relevant authorities' representatives who committed the violation (or their superior).

1.3. Activities Targeted at Improving Legislation

One of the most important areas of the Defender's activities aims to improve the country's legislation. The gaps, uncertainties and contradictions in laws and other legal acts concerning human rights and fundamental freedoms lead to the violation of those rights while the legal act is being enforced-the legislative gaps make it impossible to effectively protect rights, while uncertainties and contradictions of the law and other legal acts enable arbitrary interpretation that fails to benefit the right's applicant.

In the current legislative climate-when the legal system is still being completed and made to comply with commitments undertaken within international treaties and constitutional amendments-the adoption or amendment of a law or legal act often becomes pressing and is passed with unnecessary haste, creating omissions, uncertainties and contradictions in it.

The Defender monitors legislative issues by means of studies and comparative analyses of the legal framework, as well as considering issues identified from complaints about the legal framework. Special importance is also given to organizing discussions with the initiator of draft legislation, at which the Defender's opinion is submitted.

Thus:

1. The need to make amendments to RA "Law on human rights defender" was ripe-it was required by constitutional amendments and the need to fill in gaps identified during the implementation of the law. The Defender has developed and submitted to the RA Ministry of Justice a draft law on these amendments, as well as draft laws on making amendments in Criminal and Criminal Procedures, Administrative Violations Codes, the RA "Law on state duty". These proposed amendments were passed by the RA National Assembly on 01.06.06 and ratified by RA President on 24.06.06.
2. Given that legal norms regulating the property alienation process for public and state needs do not ensure complete protection of the rights of the proprietors and people that have other property rights relating to the alienated property, the Defender applied to RA Constitutional Court to determine the constitutionality of the RA Civil Code Article 218; Land Code Articles 104 106 and 108; RA Government decree No 1151 dated August 8, 2002. By the decision of the RA Constitutional Court dated 18.04.06 those legal acts were recognized as contradicting Article 31 of the RA Constitution.
3. The Defender found that paragraphs 2 and 3 of Article 31 of the RA "Law on political parties" limit the constitutional rights of the person to form associations since that law permits the dissolution of political parties when the party does not receive the required

amount of votes during parliamentary elections or fails to participate in parliamentary elections. The Defender applied to RA Constitutional Court to determine the constitutionality of those provisions and by the decision of the RA Constitutional Court dated 22.12.2006 those legal acts were recognized as anti-constitutional. The Constitutional Court has also tackled paragraph 4 of Article 31 of the aforementioned law, according to which "After the judicial dissolution of the political party the remaining property is transferred to the Republic of Armenia". This provision of law has also been recognized as anti-constitutional.

4. Recommendations were submitted to RA Government and Yerevan Municipality to recognize the rights of several dozens of residents of Kond and Kozern districts that use territories and apartments as property. At the decision of the Yerevan Mayor, the issue has been favorably addressed: a commission was formed which conducted vital in situ studies; as a result, the property rights of the residents were generally recognized. There are disputable issues in the Kozern district, and those issues remain part of an ongoing resolution process.

5. After investigating complaints relating to public benefits, the Defender came to the conclusion that the actual financial state of many beneficiaries had worsened as a result of 1000-1500 dram pension increases that affected beneficiaries' poverty status and consequently stripped them of the right to receive 7000 dram family allowance. The matter has been submitted to RA Government and RA Ministry of Labor and Social Issues.

6. When an employer paying compensation to people who were previously disabled under their employment is liquidated, the beneficiaries are deprived of the chance to receive that compensation. The rules approved by the RA Government decree No 579 dated 15.11.1992 stipulate that "When the activities of an organization are suspended via liquidation or restructuring, any damages should be compensated (i.e. damage compensation continues) by its successor in title, or, in the absence of a successor, by the social security body at the expense of the state budget" (clause 16). However, by RA Government decree No 1094-N, dated 22.07.2004, clause 16 has been annulled. Instead, they apply paragraph 2 of Article 1086 of the RA Civil Code, according to which "When a legal entity that has been duly recognized as responsible for damage incurred to life or health is liquidated, the relevant payments are capitalized by the law or other legal acts - so that the victim receives payment". This provision of capitalization is stipulated in RA "Law on insolvency/bankruptcy"; but the rules of capitalization of the envisaged payments have not been stipulated by any law or legal acts and this case remains open. The case has been submitted to RA Government. The RA Ministry of Labor and Social Issues informed the Defender that they are preparing a draft law "On mandatory social insurance from accidents on the job and professional diseases", which will also solve the aforementioned issue.

7. The way that Article 1078 of the RA Civil Code ("the volume and nature of compensating damage caused by health deterioration") is being applied is also debatable. The Article implies that compensation paid due to the inability to work as a result of disability or other health damages caused to the citizen shall be lifelong. However, on the decision of the RA Court of Appeals, when people receiving such compensation reached pension age,

they were deemed no longer eligible for the payments and payment of such compensation terminated.

8. The attention of the RA Government was drawn to evidence suggesting that the requirement of paragraph 1 of Article 10 of the RA "Law on freedom of information", stating that "the provision of information or its copies by public and local self-governing bodies is to be conducted according to the procedure established by the RA Government" has not been enforced-the Government has established no such procedure to be used by the bodies in order to obtain information, and provision of information has been refused on the grounds that the Government has no established procedure. The RA Ministry of Justice informed that RA National Assembly did not accept the draft law "On making amendments in RA law on freedom of information" developed by the ministry. The matter is still unsettled.

9. The attention of the RA Government was drawn to the gap in the RA "Law on citizenship" that determined the citizenship of children aged 14-18 when their refugee parents receive RA citizenship. The Defender is preparing a recommendation that suggests relevant amendments to the RA "Law on citizenship".

10. To achieve maximum protection by law of the rights of people that own property and have other property rights and to restore rights violated in the alienation process, the Defender applied to the Constitutional Court to determine the constitutionality of legal acts concerning the alienation of property for public and state needs. During discussions on the RA draft "Law on alienation of property for public and state needs" the primary demand of the Defender required specification in the draft of the exceptional public interest criteria. The Defender also objected to the introduction of "beneficiary" and "acquisition" concepts in the preliminary version of the draft as well as to the planned procedure for evaluating the alienated property. Some of the recommendations of the Defender were accepted and others were not (see Annex 7).

11. In relation to the RA draft "Law on lobbying activities", the Defender expressed his concerns over a range of uncertainties and contradictions contained in it-that they might lead to illegal restrictions of people's constitutional rights to freely disseminate opinions. The draft law is still withdrawn from circulation.

12. RA draft "Law on state guarantees for ensuring equal rights and equal possibilities for men and women" was deemed incomplete and in need of more work before submission to RA National Assembly. This draft is also withdrawn from circulation.

13. Disagreement was expressed over a range of substantial provisions of the RA draft "Law on ethnic minorities and other ethnic citizens". The authors of the draft have partially agreed with submitted recommendations. The draft will be further developed.

14. Concerning "The Republic of Armenia National Security Strategy" program, several editorial recommendations have been made, which were mainly accepted.

15. The Defender expressed a positive opinion about RA draft "Law on disabled people". The draft is included in RA National Assembly agenda.

16. Draft RA Judicial and Civil Procedures Codes are under discussion and the Defender will submit his feedback about them.

17. Article 414.2 of the RA Criminal Procedures Code and Article 231.2 of the RA Civil Procedures Code envisaged the following additional conditions to consider accepting appeals:

a) the judicial act to be made by the Court of Appeals may have a substantial significance for unequivocal enforcement of the law;

b) the possible judicial mistake, resulting from violation of material or procedural rights committed by the lower court, may generate severe consequences.

The Defender considers that these conditions fail to comply with the requirements of legal certainty since the concepts "substantial significance" and "severe consequences" can always be interpreted subjectively. However, the issue is related not so much to legal formulations as to legal practice, which has proceeded in the direction of making conditions for the acceptance of an Appeal ever stricter-more than a dozen complainants came to speak about it. Given such legal practice, there is a need to further specify the law; the Defender has taken into consideration the fact that RA Prosecutor General has applied to RA Constitutional Court to determine the constitutionality of those legal norms.

18. The principle stipulated by paragraph 1 of Article 284 of the RA Criminal Procedures Code, which allows wire tapping without court permit if one of the parties agreed to wire tapping, was also discussed. The Defender deems that this principle contradicts paragraph 5 of Article 23 of the RA Constitution since at the consent of just one party, the right of the other is violated.

19. A range of articles of the Criminal Procedures Code are also being considered, relating to rights of the injured party and civil plaintiff, in order to make recommendations about relevant amendments.

1.4. Development of Information and Public Relations

The main means of developing public relations is the close cooperation of the Defender with the media. There are a number of reasons why it is necessary to achieve constructive dialogue in this area. Firstly, it is the media that influences how the activities of public bodies and the Defender are perceived. Secondly, by disseminating information about the state of human and citizen's rights and freedoms the media has a certain impact on the formation of a person's sense of justice. Thus, establishment of effective cooperation can contribute to the broad advocacy of the Defender's activities.

In 2006, the Defender ensured the implementation of public relations activities in the following ways:

1. daily monitoring of human rights materials in Armenian and foreign media;
2. development and dissemination of information materials, press releases and announcements about the activities of the Defender;
3. organization of press conferences and interviews with the Defender and his staff;

4. activities to increase public awareness on human rights and the population's sense of justice;
5. collection and filing of publications that cover activities of the Defender and human rights in Armenian and foreign media;
6. the Defender's web page;
7. preparation and dissemination of relevant statistics.

1. Daily monitoring of human rights materials in Armenian and foreign media

In 2006, one of the objectives aimed at developing information and public relations was the study of information covered in Armenian and foreign media, various human rights organizations' reports of public importance, as well as materials of interest from the standpoint of the Defender's powers, and assessment of the reliability of that material. The activities aimed at the implementation of this objective enable the Defender and his staff to be permanently informed about news published in Armenian, as well as foreign media, significant events and statements made by the Ombudsmen of other countries and international human rights organizations. For the Republic of Armenia, as well as for all the other post-Soviet republics in the phase of establishing democracy, it is very important to study the experience of human rights organizations, coverage of human rights practice in media and e-media of already established democracies, as well as the cases of public importance.

The RA human rights defender's institution is the youngest institution in the region: the first Defender was appointed on March 1, 2004 and the first parliamentary Defender was elected on February 17, 2006. Analysis of materials from the web pages of foreign Ombudsmen and international human rights organizations kept the institution informed about global developments in the area of human rights protection. The need to check the reliability of materials covered in Armenian media is due to the fact that the media often contains articles that do not truly reflect reality or contain incorrect data. In 2006, the results from the analysis or information needing the potential intervention of the Defender were at the center of his attention. According to RA "Law on media" the Defender quickly responded to publications that needed clarification or refutation.

As a result of daily monitoring of media publications, an archive of human rights materials, classified by sub-divisions, has been created. There were 481 publications concerning the Defender and his institution, summary releases were presented in electronic form, and approximately 40 TV and radio reports and interviews were broadcast.

2. Development and dissemination of information materials, press releases and announcements about the activities of the Defender

To ensure the transparency of the activities of the Defender's institution, information on the meetings and visits of the Defender as well as information on pending cases has been collected, developed and disseminated. To disseminate information on cases of special importance or public interest, the Defender's web page posted around 55 items in the "Case number" section (35 under "News"), disseminated more than 40 press releases, published

clarifications of numerous issues, and provided materials to journalists.

In 2006, there were frequent cases of harassment against the professional activities of journalists. After analysis of the events (and examination of their reliability), the Defender instructed that announcements be disseminated in which he severely condemned the actions. Most of the press releases and announcements were broadcast on various TV and radio programs (mainly news programs).

A photo archive has also been created to make the disseminated information more visual.

3. Organization of press conferences and interviews with the Defender and his staff

One of the best means of ensuring the transparency and publicity of the Defender and his institution is the organization of press conferences in which journalists have additional opportunity to ask the Defender about issues with which they are concerned. To cover the activities of the Defender's institution in 2006, the Defender called press conferences with the active participation of approximately all the representatives of the media. During the press conferences statistical data and other interesting materials concerning the reporting period were provided to journalists. To cover information and assessments of the Defender, the information and public relations group of the staff is actively participating in the visits of the Defender and his staff to marzes, penitentiary institutions, special schools, retirement homes and other places. During these visits the group has disseminated materials concerning the activities of the Defender.

4. Activities to increase public awareness of human rights and the population's sense of justice

The need to increase public awareness of human rights and the population's sense of justice is vital-the majority of the population is unaware about its rights and fundamental freedoms and lacks the desire to follow the procedure established by law to protect rights that are infringed by public bodies. This phenomenon leads to corruption and gives additional opportunities for public body representatives to violate those rights of citizens-rights that should be provided by that very public body or its representative. This course, due to society's lack of awareness about its rights or its willful illegal protection of its lawful rights, causes considerable damage both to the country's democratization and to the establishment of a lawful state. Thus, one of the important functions of the Defender is to inform as many sectors of society as possible about human rights and fundamental freedoms and communicate the importance of those rights being widespread.

In 2006, to develop public relations, a leaflet about the Defender and his institution was produced. It gives brief information on how to apply to the Defender, the scope of his powers, the staff and other issues. RA "Law on human rights defender" with its amendments has also been translated (into Russian and English).

A 2007 action plan has been developed, aimed at increasing a sense of justice among the population. A constituent part of the action plan is to identify which sector of society has a high number of rights violations due to a low level of sense of justice and a lack of

awareness about elementary rights. Analysis of complaint applications addressed to the human rights defender will provide a useful basis to identify this (target) group.

Today, television, with its large audience, is the most influential means of communication and is crucial in forming public opinion and support. In 2006, steps were taken to achieve some agreements with television companies. In particular, there is a proposal to collaborate with the creation of a series of TV programs, social advertisements (PSA) and films. The purpose of TV programs will be to cover: activities of the Defender; issues concerning pending cases; gaps in legislation and possible reforms; and positive outcomes - with the participation of the citizens and organizations that applied to the Defender. PSAs could be about how to apply to the Defender or courts, the Defender's institution, and certain rights. The advocacy film with explanatory information concerning the Defender's institution will have a significant role in increasing public awareness.

Some steps were also taken to create a periodical to cover the activities of the Defender.

RA "Law on human rights" has been translated into two languages and has been published and disseminated. However, it is essential to publish this document (as well as other laws) with explanatory notes for the relevant audiences sectors of society. The creation and dissemination of such accessible legal materials for the vulnerable groups mentioned above can also considerably contribute to an increase in the level of legal literacy.

Posting of public signs-in public places and border crossing points-can also play an important role. The information on the signs can be of an advocacy-advertising nature (address and phone number of the Defender's institution and the Defender's 'motto'). These signs and other materials, such as published calendars with colors and slogans signifying the Defender's institution, can be disseminated in public administration institutions (penitentiary institutions, police, etc.). In 2006, such steps were taken.

5. Collection and filing of publications that cover activities of the Defender and human rights in Armenian and foreign media

In 2006, a database of publications that cover the activities of the Defender and concern human rights in Armenian and foreign media was created.

6. Defender's web page

The web page of the RA human rights defender is a part of public relations development. Given that the internet has an increasingly large impact in Armenia, special importance has been given to posting information about the Defender's activities on the web and disseminating it in electronic form.

In 2006, the "News" section of the web page was updated almost every day-it contained information on the activities of the Defender, gratitude of citizens, messages about meetings and visits, issues of public importance, and positive outcomes were posted on it. The web page also contained an "Announcements" section to post any announcements made by the Defender.

In the "Frequently Asked Questions" section, the reader can obtain information about

the powers of the Defender and the institution, the process of applying to the Defender, and other comprehensive and user-friendly information. There is a detailed description of who can apply to the Defender (when, how and with what matters), what decisions the Defender makes, and how to meet the Defender. By posting 'pending with the Defender' issues (while ensuring the secrecy of the applicants) there is an important source of information for journalists and it has contributed to the journalists' activities. Additional information has been provided to journalists interested in a case.

The speeches of the Defender at the human rights conferences and discussions are also posted on the web pages.

The web pages of the RA human rights defender were presented at the second e-content pan-Armenian contest organized by Information Technology Fund. More than 400 web pages representing different sectors of the country's public life participated in the contest. The web page of the Defender was awarded 2006's Grand Prize. The works presented were assessed by the following criteria:

- quality and quantity of content;
- easiness and accessibility of use;
- strategic importance for Armenian society.

1.5. Cooperation with Non-governmental Organizations

Today's system of Armenia's non-judicial human rights protection institutions, which also includes human rights organizations and the Defender's institution, lacks any clear or regulated lines of cooperation. Cooperation between the Defender and non-governmental human rights organizations are not regulated by the RA "Law on human rights defender" either. Perhaps the only exception is the 'expert council', provided by law, which acts with the Defender.

From the very beginning of the Defender's institution activities one of the forms of cooperation between the Defender and non-governmental organizations was through this expert council acting with the Defender. Representatives of human rights organizations were included in the council as well. The activities of the council are aimed at the solution of complex issues that are encountered while restoring violated rights of citizens, improving legislation, developing international relations in human rights, and legal coverage.

These non-governmental organizations provide citizens with legal aid and have the greatest opportunities to assess flaws in legislation and legal practice since often the adoption of a new legal act or the formation of legal practice leads to an increase in the number of citizens that need protection. However, the non-governmental organizations are not endowed with the powers of public authorities-powers which are necessary to provide practical assistance to the citizens that turned to them expecting rights and freedoms to be protected. The non-governmental organizations do not reserve the rights to legislative ini-

tiative that can impact the legislative process, initiate legislative reforms in the domain of human rights, and eliminate gaps and contradictions.

Given these facts, and the increasing tendency for public bodies and non-governmental organizations to cooperate in Armenia, the Defender has always made great efforts to establish cooperation with non-governmental organizations.

In 2006, this cooperation was also conducted by means of regular consultations around urgent issues of human rights protection with the representatives of non-governmental organizations and information-coverage activities.

Joint measures were also developed to: monitor the state of human rights protection; increase the legal culture of citizens and non-governmental organizations; improve legislation; develop respective recommendations and submit them to the relevant sessions of parliament.

In 2006, the Defender expanded active cooperation with non-governmental organizations with the request to monitor the state of human rights. The purpose of the monitoring was to get impartial and exact information about the most frequently encountered and extreme human rights violations.

"The concept paper of the Defender's relations with non-governmental organizations" has also been devised. It envisages a joint monitoring of the state of the country's human rights upholding and protection. For example, the concept paper enabled measures to ensure the participation of the representatives of relevant non-governmental organizations to develop the RA "Law on alienation of the property for the public and state needs" and facilitated an international conference on the topic "Bio-ethical aspects of human rights in the education sector".

In 2006, joint visits of the Defender and representatives of non-governmental organizations were of a regular nature. During the visits, the Defender and the leaders of the human rights movement were familiarized with the activities of public bodies in the area of human rights protection. As a result of cooperation, cases of citizens' rights violations have been identified.

"Roundtable" discussions about Armenia's pressing issues of human and citizen's rights and freedoms were regularly held with leaders of non-governmental organizations.

In 2006 the Defender and his representatives visited offices of different non-governmental organizations-all meetings were aimed at maximizing discussion of human rights protection issues.

The conference dedicated to the international day of human rights protection held in Yerevan on December 10, 2006 was another significant event and the human rights defender was the initiator of this event.

These are just first steps to ensuring constructive dialogue with non-governmental human rights organizations. In the future extensive and demanding work is needed to develop productive cooperation. The objective of this cooperation will be: exchange of experience related to achievements made in publicly important outcomes; provision of assistance by the Defender to non-governmental organizations to monitor the violation of

human and citizen's rights and freedoms. As a result of cooperation, the Defender-based on data submitted by non-governmental organizations-will also be able to evaluate how human rights are being upheld and protected in the **marzes.**

1.6. International Cooperation

Another key activity of the Defender is the development of cooperation between international organizations and institutions, their Armenian representations and the human rights defender's institution in the area of human rights protection.

International cooperation creates awareness about the activities of international organizations in the area of human rights and the international experience of Ombudsmen activities, which in turn facilitates the use of international experts' knowledge and skills to improve the Defender's institute activities. In this area the ways to achieve the objectives of the RA human rights institution are:

- integration into the international framework of human rights institutions;
- establishment and development of links between international human rights organizations, their Armenian representations, and the Defender's staff;
- development of cooperation with international human rights organizations and institutions to consistently augment the professional knowledge and working skills of the Defender's staff;
- development and implementation of a cooperation strategy;
- promotion of respect towards human rights.

1. Integration into the international framework of human rights institutions

From the start the Defender's activities, there was active cooperation with international human rights organizations and bodies, and other national human rights institutions. The RA human rights defender's institution is already broadly recognized among such international entities with a well-established role.

The Defender's institution has become a member of such internationally renowned organizations as International Institute of Ombudsmen and the European Institute of Ombudsmen, and is a fully-fledged member of them.

1.1. The membership of the Defender's institution in the International Coordination Committee (ICC) of national institutions of human rights protection and promotion is another important fact. In 2005, the human rights defender's institution submitted a membership application to the ICC (to become a member of which requires that the institution complies with the Paris principles). The RA human rights defender's institution membership was discussed in April 2006 and the accreditation committee decided to award the institution with A(R) status. The following is a summary of the statuses awarded by the committee:

- A - complies with Paris principles;
- A(R) - reserve accreditation; additional information is required to receive A status;
- B - observer; the institution does not fully comply with Paris principles or insufficient information was provided;
- C - fails to comply with Paris principles.

The accreditation committee's session took place in October 2006. It deemed that, since the Defender's institution had expanded effective activities within the territory of the country, the RA human rights defender's institution A(R) status could be upgraded to A.

1.2. International human rights entities are also interested in improving and developing Ombudsmen institutions. Thus, in Strasburg, during a working meeting entitled "Support to Ombudsmen activities", representatives from the RA human rights defender's institution participated in a discussion of the status of Ombudsmen in the Council of Europe member states, procedures necessary to support them, and the difficulties and challenges facing Ombudsmen.

2. Establishment and development of links between international human rights organizations, their Armenian representations, and the Defender's staff

2.1. As a Council of Europe member country, Armenia functions via various bodies: Parliamentary Assembly, Committee of Ministers, and a range of other entities. To implement reforms, the Defender considers it to be of utmost importance to fulfill commitments undertaken as part of the Council of Europe and implement the principles (Paris principles) concerning the status of national institutions approved by UN General Assembly.

In 2006, the Defender continued cooperation with the Council of Europe and the European Union, as well as with the Organization of Security and Cooperation in Europe.

2.2. In 2006, the RA human rights defender and his staff members organized meetings with international organizations dealing with human rights promotion and protection, including SIDA (Swedish International Development Association), UNDP (United Nations Development Program), British Council and representatives of other organizations, and official ambassadors in Armenia. During these meetings they discussed: the potential for cooperation-in particular development of regional cooperation; provision for the complete implementation the European Court of Human Rights Case Law in Armenia; improvement of legislation on human rights and freedoms in order to make it relevant to international law.

2.3. The year's working meetings of the Defender with representatives of PACE Women and Men Equality Commission, European Committee of Prevention of Torture and Inhuman or Humiliating Treatment or Punishment (CPT) delegation, and the European Commission of Fights Against Racism and Intolerance (ECRI) created the necessary preconditions for ensuring further effective cooperation of the Defender with these entities. An agreement has been reached to organize in 2007 joint measures with UNESCO to increase information and public awareness.

2.4. The human rights defender representative actively participated in the activities of

the Lisbon international conference to devise the provision of an Optional Protocol of UN Economic, Social and Cultural Rights International Convention.

2.5. With the support of the OSCE Office for Democratic Institution and Human Rights, good grounds were created for cooperation between the Lithuanian Seim and The RA human rights defender institute. The meetings of the Defender with the Lithuanian Minister of Justice, Ombudsman, Speaker of Seim, and Seim's human rights committee members have substantially contributed to the exchange of accumulated experience in the area of human rights in Armenia and Lithuania.

3. Development of cooperation with international human rights organizations and institutions to consistently augment the professional knowledge and working skills of the Defender's staff

3.1. International organizations and institutions play an important role in training personnel. They pay serious attention to and support the formation of the Ombudsmen institution. For example, the Council of Europe helps such institutions to become familiar with CE human rights legal documents, activities of the organization, non-judicial mechanisms of human rights protection, as well as activities of the European Court of Human Rights. To this end, a study tour was organized by the Council of Europe's chief human rights department with representatives of the RA human rights defender's institution participating.

Generally, assistance from international organizations is of an organizational nature. For example, UNDP office organized an international meeting in Bratislava to discuss issues relating to: specifying the relationship between Ombudsmen and bodies in charge of public security in the area of civil supervision; effectively assessing the formulation of strategic development plans and the efficiency Ombudsmen institutions' work.

Understanding the importance of studying and using international experience on human rights protection, the RA human rights defender ensured that his staff participated in various international meetings and training sessions (organized by different international organizations) in order to increase their professional level, acquire new skills and knowledge, and exchange experience.

For example, a delegation from the RA human rights defender's institution participated in "The role of national human rights institutes" roundtable discussion organized in Germany by UN Human Rights High Commissioner and the Danish and German Institutes of Human Rights. During the roundtable they discussed, among other things, the current links between national and international human rights entities and the significance and prospects of those entities.

Representatives of the Defender have also participated in specialized human rights training organized by International Civil Peacekeeping and Peace Building Center in Austria. This program not only informed staff members about the activities of the Ombudsman of Austrian Federal Republic, but also enabled the Defender's institute to expand the scope of its international cooperation. Consequently, relations between the institutions of the two countries are developing.

The exchange of experience contributes not only to capacity building of the institution and its staff but also introduces experience and recommendations acquired from other sectors. For example, the participation of the Defender's representative in an international conference (in Moscow) dedicated to formal and informal education systems' activities should be noted.

In 2006, the Defender hosted Swedish Ombudsman of Equal Rights, who came with the intention to establish cooperation with the Defender's office.

International cooperation can be considered established when practical relations are reinforced via the conclusion of bilateral or multilateral agreements of joint activities. As a result of discussions with the delegation from Sweden, a memorandum was concluded (at the initiative of the Human Rights Wallenberg Institute) that envisages provision of methodology assistance by the Wallenberg Institute for the training of the Defender's staff, RA human rights organizations, as well as public and non-governmental organizations.

4. Development and implementation of a cooperation strategy

4.1. To ensure necessary conditions for the harmonization and implementation of measures with other partners in this sphere, the Defender is implementing a comprehensive cooperation strategy. In 2006, the RA human rights defender cooperated with international organizations to develop and implement joint projects promoting respect for human rights.

To make assistance more effective, the Defender supports activities aimed at establishing a network of international cooperation. These networks provide:

- the coordination necessary to avoid duplication of efforts and ensure interconnected activities;
- the co-financing necessary to provide effective allocation of resources and ensure the sustainability of the project;
- the advocacy necessary to ensure awareness of conceptual issues;
- the experience and knowledge necessary to ensure high-quality, targeted projects.

4.2. The human rights defender contributes to the establishment of the cooperation network in the following ways:

- Participation in discussions on conceptual issues;
- Proposing on innovative initiatives and ensuring exchange of experience.

In the future, regional meetings are planned to discuss general issues existing in the area of human rights and to regulate those issues through the involvement of the Ombudsmen.

5. Promotion of respect towards human rights

5.1. The promotion of respect towards human rights is implemented by:

- Encouraging innovative and flexible approaches to the implementation of a human rights action plan;
- Developing training programs in human rights protection;
- Developing the knowledge and skills of human rights education specialists;

- Improving the knowledge and skills of the Defender's staff;
- Raising public awareness of the conditions and procedures for applying to the human rights defender.

5.2. In 2006, in order to increase awareness of human rights, a range of seminar-discussions was organized for non-governmental organizations, public and non-governmental institutes, as well as international organizations. For example, together with the national institute of bioethics, the Defender's staff organized a two-day international conference entitled "Bioethical aspects of human rights in educational system" with the support of the Moscow UNESCO office. Participating were delegations of National Ombudsmen Institutions and human rights organizations, as well as bioethics experts from Georgia, Belarus, Moldova, Russian Federation and representatives of international organizations functioning in Armenia, public bodies and non-governmental organizations. The concluding document adopted by the conference participants was positively assessed by non-governmental organizations and public and non-government bodies specialized in bioethics.

Having the highest praise for Yerevan's international conference the Moscow office of UNIESCO developed a close cooperation program with the Defender's office; in its 2007-2008 strategic plans it envisages a range of joint measures like public awareness, encouragement and fostering UN human rights, international treaties, and implementation processes. To further discuss close cooperation with the Moscow UNESCO office, the Defender was invited to Moscow. Within the framework of the visit, the Defender met with the Ombudsman of the Russian Federation V. Lukin. During the visit, the Defender reinforced further cooperation with the Ombudsman institution of the Russian Federation, as well as with the UNESCO office.

5.3. The RA human rights defender actively participated in Istanbul's Black Sea Economic Cooperation member-states national human rights institutions' conference entitled "The role of the ombudsman institution in reinforcing democracy".

5.4. In 2006, to engender respect towards human rights and freedoms, democracy and rule of law reinforcement in Armenia, the Defender's staff, in cooperation with Armenia's UN Office, OSCE Yerevan Office and British Council in Armenia, organized a workshop entitled "Human rights and Armenian realities". During the event, dedicated to international human rights day, they discussed a range of pressing issues like "Individual applications in the Constitutional Court", "Human rights and education", and "Civil procedural guarantees of human rights". This discussion demonstrates that: (i) the Ombudsman institution model has a unique status that reinforces cooperation among human rights institutions and international organizations; (ii) the international community expresses willingness to support the RA human rights defender's activities.

5.5. In 2006, within the framework of cooperation with international institutions, the Defender also conducted research. The Defender actively participated in the development of views about individual issues of human rights protection and the preparation of instructions by international organizations. With the Defender's supervision, professional human rights schools have studied and analyzed information concerning professional training

from developed democratic countries' human rights entities and international human rights non-governmental organizations. They have also analyzed and evaluated international reports, resolutions and other documents concerning Armenia.

1.7. Expert council

According to paragraph 1 of Article 26 RA "Law on human rights defender", in order to benefit from advisory assistance, the Defender may establish Expert Councils composed of individuals with backgrounds in human rights and fundamental freedoms.

In 2006, the expert council, established by the decree of the Defender, included people of high reputation with essential knowledge, a background in the area of human rights and fundamental freedoms, and legal experience. It comprised of representatives from the teaching staff of universities; public administration bodies and non-governmental organizations, as well as the media.

The expert council has set up sub-committees to work on:

a) civil, social, economic and cultural issues;

b) national minorities, refugees, women and child rights, environmental and non-governmental organizations issues;

c) criminal, criminal procedures and rights of military servicemen issues.

The members of the expert council are involved on a voluntary basis-they are not paid for the services they provide (paragraph 4 of Article 26 of the law).

Objectives of the expert council are to:

- analyze the state of human rights protection and maintenance in the Republic of Armenia;
- submit conclusions about draft legislation on individual issues concerning human rights and freedoms;
- improve legislation concerning human rights by submitting recommendations aimed at making legislation comply with the RA Constitution and the principles and norms of international law;
- discuss the most important recommendations and motions to be submitted by the Defender to public bodies;
- present materials to be reflected in the annual and special reports of the Defender and expert assessments; discuss conclusions stemming from the reports;
- provide legal expertise on issues concerning widespread or extreme violations of human rights and fundamental freedoms.

In 2006, the expert council, together with the Defender, discussed the proposals on draft RA "Law on making amendments in "RA Law on television and radio", as well as the appropriateness of having a media defender. The council discussed the issue concerning draft RA "Law on making amendments in "RA law on alternative service"". They also dis-

cussed issues concerning Armenia's joining the Optional Protocol on "The Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment".

At sessions of the expert council issues concerning freedom of speech-in particular issues concerning the termination of "A1+" and "Noyan Tapan" media outlets' activities-national minorities, and participation of the council's members in Armenia's legislative activities were also discussed.

The members of the expert group have also discussed the 2006 amendments made in "RA law on human rights defender", as well as amendments proposed by the Defender in RA Criminal and Criminal Procedures Codes, Administrative Violations Code, RA "Law on state duty".

SECTION 2

HUMAN RIGHTS VIOLATIONS ARISING FROM LEGISLATIVE ISSUES

This section analyzes the legal frameworks that lead to the violation of human rights. It is well known that legislation itself can often be a major cause of human rights violations; legislative contradictions and gaps, as well as subjectively stated legal norms, create fertile ground for the violation of human rights.

In this section issues that concern the realization of international commitments undertaken by RA, reports about RA submitted by relevant international organizations, and the assessments and recommendations within them, will also be considered.

2.1. Economic, Social and Cultural Rights

2.1.1. Right to Free Choice of Employment

According to paragraph 1 of Article 32 of the RA Constitution "Every citizen has the right to free choice of employment".

The content of 'right to employment' is often confused with 'the right to be provided with employment'. Paragraph 1 of Article 6 of the International Convention on Economic, Social and Cultural Rights stipulates that the right to employment includes the right of

every person to have the opportunity for earning his/her living in a way that he/she freely chooses or he/she freely agrees with. The Committee on Economic, Social and Cultural Rights, by the general comment No 18 adopted 24.11.2005, has highlighted that the right to employment should not be perceived as the absolute and unconditional right to be employed. Consequently, the right to employment recognized by the International Convention on Economic, Social and Cultural rights does not assume that the states is obligated to guarantee employment. Instead, it implies the obligation of member-states to undertake measures to ensure complete employment.

The RA Constitution has stipulated the right of everyone to free choice of employment. It has also stipulated the right to fair remuneration (to no less than the minimum amount set by law), as well as the right to working conditions that comply with safety and hygiene requirements. Thus, in this report, the 'right to employment' and 'right to free choice of employment' are understood as equivalent norms.

The second part of Article 6 of the Convention stipulates that member-states be committed to ensuring the right to employment, including: training and quality technical and vocational programs; a commitment to develop means and procedures that achieve complete employment of economic, social and cultural development and productivity (under conditions that guarantee fundamental political and economic freedoms). According to Article 6 of the Convention on Economic, Social and Cultural Rights, member-states are also committed to ensuring the right of the individual to freely choose employment, or agree to undertake employment, including the right not to be illegally dismissed.

In ratifying the International Convention on Economic, Social and Cultural Rights, RA committed to submitting reports to the economic, social and cultural rights committee on measures aimed at the implementation of the Convention. The first such report was submitted by RA in 1997, and the deadline for second one was 2000.

RA has undertaken similar commitments in accordance with the Revised European Social Charter. The first report was submitted to the European Committee in November 2006; the Committee has not made any final conclusions about it yet. It is appropriate to consider some interpretations of certain provisions of the Revised European Social Charter. Paragraph 4 of Article 4 of the Charter envisages the right of all employees to receive notice about dismissal within a reasonable period (this provision should not be interpreted as an obstacle to dismissal from employment in cases of serious offences)[2]. According to the comments of the European committee on social rights - paragraph 4 of Article 4 of the Charter is not only about cases of dismissal, but also relates to all cases of labor termination-for example, termination resulting from employer's bankruptcy or death, etc.

The RA Labor Code also envisages the possibility of terminating a labor agreement without prior notice in the following cases: ***bankruptcy of the employer; non-performance or underperformance of employment duties by the employee; loss of confidence towards the employee.*** Clearly, not all grounds for terminating the labor agreement without giving prior notice are connected with commitment of serious offences. Consequently,

[2]Annex of the Revised European Social Charter

the aforementioned grounds should be reviewed to ensure their relevance to the requirements of paragraph 4 of Article 4 of the Revised European Social Charter.

The European Committee on Social Rights has not stipulated the concept of "reasonable notice". The main criterion used by the Committee to assess what is considered "reasonable" is the period of employment duration. For example, the Committee deemed as inconsistent with the requirements of the Charter one week's notice given during the first year of employment, the thirty days' notice after at least five years of employment, and the eight weeks' notice after more than 15 years of employment.

The RA Labor Code envisages various terms for giving notice when employment is terminated, including ten days, two weeks, two months and finally the possibility of terminating the labor agreement without notice-without conditioning it with the period worked by the person.

According to paragraph 4 of Article 2 of the Charter, in order to ensure the effective exercise of the right to just conditions of work, the Parties undertake measures to eliminate risks in inherently dangerous or health-damaging occupations; when it has not been possible to sufficiently eliminate or reduce these risks, either a reduction of working hours or additional paid holidays are provided.

The RA report submitted to the European Committee on Social Rights describes measures undertaken to ensure the aforementioned requirements. In particular, it presents the requirements stipulated by Chapter 23 of the RA Labor Code concerning the security and health of workers and the obligations of employers to ensure healthy and safer working conditions.

It should be mentioned that, according to Article 5 of the RA "Law on putting into force the RA Labor Code", a three-year period-beginning from when the Code came into force-has been established so that the employer can implement the range of obligations required for healthy and safe working conditions. In particular, within three years the employer shall ensure that the requirements of paragraph 1 of Article 208, Articles 243, 245 and 249-255 are ensured. These articles detail employers' duties to ensure mandatory medical examination of individual workers, provide hygienic and sanitary rooms for workers, provide protection equipment for workers, and create adequate, safe and health-friendly conditions.

The RA Labor Code came into force on June 21, 2005; consequently employers have until June 21, 2008 to execute the changes needed to achieve implementation of the aforementioned health conditions and safe working environments. The aforementioned provision stipulated by Article 5 of the RA "Law on putting RA Labor Code into force" is considered to be disputable from the standpoint of ensuring that the requirements of the European Social Charter are implemented.

The RA human rights defender has found that, in many cases, the employer dismisses the worker when the person reaches the pension age stipulated by RA "Law on state pensions". According to RA Labor Code, when an employee reaches retirement age (65 years old), the employer can consider this a basis for terminating their employment agreement (clause 9 of paragraph 1 of Article 113).

Clause 5 of paragraph 4 of Article 114 of the RA Labor Code is one basis for this kind of interpretation, according to which the age cannot be a legal reason for termination of labor agreement unless the worker has the right to receive a pension or receives that pension. Consequently, it is necessary to revise clause 9 of paragraph 1 of Article 113 of the Labor Code in order to clarify the "pension age" concept.

In 2006, the RA human rights defender received 63 complaints concerning employment rights. These mostly related to workers' final settlement not being set or paid by employers, workers not being given due notice about dismissal and not being informed about the reasons for dismissal, and dismissals that violated requirements of the law.

2.1.2. Right to Education

According to paragraph 1 of Article 39 of the RA Constitution everyone shall have the right to education.

Education is necessary to realize a person's civil, political, and socio-economic rights. The right to education implies that the state is obligated to ensure education for everyone, eliminate any existing inequalities in terms of accessibility, and fully implement the right to education.

The right to education is stipulated by a range of international and regional documents: the Universal Declaration of Human Rights; the International Convention on Economic, Social and Cultural Rights; the First Protocol of the European Convention on Human Rights, etc.

The right to obtain education is the basis of the right to education. To comply with this, one of the positive commitments of the state is to provide the necessary educational institutions. However, this does not mean that those institutions must be founded only by the government. If there is a sufficient number of private (non-governmental) education institutions, the commitment of the state can be considered to have been fulfilled. It must then ensure the execution of requirements stipulated by the norms of international law about the accessibility of that education.

Article 13 of the International Convention on Economic, Social and Cultural Rights stipulates that the Convention's member-states are fully committed to providing elementary education that is mandatory and free for all. Secondary education, in its various forms (including secondary technical and vocational education), should be open and accessible to all by all means possible, in particular by introducing an advanced free education system. Similarly, higher (university) education, according to the abilities of each person, should be equally accessible for all by all means possible, in particular by introducing an advanced free education system. The member-states should actively develop schools at all levels, establish a system for stipends/scholarships, and continue to improve the material conditions of teaching staff.

The RA Constitution, as well as RA legislation concerning education, has generally

stipulated the provisions of the main international documents concerning the right to education. The state is currently undertaking steps to ensure their effective implementation, including development and implementation of pertinent programs and strategies[3].

Thus, according to Article 39 of the RA Constitution, general education in Armenia is mandatory, and secondary education in public education institutions is free. Moreover, each citizen has the right, on a competitive basis, to receive free education in the state's higher and vocational education institutions (as established by law). In cases and according to the procedures established by law, the state provides education institutions implementing higher education and other vocational programs and their students with financial and other relevant assistance.

Article 36 of the Constitution should also be highlighted-it stipulated, for the first time at constitutional level, the right and duties of parents to care for the upbringing and education of their children.

Given that RA has opted to integrate into the European higher education system, it is obliged to help solve some of the fundamental problems facing the country's sector. In particular, education reforms were made to comply with Bologna principles, licenses and accreditations issued to private universities were revised (relating to the country's transition to a two-degree university system and a university accreditation system that corresponds with European criteria). This is an ongoing process.

In 2006, the RA human rights defender received 18 complaints concerning the right to education. These mostly related to tuition fee compensations in the form of benefits and violations of established deadlines for the accreditation of private universities.

The Defender considers important the introduction of a system for tuition fee compensation in the form of benefits established by RA "Law on higher and postgraduate education"-it fosters high study progress of students and efficiency of studies. In addition, the Defender questions certain issues concerning the process of applying a rotational system and maintains his position on the grounds of human rights.

The RA "Law on higher and postgraduate education" was adopted 14.12.2004 and came into force 02.03.2005. According to paragraph 4 of Article 6 of the law: "Compensation for the tuition fee in the form of benefit is allocated to socially vulnerable students who were admitted to higher education institutions on a competitive basis and who have shown excellent progress within the academic year, according to the RA Government approved procedure and number of places". Thus to implement this norm, the adoption of other legal acts by the RA Government is needed-in particular acts approving the procedure of tuition fee compensation in the form of benefits and number of places.

Paragraph 6 of Article 26 of the law implies that the principle 'rotating' a student's status will be applied, starting from 2005-2006 academic year. However, it is obvious that the RA Government should have adopted the relevant acts prior to the beginning of 2005-2006 academic year. Nevertheless, the discussed procedure about receiving student benefits in RA state higher education institutions was approved by the RA Government on 15.09.2005 by the decree 2114-N, which came into force on 29.12.2005.

[3]See dwcrees N 17 dated 06.05.2004, N 46 dated 21.11.2003 and others of the RA Government.

In reality, it was only after the beginning of the 2005-2006 academic year-moreover, only several days prior to the first examination session-that it became possible to ensure the enforcement of the requirement of paragraph 4 of Article 6 of the RA "Law on higher and postgraduate education", although the students had been informed about the aforementioned procedure.

Paragraph 4 of Article 68 of the RA "Law on legal acts" states: "if the implementation of what the legal act's norm requires can be realized only by the adoption of another legal act, or its implementation is directly dependent on the adoption of another legal act, then the former legal act only functions after the other legal act has come into force". Consequently, paragraph 4 of Article 6 of the RA "Law on higher and postgraduate education" can be considered as functioning only from the point when the relevant legal act adopted by the RA Government came into force-i.e. from December 29, 2005. Thus, the procedure of rotating the status of students from a free to a fee-based education system could not be enforced from 2005-2006 academic year, as the legal act adopted by the law was adopted only in the middle of the year.

The decree No 201-N of the RA Minister of Education and Science dated May 3, 2005 (adopted two months after the RA "Law on higher and postgraduate education" came into force) approved full-time education rules for 2005. The provision concerning the application of a 'rotating' system of students' status was missing. According to the rules in 2005, relevant contracts were signed between universities and admitted students, in which the relevant provision was also missing. (The requirement to conclude contracts with students stems from the RA "Law on education", "Law on state non-commercial organizations" and "Law on higher and postgraduate education".) Thus, According to paragraph 3 of Article 4 of the RA "Law on higher and postgraduate education" "the university shall conclude a contract with the student, whose text is published when admission to university is announced, and shall be passed to applicants before [study]…". This provision shows that prior to applying and being admitted to this or that university the applicant shall be informed about the text of the contract, which will be concluded with him/her when admitted. However, the legal provision for a 'rotating' procedure of student status could only be incorporated into the contract for the 2006-2007 academic year. In the existing admission rules of 2006, according to which contracts with students were concluded, they already envisaged a provision about the application of the rotational system.

Thus, in 2005-2006 academic year the legal framework necessary for the application of the rotational system was not yet fully formulated. Although the students were informed about the rotational system, there was nothing mentioned in the contracts concluded with the students. The human rights defender interpreted these kind of ambiguities in favor of those students whose conditions worsened as a result of the application of a rotational system during the 2005-2006 academic year. The human rights defender proposed to the RA Government to undertake measures to compensate for the tuition fees of those students.

2.1.3. Right to property

According to paragraph 1 of Article 31 of the RA Constitution everyone reserves the right to freely own, use, dispose of and bequeath the property belonging to him/her.

The right to property is stipulated by Article 17 of the Universal Declaration of Human Rights. Concerning the International Conventions on Economic, Social and Cultural Rights, as well as Civil and Political Rights, then there is no right to property envisaged in them. Although during the development of the conventions serious efforts were applied to stipulate the right to property, however, the efforts made failed flat - due to the failure to come to a common ground for the limitations to the right.

They have also failed to include the right to property in the European Convention on Human Rights. However, later, by the Protocol I of the Convention they already envisaged the protection of the right to property. Thus, Article 1 of the Protocol stipulates that each natural or legal entity reserves the right to freely use his/her property. One shall mention that according to the comments of European Commission on Human Rights and European Court of Human Rights - the right of the person to freely use his/her property is in fact equalized to right to property.

It has been also stipulated that no one can be deprived of his/her own property, except for the protection of public interests and on the conditions stipulated by law and general principles of international law.

A similar provision is also stipulated in Article 31 of the RA Constitution, in particular, the alienation of the property for the needs of public and state can be exclusively done only in cases of dominant public interests in order established by law by prior equivalent compensation.

In this context we find it appropriate to tackle upon the analysis of certain legal acts concerning the alienation of the property for public and state needs in the Republic of Armenia.

We have first to mention that the process of alienation of property for the needs of public and state with the purpose of urban development in Yerevan has permanently been in the focus of the RA human rights defender's attention.

The human rights violations facts during the property alienation process have been identified in previous annual reports of the RA human rights defender, as well as in 2005 special report of the Defender "On violation of rights to property, fair trial and legal protection".

The entire process of alienation of property for the needs of public and state in regard of implementation of Yerevan urban development projects has been regulated by the RA Government decrees, which stipulated the areas of alienation of the real estate in the city of Yerevan that is property of the citizens, procedure and conditions of the alienation.

Those decrees of the Government did not identify the content of "need of state" concept and Article 218 of the RA Civil Code, as well as Articles 104, 106 and 108 of the RA Land Code did not stipulate a sufficiently clear formulated procedure to take over the land for "needs of state".

There was no individual law, which would stipulate the exclusive importance and significance of the property alienation, as well as those public and state needs, for the satisfaction of which the alienated land shall be directed to.

In March 2006, after the constitutional amendments came into force, the defender turned to the RA Constitutional Court with a request to determine the constitutionality of Article 218 of the RA Civil Code; Articles 104, 106 and 108 of the RA Land Code and decree N 1151-N of the RA Government dated August 1, 2002.

In addition to other arguments the application was justified by the fact that the questionable legal acts do not comply with the principle of the legal certainty (res judicata).

Turing to the concept "law" in the sense of the Convention the European Court on Human Rights, has in particular mentioned that in no legal norm can be considered "law", if it does not comply with the principle of legal certainty (res judicata). In particular, if it is not formulated with sufficient certainty, which would allow the citizen to put the proper behavior in compliance with it. The citizen shall have an opportunity, in case of necessity benefiting from consultation, to foresee the consequences that might emerge from the given action[4] .

During court hearings of Pressos Compania Naviera S.A. and Others vs. Belgium, as well as in a range of other cases the European Court of Human Rights has emphasized the intervention "into the right to freely use the own property" implies "fair balance" between public interests and need for protection of fundamental human rights. In particular it is necessary to ensure a reasonable proportion between the used means (which deprives the person from the property) and the purpose, to which that means is aimed at[5] .

If the forced alienation of the property for the public needs takes place without clearly stipulating by the legislation the constitutional requirements for the alienation neither taking them practically into account, then it leads to disproportional limitation of the right to property[6] .

With its decision the RA Constitutional court has tackled upon the issue of powers of the RA Government to adopt decisions on regulating the property alienation process. In particular the decision of the RA Constitutional Court has emphasized that with its decrees the RA Government cannot established property alienation procedure for the needs of state, which directly concerns the property limitation issue and shall be a guarantee for the balance between public interest and individual's right to property.

The study of judicial practice on challenging the respective government decrees regulating the process of alienating the property for public and state needs comes to witness that while considering the applications about the compliance of the RA Government adopted legal acts with the laws, the courts of general jurisdiction have rejected to accept them for consideration - based on paragraph 2 of the clause 1 of Article 160 of the RA Civil Procedures Code. This conclusion is also confirmed by the decree of the RA Constitutional Court No 665 dated 16.11.2006, with which paragraph 2 of the clause 1 of Article 160 of the Republic of Armenia Civil Procedures Code with the content given from the standpoint of legal practice, has been recognized as contradicting the requirements of Articles 18 and 19 of the RA Constitution likewise null and void.

[4]See paragraph 49 of the decision on The Sandy Times v. The United Kingdom dated 26.04.1979; paragraph 66 of Malone v. The United Kingdom dated 02.08.1984; paragraph 67 of James and Others v. The United Kingdom dated 22.01.1986.

[5]See also paragraph 58 Lopez Ostra v. Spain dated 19.12.1994 of the European Court.

[6]See also decision 630 of the RA Constitutional Court dated April 18, 2006.

By the decision made on April 18, 2006 the RA Constitutional court recognized Article 218 of the RA Civil Code; Articles 104, 106 and 108 of the RA Land Code and decree N 1151-N of the RA Government dated August 1, 2002 as contradicting Articles 31 (3rd part) and 4, as well as the requirements of a range of other articles of the RA Constitution.

At the same time, taking into account, that RA National Assembly and RA Government within the shortest time possible were supposed to put numerous legal acts in compliance with the RA Constitution and decision of the RA Constitutional Court and give a legislative regulation to the legal regime on forced property alienation, the RA Constitutional Court in its decision stipulated that deadline for losing the legal force of the legal norm recognized as inconsistent with the RA Constitution shall be the moment, when such legal regime comes into force based on the law, however, no later than October 1, 2006.

The adoption of this decision was followed by the development of the RA draft "Law on property alienation for public and state needs".

The human rights defender has submitted his opinion about the draft to the consideration of both RA National Assembly, as well as The RA Ministry of Justice. Some portion of the introduced proposals was accepted, however, some proposals and comments of substantial importance were not taken into account[7] .

In 2006 the RA human rights defender received 123 complaints concerning right to property.

Those were mainly about the process of property alienation for public and state needs, including the charging of income tax from the compensation amount given for taking over the real estate for state needs; violations of right to property not connected with deprivation of ownership; unjustifiably rejecting the registration of real estate ownership/use/; offenses committed at the process of legalizing the facilities constructed without prior permission, etc.

We think it is appropriate for us to tackle upon the issue of legality of charging of income tax from the compensation amount given for taking over the real estate for state needs.

The aforementioned issue has been raised on many occasions with authorized public administration bodies. The RA Constitutional Court has tackled upon this issue in its decision of the case dated 18.04.2006 concerning the compliance of Article 218 of the RA Civil Code; Articles 104, 106 and 108 of the RA Land Code and decree N 1151-N of the RA Government dated August 1, 2002 with Article 31 of the RA Constitution.

In particular the RA Constitutional Court has identified that in case, when the property of the citizen has been taken over for public and state needs, a contract shall be concluded with him/her "on compensating the property to be taken over" and that the compensation paid shall not be deemed as income received by the owner or user and charged by income tax.

With the purpose to regulate the issue the Defender has undertaken consistent actions to regularly draw the attention of the authorized public bodies to the need of solving the issue.

Finally the matter has been settled by the amendments made in RA "Law on income tax" dated 01.06.2006. In particular Article 9 of the law has been amended by sub-clause "kp", which stipulates that while determining the charged income from the gross income of the taxpayer they shall reduce the amounts paid to natural persons for taking over the real

[7] See the opinion of the Defender on RA draft "Law on property alienation for public and state needs" (Attachment 7).

estate belonging to natural persons for public or state needs, as well as to natural persons registered in that real estate.

Thereinafter, by the decree N 1505-N of the RA Government dated 26.10.2006 they have stipulated the process of returning the income tax charged from the amounts paid to the people in regard of terminating their right to property alienated for the state needs.

2.1.4. Right to social security

According to Article 37 of the RA Constitution everyone shall have the right to social security during old age, disability, loss of bread-winner, unemployment and other cases prescribed by the law. The extent and forms of social security shall be established by the law.

In 2006 the RA human rights defender received 117 complaints concerning the right to social security.

Violations of the right to pension:

The complaints concerning the right to pension were mainly about the establishment of certain periods of pension payment during each month based on the contract signed between the RA Social Insurance State Fund and "Armsavingsbank" CJSC; elimination of privileged procedure of pension settlement, etc.

About elimination of the procedure of settlement of service period for working in especially hazardous and especially hard conditions:

According to Article 30 of the former RA "Law on state pension security of the RA citizens" (passed on 06.12.1995, called invalid on 10.04.2003) the service period for working in especially hazardous and especially hard conditions is settled one and half times as much.

According to paragraph 2 of Article 45 of the existing RA "Law on state pensions" (passed on November 19, 2002 and came into force on April 10, 2003) for one calendar year they cannot calculate more than one year of insurance service period, except for the procedure established by Article 48 of this law. However, the aforementioned article does not deem the work in especially hazardous and especially hard conditions as a peculiarity of service period settlement.

One shall pay a special attention to Article 73 of the RA "Law on state pensions", which is about the procedure of resettlement the pension appointed before this law came into force.

According to the mentioned article the pension appointed before the law came into force is resettled according to the service period settled by the documents existing in the pension file - taking into account the main pension size established according to Articles 17-19 of the same law; cost of one year of insurance period and personal coefficient of the

pensioner. In case of submitting additional documents the pension is resettled in order established by the same law and is considered as newly appointed.

It is also stipulated that, if the amount of the resettled pension is lower than the pension appointed before the law came into force, then the pension of the previous level shall be paid.

It stems from the content of Article that here the legislature identifies two approaches about the procedure of resettlement of the pension appointed in the past. The matter is about the resettlement of the pension without submission of additional documents justifying the service period and in case of submission of such documents.

In the first case the legislature has performed a logical approach by stipulating that "The pension appointed before the law came into force is resettled according to the service period settled by the documents existing in the pension file…". Consequently in this case they have maintained the procedure of privileged settlement of the pension.

In case of submitting additional documents justifying the service period, in new order established by the RA "Law on state pensions", they resettle the whole pension; including the already stipulated services period based on filed documents, which is again in compliance with the new order. Thus, in this case the process of settling the privileged service period is not maintained.

Actually in case of submitting additional documents the person loses the right to privileged settlement of the service period, which the person acquired according to the previous legislation for working in especially dangerous and especially hard conditions (during his service period), in case, when his/her pension has been settled and appointed according to it. As a result with the force of this norm the person loses his/her rights gained by the pervious legislation.

One shall also mention that the law makes no difference for the service period approved by the additionally presented documents. Independent of which service period the presented documents approve - working activity before coming into force or after it came into force - the pension is resettled in new order established by the RA "Law on state pensions" and is considered new appointment.

We think, in case, when additional documents are presented, which confirm the service period of the person before the RA "Law on state pensions" came into force, the pension for the given period shall be resettled in conditions stipulated by the previous legislation. This position is justified by the fact that the citizen has gained his right to privileged settlement of the pension before the RA "Law on state pensions" came into force and the citizen can exercise this right also after the law comes into force.

As a result of applying the new order of settling the pension established by the RA "Law on pensions" with the purpose of avoiding the possible reduction of the pension paragraph 3 of the discussed Article has stipulated that, if the amount of the resettled pension is lower than the pension appointed before the law came into force, then the pension of the previous level shall be paid.

This means that the law does not allow reduction of the pension as a result of resettlement on the basis of the submitted additional documents confirming the service period. At the same time in similar cases the service period of the citizen approved by the additional documents is not accounted at all.

About the procedure of allocating poverty family allowances:

There are many complaints concerning the procedure of allocating poverty family allowances. In particular, the applicants have informed that as a result of increase of amount of the basis pension, as well as for each year insurance period their family welfare indicator has gone down, as a result of which the former beneficiary family or a single beneficiary has been stripped of the right to receiving poverty family allowances. Actually, in case of having 1000 or 2000 dram pension increase the citizen has been deprived of greater, for example, 7000 dram poverty family allowance amount. This in its turn has further deepened the poverty of the citizen. Actually de jure the pension amount increased; however, de facto the social state of the citizen worsened. This matter has been identified by the Defender in 2005 report as well.

One shall state that in this case there was no systematic approach to the regulation of the matter and they did not envisage the possible economic consequences of such legal regulations for individual people and vulnerable families.

With this matter the Defender has turned to the RA Minister of Labor and Social Issues. In the ministry they have organized a discussion on this matter; the Defender was informed about the results and the position of the ministry on the matter.

In particular they have mentioned that taking into account the experience of the last years, as well as the existing socio-economic situation, by "the evaluation procedure of the families insecurity" for 2006 approved by the decree N 2317-N of the RA Government dated December 29, 2005 they have envisaged amendments that have set up more favorable conditions for the family allowances of families that have a pensioner. They have increased the point of people having a "pensioner" within the social group from 34 up to 36 and the ones having "a single pensioner" up to 37. They have also mentioned that according to the studies conducted during 2005 and from January 1, 2006 as a result of increase of amount of the basis pension, as well as for each year insurance period more than 4000 families with pensioners would lose right to family allowance. The resettlement results during first three months of 2006 have shown that 770 families having a pensioner member lost the right to allowance.

As a positive example one shall consider the amendments made in procedure for assessing the vulnerability of the families by the decree N 1896-N of the RA Government "On establishing the amounts of 2007 state benefits and making amendments in a range of decrees of the RA Government dated December 28, 2006. Together with other amendments for the single pensioners they have stipulated a more favorable coefficient, which enabled them to gain the right to benefit in other equal conditions.

Example 1

In the application addressed to the RA human rights defender the applicant has informed that he is 75 years old single pensioner and is in dire social situation. From January 1 his pension has been increased by 1400 drams, as a result of which they have ter-

minated the payment of poverty family allowance (7.000 drams), as his family vulnerability point became 31.25.

About the procedure to get compensation for the deposits invested before June 10, 1993 in the State Bank of Armenian SSR of USSR Savings Bank/s:

In 2006 there were many complains about the procedure to get compensation for the deposits invested before June 10, 1993 in the State Bank of Armenian SSR of USSR Savings Bank/s.

There were complaints from citizens, who in the past received poverty family allowances, however, as a result of increase of amount of the basis pension, as well as for each year insurance period their family welfare indicator went down, as a result of which they were stripped of the right to receiving poverty family allowances. As a result of this they were also stripped of the right to get compensation for the deposits invested in Savingsbank.

If before September 2006 the verbal and written complaints of the citizens about the deposits were mostly regarding the procedure established by the RA Government decree N 352-N of the RA Government dated 16.03.2006, according to which a precondition to get compensation is to be permanently involved in the list of poverty family allowances between July 1, 2005 and April 1, 2006, then from September 2006 there were complaints from people included in the arguable lists.

Thus, starting from September 2006 there were complaints submitted to the Defender from applicants who were included in the lists of the people entitled to get compensation, however, afterwards they were informed that no compensation will be allocated. The examination of the complaints and attached documents identified that the applicants were included in the questionable lists. A part of them was included in those lists because of the reason that the account number was missing in the inventory database made by "Armsavingsbank" CJSC in 2001 and submitted to the RA Ministry of Finance and Economy. A part had also other inaccuracy - the account numbers were present in the inventory database; however, the data on names, surnames and patronymic names were not consistent. The examination shows that most of the citizens are included not in the finally corrected, but questionable lists due to the fact that the database of those people entitled to the compensation was compared with 2001 database existing in the RA Ministry of Finance and Economy.

As a positive result we shall mention that during the discussion of these complaints the RA Government amended its decree N 352-N dated March 16, 2006.

In this regard the RA Minister of Labor and Social Issues, in response to the note of the Defender has informed that the questionable circumstances emerged owing to the comparison of the information existing in the documents submitted by the agencies to the citizens and inventory database of deposit account conducted in 2001 by Savingsbank and submitted to the RA Ministry of Finance and Economy.

As a result of this, certain concerning data have been received, as many depositors were included in the list of depositors with questionable data. The examination has identified

that most of the reasons of the matter in concern is conditioned by the shortcomings while formulating inventory database.

Taking into account the shortcomings found in the inventory database that played crucial and decisive role while developing checked summary lists, with the purpose to avoid large-scale social tension, the RA Government on 19.11.2006 adopted a decree "On making amendments in the Republic of Armenia Government decree N 352-N dated March 16, 2006". According to the decree, while developing the summary lists one shall take into account the information of the agencies and data of the deposit account cards existing in the branches and provided by Savingsbank.

They have also informed that as a result of the amendments many depositors with their relevant deposit account numbers will be left outside of questionable lists. As a result of preliminary analysis from 138061 account numbers cars existing in the ministry in Armsavingsbank around 4000 are missing. This matter will be solved in legal form or in order established by the RA "Law on basis of administration and administrative procedure".

About compensation of the damage of the disability connected with the performance of the employment responsibilities; professional diseases and other damages caused to the health:

Among the applications addressed to the human rights defender special attention require the applications, which are about the issues of compensation refusal as a result of damage of disability connected with the performance of the employment responsibilities; professional diseases and other damages caused to the health. Around 250 citizens have turned to the RA human rights defender with the aforementioned issues. One shall mention that this issue has been tackled upon also in previous reports of the Defender.

According to clause 16 of the RA Government decree N 579 dated November 15, 1992 in case of liquidation or restructuring of the organization the damage is compensated by its successor in title and in case, when the latter is missing, the social security body at the expense of state budget resources.

In regard of the aforementioned issues Article 1086 of the RA Civil Code enforced in 1999 stipulated that in case of liquidating the legal entity duly recognized as responsible for the damage to life or health the pertinent payments shall be capitalized in order established by law or other legal acts - to pay them to the victim.

At present the RA legislation does not regulate the issue of compensation of the damage caused to the workers as a result of working disability, in case of liquidation of the organization or terminating its activities. I.e. they have not regulated issues on which body shall pay those compensation amounts; where and how shall the capitalized resources be accumulated and allocated, etc.

It is assumed that the law or Government decree should have stipulated the procedure, which would specify the mechanism of compensating the citizens having been disabled during the performance of the employment duties in case, when the organization's activi-

ties have been terminated by liquidation.

However, during the past 7 years no law or Government decree stipulated such a procedure. Instead on November 11, 2004 the RA Government adopted a decree, which annulled Article 16 of the decree 579 of the RA Government dated November 15, 1992. The issue remains unsettled.

Taking into account the aforementioned, in regard of the aforementioned issue the RA human rights defender has drawn the attention of the RA Government on this matter - proposing to undertake measures as soon as possible to overtake the existing legislation gap. It has been proposed to also discuss the issue of unpaid compensation amounts for the left aside period in the context developing structures.

With a note of the RA Minister of Labor and Social Issues the Defender has been informed that it has been proposed to include the draft RA "Law on mandatory social insurance from accidents and professional diseases at the employment place" in the list of measures ensuring the implementation of 2007 action plan of the RA Government - stipulating an implementation period last ten days of June. He has also been informed that the draft is in the development phase and upon completion it will be presented to the discussion and approval of the Defender as well.

Example 1

The applicant has informed that he/she worked in bakery No 1, where as a result of injury while performing employment duties he/she has been disabled. The payment of the established compensation has been terminated in 2003, as a result of the organization's liquidation.

Example 2

The applicant has informed that as a result of an accident in the territory of "Hrazdan" AC he/she and 9 other citizens have been disabled. The compensation amount for the health damage has been paid to them up to September 2002. After the liquidation of the company the payment of compensation has been terminated.

2.1.5. Right to obtain medical aid and service

According to paragraph 1 of Article 38 of the RA Constitution everyone shall have the right to benefit from medical aid and service.

A range of international and regional human rights treaties stipulate the right to health protection.

Thus, Article 12 of International Convention on Economic, Social and Cultural Rights stipulates the commitments of the member-state in the area of ensuring the rights of people to benefit the maximum accessible level of physical and psychological health.

In particular the states shall undertake measures to reduce death/birth and infant mortality ratios; provision for healthy development of child; prevention of epidemic, local epidemic, employment and other diseases; treatment and control, as well as creation of such conditions, which in case of disease will ensure medical aid and care for everyone.

In 2006 the RA human rights defender received 18 complaints concerning the right to get medical aid and service.

Most of the complaints were of the procedure of receiving free medicine or medicine with privileged conditions and state guaranteed free medical aid.

We find it appropriate to tackle upon the decree N 346 of the RA Minister of Health dated 09.04.2004, which stipulates the list of "State guaranteed free medical aid and permitted services and prices within the services".

According to the aforementioned decree the unit price for treatment of acute mental cases is 110 400 dram; daily unit price - 4600 dram. Based on the aforementioned one can say that within the government funded program for acute mental cases they have allocated only 24 days. In this regard the decree makes no reservation.

The examinations of the Defender also showed that the patient is kept in the mental hospital for only 24 days - irrespective of his need of healing and need for further in-bed treatment. Actually in cases of acute metal conditions, the person having no necessary means for the healing can be checked out of the hospital in unhealed state only on the basis of expiring the 24-day deadline.

We find that this matter needs further settlement.

Example 1

With his/her application the applicant has informed the RA human rights defender that his/her son is a handicapped of second group and suffers a mental disease. The personnel of "Mental medical center" CJSC Nubarashen clinics perform permanent medical control over the son of the applicant. However, they refuse to perform the in-bed treatment for more than 24 days.

The applicant has requested the intervention of the applicant to keep his/her son under hospital long-term medical care.

In response to the note of the RA human rights defender the RA Deputy Minister of Health informed that the patient was checked in RA MH "Mental medical center" CJSC Nubarashen clinics on 21.07.2006 with a diagnosis "Lightly expressed mental underdevelopment, affective instability". At present the patient is calm and quiet; the behavior is regular; does not need treatment and care.

At the same time he informed that according to the list of "State guaranteed free medical aid and permitted services and prices within the services" approved by the decree N 346 of the RA Minister of Health dated 09.04.2004 within government funded program the treatment of acute cases takes 24 days.

Example 2

With his/her application the applicant has informed The RA human rights defender that he/she is a handicapped of the first group and suffers from "osteoporoses, arthoz" bone-joints diseases. For many years he/she has been treated in various medical institutions, however, did not reach any positive outcome.

In 2006 the person turned to medical center after V. Avagyan, underwent additional medical examination and received the reference of the narrow specialist that at present there are new effective medicines against that disease. The applicant has also informed that those are expensive and not accessible. In 2006 with pertinent documents the person applied to The RA Ministry of Health care care with a request to allocate free medicines, however, he/she received verbal rejection.

Taking into account that "osteoporoses" disease is widely spread and leads to detrimental consequences, including to the disability of the patient, The RA human rights defender found it necessary to include that disease into the list of diseases approved by the RA Government "On approving the lists of the diseases and population social groups that are entitled to get free or privileged medicines".

With this purpose the Defender has applied to RA Minister of Health with a proposal to undertake measures aimed at the inclusion of "osteoporoses, arthoz" disease into the list of diseases approved by the RA Government "On approving the lists of the diseases and population social groups that are entitled to get free or privileged medicines".

2.1.6. Right to an adequate standard of living

According to Article 34 of the RA Constitution everyone shall have the right to a standard of living adequate for himself/herself and for his/her family, including housing as well as improvement of living conditions. The state shall take the necessary measures for the exercise of this right by the citizens.

The right standard of living has been stipulated in a range of international and regional documents, including Universal Declaration of Human Rights; International Convention on Economic, Social and Cultural Rights; Revised European Social Charter, etc. According to the first paragraph of Article 11 of the Convention the member-states recognize the right to a standard of living adequate for himself/herself and for his/her family, including sufficient nutrition, cloths and housing and continuous improvement of standard of living. The member-states undertake adequate measures to ensure the enforcement of those rights - in this regard accepting the important significance of international cooperation based on expression of free will.

In 2006 the RA human rights defender received 199 complaints concerning standards of living.

Complaints concerning the right to housing were mainly about emergency buildings; residents of earthquake zone; refugees concerning the housing; dire circumstances of the buildings; unfair allocation of the apartments; groundless removal of individual families from housing lists; non-allocation of apartment equal to the apartment lost in the past and other issues.

The complaints received from the residents of the emergency buildings are of concern, although the RA Government has taken and continues to take consistent steps to solve the housing issues of these people, however, the issue is of pressing nature and additional measures need to be taken to expeditiously solve that issue.

In the application-complaints addressed to the Defender there are quite a few application-complaints from the people who had suffered from 1988 earthquake. As a result of measures undertaken by the Defender in regard of some applications details were identified, which served as a basis for termination of the consideration of the pertinent application-complaints by the Defender. Some application-complaints addressed to the Defender concerning the same issues are still under discussion, which is conditioned by the need of clarifying additional information.

In parallel with this there were discontents in regard of those provisions of the RA Government decree N 432 dated 10.06.1999, which are about the procedure of clarifying the registration lists of the citizens entitled to receiving housing in earthquake zone out of turn.

According to paragraph 8 of the procedure approved by the RA Government decree N 432 dated 10.06.1999 the lists of the citizens entitled to receiving housing in earthquake zone out of turn are subject to clarification up to March 1 of each year and within one month shall be approved by the community leader.

On 06.06.2002 the RA Government has adopted decree N 831-N "On approving the procedure of providing with free of charge state financial assistance for the procurement of apartments (housing) by the residents that remained homeless as a result of the earthquake - within the framework of implementing a complex project on rehabilitation of earthquake zone". The decree has stipulated that those people are entitled to receive assistance for the procurement of the apartment /housing/ by means of the housing titles, who are registered by the procedure approved by decree N 432 dated 10.06.1999. The RA Government decree N 831-N stipulates no deadline for the registration.

The aforementioned decree has been annulled by the RA Government decree N 309-N dated 24.05.2005, which stipulated that the people entitled to receive assistance for the procurement of the apartment /housing/ by means of the housing titles, who are registered to receive housing as by March 1, 2004 according to the procedure approved by the RA Government decree N 432 dated 10.06.1999.

The RA Government decree N 309-N dated 24.05.2005 is questionable in the sense of time limitation of the envisaged registration deadline - from the standpoint of ensuring legal certainty. At the same time the RA Government decree N 432 dated 10.06.1999 vaguely stipulates the procedure of clarifying the lists of people registered as homeless, which has in practice generated a range of complexities.

In several applications citizens have informed that although they are registered as

homeless before March 1, 2004, however, while clarifying the lists their re-registration has been performed after March 1, as a result of which they were stripped of the right to benefit from the program of housing title procurement.

In the clarification submitted to the Defender the Mayor of Gyumri informed that the list did not include even those citizens, who had submitted applications on the second half of February 28. There are 25 such citizens left outside of registration.

The fact that the citizens having submitted applications before the established deadline have been left outside of registration was explained by the condition that they failed to submit additional documents confirming their being homeless.

Those complaints are still under consideration.

There is quite a few number of applications concerning the social status of the citizens. In these applications they mostly ask for the Defender's assistance.

2.1.7. Right to live in an environment contributing to one's own health and well-being

According to paragraph 1 of Article 33.2 of the RA Constitution everyone shall have the right to live in an environment favorable to his/her health and well-being and shall be obliged to protect and improve it in person or jointly with others.

The examination of the limited amount of complaints received in 2006 by the RA human rights defender comes to witness the low level of public awareness of environmental issues.

One shall state that RA legislation does not sufficiently regulate the process of environmental information provision by public bodies to the society. The legislation does not clearly stipulate the processes ensuring the public participation in decision-making of environmental issues. The requirement of defining such procedures stems also from the provisions of Orhus Convention on Environmental Information, Public Participation to Decision-making and Access to Justice.

In this regard we find it appropriate to deal with the conclusions and recommendations adopted in March 2006 by Orhus Convention Compliance Commission in regard of development of "Dalma Gardens" territory.

The application was submitted by three non-governmental organizations still in September 2004. In application they had mentioned that there were no public discussions, no environmental expertise and no public awareness advocacy about making decisions on changing the target significance of "Dalma Gardens" territory lands, as well as leasing individual land plots in five decrees adopted by the RA Government between March 2003 and March 2004. The RA Government decrees were adopted as individual legal acts; the society did not have an opportunity to make optional proposals on them and was informed only, when the process was over.

And when those decrees were appealed in the court, the courts refused to accept the appeals with the reasoning that the issue of anti-constitutionality of the RA Government decrees is a matter of the RA Constitutional Court.

The respective commission has examined this case at the session of Alma-Ata on May 22, 2005 and during its 11th session on March 29-31, 2006 it has approved the final version of conclusions and recommendations.

In particular it has been mentioned that the RA Government decrees on land use and development in the sense of sub-clause "b" of the clause 3 of Article 2 of the Convention are considered "means". The information required is clearly included in the concept "environmental information" stipulated by paragraph 3 of Article 2.

Thus, the commission's opinion is that in the sense of sub-clause "a" of the clause 2 of Article 2 of the Convention RA Government State Committee of Real Estate Cadastre and Yerevan Mayor's Office considered public bodies were bound to provide the applicants with the environmental information in compliance with paragraph 1 of Article 4 and as a result of non-compliance with the requirement or failing to observe the deadlines mentioned by Article they had violated the provisions of paragraphs 1 and 2 of Article 4 of the Convention.

The change of the land targeted significance was deemed as an environmental impact activity, in case of which the provisions of the Convention shall be applied. The commission found out that without ensuring the participation of the commission the decision making violated the provision of Article 7 of the Convention. They also emphasized that in this case they had violated the requirements of the RA legislation. The commission's opinion is that the reason of violating the requirements stipulated by Articles 4 and 7 of the Convention is not that much about the gaps in the legislation, but in legal practice.

The commission also mentioned that in regard of specific activities in the decision making process the public participation processes had not been pertinently ensured by the legislation. Although in this regard the RA "Law on environmental impact assessment" stipulates some provisions, it was advised to develop a more specific procedure.

As a result of the application consideration the Orhus Convention Compliance Commission identified the violations of the provisions of paragraphs 1 and 2 of Article 4; sub-clause "a" of paragraph 1 of Article 6 and paragraph 20 of the Annex 20; paragraphs 2-5 and 7-9 of Article 6; Article 7 and paragraphs 2.4 of Article 9 of Orhus Convention in regard of "Dalma Gardens" development in the Republic of Armenia.

In regard of those violations, to exclude such violations in the future, the commission submitted to our country recommendations made of 7 points, which would ensure the accessibility of environmental information; public participation to such processes; discussion of alternative options and access to justice.

2.2. Civil and political rights
2.2.1. Prohibition of torture

According to paragraph 1 of Article 17 of the RA Constitution no one shall be subjected to torture, as well as to inhuman or degrading treatment or punishment.

The principle of Prohibition of torture is stipulated by a range of international and regional treaties. This principles is also stipulated by the RA Constitution (Article 17); a range of articles of the RA Criminal Procedures Code, as a crime against life and health also by the RA Criminal Code.

We find it appropriate to deal with the peculiarities of examining the applications on torture, cruel or inhuman treatment by the European Court on Human Rights.

The examination of the verdicts of the European Court shows that, if the defendant government in compliance with its legislation does not adequately deal with the disputable complaint on torture, cruel or inhuman treatment of the arrested or detained person; lacks due zeal in conducting such examination and by means of such examination does not identify the reasons the injuries inflicted while being under the custody of the police of the detained people and other circumstances connected with those injuries, then the European Court is guided by the presumption that those injuries were inflicted by the policemen or other representatives of the state in violation of Article 3 of the Convention.

In this regard the verdict of the European Court in the case of Sevtap Vezenedaroghlu vs. Turkey is quite interesting. Although the European Court did not dispose evidence that the injuries of the applicant were inflicted by the policemen, however, based on the mere fact that those were inflicted while being in the police and the national authorities did not undertake enough examination to clarify the reasons of those injuries, the Court was guided by the presumption that those were inflicted by the police. With this case they identified a violation of Article 3 of the Convention by the state.

With its numerous verdicts the European Court of Human Rights has expressed its explicit position that, if the person submits a complaint about being subjected to the treatment forbidden by Article 3 of the Convention on behalf of the police of other representatives of the state, then this article, under the light of general commitment of the state envisaged by Article 1 of the Convention, requires an effective official investigation, which will enable to identify and punish those people responsible for such treatment[8] .

Paragraph 4 of Article 17 of the RA Criminal Procedures Code stipulates: "The statements of the suspect, defendant or their defense attorneys about their innocence; existence of evidence justifying the suspect or defendant or mitigating their liability, as well as complaints concerning violations of the legitimacy during the criminal procedures shall be examined in detail by the body in charge of criminal procedure".

The number and nature of the complaints received come to witness that this requirement of the law is not always completely observed by the prosecution bodies.

[8]See the verdict on Sevtap Vezenedaroghlu vs. Turkey.

For the first time in October 2002 the representatives of European Committee on Prevention of Torture visited Armenia. On the basis of the visit results still in 2004 CE Committee on Prevention of Torture published a report, where it stated that during the visit the representatives of the committee gained reliable information that the arrested people were under a grave risk of being subjected to cruel treatment by police. It was also mentioned that the beating and torture in the Republic of Armenia were used mainly for the purpose of extracting self-confession testimony. They report also dealt with the issues concerning the conditions of keeping people in penitentiary institutions and PDA. In particular they have mentioned the issue of overload in PDA and penitentiary institutions and employment of prisoners.

The committee offered to give a primary importance to professional trainings of the police officials, which will also include methods of modern interrogation.

The report has also offered that in the places of detention they shall provide with the necessary housing norm, i.e. at least 4 sq/m; sufficient illumination; ventilation; sufficient hygiene-sanitation conditions; food of sufficient quantity and quality, necessary renovation.

In 2006, upon the proper initiative as well as based on the received complaints as a result of the RA human rights defender visits to RA police places of detained people, the RA Ministry of Justice penitentiary institutions, as well as a result of examination of the application-complaints received, we shall state that the issues identified in the report of the committee exist even today. We shall also mention that during last four years there was a big positive move in that direction. The conditions of keeping the arrested and detained people in the penitentiary institutions are described with much detail in Section 3 of the report (entities of the RA Ministry of Justice system). The representatives of the European Committee of Prevention of Torture visited Armenia also in 2006. The report of the Committee is in the preparatory phase.

On May 31, 2006 RA National Assembly ratified the Optional Protocol on the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment, which came into force on June 22. According to Article 17 of the Protocol no later a year after the Protocol comes into force or ratifying it or joining it each member-country shall approve, assign or set up one or several preventive independent national mechanisms with the purpose of preventing the tortures on the national level. Paragraph 4 of Article 18 of the Protocol in particular emphasizes the need of duly observing the principles concerning the status of national institutions of human rights protection and fostering, while setting up a national mechanism /Paris principles/.

Taking into account that the RA human rights defender's institution complies with the main criteria of preventive independent national mechanism stipulated by the Optional Protocol on the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment and can undertake its functions in Armenia - the Defender has submitted a proposal to The RA Ministry of Foreign Affairs to recognize the human rights defender's institution as a preventive national mechanism. The aforementioned issue is still under discussion.

2.2.2. Right to fair trial

According to paragraph 1 of Article 19 of the RA Constitution Everyone shall have a right to restore his/her violated rights, and to reveal the grounds of the charge against him/her in a fair public hearing under the equal protection of the law and fulfilling all the demands of justice by an independent and impartial court within a reasonable time.

According to RA "Law on human rights defender" the Defender is not entitled to intervene into the court procedure; demand from the courts and judges clarifications about the issues emerged during the examination for the complaint; he cannot consider the complaints that shall be solved only judicially, as well as is bound to terminate the consideration of the complaint, if after the beginning of the consideration the interested party has filed a case or appeal in the court.

By the verdict dated May 6, 2005 the RA Constitutional Court recognized the provision stipulated by the 2nd sentence of clause 2 of paragraph 1 of Article 7 of the RA "Law on human rights defender" as non-complying with the provision of Article 39 and paragraph 1 of Article 97 of the RA Constitution. With the aforementioned provision, in particular, they stipulated the right of the Defender to demand information on any case in trial and submission of recommendations to the court guaranteeing the adequate enforcement of the right of citizens to trial envisaged by the Constitution of the Republic of Armenia and international law.

The verdict also stipulates that the right of the Defender to demand information from courts, in regard of ensuring the applicability of provisions of relevant articles, is subject to improvement, if it is not an intervention into the judicial procedures; does not concern to the implementation of justice in a certain case and is not about the issues of material or procedural nature of the case in trial.

Whereas quite a few complaints against the courts are about the violation of procedural requirements like - the cases of unjustifiably delayed trials; not sending the appeal, verdict or decision made about the case in terms established by law; not informing the parties about the trial in adequate way, etc. In these cases, as well as in regard of legality and validity of the verdicts and decisions made by the courts the RA human rights defender made a decision on not considering the complaints according to RA "Law on human rights defender".

Nevertheless, the Defender has examined some judicial cases, in regard of which the court decisions came into legal force. Let us mention that according to clause 5 of paragraph 1 of Article 12 of the RA "Law on human rights defender" the Defender reserves the right to study the cases, in regard of which the court verdicts and decisions have come into legal force.

Individual judicial cases have been analyzed in Section 3 of the report (courts).

One shall also pay attention to the results of examination of judicial practice in regard of challenging the government decrees on the property alienation process for the public and state needs.

Thus, the examination of the judicial practice comes to witness that the courts of general jurisdiction, while considering the issue of compliance of the legal acts adopted by the

RA Government to the law, based on paragraph 2 of the clause 1 of Article 160 of the RA Civil Procedures Code, turned down to accept them for consideration.

One shall mention that this position formulated by the courts of general jurisdiction, which is connected with the interpretation of paragraph 2 of the clause 1 of Article 160 of the RA Civil Procedures Code, is not only inconsistent with paragraph 1 of Article 15 of the RA Civil Procedures Code, but also contradicts paragraph 4 of Article 6 of the RA "Law on legal acts[9] ".

This implication is also confirmed by the decision N 665 of the RA Constitutional Court dated 16.11.2006, which called the clause 2 of paragraph 1 of Article 160 of the Republic of Armenia Civil Procedures Code - from the standpoint of the content given to it by the legal practice - as contradicting Articles 18 and 19 of the Constitution of the Republic of Armenia and invalid.

We consider it important to also turn to the amendments of the RA Civil Procedures Code and RA Criminal Procedures Code made on 07.07.2006 in regard of establishing conditions of accepting the cassation appeal.

The RA "Law on making amendments in the Republic of Armenia Civil Procedures Code" made on 07.07.2006 and enforced on 05.08.2006, as well as RA "Law on making amendments in the Republic of Armenia Criminal Procedures Code" stipulated the conditions of accepting the cassation appeal.

Thus, Article 231.2 of the RA Civil Procedures Code stipulated that the Court of Cassation accepts the case, if:

1) the judicial act made by the Court of Cassation in regard of that case can have a substantial significance for unequivocal application of the law or

2) the re-considered judicial act contradicts the judicial act previously adopted by the Court of Cassation or

3) as a result of violation of procedural or material right by a court of lower instance the possible judicial act may inflict grave circumstances or

4) there are new circumstances emerged.

The RA Criminal Procedures Code also stipulated "such system of admissibility" of cassation appeals.

For this criterion of cassation appeal's admissibility they introduced the term "justifications" of the cassation appeal. The "grounds" for submitting a cassation appeal have not changed. The meaning of the criteria discussed is that, hereinafter, in order to submit a cassation appeal the grounds envisaged by the procedures codes will not be sufficient for the Court of Cassation to accept the case. It will be necessary for those grounds to be expressed by one of the forms of the laws.

One shall mention that the conditions mentioned do not comply with the requirements of legal certainty - enabling the Court of Cassation to express subjectivism.

Turing to the concept "law" in the sense of the Convention the European Court on Human Rights, in particular mentioned that in no legal norm can be considered "law", if it does not comply with the principle of legal certainty (*res judicata*)[10] .

[9] See decision N 665 of the RA Constitutional Court dated November 16, 2006.

[10] See paragraph 49 of the decision on The Sandy Times v. The United Kingdom dated 26.04.1979; paragraph 66 of Malone v. The United Kingdom dated 02.08.1984; paragraph 67 of James and Others v. The United Kingdom dated 22.01.1986.

One shall also mention that the issue is not that much in formulations of the aforementioned provisions, but in the legal practice.

As we mentioned the relevant amendments of the RA Civil Procedures Code and RA Criminal Procedures Code came into force on 05.08.2006. The examinations done by the RA human rights defender come to witness that with justification of incompliance to the permissibility conditions the RA Court of Cassation has returned all those cassation appeals, which were submitted to the Court of Cassation before the amendments of the RA Civil Procedures Code and RA Criminal Procedures Code came into force on 05.08.2006. They have also returned those complaints, the law-stipulated one month deadline for the consideration of which starting from the day of submission was already expired.

We find that the respective decisions on returning the cassation appeals submitted to the RA Court of Cassation before 05.08.2006 do not comply with the requirements of the RA legislation. These decisions have given a retroactive force to the legal acts making strict the procedure of exercising the right of the natural persons.

According to Article 42 of the RA Constitution the laws and other legal acts exacerbating the legal status of an individual shall not be retroactive. A similar provision is also stipulated by Article 78 of the RA "Law on legal acts.

The same principle has been also stipulated by the RA Criminal Procedures Code. Paragraph 2 of Article 4 of the Code stipulates that the criminal procedures code eliminating or limiting the rights of the trial participants, as well as exacerbating their legal status in other way shall not be retroactive and shall not be extended to the case started before the legal enforcement of the law.

The stipulation of these norms is conditioned by the need to ensure the legal certainty. The changes made by the legislature of the conditions stipulated in the past shall be performed in a way, in order to maintain the trust of the citizens towards the law and activities of the state, which implies reasonable stability and predictability towards the law, which implies reasonable stability and predictability of legal regulations.

2.2.3. Right to personal liberty and security

According to paragraph 1 of Article 16 of the RA Constitution everyone shall have a right to personal liberty and security.

In 2006 the RA human rights defender received 19 complaints concerning the right to personal liberty and security.

Those were mostly regarding the issues of choosing the detention as a preventive punishment and illegally keeping the person in detention.

These complaints are analyzed in Section 3 of the report.

We find it appropriate to separately deal with the some issues concerning the legal regulation of the relations in regard of detaining a person.

Thus, after the amendments made in the RA Criminal Procedures Code the application of detention is considered legitimate also during the preparation of materials with a purpose of filing a criminal case.

In particular, According to paragraph 2 of Article 180 of the RA Criminal Procedures Code during the preparation of the materials they may demand explanations and other materials, as well as they may examine the crime scene; in case of having sufficient ground to suspect of crime committed **they can detain and make personal search of the persons**; take up samples for examination and appoint expertise.

Indeed one can understand the good will of the legislature to make the job of prosecution bodies easier while detecting the crime features in hot traces. I.e. in this case there has been an attempt to give a preference to public interest at the expense of private interest.

However, we are convinced that such regulation can lead to undue limitations to person's right. Moreover, the Code does not stipulate any guarantee to avoid unreasonable detention. In particular they have not stipulated the maximum period of keeping the detainees, during which activities aimed at the identification of the detainee shall be immediately performed. Article 153 of the RA Criminal Procedures Code does not anticipate anything about it either.

Moreover, in its turn paragraph 2 of Article 17 of the RA "Law on police" with an ambiguous definition reserves the police a direct right to keep the detained people.

The position proposed stems also from the analysis of the practice. There were confirmed cases, when the detained people were kept by prosecution of investigation bodies for even several days.

Example 1

The lawyer of the applicant in the verbal complaints addressed to the Defender informed that the personnel of criminal investigation department of Arabkir district unit of Yerevan Police Department (hereinafter referred to as CID) of the RA Police at around 11 pm. on 23.09.2006 illegally took custody his client in the police department and it had been two days that refused to set him free.

With the purpose to clarify the circumstances of what had happened the human rights defender staff visited Arabkir district unit of Yerevan Police Department of the RA Police and met deputy head of the unit for operative cases, as well as head of CID.

At the moment of the visit the client of the applicant was still there. From the clarifications given by the aforementioned officials it became clear that there was no criminal case filed and there the citizen did not have any procedural status.

That is to say that keeping the aforementioned citizen did not have any legal ground. According to the clarification given by the CID head of Arabkir district unit of Yerevan Police Department of the RA Police materials were prepared to file a criminal case against the citizen, which were forwarded to the Prosecutor's office of Arabkir and Kanaker-Zeitun communities with the purpose of final solution.

However, upon the claim of the Defender staff the citizen was immediately released.

The following issue connected with the order of judicial appeal of the arrest is also interesting:

Thus, According to paragraph 4 of Article 16 of the RA Constitution everyone shall have a right to appeal to a higher instance court against the lawfulness and reasons for depriving him/her of freedom or subjecting to search.

Whereas, the RA Criminal Procedures Code contains no direct content about the fact that the arrested person shall have a right to appeal to a court against the lawfulness and reasons for arrest. The legislature envisages norms of only general nature, which are about court appeal of the activities and decisions of criminal investigation bodies (paragraph 1 of Article 103 and paragraph 1 of Article 290 of the RA Criminal Procedures Code).

Although the norms of the RA Constitution are directly applied, however, we find that it would be more appropriate to clearly stipulate the aforementioned norm also in the RA Criminal Procedures Code.

Paragraph 4 of Article 5 of the European Convention of Human Rights stipulates that everyone, who is deprived of liberty due to arrest or detention, has the right to challenge the lawfulness of his/her arrest, in regard of which the court shall make an immediate decision and orders to set him/her free, if the arrest was illegal. A similar requirement is also stipulated in paragraph 4 of Article 9 of International Convention of Civil and Political Rights.

It is also important to tackle upon the decree No NH-163-N of the RA President dated July 31, 2006, which stipulates the procedure for establishing and activities of an independent commission dealing with issues of parole, replacing the unserved punishment with a milder punishment.

The commissions are functioning from August 1, 2006 and give conclusions regarding application admissibility for parole in regard of prisoners presented by the penitentiary institution administration.

There were 11 complaints received from the prisoners in regard of the commission's decisions. The applicants are convinced that the conclusions of the commission were not objective.

The examinations of the aforementioned complaints have identified that all those prisoners were presented for parole by penitentiary institutions, who had served the court's appointed period envisaged by the law and received the right to submit a request about parole.

Article 76 of the RA Criminal Procedures Code is dedicated to the grounds of the parole. According to paragraph 1 of Article "The person sentenced to public work, correctional labor, imprisonment or disciplinary battalion can be released on parole with his consent, if the court finds that for his correction there is no need to serve the remaining part of the punishment". "When exempting from punishment on parole, the court also takes into account the fact of mitigation of damage to the aggrieved by the convict".

This implies that the task of independent commission is to find out how sufficient the data are about the prisoner, which will give reasons to the court to be convinced that the given prisoner does not need to serve the rest of the appointed punishment to be corrected.

In case of existence of encouragements received by the prisoner during the service of

the punishment, active participation to public works, positive impact on other prisoners, permanent link with the family and presence of other similar facts the commission will naturally give a positive opinion.

If such data are missing about the prisoner and instead of it there are data which negatively describe him, then the opinion of the commission cannot be positive.

The independent commission has mainly acted on these principles.

2.2.4. Right to form associations with others

According to paragraph 1 of Article 28 of the RA Constriction everyone shall have the right to freedom of association with others, including the right to form and to join trade unions.

The right to association is stipulated by a range of international documents, including Article 11 of the European Convention on Human Rights. While interpreting the concept of "Freedom to association" The European Court of Human Rights has stipulated it as follows: "Freedom of association is the general possibility for people to get together into a union to achieve common objectives without intervention of the state".

The study of the verdicts made by the European Court shows that Article 11 can be indisputably applied for the political parties. Thus, in the verdict made in regard of the case the Socialist Party of Turkey and other vs. Turkey the court underlined that if Article 11 is considered a legal guarantee ensuring the adequate exercise of democracy, then with this article the political parties are the most important unions protected by this article.

Getting to the issues of limiting the right to unite let us mention that the Convention considers permissible the limitation of this right only in the following case: when the limitation is envisaged by the national legislation of the defendant country, chases any legitimate objective or objective stipulated by paragraph 2 of Article 11 of the Convention and is necessary in the democratic societies.

The European Court has performed a special attitude towards the issue of banning the activities of the political parties by the country.

In particular, in the verdict made in the case of United Communist Party and other vs. Turkey the court mentioned that in cases, when the a decision was made about liquidation of the political party and its leaders were banned from the future political activities, while performing an examination the European Court shall exercise a special supervision.

By a range of decisions the European Count of Human Rights has also mentioned that only serious offences, that can jeopardize political pluralism and fundamental democratic principles, can justify the ban on the activities of the political parties.

The guiding principles adopted in December 1999 by Venice Commission "On banning and liquidating political parties" are also interesting. In particular, the principle stipulates that the ban on the activities or forced liquidation of the political party can be justified only

in case, when the party campaigns for violence or overthrow of democratic constitutional order by exposing the rights and freedoms guaranteed by constitution.

The principles have emphasized that the ban or liquidation of a political party in a democratic society shall be as an exclusive means.

From the standpoint of ensuring the right to form unions clauses 2 and 3 of paragraph 2 of Article 31 of the RA "Law on political parties" are also interesting, which are about the grounds to liquidate the political parties as a result of not gaining sufficient votes during elections.

Thus, clauses 2 and 3 of paragraph 2 of Article 31 of the RA "Law on political parties" stipulate the following grounds for the liquidation of the political parties: the political party is subject to dissolution, if at any two consecutive elections of the National Assembly it receives less than one percent of total number of votes and inaccuracies cast for electoral lists of all the political parties participated to the elections, as well as does not participate to one elections of the National Assembly on proportional basis and less than one percent of total number of votes and inaccuracies cast for electoral lists of all the political parties participated to the elections during the elections preceding or after it.

Finding that on the basis of not getting the necessary amount of votes during the elections the limitation of the right of every citizen to create political parties with other citizens and affiliate to them does not comply with the objectives of limiting the fundamental rights and freedoms envisaged by paragraph 1 of Article 43 of the RA Constitution the human rights defender turned to the RA Constitutional Court with a request to determine the relevance of clause 2 and 3 of paragraph 2 of Article 31 of the RA "Law on political parties" with paragraph 2 of Article 28 of the RA Constitution.

One shall also mention that the challenged provisions of the RA "Law on political parties" also contradict paragraph 2 of Article 7 of the RA Constitution, according to which the parties are formed freely, contribute to the formation and expression of the political will of people.

It is obvious that in the sense of the challenged provision of the RA "Law on political parties" the political party unsuccessful during the parliamentary elections, in case of continuing the activities, can also contribute to the formation and expression of the political will of people.

With the aforementioned case on 22.12.2006 the RA Constitutional Court ruled:

The clause 2 and 3 of paragraph 2 of Article 31 of the RA "Law on political parties" are considered contradicting paragraph 2 of Article 28 and 43 of the RA Constitution and annulled.

According to paragraph 9 of Article 68 of the RA "Law on Constitutional Court", while determining the constitutionality of any legal act mentioned in paragraph 1 of Article 100 of the Constitution, the RA Constitutional Court identifies the constitutionality of other provisions of that act systemically interconnected with the challenged provision of that act. Assured that the provisions of other legal acts interconnected with the challenged provision of that act contradict with the Constitution, the Constitutional Court can recognize those provisions as contradicting the Constitution and annulled.

Guided by the aforementioned provision the RA Constitutional Court considered as contradicting paragraph 2 of Article 28 and 43 of the RA Constitution and annulled also the provision of clause 1 of paragraph 2 of Article 31 of that act systemically interconnected with the challenged provisions of the RA "Law on political parties", according to which "The political party is subject to dissolution, if it did not participate in two consecutive elections to the National Assembly on a proportional basis".

Besides on the basis of paragraph 9 of Article 68 of the RA "Law on Constitutional Court" the provision of paragraph 4 of Article 31 of the given act interconnected with the challenged provisions of the RA "Law on political parties", according to which "The property remained as a result of the liquidation of the political party shall be transferred to the Republic of Armenia".

Let us also mention that the draft new RA "Law on political parties" is in the process of development.

2.2.5. Right to freedom of speech

According to Article 27 of the RA Constitution everyone shall have the right to freely express his/her opinion. No one shall be forced to recede or change his/her opinion.

Everyone shall have the right to freedom of expression including freedom to search for, receive and impart information and ideas by any means of information regardless of the state bodies...

The right to receive information is a constituent part of the right to freedom of speech. The experience of the RA human rights defender shows that this right is often violated due to lack of relevant sub-legislation ensuring the enforcement of the right to receive information.

We find it appropriate to tackle upon the issue of the draft RA "Law on lobbying activities", about which the RA human rights defender has submitted his opinion to the authorized public bodies. In particular the following was stressed:

As it stems from the systemic analysis of paragraph 1 of Article 4 and Article 7 of the draft, the right to lobbying activities is reserved exclusively to those people, who in order established by law have been registered as lobbyists.

The draft has presented, as a form to exercise lobbying activities, for example, the submission of proposals, information, analytical and other documents regarding the subject of lobbying activities to the body developing legislation or body with the powers to develop legislation /clause "b" of paragraph 3 of Article 21/.

The conclusion submitted by the defender has especially stressed that in case of adopting this draft it will contradict a range of articles of the RA Constitution, including the violation of Article 27, according to which everyone shall have the right to freely express his/her opinion, as well as right to freedom of speech, including freedom to search for, receive and impart information and ideas by any means of information regardless of the state bodies.

Let us also mention that the shortcomings of the draft owe to the fact that the nature of the lobbying activities has not been pertinently defined.

Thus, from the wording of Article 2 of the draft one cannot draw a demarcation line between the areas of the professional entrepreneurial activities, i.e. lobbying activities and personal or public interest protection. The lobbying activities, according to the draft, is an activity performed in order envisaged by the draft with the purpose to impact the decision-making on stipulating, amending or suspending a legal norm of the body developing legislation and (or) body with the powers to develop legislation, which is aimed at the provision of legitimate rights of a person or persons. However, in many cases the activities performed in order established by law is equalized to the protection of pubic interests.

Without defining clear legal criteria (grounds) to draw a demarcation line between the areas of professional entrepreneurial activities and or public interest protection and procedures to perform lobbying activities it is not possible to achieve those constitutional objectives, for the provision of which this institute could be introduced. In this case the lobbying loses the features of a democratic institute, sets up preconditions for its use in bad faith contradicting the principles of democracy.

"The right of expression is in the basis of democratic society, it is one of the major conditions for the development of democratic society and each person[11] ".

In 2006 in the Republic of Armenia there were cases of violence against the journalists of a range of papers, hampering of their professional activities, which is greatly exposing the complete provision of the freedom of speech in Armenia.

The RA human rights defender has strongly condemned those harassments and made an official statement - calling upon the law enforcement authorities to be more consistent to identify any case of hampering the professional activities of the journalist and bringing the guilty ones to just in order established by law.

2.2.6. Right to effective legal remedies

According to Article 18 of the RA Constitution everyone shall be entitled to effective legal remedies to protect his/her rights and freedoms before judicial as well as other public bodies.

The Right to effective legal remedies is stipulated in Article 13 of the European Convention of Human Rights, which enables us to protect the rights and freedoms stipulated in the Convention. Consequently this article a measure of legal protection that in essence enables to consider the complaint based on the Convention and respectively restores the violated right. The scope of this commitment differs depending on the nature of the applicant's application. However, the measure required for the legal protection shall be effective and real in the law, as well as in practice.

According to the interpretation of the European Court of Human Rights Article 13 requires that, if the person considers him/her as a victim suffered from the violation of the

[11] See the verdict of the European Court on Handisay vs. United Kingdom.

Convention, then he/she must have an effective measure of legal protection in front of the national body, in order to be able to achieve the decision-making on the complaint, as well as in case of necessity a compensation of the damage.

In a range of decisions the European Court has mentioned that Article 13 of the Convention requires provision of national protection measures, which will actually enable one to examine the "challenging complaint" based on the Convention and provide with respective compensation.

In this context we would like to deal with the issue of compensation of moral damage in the Republic of Armenia.

The RA legislation does not envisage the institute for the compensation of moral damage.

However, we think that the compensation of moral damage, as a way of protection of the right, in the respective cases shall be applied by the national courts.

The fundamental human rights and freedoms mentioned in Chapter 2 of the RA Constitution, which are protected also by the European Convention, are consistent and their interpretations shall be the same. Taking into consideration that the right to effective measure of legal protection is stipulated by the RA Constitution, the interpretation of this right shall also be consistent with the interpretation of Article 13 of the European Convention.

In several verdicts the European Court of Human Rights has emphasized the fact that in cases, when Articles 2 and 3 of the Convention are violated, which is fundamental provision of the Convention, the compensation of the moral damage stemming from such violations shall in principle be an element of the protection measures. Consequently in the aforementioned cases the courts shall directly apply the norm of the RA Constitution and commit the respective bodies to compensate the moral damage.

In the sense of Article 13 of the European Convention of Human Rights the "efficiency" of "measure of legal protection" shall not depend on how appropriate it is for the favorable decision for the applicant, but on the contrary it minimum requires the case to be considered quickly[12] .

2.2.7. Right to freedom of thought, conscience and religion

According to paragraph 1 of Article 26 of the RA Constitution everyone shall have the right to freedom of thought, conscience and religion. This right includes freedom to change the religion or belief and freedom to, either alone or in community with others manifest the religion or belief, through preaching, church ceremonies and other religious rites.

The right to freedom of thought, conscience and religion is stipulated in a range of international and regional documents, including the European Convention of Human Rights. It is interesting that the most serious issue that convention entities face in regard of freedom of conscience has been the exercise of right to refuse military service on the justification of convictions. At present the European Court of Human Rights views the criminal prose-

[12] Instruction-recommendation of the Ministerial Committee Rec(2004) 6 to member-states "On improving the national measures of legal protection"

cution for the refusal of military service on the justification of convictions as intervention into the right of thought, conscience and religion.

They also put importance to the instructions of CE Ministerial Committee 1987 R(87)8 - regarding the refusal of compulsory military service on the justification of convictions, as well as instructions of CE Parliamentary Assembly 2001 N1518(2001) - about the exercise of right to refuse military service on the justification of convictions in the Council of Europe member-states. By the commissions the member-states have been offered to legislatively stipulate the right to refuse the military service on the justification of convictions; to put the national legislation and practice in compliance with certain principles of that right.

Becoming a member of the Council of Europe, in a range of other commitment, the Republic of Armenia has also committed itself to adopt an alternative service law in compliance with the European standards. The Republic of Armenia has also committed itself to amnesty those people sentenced to deprivation of freedom or corrective works due to rejecting military service on the justification of conviction and enable them to make a choice between unarmed military service and alternative military service.

RA "Law on alternative service" came into force on July 1, 2004. The period of alternative military service stipulated by law is 36 months and period for alternative labor service is 42 months. The latter is conducted in the places identified by the RA Government (mental hospitals, boarding houses of disabled people, etc.); the same bodies dealing with the issues of mandatory military service draft are also in charge of organizing and supervision of alternative military draft activities.

The Parliamentary Assembly of the Council of Europe (PACE) with its resolution No 1361 (2004)1 has considered unacceptable and extremely long the period for alternative service, which is 42 months. It has been recommended to reduce that period up to 36 months.

The Parliamentary Assembly of the Council of Europe (PACE) with its resolution No 1532(2007) on the commitments and obligations undertaken by the Republic of Armenia has again dealt with the commitment of Armenia to adopt a "law consistent with the European standards" and "amnesty those people sentenced to deprivation of freedom or corrective works due to rejecting military service on the justification of conviction".

SECTION 3
ANALYSIS OF HUMAN RIGHTS VIOLATIONS BY PUBLIC BODIES

The enforcement of fundamental human rights and freedoms and citizens' rights and the guarantees for their protection are first of all based on the activities of public bodies-in particular, the extent to which those activities are exercised within the framework of the law. In their activities, public bodies should always be guided by the principles stipulated by Article 3 of the RA Constitution, according to which, "The human being, his/her dignity and fundamental human rights and freedoms are ultimate values. The State shall ensure the protection of fundamental human and civil rights in conformity with the principles and norms of international law. The State shall be limited by fundamental human and civil rights as a directly-applicable right."

The RA "Law on the fundamentals of administration and administrative procedure" was prepared with the rationality of ensuring the enforcement of these principles. This law stipulates the recognition of the rule of law. Respect towards and maintaining the law is thus mandatory for administrative bodies as principles of their activities by law.

The assessments of the activities of public bodies given by the Defender stem from the principle that those bodies are called upon to serve people to perform only such actions within their powers, aimed at the respect and encouragement of fundamental human rights and freedoms, and the protection of those rights from any violation. In addition, the following principles are stipulated in the RA "Law on the fundaments of administration and administrative procedure":

"While performing administrative duties, administrative bodies are prohibited to overburden people with commitments or refuse to provide any right to them simply in order to carry out formal requirements, if the commitments put on them have essentially already been performed" (Article 5);

"While performing discretionary powers, administrative bodies shall be guided by the need to protect human rights and the freedoms and rights of citizens stipulated by the RA Constitution, including the principles of their right to equality, acceptable levels of bureaucracy and the absence of arbitrariness and the attempts at achieving other purposes predetermined by the law" (Article 6, paragraph 2).

These and other principles stipulated by the law ("the absence of arbitrariness", "acceptable levels of bureaucracy", "the principle of maximum effect", "the presumption of reliability", etc.) are put in place in order to guarantee the establishment of the enforcement of law and the rule of law, which is the basis for society's harmonious development.

Any deviation from these principles is deemed as a violation of fundamental human rights and citizens' freedoms and rights of. It is these sorts of violations that the Defender

accepts for consideration as complaints. The complaints received in 2006, which are classified by public bodies (see Section 1 of this report), give reasons to state that, while dealing with the applications and complaints of citizens, public bodies are not always guided by the principle of the rule of law or the principles stipulated by Article 3 of the RA Constitution and the RA "Law on the fundaments of administration and administrative procedure".

In 2006, 2,687 applications and complaints were received. There were 6,567 applicants, with 103 complaints being submitted collectively by 3,983 applicants. Moreover, 222 applicants further submitted an additional 132 applications. The distribution of the received applications and complaints is presented in Section 1 of this report.

This number of complaints submitted against public bodies, irrespective of the fact that a violation on their part was found or not, is already proof that, while taking up their various applications, officials of public bodies were inept at performing their duties. If the rights of the applicants were not violated, then there was evidently negligent or inadequate approaches towards the applicants, or applications were rejected for inappropriate reasons, or there were other similarly unacceptable cases of conduct.

The statistical data on the application prove that there is quite a large number of complaints against the activities of courts (159 in number), against Yerevan Municipality (120), against police bodies (114), against bodies in the system of the RA Ministry of Justice (88), against the Prosecutor-General's Office (76), against the RA Ministry of Labor and Social Affairs (76), and against cadastre bodies, 39.

Compared to the applications and complaints received in 2004 and 2005, the number received in 2006 by public bodies has remained more or less the same. The nature of the complaints received did not change either-e.g. discontent with court decisions, social issues, including some from residents of the earthquake zone and refugees, and land disputes and other disagreements over property.

As in previous years, there were many complaints against the Yerevan Municipality in 2006 as well (not including the complaints against courts)-brought mainly about cases of violations of property rights. Most complaints continue to be against law enforcement agencies, i.e. the Prosecution, the police, as well as bodies of the RA Ministry of Justice, including the Service for Compulsory Execution of Judicial Acts, the State Registry, penitentiary institutions, as well as the courts. Complaints against state cadastre bodies also continue to be received.

Among the received applications and complaints, complaints against the police, Prosecution, certain bodies of the RA Ministry of Justice and the courts are emphasized in this report, which is based on the fact that those bodies are privileged with the powers to limit rights, which always contains risk of violating rights and freedoms. Accordingly, the sequence of analysis of the applications received is categorized by public bodies, with the ones against law enforcement authorities being considered as primary.

3.1. The Police

As mentioned before, there were 114 complaints against the police in 2006, of which:

- 44 were accepted for consideration,
- 26 were sent to the consideration of other authorities,
- in 13 cases, applicants were advised about their rights,
- 24 were not accepted for consideration,
- 7 are currently under examination.

The complaints against the police were mainly about: the unjustifiable detention of the applicant by the police, illegal detentions, the filing of criminal cases without factual basis of the alleged crimes, not undertaking active measures to solve crimes in filed criminal cases or, in the case of being involved as a suspect, the unjustified nature of allegations, and other similar circumstances.

For complaints of this kind, applicants characteristically complain about police activities whose legal verification comes under the Prosecution. For example, complaints concerning the legality of decisions on rejecting the filing of a criminal case, suspending a criminal case, being involving as a suspect, and choosing arrest as a preventive punishment were mainly sent to the consideration of the Prosecution or the applicant was explained, by the procedure established by law, on how to appeal against those decisions. There were 39 complaints of this nature.

If the complaint was about the legality of a decision on refusing to file a criminal case with evidence and if there were grounds to suspect the decision's validity, then the evidence was requested from the authorized body and examined. If the complaint was found to be justified, a proposal was submitted to the RA Prosecutor-General to withdraw (or review) the decision on refusing to file that criminal case. For instance, based on the materials requested and studied (based on one such complaint), a recommendation was submitted regarding the withdrawal of a decision on filing a criminal case based on evidence. The motion was upheld by the Yerevan City Prosecutor, and the decision on refusing to file a criminal case based on evidence was withdrawn.

In considering the complaints received, cases were found in which, instead of making a decision based on the information issued on the crime in the order established by Article 181 of the RA Criminal Procedures Code (including sending a copy of the decision to the applicant and clarifying the right to appeal the given decision) the final processing of the evidence was carried out by the police by filing a reference or report, of which the applicant was often left uninformed. This matter has also been taken up in reports of the Defender in previous years. The practice of solving the processing of evidence by statements has been mostly prohibited. Similar cases continue to exist, however.

There are also quite a few cases when, stipulated by Article 180 of the RA Criminal Procedures Code on making a decision regarding information received, deadlines were not observed. Based on the aforementioned Article, this information should be considered and resolved immediately and, in the case of the need to verify the sufficiency of the grounds

to file a case, within 10 days after receiving them. Paragraph 1 of Article 174 of the same Code stipulates that, "The procedural actions made after the expiry of the deadline are invalid, if the deadline is not restored".

In any criminal case, one can encounter violations of the deadline stipulated by Article 180 of the RA Criminal Procedures Code, which, afterwards, is undermined by the preliminary investigation body and then also by the criminal cases tried in the courts. As a result of such an approach, the principle stipulated by paragraph 1 of Article 174 of this Code is not enforced and remains of a formal nature.

The following examples are characteristic of the kind of rights' violations that are committed by police bodies:

Example 1

The applicant complained that three officers of the Shengavit Police Department, Charbakh Office, entered his/her house and beat his/her son. Such violence against the son of the applicant was without foundation. It was later discovered that a protocol on administrative violations with regards to him had been filed with insufficient data. The Defender deemed the actions of the police officers as a violation of human rights and a decision was made; on the basis of the Defender's decision, those police officers were given disciplinary sanctions.

Example 2

The applicant complained that his/her two neighbors, having used forged documents, possessed a plot of land (an apartment building's service area), three basements and a boiler room of general use. A criminal case based on the evidence acquired by his/her application was refused to be filed in the Central Office of the Yerevan Police Department without sufficient justification. The evidence regarding the complaint of the applicant was requested from the Central Office of the Yerevan Police Department. However, the evidence was not submitted even after giving further notice. A decision was made on considering the actions of the mentioned officer of the Police as a violation of human rights and it was proposed to initiate an internal investigation on the basis that the demand of the Defender to send him the evidence had been neglected. An internal investigation has been assigned for the given case. However, any information about the final results have not yet been received.

Example 3

A lawyer verbally reported that his/her client had been taken into custody in the Arabkir Police Department, thus being illegally deprived of liberty. The report was verified on the spot and confirmed that the female citizen was kept in the police department without legal grounds-there was no criminal case filed, no protocol of custody had been filed, and there was no protocol or decision on arrest. According to the authorities of the police department,

there was evidence against her in the Prosecutor-General's Office and the police was in the process of performing some operative activities. As a result of the Defender's intervention, the citizen was released. However, she refused to make charges against the illegal actions of the police.

Example 4

The applicant complained that the head of Tavush Police Department refused to accept his/her complaint concerning the illegal actions of police officers, explaining that he/she had no power to consider a complaint against his/her personnel. Upon the motion of the Defender, the RA Police conducted an internal investigation, resulting in the complaint's details being confirmed and the issue of disciplining a group of Tavush Police Department personnel was raised.

Example 5

The RA State Border Police Passport and Visa Department officers took the passport of the applicant at the Gogavan check-point and returned it only after the intervention of the Defender.

Example 6

The applicant complained about the arbitrary actions of police officers. It was found that the applicant was taking care of his/her son's three-year-old child. The police officers of the Arabkir Police Department, based on the request of a woman who had arrived from the Russian Federation with no document confirming her to be the child's mother, had forcibly taken the child from the applicant and handed it over to the woman, who immediately left for the Russian Federation. Taking into account that, in cases established by law, issues on childcare should be solved by official custody and trusteeship bodies or in judicial order and considering that the police had undertaken powers of trusteeship and judicial bodies, their activities were classified as arbitrary and it was recommended to settle the issue of the responsibility of those police officers.

It is interesting that, with regards to the given case, the authorities of Arabkir Police Department tried to justify the actions of their officers by a distinctive interpretation of some provisions of the RA "Law on Police". They made a reference to paragraph 6 of Article 2 and clause 1 of paragraph 2 of Article 36 of the law, which say, "The objective of the police is to protect all forms of property in consistency with law" (Article 2, paragraph 6). "Within the territory of the Republic of Armenia, police officers, irrespective of their position, location and time, shall provide help (including first aid) to citizens involved with a given crime, administrative offences and accidents, as well as citizens in helpless or life-threatening circumstances" (Article 36.2, paragraph 1).

In the given case, if the police officers handed the child over to custody and trusteeship bodies prior to clarifying the rights of the challenging parties, their activities would fit the framework of the aforementioned articles. However, they predetermined the prevalence of

the right of the woman with an unconfirmed identity, who claimed to be the child's mother, over the rights of the grandmother who was taking care of the child. In contrast, the indifference and inactivity of some police officers is evident when there is a real need to intervene in order to prevent an everyday quarrel or criminal dispositions, or look into offences, etc.

Example 7

After the tenant left the apartment in question, the applicant (the owner) found a bag full of firearm bullets in it and immediately informed the Mashtots Police Department officers. In contrast to the previous case, in which the police officers intervened to solve a matter that was beyond their jurisdiction, in this case they were totally indifferent. The report of the citizen on discovering bullets for firearms was not adequately formulated, no evidence was prepared, the person that acquired and kept the bullets was not identified, and further applications of the citizen were left unanswered. With the consent of the applicant, the complaint was referred to the RA Office of the Prosecutor-General and, upon the commitment of the latter, evidence was given in the Ajapnyak and Davitashen Community Prosecutor's Office and the officers responsible for not processing the report of the citizen were subjected to disciplinary action.

Example 8

The applicant complained that the police officers of Nor Nork had entered by force into their house without any legal grounds, exerting force over his previously-imprisoned son and other members of the family, as a result of which they received physical injuries and the son was taken and was being kept in custody by the police. Taking into account that the complaint was on criminal actions of the officials, upon the consent of the applicant, the complaint was referred to the RA Office of the Prosecutor-General. The Prosecutor-General's Office informed the Defender's institution that a criminal case had been filed, and the persons mentioned by the applicant were sent for a medical examination.

The Prosecutor-General's Office also stated that, with regards to investigating the case of a theft committed at the Nor Nork Police Department, data had been received on the theft having been committed by the son of the applicant. In this regard, the latter had been asked to appear at the police department; however, he did not comply, resisted arrest, and then escaped. The police officers tried to take into custody the other brother, who also resisted arrest and failed to submit to the demands of the police officers. The escaped brother returned and, in the presence of the police officers, slashed his arm and also inflicted injuries on one of the employees at the police station.

This case is characteristic, in that they did not refute the insistence of the applicant that the police officers forcibly entered their house without the consent of the house owners and without court decisions, there was no warrant on taking the son into custody, and the son had never been asked to appear to the police by a notice or any other means described by law. The criminal case, currently being investigated by the Prosecution, will give an assessment of the activities of the police as well.

Example 9

The applicant complained that, as a result of incorrect surgery, her husband lost his eyesight and the complaint against the doctor in question, which she submitted to police, had not been processed. Upon the consent of the applicant, the complaint was referred to the Yerevan City Prosecution, from where it was stated that relevant evidence was being prepared to file a criminal case.

In a number of complaints, the applicants challenged the allegations against them in a criminal case not by stating a violation of procedural rights but by regarding the insufficiency or acceptability of the evidence provided against them. If the Defender intervened in such cases, it would mean replacing investigative bodies. These were the main types of complaints in which applicants received legal advice or, upon their consent, the complaint was referred to the Prosecution. There were also complaints in which the circumstances on the violations of rights were not confirmed. The following are such cases:

Example 10

The applicant was the suspect of a filed criminal case, accused of desecrating a tombstone. He complained that the allegations against him were without grounds. The applicant was presented with the procedural possibilities of protecting his rights, as the consideration of the complaint was beyond the Defender's jurisdiction.

Example 11

The victims of a criminal case on fraud, investigated in the Central Office of the Yerevan Police Department, complained that the integrity of the investigation was not observed and investigative measures necessary for the reinstating of their violated rights were not undertaken. Upon the consent of the applicant, the complaint was referred to the RA Office of the Prosecutor-General. With the commitment of the RA Prosecutor-General, this case was taken under special supervision.

Example 12

The applicant approached the police with a complaint against the illegal activities of his/her neighbors. The investigative unit of the Shengavit Police Department checked the complaint. In this case, a decision was made on refusing to file a criminal case with evidence, which was the reason for the applicant's complaint. Upon the consent of the applicant, the complaint was referred to the Office of the RA Prosecutor-General, where the legality of refusing to file a criminal case based on materials was verified. No procedural violations were found and the decision was considered legal.

Example 13

The applicant complained to the relevant police department against the illegal activities of his/her neighbors and they refused to file a criminal case by the evidence provided,

based on the lack of evidence in the details submitted. In an application to the Defender, the applicant complained against the decision of not filing a criminal case. The Defender demanded and examined the materials and no human rights violations were identified in the activities of the police.

Among the complaints against the police there are quite a few which refer to passport issues, i.e. the provision of passport, registration of residence, deregistering from residence, the provision of exit permits (the note which states "This passport is valid for foreign countries"), registrations mentioning the actual place of residence, and other such issues. The RA Government Decree N 821 "On approving the statute of the passport system in the Republic of Armenia and the description of the passport of RA citizens" dated December 25, 1998, as well as the RA "Law on state registry of the population" regulate the issues of passport issuance, passport registration and deregistration, and failure to meet those requirements leads to the violation of rights.

Example 14

The applicant complained that, on the basis of religious convictions, he refused mandatory military service, for which he had been sentenced and was serving his punishment. Then he approached the passport section of the police in order to get a passport, for which a notation from the Shahumyan local military committee was necessary for military registration. Without giving any reason, the Shahumyan local military committee refused to make the necessary notation in his documents. The matter was solved only after the involvement of the Defender.

Example 15

The applicant referred to the Yerevan Police Department's passport section with a request to get registered at the address where he/she had been registered from 1961 up to 2001 and was deregistered to leave for the Russian Federation. He/she returned in 2004 and resided at the same address. The re-registration of the applicant at the same address was rejected without any reasoning. As a result of the Defender's intervention, the matter was resolved.

The overall analysis of the applications and complaints received against the police prove that, with regards to the respect and protection of human rights, irrespective of evidently positive steps, there are still violations of human rights, such as illegal custody, illegal deprivation of freedom, forced confessions, illegal interventions into the personal life of a person, leaving complaints unattended, incomplete investigations of criminal cases, excessive bureaucracy in passport issues, etc.

Even so, there are positive steps being taken in the police system. It is good to note that, in 2004 and 2005, there were massive violations of rights in the areas of free movement, arrests and administrative violations, but in 2006 there were very few complaints concern-

ing those violations. It is also positive that there was stable and effective cooperation between the institution of the Human Rights Defender and the national police. The latter always responded to the reports on violations committed by police officers and, when needed, implemented respective measures to counter the incidents generating violations of rights and made relevant amendments in ministerial acts regulating police activities.

Example 16

A group of citizens with visual impairment complained that the traffic on N. Tigranyan Street, in Yerevan, which used to be one-way, was changed into a two-way street, which caused some hazards to them. The issue was referred to the Yerevan City Traffic Police Department and the issue received a positive solution.

Example 17

There were also complaints against the 2004 joint decree of the RA Chief Policeman and the Chairman of the RA State Customs Committee "On strengthening the struggle against the illegal circulation of vehicles that are stolen or procured illegally in foreign countries", based on which, it became common practice in the traffic police registration and examination sub-divisions to issue a temporary coupon for the owners of such vehicles with a note that said, "cannot be sold". Such coupons were issued not only to newly-imported vehicles, but also for the vehicles that were in use for a long time by regularly updating such coupons. This has not only led to the limitation of property rights, but also contained corruption risks. In this regard, based on the recommendations made by the Defender's decision on the given case, the Chief Policeman and Chairman of the State Customs Committee stated that the matter had been taken into consideration, respective amendments were being prepared in the decree, which would exclude unjustified limitations on the rights of vehicle owners.

3.2. The Prosecution

In 2006, there were 76 complaints received against prosecution bodies. The complaints received were broken down as follows:

- were accepted for consideration,
- 25 were sent to the consideration of other bodies,
- in 14 cases, the applicants were advised about their rights,
- 21 were not accepted for consideration.

The complaints against the prosecution mainly concerned: failure to process reports on crimes, refusing to file a criminal case based on evidence, terminating criminal cases, groundlessness of accusations, and being taken into custody as preventative punishment.

Applicants of such complaints were, on the one hand, the victims, when the matter was about refusing to file a criminal case based on evidence, suspending or terminating a filed

criminal case, not charging the suspect they identified, etc., and, on the other hand, the accused (or their relatives were), when the matter was about allegations regarding being taken into custody as preventative punishment, rejection of the petitions of the defense, etc.

Most of these kinds of complaints were about the preliminary investigation process, with regards to which the powers of the Defender to intervene are limited. The complaints containing data on violating procedural rights were accepted for consideration. Other kinds of complaints, which related to the assessment of evidence, were referred to the Prosecutor-General upon the consent of the applicant, or clarifications were given to the applicant regarding the possibilities of protecting his/her rights regarding those matters.

Of course, complaints made against a certain body's functioning or inactivity were not forwarded on to the same body for referral. As the complaints were against the activities or inactivity of some sub-division or other of the prosecution, they were referred to the consideration of the RA Office of the Prosecutor-General. There is no other way, as no other bodies (except for the prosecution) are entitled to intervene in resolving the aforementioned issues. For example, no other body besides the RA Prosecutor-General or the prosecutor in charge of an investigation is entitled to overrule any decision of the investigator in question, change the charge under investigation, sustain or withhold an objection, or carry out other similar procedures.

Example 1

The applicant complained that a criminal case investigated in the military prosecutor's office for his/her sister's son's murder was suspended, as the person that was to be involved in the case as a suspect was unknown. He/She acted as the representative of the victim's next-of-kin. The decision on suspending the case was given to him/her only after six months of making that decision and only when he/she came to the prosecution in person and made inquiries about the case. He/She disagreed with the decision of suspending the case. However, his/her complaints were groundless, as he/she is not familiar with the details of the case. The investigator insists that he/she is entitled to review the evidence of the case only after a statement about the end of the investigation is issued.

According to Article 196 of the RA Criminal Procedures Code, "Preliminary investigations are over when a decision is made to send the criminal case for indictment and referral to medical measures or to terminate the procedure of the criminal case". The termination of the procedure of the criminal case was not the end of the case and an implication was made that the participant of the trial cannot benefit from the right of reviewing the evidence in the case.

However, According to paragraph 21 of Article 6 of the Code, the "prosecuting party" means the criminal prosecution bodies, the injured party, the civil claimant and their representatives and legal representatives. Consequently, they can contribute to completing the evidence in the case, finding the solution to the crime and identifying the criminal. This implies that, when suspending the procedure of a case, denying them the evidence in the case materials does contribute to the interests of the investigation. Paragraph 2 of Article

201 of the RA Criminal Procedures Code also envisages a commitment to not publicize preliminary investigation data without relevant permission for this very reason.

The complete isolation from the investigation of other participants of the accusing party by the criminal investigation body, unnecessarily keeping the evidence secret, lead to discontent and the complaints of the victims of the given case. Although the general principles of the RA Criminal Procedures Code allowed a solution of the given issue for the benefit of the applicant, in order to ensure an all-round approach, it is necessary to make amendments to Articles 185 and 258 of the RA Criminal Procedures Code. The matter of providing the participants of trials with extracts and copies is also closely connected with this same issue.

As for the rights of victims, civil claimants and civilian defendants, the Criminal Procedures Code also envisages the right to review the protocols of investigative actions performed with his/her participation, the decision on appointing an expert examination, and the conclusions of the expert.

The right to extracts and copies of evidence of the case at the end of the investigation is directly stipulated by law, but the right to review certain pieces of evidence, the right to get extracts and copies, prior to a statement being issued about the end of a preliminary investigation, is not provided for, which is used by criminal investigation bodies by presenting documents for the review of participants of trials without allowing them to take out extracts and copies. For example, the representative of the next-of-kin of the victim in the aforementioned case was refused copies of the decision on appointing an expert and the conclusions made by the expert. The fact that the right to get extracts and copies is directly mentioned in some articles of the aforementioned code has led criminal investigation bodies to the conclusion that the rights to review evidence and to acquire their copies are separate and that the right to review evidence does not imply the right to get a copy of the document.

As prosecution bodies interpret the law literally-mostly in respect to limiting the right of the trial participant-it is necessary to make relevant amendments in the RA Criminal Procedures Code. For example, Article 6 of the Code, which defines the basic notions used in the code, stipulates what can be understood by saying "review". It should be clarified that review implies the right to acquire extracts and copies.

There are quite a few complaints concerning the taking into custody of people as preventative punishment. It is still quite commonplace to take into custody as preventative punishment those suspects whose freedom can have no essential impact on the investigation of the case, when it is obvious that the given person will not avoid investigation or trial, cannot and will not influence witnesses and victims, and when he/she is the only wage earner in a family.

Although, in this regard, the approaches of courts have somewhat improved in comparison with previous years, and courts often refuse warrants demanded by prosecution bodies that endorse custody as preventative punishment, positive steps, especially in the approach of prosecution bodies, cannot yet be considered sufficient.

The following cases are characteristic of complaints against prosecution bodies:

Example 2

According to the applicant, the Kotayk Prosecutor's Office performed a biased investigation regarding his/her brother's murder, in which the investigator forced the witnesses to give false testimony. His/Her appeals for examinations, searches and other necessary investigative actions were all turned down without reasonable justifications. The complaint shows that, in any case, the applicant had the opportunity to benefit from his procedural right by reviewing the decision on appointing an expert and the conclusions of the expert and submitted motions. The complaint is based on the fact that the prosecution did not completely use the resources of the prosecution body that was part of the accusation. As the applicant challenged the objectiveness of the investigation, the Defender advised him/her on the right to appeal against the actions of the investigator and submit a petition against him/her.

Example 3

The applicant complained that, in the criminal case on file at the Shirak Prosecutor's Office, he was indicted for causing physical injuries to the victim, but that in reality he had not committed a crime. He had disagreed with the forensic doctor's conclusion and demanded an additional examination, but was turned down. Taking into account that the complaint was again against the assessment of evidence, the Defender advised the applicant regarding his rights to appeal against the activities of the investigator by submitting a petition against the investigator and submitting appeals in writing.

Example 4

Two different applicants complained about the fact that they were taken into custody as preventative punishment (since they were suspects in criminal cases being investigated by the Prosecutor-General's Office) when they discovered that the application of such a preventative measure was not justified by the evidence. One of the accused in these cases is a journalist and the other a woman, i.e. it is obvious that, while choosing the preventative punishment, they did not take into consideration what kind of individuals the accused were.

The examination of the complaints about being taken into custody as preventative punishment suggests that the prevalent practice of immediately choosing custody as preventative punishment, based simply on the nature of the crime allegedly committed by a given person, has not yet been overcome. As being taken into custody as preventative punishment is only endorsed by court decisions and the Defender is not entitled to intervene in court proceedings, these complaints were not considered.

Example 5

The applicant complained that, in a criminal case filed by the RA Office of the Prosecutor-General, evidence acquired in violation of the law was used, that being taken into custody as preventative punishment was unjustified, and that the prosecution against him/her and his/her family had an ulterior motive and was illegal. The applicant used

his/her right to appeal against the decision of the Court of First Instance. In this case as well, the matter involved intervening in ongoing preliminary investigations and court proceedings, for which reason the case was forwarded to the Prosecutor-General's Office.

Example 6

The applicant complained that, in his case, he was in preliminary custody and, in another case, his wife was also arrested. He considered that his family was subject to illegal prosecution. Without referring to the justified or unjustified nature of the accusations ascribed to the couple, it is especially significant to consider how justified it was to arrest two parents of the same family. It has been recommended to the RA Prosecutor-General to review the issue of the appropriateness of choosing custody as preventative punishment regarding the applicant's wife. According to the answer received from the court, "There is no need for revision as the matter has been settled by the court".

Example 7

The applicant complained that his/her son had died in suspicious circumstances at his work place. The Shengavit Prosecutor's Office refused to file a criminal case based on evidence, and he/she was informed about this only after one year. Upon the recommendation of the Defender, the RA Prosecutor-General's Office annulled the decision of filing a criminal case based on evidence as a result of examining the given evidence.

This kind of conduct should be deemed as unacceptable-when relevant bodies try to identify the circumstances of death occurring in unidentified conditions without filing a criminal case. First of all, this violates the deadlines stipulated by Article 180 of the RA Criminal Procedures Code and, afterwards, investigative activities are not carried out, which can in any case be done only after filing a criminal case. It is natural that, under such circumstances, the case is not seen through and the victims are left dissatisfied.

Example 8

The applicant complained that, by the criminal case filed regarding the disappearance of his son under suspicious circumstances, the Yerevan Central Prosecutor's Office did not carry out a complete investigation and the proceedings of the case were suspended with the incomplete investigation of the case. The complaint was referred to the RA Prosecutor-General, and, upon his commitment, it was examined and the decision on terminating the case's proceedings was overruled. So, the complaint of the applicant about the case's incomplete investigation was deemed reasonable.

As a result of unjustifiably rejecting the filing of criminal cases based on reports of crimes and incomplete examination carried out of filed criminal cases, the victim is deprived of the opportunities of legal protection and his/her right of judicial protection is violated. Consequently, the law should guarantee the possibility of the complete implementation of the victim's right to appeal against the decision of the prosecution bodies, with a clear formulation of reviewing evidence, and acquiring their extracts and copies.

On the grounds of the complaints on exercising violations against trial participants, illegal prosecution methods and other similar circumstances, the Defender has submitted numerous recommendations to the RA Prosecutor-General's Office, such as to file a separate procedure regarding those cases that will enable the completeness of verifying complaints, also raising the issue of bringing to criminal liability those who make false reports.

Example 9

The applicant complained that, in the Goris Penitentiary Institution, the personnel of the penitentiary institution had violently beaten him and caused physical injuries. It was discovered that, while on a walk, the applicant entered an investigators room, disturbing his activities and beating him. In this regard, a criminal case was filed against the applicant. Two days after this incident, the personnel of the penitentiary department conducted a search among the prisoners, during which they also exerted violence over the applicant. A medical forensic examination concluded that the applicant sustained mid-level physical injuries. No special proceedings were filed regarding the applicant's complaint. The verification of the complaint was referred to the investigator in charge of the criminal case of the aforementioned investigator, i.e. to verify them jointly. As a result of it, the truth is still undiscovered. The investigator came to the conclusion that the physical injuries of the applicant were the results of applying legitimate measures of force against him.

Paragraph 4 of Article 17 of the RA Criminal Code stipulates that, "The statements of the suspect, defendant or their defense attorneys about their innocence, the existence of evidence justifying the suspect or defendant or mitigating their liability, as well as complaints regarding violations of legitimacy during criminal proceedings shall be examined in detail by the body in charge of the criminal proceedings". The number and nature of the complaints received show that this requirement of the law is improperly enforced by prosecution bodies and this also reveals the misconduct of the Prosecutor-General's Office.

Parallel to this, there are also positive moves in defense attorney-prosecution relations. Direct communications have become more frequent. There is a possibility of joint discussion of the identified issues regarding specific complaints with the investigator in charge of a given case, the prosecutor in charge of supervising the case, as well as with the RA Prosecutor-General. In addition to this, the recommendations of the Defender were also taken into account.

3.3. Courts

In 2006, there were 159 complaints against courts. They were complaints against verdicts, rulings and decisions of courts. Although one might consider natural the discontent of defendants with verdicts and, in civil cases, the discontent of the party for the decision made to

his/her disadvantage, however, the number of complaints implies that public trust towards the courts is far from being satisfactory.

159 complaints against the courts were processed as follows:

- 7 were accepted for consideration,
- 5 were sent for the consideration of other bodies,
- 21 applicants were advised on the possibilities of their rights,
- 124 were not accepted for consideration,
- 2 are currently under examination

It has already been mentioned that the complaints against the courts were mainly about disagreements with verdicts, rulings and decisions of courts. The applicants complained that the court did not satisfy some appeal or other, disregarded submitted evidence, did not correctly allow for the exercise of rights, did not reject evidence obtained in violation of the law, etc. They complained of circumstances, the verification of which is, in reality, the exclusive right of superior courts.

The RA "Law on the Human Rights Defender" does not permit the intervention of the Defender into trial proceedings, requiring clarifications from courts. The consideration of the complaints shall be terminated if the interested party submits a suit or appeals to the court. As per the Decree of the RA Constitutional Court dated May 5, 2005, the submission of recommendations to courts regarding a case on trial is considered to be a violation of the principles of judicial independence. Owing to this, 124 out of 159 complaints were not accepted for consideration.

The Defender or his staff provided many of those applicants whose applications had not been accepted for consideration with relevant legal advice on filing for re-examination or for an appeal, submitting petitions necessary for cases on trial or to present evidence, providing intervention in special cases and other issues regarding cases on trial.

Thus, providing legal advice regarding complaints that could not be processed was the most important and laborious part of the Defender and his staff's activities. In 2006, only 7 complaints against courts were accepted for consideration. The following examples are characteristic of them.

Example 1

In this case, the applicants are 400 residents of the Shirakavan settlement of Gyumri, which, as a result of the earthquake, became homeless and resided in so-called "Modules", facilities built up by the "Leningradshin" organization. Later on, those facilities were transferred to the "Shirakshin" CJSC. The residents living in these facilities have not been registered as citizens rendered homeless as a result of the disaster and there is no specification regarding their right to title to the facilities they occupy. Upon the verdict of the RA Economic Court, the "Shirakshin" CJSC was recognized as bankrupt and the property on the account of the company, including the aforementioned facilities, were auctioned without considering the presence of the residents.

The insistence of the residents that the bankrupt company became the owner of those

facilities without any investment and accepted only the assets of former "Leningradshin" organization, and that the maintenance, repair and some reconstruction of the facilities was performed by they themselves is justified and fair.

Under these circumstances, when there was the issue of insolvency and liquidation of the "Shirakshin" company, when the list of the existing property of the company was discussed and hundreds of residents were to become homeless, the Governor of Shirak marz and the Mayor of Gyumri should not have remained indifferent. The court should not have declined to recognize the presence of residents in those facilities and could have involved them as third parties having their claims, and this was not done either. The residents were informed about the liquidation of the company only after those facilities were auctioned.

Example 2

The criminal case of the murder of two military servicemen in Mataghis was broadly publicized. It was prosecuted and sent to court by military prosecution. In this case, the Court of First Instance and Courts of Appeal sentenced the defendants to life imprisonment, whereas the Court of Cassation stated that the verdict was reached in conditions of insufficient evidence and ruled to reopen the case for additional preliminary investigations. It is based on the final results of the additional preliminary investigations of the case, that assessments are to be given regarding the proceedings of the preliminary investigations and trial.

Example 3

There is another broadly-publicized criminal case of a journalist who avoided mandatory temporary military service. The assessment of the Defender for this case was that, although the journalist was accused in committing a crime as per clause 2 of Article 327 of the RA Criminal Code, which foresees a prison sentences of 1 to 5 years, the three-and-a-half-year sentence was found to be a very strict measure. Such points as the lack of prior imprisonment, an untainted reputation, the nature of the activities of the accused, etc., which gave a positive picture of the defendant were not taken into account.

Example 4

The applicant used to work at the Yerevan Central and Nork Marash Community Court of First Instance as a typist. She was fired on the grounds of her contract's expiration. The applicant complained that she had not been told about the discontinuation of her work agreement and she was not returned her employment record book yet. It was stated at the Judicial Department that there were no reasons for terminating the labor agreement in the personal records of the applicant. This was an obvious fact of violating the applicant's labor rights, due to which the Defender considered this to be a violation of the applicant's rights.

Example 5

The applicant complained that Tavush marz Court of First Instance did not accept the application regarding the request on returning him/her to his/her job, based on the fact that

he/she had missed the deadline of one month foreseen for applying to the court. The examination showed that the appeal was not accepted by the court because the applicant had missed the established one-month deadline for appealing to the court with the request to be re-considered for employment. It was owing to this that the appeal had been denied. The Defender explained the decision of the court to the applicant.

Example 6

The applicant appealed to a court with a request to consider illegal the termination, on the grounds of retirement, of the payment of compensation by his/her employer for the partial loss of the ability to work as a result of an on-site accident during work. Through the decision of the Court of First Instance of the Erebuni and Nubarashen Communities of Yerevan, the claim was denied on the grounds that the retirement of the person who had partially lost the ability to work was the reason for the suspension of the payment of the compensation.

The RA Civil Cases Court of Appeals upheld this suit on the grounds that this kind of compensation should be paid for life. The RA Court of Cassation overruled the verdict of the Court of Appeals, finding that the damage caused to the health was compensated for by the payments made instead of salary and that the plaintiff had retired, that is to say that the loss of the ability to work does not hold anymore significance. This complaint was accepted for consideration owing to its relevance to social rights and equivocal interpretations of the law.

Example 7

The applicant referred to the Defender in one case stating that his/her documents submitted to the Court of First Instance of the Yerevan Central and Nork Marash Communities were missing and, in another incident, complaining against the acceptance of a case by the Court of Appeals under invalid circumstances, in that the copy of the appeal and complaint submitted during the case had not been sent to him/her. Further examinations of the complaint details proved them to be unjustified.

Like in 2004 and 2005, there were quite a few complaints in 2006 as well against the decisions of courts regarding the forced seizure of property for the needs of urban development in the city of Yerevan. Although there were publications critical of these decisions, their characteristics did not, however, change in 2006, and the attitudes of the courts towards them did not change either. The fact that, during last four years, there has not been a single court decision for the benefit of the owner or other title-holder in such cases proves this.

The examinations of similar cases show that, in all of the cases, the implementing organizations had evaluated the seized property and through court decisions, having forced the owners to take the unacceptable compensations based on their evaluation. The court decisions were mostly with the following content, "Make the respondent sign a contract and vacate the

residence area". The courts have never accepted the objections of the owners regarding the amount of the compensation, and nor have they satisfied their appeals.

While considering the relevance of Article 218 of the RA Civil Code, Articles 104, 106 and 108 of the RA Land Code, and the RA Government Decree No 1151 dated August 8, 2002 to the RA Constitution, the RA Constitutional Court has given its evaluations on the judicial practice based on such verdicts, which were mostly based on Article 218 of the RA Civil Code and Article 104 of the RA Land Code.

After the RA Constitutional Court recognized the aforementioned legal norms as contradicting the RA Constitution, those citizens deprived of their property through the decision of courts made a new attempt at reconsidering those decisions, deeming the decision of the Constitutional Court as a new circumstance stipulated by the RA Civil Procedures Code.

The Courts of First Instance and the Civil Court of Appeals rejected those suits on the grounds that those legal norms considered as anti-constitutional through the decision of the RA Constitutional Court enter into legal force only after October 1, 2006, the date established by the RA Constitutional Court and that, before that date, the decision of the RA Constitutional Court cannot be deemed as a new circumstance. However, the fact is that the appeals submitted even after October 1, 2006 have not been satisfied either on the same justification that the aforementioned decision of the RA Constitutional Court cannot be deemed as a new circumstance for reconsidering the decisions made for those cases.

It is also characteristic for the courts that if there are many gaps and uncertainties in the present legal framework, they would not use their right to refer to the Constitutional Court with a request to determine the constitutionality of those legal acts. So far, there has been only one case, when a judge referred to the RA Constitutional Court, which was regarding an issue of the RA "Law on status of the judge".

There were also complaints regarding the Court of Appeals for not accepting appeals and complaint. Articles 414.1 and 414.2 of the RA Criminal Procedures Code and Articles 231.1 and 231.2 of the RA Civil Procedures Code lie at the heart of those decisions. Section 2 of this report contains the relevant details.

Among the judicial reforms regarding the protection of rights, one may consider a positive step the improvement of the facilities of the courts, recording of court sessions, the establishment of a judicial school and everything that is aimed at the provision of the supervision of judicial proceedings, the guarantee of the qualifications of judges and an increase in their reliability.

3.4. Bodies of the RA Ministry of Justice System
3.4.1. The Service for Compulsory Execution of Judicial Acts

The role and significance of the Service for Compulsory Execution of Judicial Acts is important in that the enforcement of court decisions is a constituent part of the enforcement of justice and respectively the right of judicial protection. The complaints received against the activities of these bodies were about untimely or generally unenforcement of the requirements of court decisions, the exercise of excessive powers on behalf of the bailiff while performing their proper duties and other similar violations. Such violations were also reported in 2004 and 2005. Irrespective of this, the situation remains unchanged, i.e. there are similar violations, which give grounds for continuous complaints.

In 2006, there were 46 complaints against the Service for Compulsory Execution of Judicial Acts, of which:

- were accepted for consideration,
- 2 were referred to the consideration of other bodies,
- in 2 cases, the applicants were advised about the possibilities of their rights,
- 8 were not accepted for consideration,
- 5 are currently under examination.

The following complaints assess the activities of the Service for Compulsory Execution of Judicial Acts:

Example 1

The applicant complained that the Yerevan Office of the Service for Compulsory Execution of Judicial Acts did not enforce the verdict dated 03.05.2005 of the RA Civil Court of Appeals on enforcing the demolishing of facilities constructed without permission. Further examination of the application revealed that the Service for Compulsory Execution of Judicial Acts had solely made a decision to force the respondent to demolish the facilities constructed without permission. However, it did not take any action to ensure the enforcement of the decision, i.e. it disregarded the requirements of Article 24 of the RA "Law on the enforcement of court decisions". Only after the intervention of the Defender did the Service for Compulsory Execution of Judicial Acts initiate the enforcement of its decision. The inactivity of the Service for Compulsory Execution of Judicial Acts had been deemed as a violation of the applicant's right to judicial protection.

Example 2

Back on 29.07.2004, the Yerevan Office of the Service for Compulsory Execution of Judicial Acts had filed an enforcement procedure in execution of the verdict dated 22.04.2004 of the RA Civil Cases Court of Appeals, to assign the Mayor of Yerevan to propose to the applicant an architectural design project. The Service for Compulsory Execution of Judicial Acts only sent notes to the Mayor and deemed as justified the note in reply from the Architectural and Urban Development Department of the Staff of the Mayor,

which stated that, according to the RA Government Decree "On approving the main plan of activities for implementing the general plan of Yerevan city (2006-2020)", the zoning plan works of the Yerevan Central Community were to be carried out.

Evidently, the provision of an architectural design project to the applicant, without any justification, was due to the carrying out of the aforementioned zoning plan activities. Only after the intervention of the Defender, around two years after filing the procedural case, the Service for Compulsory Execution of Judicial Acts applied an administrative sanction against the debtor and established a deadline for implementation.

Example 3

The Yerevan Office of the Service for Compulsory Execution of Judicial Acts filed a procedural case on 30.03.2006 to enforce the verdict of the Court of First Instance for Yerevan's Central and Nork Marash Communities dated 10.01.2006 to confiscate 225,232 drams from the police for the benefit of the applicant, who was not paid his pension in full. Like in the previous case, the Service for Compulsory Execution of Judicial Acts sent notes to the debtor, not taking any actions for actual enforcement, however. The verdict of the court was enforced in September 2006 upon the intervention of the Defender.

Example 4

In execution of the verdict of the RA Civil Court of Appeals dated 06.05.2006, the Service for Compulsory Execution of Judicial Acts settled the plaintiff in the apartment of the applicants, in the course of their absence and without stipulating a time for them to voluntarily carry out the verdict. In previous cases, the bailiffs were inactive in their official duties, but in this case they acted in haste, as a result of which the rights of the other party were violated. During the discussion of the complaint, an agreement was reached between the parties and the applicants asked to cease the consideration of the complaint.

There were also similar complaints with regards to violations committed by officials of the Service for Compulsory Execution of Judicial Acts in marz (regional) offices.

The overall assessment of the activities of the Service for Compulsory Execution of Judicial Acts is that, when the debtor is a public body, the bailiffs refrain from utilizing their legal right to exercise enforcement measures. In such cases, they seemingly do not perceive the principle that everyone is equal towards the law. This proves the fact that they mostly do not enforce or enforce after long delays those court verdicts in which the debtors are the Mayor, Governor, cadastre, police or other public administration bodies. The numerous complaints received regarding the non-enforcement of court decisions prove the aforementioned.

The RA "Law on enforcement of court decisions" gives the officials of the Compulsory Execution of Judicial Acts Service powers such as fining the debtor that deliberately defies the decision of the bailiff, sending evidence to the prosecution for bringing a party in ques-

tion to criminal liability, exercising measures towards those who hamper their legal activities, etc. The provision of the bailiffs with such powers aims at ensuring the irrevocability of the enforcement of judicial decisions for all, including public administration bodies and their officials. Finally, one should also consider the fact that the Service for Compulsory Execution of Judicial Acts is also responsible for making the enforcement of the judicial decision impossible, as well as for the damages incurred to the debtor as a result of its non-enforcement.

Based on the details of a number of applications and complaints received, the attention of the Service for Compulsory Execution of Judicial Acts authorities was drawn to the fact that, while performing respective procedures, the bailiffs do not always ensure the enforcement of the rights of the participants in the proceedings as stipulated by the law, i.e. to be acquainted with the given procedure, to appeal against the activities of the bailiff, to object against the bailiff, claim re-evaluation of property under auction, propose agreements of reconciliation, etc.

Thus, using credit liabilities of the debtor, forced auctions of collateral property are often organized. It is well-known that the pledged property is often evaluated at a much lower price than the market one. While presenting this property for auction, a price defined by the evaluation is quoted as the initial price and it is rare that the debtor is informed about his/her right to claim re-evaluation. Or, when an insolvency suit is filed in the court with regards to the debtor during the course of a case, it is obvious that the bailiff in charge of the case should inform the creditor about the consequences of recognizing the debtor as insolvent. However, things often do not proceed this way and the creditor, not being aware of the law, faces the bankruptcy of the debtor, when he/she is not a claimant anymore.

It is due to detailed explanations of the rights of parties and their full provision that violations of the law can be prevented and eliminated, and dissatisfaction with the activities of bailiffs will be minimized.

3.4.2. Penitentiary Institutions

One of the key and important areas of the activities of the Human Rights Defender is the protection of the rights of people under preliminary custody or deprivation of freedom in penitentiary institutions, giving special importance to the provision of necessary and sufficient conditions of well-being, the exclusion of the actions against them that involve violence, and the humiliation of honor and dignity, the right to communicate with the outside world, as well as the complete enforcement of other rights foreseen by the law for people kept under custody.

Based on the data of relevant studies, one can ascertain that the present facilities of the penitentiary institutions cannot yet be fully considered as consistent with the similar condi-

tions foreseen for international standards, regarding hygienic conditions, provisions of necessary heating, controlling humidity, medical care resources and other similar conditions.

At the same time, considerable work has gone into and continues to be carried out to rehabilitated the facilities of almost all the penitentiary institutions, bringing them closer to international standards. One can state that there are positive moves as compared with former conditions. Due to repairs and reconstruction works, it has become possible to reduce the load on cells, and as a result of isolating utilities, water supply and other similar changes, better hygiene conditions have been set up. Much attention is paid to the creation of corresponding conditions necessary for education and recreation of prisoners, as well as for keeping them busy. In any case, the steps continually being taken to improve the existing situation is evaluated as positive, which is caused by financial and, in some cases, also by technical possibilities.

In March 2006, during a visit to the Goris Penitentiary Institution, the prisoners complained of irregular water supply and high degree of humidity. That was true, in that the water supply pipes of the institution were outdated and, as a result of their corrosion, no regular water supply was possible there. At the moment of the visit, the water pipeline restoration works were going on and, during a follow-up visit, the water supply issue was settled. The humidity level in the cells of the Goris Penitentiary Institution was caused not only by the state of the facilities, but also the natural climate of that area. The administration of that penitentiary institution tried to solve that issue by using mostly the cells on the top floors and on sides receiving more sun.

The situation is very bad at the Abovyan Penitentiary Institution. The facilities are so desperate, that no improvement of the conditions will be possible by means of renovation and reconstruction, and only the complete demolition of the facilities would be appropriate. Humidity levels are very high in the cells, the hygienic conditions are unsatisfactory and the heaters used do not provide sufficient warmth. This is the case when there are no technical possibilities for reforms. The RA Ministry of Justice plans the construction of a new institution which will replace that one. During a visit to the Abovyan Penitentiary Institution, female prisoners complained that, due to the narrowness of the cell at daytime, they are banned from using the bed for rest. This complaint was submitted to the consideration of the penitentiary administration. The latter agreed and permitted the imprisoned women to use the beds allocated to them in the cells for rest during the day as well.

The newly-built Vanadzor Penitentiary Institution has not been put to use so far. The conditions of the presently-functioning institution are unacceptable. Large-scale renovation and reconstruction activities have been carried out and are still being performed at the penitentiary institutions in Nubarashen, Erebuni, Vardashen, Gyumri, Kosh and Artik. Alongside this, the prisoners of the "Meghri" open type penitentiary institution face very bad conditions. The unacceptable condition of facilities and lack of satisfactory living conditions are justifiable reasons for complaint. The administration of the institution substantiates this by the fact that they do not get material resources for the renovation and reconstruction of those facilities.

The Yerevan Central Penitentiary Institution, included in the RA Ministry of Justice struc-

ture, is still located in the building of the RA National Security Service. Both persons under preliminary custody, as well as sentenced prisoners, are kept here. Although there were no complaints from people who were being kept there regarding their conditions, it is considered, however, that this is due to the risk of their being under the influence of the RA National Security Service.

In 2006, there were few complaints from people kept in penitentiary institutions regarding the conditions of custody and violation of their rights by the administration. In one-third of the complaints received against penitentiary institutions in 2006, the applicants complained of violations of their rights. In the rest of the cases, the applications contained a request to meet with the Defender, petitioned the Defender to be transferred to another place of detention, or to review the ruling against them and other similar issues. There are numerous complaints from imprisoned people regarding the decisions of courts against them dating back some years, claiming that the decisions were unfair. The only complaint about being subjected to violence within the penitentiary institution was from the Goris Penitentiary Institution and this case was already discussed in the Prosecution section. The mother of a person under custody in the Nubarashen Penitentiary Institution complained that the administration denied her meeting with her son. No violations of rights regarding this complaint were discovered, as the meeting with the accused under preliminary custody was limited for the relatives through a decision of the prosecution body and the compliance with this decision is mandatory for the administration of the penitentiary institution.

There were complaints from prisoners sentenced to life imprisonment in the Nubarashen Penitentiary Institution regarding illegal searches in their cells, taking away everyday items from their use, illegally transferring them to penalty cells and lack of adequate medical care to those who have hurt themselves. The complaint was checked on the spot. It was stated that the search of the cells was conducted in accordance with the RA Government Decree N 1543-N "On approving the internal regulations of places of detention and correctional facilities of the RA Ministry of Justice penitentiary service" dated 03.08.2006. Only those commodities and items were taken away from prisoners, which are banned as per the aforementioned regulations.

At the same time, the attention of the administration was drawn to the fact that the information filled in medical forms of prisoners for such cases such as the provision of medical care or refusal from medical care, etc., were mostly incomplete. The complaints of prisoners who had received the death penalty in the past and which were commuted to life imprisonment because legislative issues were analyzed in Section 2 of this report.

Regarding penitentiary institutions, special importance was given to the procedure of calculating the period of being kept under preliminary custody when the Court of Appeals makes a decision to return the case for additional preliminary investigation and the period of keeping under the preliminary custody has already passed. A specific complaint was considered, according to which the RA Criminal and Military Court of Appeals made a decision to return the case for additional examination, having further left unchanged the preventative punish-

ment of the defendant. A note was forwarded to the Nubarashen Penitentiary Institution about having the prosecution consider the custody. Instead of sending the criminal case immediately to the Prosecutor-General's Office, it was instead kept in the office of the Court of Appeals. Thereafter, ten days after the court decision, the defense attorney submitted his complaint to the Court of Cassation against the court decision and, from the Court of Appeals, the case was sent to the Court of Cassation, during which the defense attorney took back the complaint. However, for around two months, the criminal case remained first in the Court of Cassation and then at the Court of Appeals.

The penitentiary institution continued to consider and calculate the custody as per the prosecution, as no additional note was forwarded from the Court of Cassation or the Court of Appeals regarding reconsidering or recalculating the custody as per the court. In the meantime, the period of keeping that person under preliminary custody expired as well. In response to the warning note of the penitentiary institution on the expiration of the period for keeping the person under preliminary custody, an investigator of the Prosecutor-General's Office stated that an appeal and complaint was brought regarding this criminal case, the case being in the Court of Cassation and the custody would be considered and calculated by the court. At the penitentiary institution, this note of the investigator was referred to, and it was considered that keeping the given person under custody was legitimate.

The Defender thinks that they should not have denied the fact that the decision of the Court of Appeals on returning the case to additional preliminary investigations came into legal force from the moment of its promulgation, that the Court of Cassation did not suspend or overrule those decisions. Consequently, starting from the moment when the Court of Appeals promulgated the decision, the custody was considered to be on the preliminary investigation body and, starting from that moment, the period of preliminary investigation continued, upon expiry of which the director of the penitentiary institution was supposed to free the person from the custody through his own decision.

Such cases dealing with penitentiary institutions are always at the center of the Defender's attention. The Defender often visits those institutions, meets with the detainees and prisoners, and, upon the request of persons under the custody, responds to media outlets, cooperates with the public observatory group of the RA Ministry of Justice, etc.

3.5. State Committee of Real Estate Cadastre adjunct to the RA Government

The enforcement of property rights of citizens in cases foreseen by law (in general real estate transactions) has to do with the state registration of those rights. The complaints against this entity were about the registration of property rights, reformulation of the registered property rights or unjustified refusals to provide with information on them.

In 2006, 39 complaints against cadastral bodies were received, of which:

- were accepted for consideration,
- 1 was referred to the consideration of other bodies,
- in 1 complaint, the applicants were advised about the possibilities of their rights,
- 11 were not accepted for consideration.

The following complaints against cadastral bodies are the most characteristic from the standpoint of violations of rights:

Example 1

The Central Office of Real Estate Cadastre refused to register the property rights of the applicant, as per a court decision, with regards to the real estate, on the justification that the property was located within areas subject to seizure and the management board of the Yerevan urban development Project Implementation Unit (PIU) considered that the registration of property rights was unacceptable.

According to the RA "Law on state registration property rights", which is a guiding document of cadastral bodies, this kind of justification is not foreseen for refusing the registration of property rights. Furthermore, this case is about the registration of rights which have been recognized by a legally-enforceable court decision.

Instead of being guided by the law regulating their activities and registering those property rights of the citizen as per the court decision, the cadastral bodies sent the court decision and decision of the Service for Compulsory Execution of Judicial Acts regarding the enforcement of the court decision to the management board of the PIU in order to get a registration permit. This board, the membership of which is defined by a Government decree and which is chaired by the Mayor of Yerevan, has given itself the authority to make decisions on the non-compliance of court decisions.

The Service for Compulsory Execution of Judicial Acts deemed the decision of the board as sufficient and did not undertake any follow-up actions. The Defender stated a violation of rights in the activities of the bailiff; cadastre and Mayor. Only after this was the state registration of property rights of the applicant implemented.

Example 2

Like in the previous case, cadastral authorities refused to register the property rights of the applicant regarding real estate as per a corresponding court decision, on the justification that the property was located within areas subject to seizure and the management board of the Yerevan urban development Project Implementation Unit (PIU) considered that the registration of property rights was unacceptable. The case was referred to the RA Prosecutor-General's Office with a proposal to institute criminal proceedings against those authorities which did not comply with the decision of the court. Only after this was the state registration of property rights of the applicant implemented.

Example 3

The applicant complained that an official at the cadastre had submitted falsified documents to court about his land plot, as a result of which the court made a wrong decision upon his suit to clarify the boundaries of the land plot. Upon the consent of the applicant, the complaint was referred to the RA Prosecutor-General's Office, where additional materials were prepared. The Prosecutor-General's Office later stated that the examination of the case showed that the official of the Davitashen Office of the State Cadastre Committee of Real Estate had submitted falsified documents to court. A criminal case based on evidence was refused to be filed on the grounds that the period for bringing the culprit to justice, stipulated by law, had expired. It was confirmed that documents were falsified back in 2003.

Example 4

In this case, the applicant is a joint-stock company. The Arabkir Office of the State Cadastre Committee of Real Estate refused property rights regarding an apartment building procured by a contract of sale and purchase, on the grounds that the company had not paid the cadastral value of the land that the apartment building occupied. On 31.07.2006, the RA Economic Court satisfied the suit of the company to consder the refusal of the Arabkir Office as illegal. The RA Economic Court discovered that the cadastral body had misinterpreted Article 23 of the RA "Law on making amendments in the RA Land Code" dated 04.10.2005 and disregarded the fact that, when transferring property rights of land occupied by apartment buildings, there is no provision for paying a cadastral value for them.

The verdict of the Economic Court came into legal force, and the applicant was given a warrant. However, so far the ruling has not been enforced on the grounds that the verdict is being appealed. The fact is that the appeal against the verdict that has come into legal force cannot suspend the enforcement of the verdict, unless the Court of Cassation makes a decision to suspend it. In this case, the Court of Cassation has not made any decision of that kind. Non-enforcement of the court verdict that came into legal force is due to the inactivity of the bailiff and the arbitrary approach of the cadastral body.

The RA Government and the Mayor of Yerevan took a positive step in the direction of recognizing property rights of citizens regarding those buildings that were considered as constructed without permission in the Kond and Kozern districts of Yerevan, as well as in legalizing occupied property. In these cases as well, the bodies in charge of state registration of property rights recognized by the municipality have created artificial hurdles, certain barriers causing complaints and the dissatisfaction of applicants. The Defender was forced to intervene in such cases. The controversial cases have been partially settled thus far.

There are complaints regarding the enforcement of the RA "Law on the status of facilities and buildings constructed without permission and land plots occupied without permission" adopted on 26.12.2002. For example, as a result of unjustifiably returning the application on registration of property rights of a facility constructed without permission and post-

poning the fulfillment of the applicant with unjustifiable grounds, applicants miss the deadline established by law to legalize the title. Also in cases, when the rejection to register property rights is due to the fault of cadastre or local self-government bodies to recognize and register those property rights, citizens are forced to make payments for that land plot according to the rates established by the RA Government Decree N 936-A dated 25.11.2005 "On regulating the issues arising from the expiration of the RA "Law on the status of facilities and buildings constructed without permission and land plots occupied without permission"" adopted on 26.12.2002, which is ten times more than stipulated by this law..

3.6. RA Ministry of Defense

In 2006, 41 complaints were received against the bodies of the RA Ministry of Defense, of which:

- were accepted for consideration,
- 1 was referred to the consideration of other bodies,
- 17 were not accepted for consideration,
- 5 are currently under examination.

This group of complaints was mostly about military recruitment exercised by local military committees in violation of the law, registering for and deregistering from military service, the provision of incorrect medical reports about the health of conscripts by military medical commissions, improper conduct towards temporary military serviceman, unjustifiably refusing the application of the provision of the RA "Law on citizens not having served in the military in violation of the established order", etc.

Example 1

The son of the applicant was recruited for mandatory military service in December, 2005. The military medical commission had not taken into account his complaints regarding his health and considered him as fit for the military service. During the entire period of the service, the conscript complained of his health. Upon the intervention of the Defender, the authorities of the RA Ministry of Defense assigned the military medical department to conduct additional medical examinations of the conscript in question. The conscript was transferred to the Central Clinical Hospital of the RA Ministry of Defense, where, as a result of the examination, the Central Military Medical Commission of the RA Ministry of Defense recognized him as unfit for military service in peacetime. This took place only five months after the person was recruited to the army, which proves that he had been ill before the recruitment and the relevant military medical commission could have noted that he should have been examined adequately.

There are also cases when local military committees try to recruit persons who have reached the age of the draft but have refugee status.

Example 2

The applicant complained that the local military committee at Masis tried to recruit his son, although his/her family, including the son, had refugee status. In response to the Defender's request, the local military commissioner gave the following clarification, "During each recruitment period, we approach young people with refugee status, we carry out broad-scale activities by interpreting the requirements of the law and their privileges, trying to enrich their spirit of patriotism and love for the nation". The complaint against the activities of the local military committee is by itself clear evidence on how and to what extent they have "enriched" the spirit of the young man with refugee status.

It is even more unacceptable that there are still cases of non-regulatory relations between military servicemen in the army, which lead to violence and even to murder.

Example 3

The applicant complained that his son, who had been recruited to the army, had been subjected to violence, including sexual harassment, directly by the commander and his fellow servicemen. The complaint was referred to the military prosecution, a criminal case was filed with regards to it. At the same time, the conscript in question passed a military medical examination and was recognized as unfit for military service. Indeed, one can see a positive change in this regard within recent years. However, the prevailing phenomenon is highly unacceptable.

Highlighting the protection of rights of military servicemen, especially those conscripted for a temporary period of service, within the Armenia-NATO Individual Partnership Action Plan, the RA Government has been approached with a proposal to assign a special position in the staff of the Human Rights Defender who will exclusively deal with the military.

3.7. RA Ministry of Labor and Social Affairs, RA State Fund of Social Insurance

In 2006, there were 91 complaints against this body, which were broken down as follows:

- were accepted for consideration,
- 5 were referred to the consideration of other bodies,
- in 38 complaints, the applicants were advised about the possibilities of their rights,
- 13 were not accepted for consideration,
- 3 are currently under examination.

The complaints in this sector were mainly regarding the right to the provision of pensions, benefits, compensations and social security. Among these complaints, there were many that require systematic solutions. For example, a pensioner complained of the inefficiency of the prevailing minimum pension, an applicant for family benefits complained against the criteria for receiving them, and there were complaints regarding high prices of public services, and other similar issues. There were complaints regarding issues requiring systematic solutions, but not the violation of a specific right of the applicant. Those issues were not accepted for consideration. However, they were used with the purpose of referring to authorized bodies in charge of preparing legislative amendments and improving existing legislation. There are quite a few uncertainties and contradictions in the laws and other legal acts that stipulate the procedures and conditions for the appointment of pensions, benefits, compensations and payments, which lead to the controversial approaches and, naturally, the violations of rights.

Example 1

The applicant, who is a resident of the village of Debed in Lori marz (region), stated that, up to March, 2005, he/she had received family benefits for poverty. However, in February, his family was removed from the list of beneficiaries because of their low level of vulnerability. He/she referred to the Lori marz (region) social service district agency and received lump-sum monetary support, which was terminated after a quarter. During the discussion of the application with the district office of the social service, it was stated that the termination of the payment of the family benefits for poverty was caused by the fact that the level of vulnerability of the applicant's family was lower than the threshold. However, they also took into account the motion of the Defender and the applicant was again included in the list of people eligible for receiving urgent assistance in the fourth quarter of 2006.

Example 2

Another resident of Lori marz (region) complained that he/she was 80 years old, with 40 years of work experience, receiving a pension of 12,800 drams. He/She was included in the list of beneficiaries as a person eligible to receive family benefits for poverty. However, the payment of benefits was terminated in 2005. He/She lives alone and does not have any other source of income. In this case as well, the termination of benefit payments was caused by the decrease in the level of vulnerability. From the Spitak district office of social service, it was stated that the issue of providing the applicant with social support had been discussed in the social support council and, in the first quarter of 2007, the family would be included in the list of families entitled to urgent assistance. Similar applications were received also from Vayots Dzor, Tavush and other marzes (regions) of the country.

Example 3

The applicant is a resident of the city of Hrazdan in Kotayk marz (region). He/She complained that, in 1996, he/she had moved from Sukhum, Abkhazia to Hrazdan and received

a pension of 11,000 drams. The payment of the family benefits for poverty had been terminated. In response to the Defender's request, it was stated from the Hrazdan district agency of Kotayk marz (region) social services that, in 2005, the level of vulnerability of the applicant's family was higher than the threshold and they received the family benefits for poverty. From January 2006, as a result of the increase of pensions the level of vulnerability of the family became lower than the threshold. In January, February and March 2006 he/she was provided with urgent assistance. Moreover, they visited him/her at home, as a result of which they found out that the applicant did not have any caregiver and, thus, he came to be included in the social group of a single, unemployed pensioner (K87) and, since July 2006, he has received family benefits.

Example 4

The applicant stated that she was teenager. She was born in 1989, she had an eight-month old child and she was homeless. Strangers had allocated a temporary residence to her in the fifth neighborhood of Nor Nork, but she did not receive any family benefits for poverty or any other monetary allowance. From the Nor Nork social service district office, it was stated that the applicant would be registered as a beneficiary when she submits the necessary documentation, and later stated that the relevant documents had been submitted and she was recognized as a beneficiary.

Example 5

An applicant from the city of Abovyan stated that he/she was a single pensioner born in 1930. Based on the social welfare document issued to him/her on 05.02.2000, he/she had been registered as a beneficiary in Yerevan. After the death of his/her son in 2005, he/she moved to Abovyan and, in the order established by law, he/she applied to the local district agency of social service to get registered as a beneficiary. Owing to a simple mistake at their end, they did not begin to pay her benefits. As a result of the Defender's intervention, the matter has been resolved.

A positive aspect of the complaints received regarding family benefits is that, even if the applicant is not included in the list of beneficiaries, upon the intervention of the Defender, urgent assistance is being provided in most cases.

Example 6

The applicant stated that, after the death of her husband, on May 4, 2005, she changed her husband's bank-book of deposits invested in the Armenian branch of the USSR Savings' Bank to her name. The respective district agency of the social service refused her request to get registered in the list of the people eligible to get compensation with the justification that she could not be considered as a person who had made deposits before 1993. While considering the complaint, the "Armsavingsbank" CJSC confirmed that there was a deposit account in the respective branch of the "Armsavingsbank" CJSC in the name of the appli-

cant's husband (the deposit account was opened in 1991), which, after his death on 03.05.1994, had been re-registered in the name of the applicant (in RA Dram). The RA Minister of Labor and Social Affairs sent a note with the clarifications provided by the RA Minister of Finance and Economy, according to which, if the depositor is dead (and, therefore, inheritance will legally take place) before 10.06.1993, then the heir will be considered a depositor as by 10.06.1993 irrespective of the date of issuance of the certificate for inheritance. In this case, along with the presence of other criteria, this heir benefits from the right of compensation and the latter may apply for registration. Based on this, the Defender proposed to the RA Ministry of Labor and Economic Affairs to include the applicant in the list of the people eligible to receive priority compensation for the deposits. The matter has been settled.

The contract signed between the RA State Fund of Social Insurance and the "Armsavingsbank" CJSC has given some grounds for contradictions and complaints. The contract limits the period for paying monthly pensions. According to the amendments made on 31.10.2005 to the contract signed between the RA State Fund of Social Insurance and the "Armsavingsbank" CJSC, the payment of monthly pensions of pensioners shall be executed within 12 calendar days upon depositing the funded amounts in the current accounts of "Armsavingsbank" branches. As a result of the aforementioned procedure, the pensioner who does not receive the pension for a given month can get it only the next month.

According to Article 55 of the RA "Law on state pensions", pensions are paid in the next month based on the current residence of the pensioner in the Republic of Armenia. The pensioner is eligible to get the pension from the organization which provides payment services. According to paragraph 21 of Annex 1 of the RA Government Decree 739-N dated 29.05.2003 "On ensuring the enforcement of the RA Law on state pensions", the monthly pension of pensioners should be paid to pensioner based on his/her current residence and, if the pensioners apply so in writing, at the office of the paying organization. It becomes clear that neither by the RA "Law on state pensions", nor by the RA Government decree 739-N dated 29.05.2003 "On ensuring the enforcement of the RA Law on state pensions" no time limit is foreseen for the pensioner to receive his/her pension. On the contrary, the law stipulates the right of the pensioner to get his/her pension during the entire next month. Consequently, the stipulation of a 12-day period for receiving the pension is a limitation of the right of the citizen to receive the pension and such limitation can be stipulated only by law[13].

Example 7

The applicant stated that the respective branch of the "Armsavingsbank" CJSC paid his/her pension only during first twelve days of each month. In case of not receiving that amount during that period, the pension could be received only in the next month. The Defender sent a letter to the Fund and stated that the provision stipulating a 12-day period of the contract signed between the RA State Fund of Social Insurance and the "Armsavingsbank" CJSC limits the rights of pensioners. In particular, they are limited in

[13] According to the paragraph 2 of Article 83.5 of the RA Constitution, restrictions on the rights and freedoms of individuals and legal entities, their obligations, as well as the form, extent and procedure for liability thereof, the means of compulsion and the procedures for them, the types, amounts and procedures for the payment of taxes, duties and other binding fees paid by individuals and legal entities shall be set forth exclusively by law.

their right to get their legitimate pension during the next month, as stipulated by Article 55 of the RA "Law on state pensions".

Taking into account the importance of this matter, with the same letter, the Defender requested to consider the issue of revising the provision stipulating a 12-day period of the contract signed between the RA State Fund of Social Insurance and the "Armsavingsbank" CJSC and keep the Defender informed about the results of the considerations. The Fund gave a clarification on the reasons defining the 12-day period. They also stated that there were discussions in the Fund to increase the number of days to pay the pensions to the pensioners by the "Armsavingsbank" CJSC. The complaint is still under consideration.

Based on the results of general examinations in the field of social issues, the Defender concludes that quite a few of the issues raised in the complaints were not connected with the overall social situation of the country, but with gaps and uncertainties of the legal framework. Thus, in his future activities, the Defender will strive to identify and discuss the contradictory legal norms together with the RA Ministry of Labor and Social Affairs.

3.8. RA Ministry of Health and the Healthcare System

The enforcement of the right of each person stipulated by the RA Constitution to get medical care and services, free basic medical services stipulated by law, is based on laws, other legal acts regulating the activities of the RA Ministry of Health and the general healthcare system. In order to ensure the possibilities for everyone to benefit from that constitutional right, the state performs a range of measures aimed at quality control of medical personnel, technical provisions of medical institutions, improvement in the methods for medical care and their means, expansion of the areas for free medical service, etc.

The introduction of free out-patient medical services, efforts aimed at the introduction of a health insurance system, the prevalence of training centers for the mandatory training and quality control of medical staff, and a hotline at the Ministry of Health for complaints regarding medical personnel are among those steps that can and must lead to the settlement of the population's healthcare issues.

In 2006, there were 16 complaints against the RA Ministry of Health, mostly with regard to the healthcare system, which were broken down as follows:

- were accepted for consideration,
- in 2 complaints, the applicants were advised about the possibilities of their rights,
- 7 were not accepted for consideration.

These complaints were, in particular, regarding the issues of free medical care services, free medicine and issues dealing with being referred to health resorts. There were very few complaints against certain medical institutions and medical staff, such as for claiming illegal payments, not providing with adequate medical service and other such issues, which,

however, do not show any lack of violations in that sector. The followings are characteristic cases for the complaints received.

Example 1

The applicant stated that, on May 3, 2005, he/she had applied to the health department of the staff of the Yerevan Municipality with a request to get a referral to health resort treatment as a disabled person. However, he/she did not receive any answer. The person requested the intervention of the Defender. On June 8, 2006, as a result of the Defender's intervention, the request of the applicant was satisfied.

Example 2

The applicant stated that he/she was a third-degree disabled person. After having received treatments twice in in July and November 2003 at the neurological center of the rehabilitation and physiotherapy scientific research institute of the RA Ministry of Health, his/her state improved somewhat. As a result of a deterioration in health in 2006, he/she applied to the same establishment with a request to get an additional course of treatment. He/she was registered, however, no information was provided about when his/her turn would come.

In response to the Defender's request, the director of the rehabilitation and physiotherapy scientific research institute of the RA Ministry of Health explained that, "The rehabilitation and physiotherapy scientific research institute of the RA Ministry of Health carries social projects, within which the number of people applying and eligible to get treatment is incomparably greater (around 1500 people), than the resources of the institute. To look into this issue, a commission in the institute had been set up, regulating admission according to criteria based on medical indicators. Sometimes, a patient who has been treated in the institute can, after a short while, be considered as someone for whom getting further treatment at the same place is not a possibility". The director of the institute also stated that the institute is not an emergency treatment hospital, they perform rehabilitation treatments, and it is improper to carry out such treatment during acute periods of the illness (as in case of the applicant). The Defender thinks that the given complaint would not be submitted if the authorized personnel of the medical institution had provided exhaustive information on the rights of the applicants and their possibilities to enforce them.

Example 3

This is one of those rare cases, when the applicant complained against an illegal fee charged at a medical institution. The applicant stated that he/she is a second-degree disabled person. On June 13, 2005, he/she was transferred to the "Erebuni" medical center while unconscious, where 65,000 drams were demanded from him/her for examinations and treatments. He/she thinks that it is illegal to claim payment from him/ her, as being a second-degree disabled person, he/she is eligible to get treatment by government funding.

In response to the Defender's request, the RA Ministry of Health stated that, regarding

the application and complaints addressed to the RA Ministry of Health by the applicant and his/her lawyer, the corresponding subdivisions of the RA Ministry of Health had already examined the aforementioned facts and documents at the "Erebuni" medical center CJSC. In particular, according to the records of the personal history file of the applicant, during the day of being received into the hospital, the latter had pains in the chest and applied to the "Erebuni" medical center for being examined as an out-patient. After passing certain examinations on 13.06.2005 on 14.06.2005, he/she was admitted to the "Erebuni" medical center in order to continue the examinations in permanent conditions and get relevant treatment. In the personal history, there are also the receipts of payments made for examination and treatment, in total 73,000 drams. According to the examined documents, at the moment of receiving the patient, the diagnosis was not mentioned in the list of diseases requiring free medical service guaranteed by the state, approved by the RA Ministry of Health for 2006. In the existing documents, there were no documents proving that the applicant is eligible to receive free medical service by government funding, i.e. the referral and copies of the documents confirming the social status of the applicant. Hospital services of people included in the socially-vulnerable and individual (special) groups are genereally undertaken through the referral issued by relevant district doctors, attaching the copies of the document confirming the person's identity and social status.

According to paragraph 19 of the RA Government Decree N 318-N "On state-funded free medical aid and service" dated 04.03.2004, except for hemodialysis and pressing medical aid, medical services in hospitals of the persons included in the socially-vulnerable and individual (special) groups is carried out based on the list of diseases and statuses requiring the approval of the minister on the basis of a referral issued by the district doctor serving the given resident. As the billing of the amount was done in compliance with legal acts, hence, this charge was not considered a violation of the applicant's rights.

Example 4

The applicant complained that, in 1974, at hospital No 3 in Yerevan, doctors had removed his/her right kidney. In 1995, the socio-medical expertise commission issued him/her second-degree disability for one year. In June 1996, the socio-medical expertise commission, having considered him/her as generally ill and unable to work, issued him/her third-degree disability. In 1997, the socio-medical expertise commission deprived him/her of any recognized disability. As a result of numerous applications and complaints addressed to the RA Ministry of Labor and Social Affairs, instead of second-degree disability, third-degree disability was restored. And, in 2000, the socio-medical expertise commission once deprived him/her of any recognized disability.

With regards to this complaint, the Defender sent requests to corresponding specialists of the RA Ministry of Health to clarify the following issues:

- In case of the absence of one kidney of a man, can it be considered that there is not any type or degree of limitation of the body's functioning ?
- In case of the absence of one kidney, is it possible that the other healthy kidney can

ensure the functioning of the given organ and the normal functioning of the body as a whole ?

The questions asked received affirmative answers, i.e. a person with one kidney may have no officially-recognized disability.

Giving special significance to the protection of the rights of people with mental disabilities and being treated in mental hospitals and taking into account that these people are mainly deprived of the possibilities to submit relevant complaints and information on the violations of their rights, regular visits to mental hospitals take place in order to clarify the legitimacy of the reasons of placing and keeping people in mental hospitals for hospital treatment, as well as to find out the conditions of their stay, day-to-day life and food, the attitude of the medical personnel and other relevant conditions.

Such targeted visits were conducted in the Nork, Nubarashen, Avan, Sevan, Gyumri and Armash mental hospitals. These visits are also important as they contribute to the awareness of the medial personnel and the prevention of possible violations of rights. The directors of approximately all of the hospitals complain of the insufficient funding. Irrespective of this, however, they have performed a limited number of activities to improve their facilities, increase the quality of food and improve the hygienic conditions in the wards and hospitals. During the visits, the administration of hospitals did not get in the way of communicating with patients, in observing the wards and in conducting other necessary examinations.

On the basis of the research conducted, it was found that the facilities of the "Mental medical center" CJSC Avan clinics is only partially renovated and, at present, the floor inside the building is completely ruined and needs capital renovation. The linen in the wards is worn out and faded. The facilities of the "Mental medical center" CJSC Nork clinics needs capital renovation as well. However, no renovation is foreseen at this point.

3.9. RA Ministry of Education and Science, and the Educational System

In 2006, there were 21 complaints in the education sector, of which:

- were accepted for consideration,
- in 2 complaints, the applicants were advised about the possibilities of their rights,
- 6 were not accepted for consideration,
- 2 are currently under examination.

In 2004 and 2005, most of the complaints in the education sector were received from teachers about violations of their labor rights, having to do with the implementation of the secondary school optimization program. In 2006, however, there were few complaints regarding dismissals. It is also satisfactory that there was no complaint about violations of

the applicants' rights during the organization and execution of the 2006 university entrance exams. However, there were complaints against changing the previously-published lists of the entrance exams results.

A group of applicants having participated in the 2006 admissions exams and their parents complained that the lists of entrance exam results were posted on the walls of all the universities in the evening of August 24 and, the next day, they were removed and changed. One hundred and fifty applicants, who were included in the lists as admitted, were afterwards removed from the lists. The secretary in-charge of the admissions commission, as well as the RA Ministry of Education and Science explained those changes in the published lists by the fact that there was a computer mistake.

As for the request of the Defender, the Minister of Education and Science clarified that "the issue of mistakenly posting the names of some applicants as a result of a mistake in software of the calculation center for 2006-2007 academic year admission was discussed at the session of the National Admission Commission (NAC). As a result of Decision No 8 of the NAC dated 30.08.2006, the mistake was corrected and the aforementioned applicants were admitted as students paying tuition (without the right to delay their military service)". The settlement of this issue was satisfactory for the applicants.

A range of graduates of private universities complained against the inactivity of the RA Ministry of Education and Science in completing the accreditation process of such universities, as a result of which their graduation certificates continue to remain incomplete and they are deprived of finding a job according to the specialization received in their university.

According to paragraph 7 of the procedure of state accreditation of middle and higher vocational educational institutions and their professions in Republic of Armenia approved by the RA Government Decree N 372 dated 07.07.2000, in case of positive conclusions of experts, the graduates up to two years shall undergo conclusive attestations in the order established by the ministry. By "conclusive attestations" the graduation examination of the university graduates and the defense of the final thesis is essentially meant.

The RA Minister of Education and Science clarified that "conclusive attestations" was not a graduation exam at all and, at the same time, submitted the procedure approved by the RA Ministry of Education and Science board dated 24.05.2002 on conducting conclusive attestations of graduates of higher vocational educational institutions that were in the process of state accreditation (these included examinations and the defense of final papers).

Another group of applicants complained that the RA Government Decree N 1183-N dated 27.07.2006 "On approving the procedure of giving allowances in RA higher educational institutions" concerning the application of tuition fee compensation in the form of allowance stipulated by paragraph 4 of Article 6 of the RA "Law on higher and postgraduate education" has been given a retroactive force, which is unfavorable for them. The examinations of the legal acts concerning these issues are presented in Section 2 of this report.

3.10. Office of the Mayor of Yerevan

Like in previous years, there were quite a large number of complaints in 2006 as well from the residents of Yerevan, the majority of which were against the Municipality.

There were 116 complaints against the Municipality, of which:

- were accepted for consideration,
- 1 was referred to the consideration of other bodies,
- in 19 complaints, the applicants were advised about the possibilities of their rights,
- were not accepted for consideration,
- 9 are currently under examination.

The complaints against the Yerevan Municipality were mainly with regard to activities or passivity of the Mayor, the staff and structural subdivisions of the Municipality, which violate the applicants' property rights. In particular those were about:

- legalizing the facilities constructed without permission and land plots occupied without permission, non-prevention of illegal activities of others that violate rights to property use or not taking measures to fix their consequences,
- inadequate compensation in cases of forced seizure of property ,
- discriminative approaches in cases of providing with the right to land use;
- allocation of land plots and privileged credits for individual housing constructions foreseen by the RA "Law on the forcibly imprisoned",
- reinforcement construction works of apartment buildings in near-uninhabitable states.

In all of the cases, the complaints received are the result of bad administration, bureaucracy and unnecessary hurdles. Also, similar phenomena existed especially during the enforcement of the RA "Law on the status of facilities constructed without permission and land plots occupied without permission" and the RA Government decree on the procedure for its enforcement. In this matter, the complaints were about unjustifiable rejections of registration of property rights of facilities constructed without permission and land plots occupied without permission, the dismissal of applications submitted within stipulated deadlines as established by law, etc.

Often, without sufficient grounds, the refusals of land allocations and permits for construction were explained by the absence of architectural documents and blueprints of some district of Yerevan or other and then, when that bureaucratic hurdle was surmounted, applications of citizens would not be replied. The facilities constructed without permission violating the rights of others are often built under conditions of carelessness of district municipalities and respective services of municipalities and, when there is a decision on demolition, the same services either do not execute that at all without having any relevant reason or undertake that after long delays. The violations committed in this or other areas will be described in the examples given below.

Complaints are still received regarding the issues concerning the seizure of private real

estate for the purpose of implementing the Yerevan city development projects. Those issues will be dealt with separately.

The issue of the apartments of former residents of apartments taken over for public needs and demolished in the 1980s based on the contracts concluded with the former city council, remains unresolved. Those residents, whose apartments were demolished and no construction of new buildings at the sites is anticipated, are not satisfied with the proposed monetary compensation, as the damage incurred to them through twenty years and the growth of their families are not being taken into account. Furthermore, the cadastre evaluation of the real estate market value which they foresee as a compensation for such people always lags behind the real value prevailing in the constantly-changing market.

If an imprisoned person or the members of his/her family are in need of housing conditions, no allocation of land plots within Yerevan is foreseen for them. This causes some problems for people having such status and living in Yerevan. There is no final solution to the housing problems of refugees from Azerbaijan living in the temporary shelters of Yerevan.

While enforcing the RA "Law on the status of the facilities constructed without permission and land plots occupied without permission", there were also subjective approaches, as a result of which some citizens were deprived of the possibility to benefit from the right as stipulated by the law. As a result of the incomplete establishment of neighborhood administrations, problems of adequate services of apartment buildings continue to exist.

The following examples are characteristic of the aforementioned issues:

Example 1

The applicant stated that, according to the Mayor of Yerevan's Decree N 2503-A dated 30.12.2004 "On buildings and structures constructed without permission in Yerevan", his/her property rights of a 51.6 sq. m. structure located in the territory adjacent to a partly-constructed hotel at the Yerevan railway station had been recognized. With the same decree, the Real Estate Management Department of the Yerevan Municipality Staff had been instructed to conclude a land lease agreement for five years. Having executed all the necessary payments, the citizen immediately applied to the aforementioned department of the Municipality Staff in order to sign the land lease contract. However, after around seven months of baseless hurdles, on 21.07.2005, the Mayor of Yerevan annulled his previous decree N 2503-A 30.12.2004 by a new Decree N 1627-A, explaining that a large-scale reconstruction program is being implemented within the site in question. The applicant claims that no program of that kind exists, as the partially-constructed building adjacent to the property in question does not have an owner at all.

The suit of the citizen with a claim to force the Yerevan Municipality to conclude a contract and to annul the Decree N 1627-A dated 21.07.2005 of the Mayor of Yerevan has been tried in all levels of court. A decision of the RA Court of Cassation left unchanged the deci-

sion of the RA Civil Court of Appeals to uphold the suit. Several times after the verdict came into legal force (last time in June, 2006), the citizen applied to the Yerevan Municipality with a request to sign a lease contract. However, he/she has been rejected. With letter N 20/1-2-20 dated 28.06.2006, the Real Estate Management Department of the Municipality Staff informed the applicant that the 51.6 sq. m. facility, with the property rights being recognized as the applicant's, is located in the land plot of a large-scale urban development reconstruction program adjacent to the railway station's partially-constructed hotel, and that a relevant note to the RA Prosecutor-General's Office had been submitted with a relevant note to appeal the decision of the RA Civil Court of Appeals.

The Defender accepted the application for consideration and requested the Mayor to present his clarifications. The following answer was received from the Mayor: "In the Yerevan Municipality, the issue of allocating land to the applicant has been discussed and, as a result, the Architectural and Urban Development Department of the Staff gave a professional conclusion that, according to clause 2 of paragraph 2 of Article 64 of the RA Land Code, the land plot cannot be allocated (it will hamper the targeted or operational significance use of the neighboring land plot, in this case, the hotel). It must be mentioned that this fact has not been tried in courts and this can be used to appeal against the court decision, as well as to review the Decree of the Mayor of Yerevan N 2503-A dated 30.12.2004. The Yerevan Municipality is considering the matter at present".

The new circumstance mentioned by the Mayor, which, as if, had not been the subject of a trial, is directly mentioned in the verdict of the court, which is legally in force as of March 10, 2006. In particular, the decision reads: the representative of the Yerevan Municipality has not submitted any evidence confirming that the property in question was ever included in a large-scale urban development program and explaining why this fact was not taken into account while making the Decree of the Mayor of Yerevan N 2503-A dated 30.12.2004. Moreover, in the course of the investigation, the representative of the Municipality stated that he/she could not submit such evidence.

Consequently, the circumstances identified by the Mayor had already become a subject to a court trial and it cannot be deemed as a newly-found circumstance, which the parties did not know during the trial and was not submitted to the court. The Defender confirmed a violation of rights and decided to submit recommendations for undertaking measures aimed at reinstating the violated rights. In the decision, sent for the Mayor to carry through, the following was mentioned:

1. There was a violation of the applicant's rights in the activities of the head of the Real Estate Management Department of the Yerevan Municipality,
2. The Mayor of Yerevan should execute the following:

- Ensure the enforcement of the activities regarding the applicant's rights stipulated by the Mayor of Yerevan's Decree N 2503-A dated 30.12.2004 "On buildings and structures constructed without permission in Yerevan",
- Settle the issue by applying disciplinary sanctions towards the officials that acted

inappropriately with regards to the applicant's rights stipulated by the Mayor of Yerevan's Decree N 2503-A dated 30.12.2004 and undertake measures to fix similar violations.

The Mayor of Yerevan disagreed with the assessments of the Defender and did not accept the recommendations made through the decision. Instead, the following answer was submitted:

"The Yerevan Municipality's respective service has developed and put into circulation a draft decree of the Mayor of Yerevan on annulling paragraph 6 of decree N 1627-A "On making amendments in the respective decrees of Yerevan Mayor "On the status of buildings and structures constructed without permission in Yerevan" dated 21.07.2005"".

As it is seen from the note, the Municipality developed a draft decree to annul a paragraph of the Mayor's former decree, which had already been annulled by a court decision.

Example 2

According to the details of an application, a 413 sq. m. land plot and 187 sq. m. residential house belonging to the applicant with property rights were subject to seizure as part of the Yerevan urban development program's implementation. Based on the requirements of the RA Government Decree N 399-N dated 04.03.2004, as well as the proposal of the "Yerevan urban development Project Implementation Unit" state non-commercial organization to take over the real estate for public needs, the Mayor of Yerevan, by his decrees N 2594-A dated 25.11.2002 and N 2778-A dated 20.12.2005, allocated a 332.6 sq. m. land plot to the applicant at 38, Arami Street 38 with leasing rights as compensation for the real estate that is his property at the same address.

In order to surmount the hurdles created as a result of concluding tgus land leasing contract and receiving architectural documents and blueprints, the applicant had to apply for court protection. Through the decision of the RA Civil Court of Appeals dated 16.12.2006, a reconciliation agreement was established, according to which the conclusion of compensation and land leasing contracts between the "Yerevan urban development Project Implementation Unit" state non-commercial organization and the applicant should be based on the aforementioned decree of the Mayor.

The Mayor and the applicant signed a land leasing agreement, which, in actuality, settled the issue of terminating the right of the applicant towards the previously-owned land and, as compensation, leasing to him land at the same address. However, the contract had not been ratified by a notary due to lack of blueprints, which were supposed to be submitted by the Architectural and Urban Development Department of the Yerevan Municipality.

The delays of the decree's enforcement led to a situation such that, on 16.03.2006, the Mayor annulled his previous decrees, which served as a basis for a lawyer with a special license to appeal on 23.03.2006 against the verdict of the RA Civil Court of Appeals dated 16.12.2005, in the light of new circumstances, but only regarding the part of the reconciliation.

Taking into account that the case was in trial under consideration of the court, the case

was terminated. However, the fact remains that the citizen is not able to overcome the arbitrary approaches of public authorities, even in case of having favorable decisions of courts.

The following case is also evidence of the widespread nature of similar approaches:

Example 3

The applicant stated that, according to the Mayor of Yerevan's Decree N 804 dated 14.06.1999, he had received permission to a five-floor apartment building on Lalayants Street, on the land that belongs to him with property rights. He obtained the permit and other relevant documents. Afterwards, within the framework of Northern Avenue urban development program, he was offered to concede his house of 59 sq/m. and the land plot of 308 sq/m. that belonged to him with property rights and, instead, receive the equivalent of 26,286 US dollars in Armenian drams and 800 sq. m. of leased land in the property adjacent to the Teryan-Lalayants Street crossing, as well as 200 sq. m. office space in downtown Yerevan.

On 06.11.2002, a real estate sale and purchase contract was signed. The Municipality committed itself to allocate to the applicant a 800 sq. m. land plot within seven months with leasing rights for 99 years in order to build facilities and, in case of not allocating the land plot in the mentioned period, a fine of the equivalent of 100 US dollars was to be paid for each day's delay. Based on the contract on 12.02.2003, the Mayor passed a Decree N 214-N to allocate land. Architectural documents, a construction permit and other documents were issued, with an exception of the blueprints, which would be provided when the property in question would be acquired.

Afterwards, the Municipality did not comply with the contractual liability regarding allocating the land plot, as a result of which the citizen had to apply to court. The verdicts of the Yerevan Central and Nork-Marash Communities Court of First Instance dated 30.04.2004 and the RA Civil Court of Appeal dated 20.07.2004 upheld the suit, and the Mayor of Yerevan was assigned with fulfilling the obligations stipulated by the contract. The Mayor did not comply with the court decision, due to which an act was filed.

The Service for Compulsory Execution of Judicial Acts did not carry out its duties; nothing was done to enforce the court decision. The citizen had to appeal against the passivity of the Service for Compulsory Execution of Judicial Acts. The court upheld this application of the citizen as well. On 22.11.2004, the Mayor of Yerevan submitted a motion to the RA Prosecutor-General to appeal against the verdict of the RA Civil Court of Appeals dated 20.07.2004. However, the Prosecutor-General's Office did not appeal against the verdict due to lack of grounds to appeal. Even after this, the Mayor of Yerevan did not comply with the verdict of the court in legal force. Moreover, he made a new decision, by which the entire free land located at the property adjacent to Teryan-Lalayants Streets, including 800 sq. m. land allocated to the applicant before that, was granted to another company.

The applicant submitted a suit to annul that decree of the Mayor at the Yerevan Central

and Nork-Marash Communities Court of First Instance, which, on 27.12.2004, upheld the suit. In the meantime, the RA Prosecutor-General's Office reviewed its assessments in the given matter and appealed against the verdict of the Court of Appeals of 20.07.2004. The Court of Cassation upheld the appeal and overruled the verdict of Court of Appeals. During the new trial in the RA Court of Appeals, the parties concluded a new reconciliation agreement, with which the Municipality committed itself to allocate an 800 sq. m. land plot in the Yerevan General Avenue areas subject to acquisition (on Byuzand Street) by concluding a relevant preliminary agreement on the right of urban development within fifteen days of the reconciliation agreement coming into force, instead of the 800 sq. m. land plot allocated by the Mayor of Yerevan's Decree N 214-A "On allocating a land plot to the applicant with the purpose of constructing public and residential houses in the Northern Avenue urban development zone". The reconciliation agreement was approved by a ruling of the Court of Appeals dated 16.03.2005.

In order to ensure the enforcement of the Court of Appeal's verdict dated 16.03.2005, the Mayor made a Decree N 679-A dated 04.04.2005 to conclude an urban development contract with the applicant. On 04.04.2005, a contract was concluded between the Mayor of Yerevan and the applicant on allocation of the land plot with urban development rights, for sale and purchase, which stipulated that, six months after concluding the contract, the land plot would be freed from rights of third parties and structures. According to the contract, in case of violating the aforementioned period for two or more months, the fines and penalties conceded by the plaintiff by the verdict of the RA Civil Court of Appeals dated 16.03.2005 would be reinstated, besides which, the Municipality would compensate the market value of the 800 sq. m. land plot.

On 04.04.2005, the architectural documents were issued. The Municipality did not comply with this commitment either. Instead, on 19.01.2006, the Mayor introduced Decree N 60-A, which annulled his Decree N 679-A dated 04.04.2005 with the purpose of ensuring the enforcement of the verdict dated 16.03.2005 of the RA Civil Court of Appeals, liquidating ahead of schedule the preliminary agreement concluded on 04.04.2005 "On the allocation of a land plot with urban development rights, for sale and purchase, in the territory adjacent to the Yerevan General Avenue", annulling the architectural documents and assigning the "Yerevan urban development Projects Implementation Unit" state non-commercial organization with executing all the necessary activities foreseen by the law, in particular, to organize an appraisal of the 308 sq. m. land plot located on Lalayants Street seized from the applicant for public purposes and submit a price quotation.

The Mayor justified this decision by the fact that there had been a substantial increase of real estate (land) market value in the real estate market, which led to the economic and financial inappropriateness of further enforcing the Mayor Yerevan's Decree N 697-A dated April 4, 2005 "On enforcing the RA Civil Court of Appeals ruling dated March 16, 2005". The applicant had to have an act filed again and once more had to apply to the Service for Compulsory Execution of Judicial Acts. The applicant referred to the Court of Appeals to

get an act filed regarding the enforcement of the ruling dated March 16, 2005 and, on 30.01.2006, the issued act was submitted to the RA Service for Compulsory Execution of Judicial Acts. On 01.02.2006, the Service for Compulsory Execution of Judicial Acts filed for proceedings, and on 12.09.2006 a decision was made to confiscate the property and to ban the acquisition of the 800 sq. m. of land at the address 91, 95, 97 Byuzand Street.

After filing further proceedings, around eight months passed before approaching the Defender. However, the demands of the ruling were still not enforced. After the Defender accepted the complaint for consideration, pertinent clarifications were requested with regard to the inactivity of bailiffs and the arbitrary conduct of the Mayor, after which a positive step took place on 16.11.06, when a new agreement was signed between the applicant and the Mayor that satisfied the applicant. This time, at least, the agreements reached were enforced.

Example 4

The interesting fact about this case is that, while issuing architectural documents for urban development, possible violations of rights of other persons foreseen by that construction are often ignored. In this case, the shop that shares a wall with the applicant was privatized, after which a company was established. According to the Mayor's Decree N 1238 dated 18.10.2001, 3,316 sq. m. land plot was allocated for reconstruction of the shop.

On the basis of the aforementioned decree of the Mayor, the relevant urban development documents were issued. Considering that the construction work of the company violates his/her rights, the bedroom windows of his/her apartment becoming blocked, he/she being deprived of natural light, the applicant submitted a suit to the court against the Decree of the Mayor and the activities of the developer.

The RA Civil Court of Appeals upheld the suit on June 26, 2003, considering the following:

"After the Mayor of Yerevan made a decree on allocating to the LLC a land plot, this construction project, which does not actually comply with existing construction norms, was approved. On the basis of the application of the plaintiff, the head of the Architecture and Urban Development Department of the Yerevan Municipality Staff sent various notes to the head of the Legal Department of the Yerevan Municipality Staff that, in case of constructing the planned facilities, the windows of the applicant will be blocked and it was recommended to prevent the construction without making changes in the plans. The recommendation was not taken into account.

According to the existing urban development norms for capital construction, it is required that the distance between two buildings should be no less than six meters".

The Civil and Economic Court of the RA Court of Cassation overruled the decision of the Court of Appeals dated August 23, 2003 and sent the case to the same court for a new trial with a different composition.

It is interesting that the Court of Cassation had only partially referred to the justifications identified in the decision of the Court of Appeals and it did not refer at all to urban develop-

ment norms, based on which the suit had been upheld. It also ignored the fact that the applicant was going to be deprived of natural light by that construction. While overruling the verdict, the court was guided by paragraph 1 of Article 205 of the RA Civil Code, which states that the owner can give land plots to the use of other persons, including leasing, as well as sub-clauses "e" of the clause 1.13, sub-clauses "b" and "c" of the clause 1.15 of decree N NH-727 dated 06.05.1997 of the RA President "On public administration in Yerevan", and Articles 61, 74 and 76 of the RA Land Code, according to which the settlement of land issues in Yerevan would be the exclusive authority of the Mayor.

Having agreed with the principles stipulated by the legal norms stated by the Court of Cassation, however, it is found that it would be appropriate to be guided by paragraph 2 of Article 8 of the RA Constitution (the previous wording of Constitution), according to which "The right to property shall not be exercised to cause damage to the environment or infringe on the rights and lawful interests of other people, society and the State", and this is exactly what the trial was about. During the new trial, the RA Civil Court of Cassation called for an expert examination of construction and technical expertise to the trial.

According to the conclusion received, "Based on the location and design size of the auxiliary structure, which the trial is about, the requirements of clause 9.19 of urban development norms SN and K 2.07.01-89 on "Design and development of urban and rural settlements", i.e. this construction would not ensure the daily normative penetration of sun rays through the back windows of the house located on house 32/1, the second lane off Charents Street, the insolation of which, based on the mentioned clause, should be 2.5 hours from March 22 up to September 22. Besides, being at a distance of only 0,71 m. from the wall of the house at the given address and covering 87% of the aforementioned windows, the structure hampers the natural illumination of the latter, which violates the requirements of clause 4 of the RA construction norm RA SN II-8.03.96 on "Artificial and natural illumination", i.e. the buildings of permanent residence shall have natural illumination.

Therefore, the LLC's store's construction plan regarding the auxiliary construction does not comply with the construction norms". This same issue has been examined by the RA Urban Development State Inspectorate and, in a letter dated September 6, 2004 addressed to the Head of the Central Division of the Yerevan City Department of the RA Police, the RA Chief Urban Development Inspector stated that, according to the privatization contract and decree of the Mayor, the LLC could build the construction at the address 13, Shara Talyan Street, but not in the vicinity of house 32/1, the second lane off Charents Street. In the general plan issued to the developer, the address was changed, the designs have been developed and agreed upon in violation of construction norms, there is a discrepancy between the architectural documentation requirements and the approved design. Also, the Head of the Fire Service of the Emergency Department of the RA Ministry of Territorial Administration stated that they had examined the fire safety requirements of the two buildings, the house located on 32/1, the second lane off Charents Street and shop N 638 constructed adjacent to it. It was found that the construction of the shop violated the requirements of Table 1 of Annex 1

(fire safety requirements) of norms SN and K 2.07.01.-89 on "Urban development. Design and development of urban and rural settlements" in the Republic of Armenia, i.e. the necessary six meters distance determining fire security between the house located on 32/1, the second lane off Charents Street (which has second-degree fire resistance) and shop N 638 constructed adjacent to it (which has second-degree fire resistance) has not been observed.

The RA Civil Court of Appeals did not try the suit with the consideration of the aforementioned civil case through the decision dated 05.02.2004 due to the absence of the plaintiffs of the case. As a result of considering the application, the Defender stated that there was a violation of human rights and submitted recommendations to reinstate the violated rights. It was recommended to the Mayor of Yerevan to settle the issue of demolishing the facilities limiting the property rights of the applicant in the order established by law, taking into account that, by all expert conclusions, it has been agreed that the facilities have been constructed in violation of norms. It would be logical for the Mayor to sue the developer, if the developer does not voluntarily fix the committed violations.

In contrast to this, the issue was avoided by various responses from the Municipality and then, a reply was received signed by the chief adviser to the Mayor, which repeated the previous responses and also added that "as the suit was left without trial, then the case is not settled in judicial form and no verdict has been made, then the settlement of this issue is beyond the scope of Municipality's jurisdiction". With another note to the Mayor, the Defender clarified that the decision on leaving the issue without trial is the same as having no suit being submitted regarding this matter. Consequently, nothing obstructs the Mayor from dealing with that matter.

Concerning the recommendation made through the decision of the Defender, the Mayor insisted with another note of reply that the construction was conducted according to the approved plans N 18-05/1-96 dated 02.07.2002, in which the wall obstructing sunlight was constructed without any flaws in planning. It is due to this attitude of the Municipality that the number of complaints against this very public body are not reducing.

Example 5

The applicant complained of the following:

The building at 14, Shinararneri Street, Yerevan was condemned as a fourth-degree uninhabitable structure, not fit for residence. By Decree N 444-A of the Mayor of Yerevan, dated 30.03.2006, other apartments were planned for the residents of that building. The Decree of the Mayor ignored the fact that some of the apartments were privatized and, consequently, the apartments provided in their place should also have taken property rights into consideration. By the same decree of the Mayor, the head of the Real Estate Management Department of the Municipality Staff was to conclude leasing agreements on allocating apartments with the residents receiving new residences only after the submission of a relevant reference about handing over the property in the condemned building to the Ajapnyak district community. It did not mention anything about including property rights with the new apartments.

As one of the apartment owners of the same building, the applicant approached the respective official of the Real Estate Management Department of the Municipality Staff. They tried to convince him/her to sign a leasing contract of the allocated apartment, but he/she did not agree. They then offered the applicant to sign a contract on apartment exchange and they sent him to the Central Notary Office. The notary refused to ratify the contract, stating that it could be made only upon written agreement of the head of the relevant Department of the Municipality. The applicant approached the Municipality again and they informed him that the head of the Real Estate Department refused to sign the contract, as there was nothing in the decree of the Mayor about the exchange of privatized apartments.

Only after the intervention of the Defender, an amendment was made to paragraph 3 of Decree N 444-A of the Mayor of Yerevan, dated 30.03.2006, by which an apartment exchange contract with the applicant was allowed to be made.

The following complaint brings to light the problems existing regarding the allocations of land plots for individual housing construction to the forcibly imprisoned or their next-of-kin, as provided by the RA "Law on the forcibly imprisoned":

Example 6

The complaints of a citizen with the status of forcibly imprisoned and his/her next-of-kin has been under discussion since 2004. The consideration of the complaint upheld that, in accordance with RA "Law on forcibly imprisoned" and the RA Land Code, back on 03.03.2003, the applicant applied to the Yerevan Municipality with a request to get a land plot free of charge on the property adjacent to Tbilisi Avenue. The request was rejected with a justification that the zoning plan of that area is in the phase of development, which implied that the application of the citizen would be considered only after the aforementioned plan was ready, something that the Municipality did not do. The citizen applied to the Municipality again on 26.08.2004, but the application was rejected once more, this time with the basis that the period established by Article 64 of the RA Land Code had expired. Disagreeing with this rejection, the applicant applied to RA Prime Minister and RA Minister of Territorial Administration, after which they instructed the Mayor of Yerevan to consider the period of absence of the applicant as acceptable, in the order established by law, and to undertake appropriate measures. The Municipality, however, continued to insist that the period established by Article 64 of the RA Land Code had already passed.

On 24.11.2004 and 25.02.2005, the Defender applied to the Mayor of Yerevan in order to acquire information on the inclusion of the land in question adjacent to Tbilisi Avenue in the zoning plans, as well as the beginning and ending as such of the zoning activities. On 23.12.2004, the Yerevan Municipality stated that they had started the zoning activities of the aforementioned territory and upon their completion, when the zoning scheme would be ready, the Defender would be provided additional information. On 22.03.2005, the Mayor of Yerevan, in carrying out the RA Prime Minister's instruction N 02716 dated 20.12.2004,

taking into account the opinions of the RA Ministry of Justice and Chairman of State Committee of Real Estate Cadastre adjacent to the RA Government about allocating land plots free of charge to the applicant with the status of forcibly imprisoned, stated that the necessary documents were being prepared for the corresponding decision of the Mayor of Yerevan; however, it is yet to be enforced.

On 16.06.2005, the Mayor of Yerevan stated that the RA "Law on making amendments in the "RA Law on forcibly imprisoned" " passed on 28.02.2005, did not foresee the allocation of a free land plot in Yerevan to the forcibly imprisoned with property rights. The land plot would be given to the forcibly imprisoned and the next-of-kin of the forcibly imprisoned free of charge before 31.12.2005, except for in Yerevan. Therefore, according to the note of the Mayor, it was not possible to fulfill the request of the applicant. The Mayor of Yerevan tried to base the refusal of the applicant's request with the following legal norms:

According to paragraph 5 of Article 64 of the RA Land Code, on the grounds of a passed deadline, as well as according to Article 6 of the RA "Law on making amendments in the "RA Law on forcibly imprisoned"" passed on 28.02.2005, land plots are given to the forcibly imprisoned with property rights before December 31, 2005 (23.05.2006 HO-96, which was later changed to June 30, 2007), and, in case of having housing needs with property rights, they will be allocated with a land plot of a specified size for individual housing construction within RA territory, at the place of their previous residence or permanent residence during last three years, except for Yerevan. The forcibly imprisoned persons having permanently lived in Yerevan for the last three years and not having received land plots free of charge with property rights for individual housing construction before June 15, 2003, will receive land plots in the settlements established by the RA Government.

According to paragraph 1 of Article 64 of the RA Land Code, public and community-owned land plots are given free of charge for agricultural purposes and for construction and service of individual housing to those people who did not benefit from the land privatization in the past, and did not receive or acquire land plots for housing or its use, and, according to paragraph 5 of Article 64 of the RA Land Code, in cases established by paragraph 1 of this Article, the period for provision of public property land plots is two years, which expired on April 1, 2004 (according to the note E-3677 dated 05.05.2004 issued by RA Ministry of Justice, the aforementioned period is calculated starting from the day when the amendments come into force; it was amended on 05.02.2002 LC-296 and came into force on 01.04.2002, i.e. the period expired on 01.04.2004).

After making amendments to 23.05.2006 (LA-96) in the RA "Law on forcibly imprisoned" and the RA Land Code, according to which the period of allocating land to the forcibly imprisoned and the next-of-kin of the forcibly imprisoned had been lengthened up to June 1, 2007, in this case as well the corresponding application of the applicant was not fulfilled by the Mayor of Yerevan.

The Defender considers that the fact that the applicant had submitted the application

about acquiring a land plot free of charge for housing construction before the RA "Law on making amendments in Article 6 of "RA Law on forcibly imprisoned"" were made was ignored and the Yerevan Municipality had unjustifiably postponed the consideration and fulfillment of his application. Consequently, similar applications should be fulfilled in the execution of the requirements of Article 78 of the RA "Law on legal acts" or by accelerating the process of making relevant amendments to the aforementioned laws.

The following example is clear proof of the passivity fixing the aforementioned violation of the law and the re-establishment of violated rights:

Example 7

The applicant complained that one of the residents of his/her apartment building had constructed a facility at the entrance without permission and, by this, limited access to the building. He/she informed the Yerevan Municipality about this in writing on December 17, 2005; however, nothing was done in this regard. Three months after the application was submitted, the Urban Development and Land Supervision Department of the Staff of Municipality responded that he/she should apply to the Central District Municipality.

The applicant applied to the District Municipality, from where he/she received an answer stating that, according to Decree N 850-A of the Mayor of Yerevan dated 21.04.2005, the aforementioned area was allocated to the constructor of that facility with property rights.

According to the clarification issued by the Yerevan Municipality with regards to the aforementioned issue, the Decree N 850-A of the Mayor of Yerevan dated 21.04.2005 recognized the property rights of the person in question in occupying the entrance towards his apartment's additional facility and there was no application regarding the building's entry submitted to the Yerevan Municipality.

Upon analyzing the relevant data on this application, it was found that the facility constructed without permission had limited the entry of the apartment building, which was carried out due to the lack of diligence of the Urban Development and Land Control Department of the Staff of the Yerevan Municipality. When they received a complaint regarding this facility, the Department did not take any measure to stop the process in time and fix its consequences in the order established by law.

In this regard, the Defender stated a violation of human rights and decided to undertake relevant measures to submit a recommendation. The decision was forwarded to the Yerevan Municipality; however, no answer was received from the Municipality.

Example 8

Since 2004, the issue of the building located at 227, Nork Gardens, not registered on the balance of any public administration body and, in the past, belonging to the high school of Armenian Communist Party and settled by refugees ever since, has been under consideration. The families of the refugees have been living here since 1988 and there were all the

grounds to allocate that building to its residents. Some of the refugees applied to court and the courts recognized their property rights towards the property in which they live; however, upon the petition of the Mayor, the RA Prosecutor-General's Office appealed against those decisions and the Court of Cassation overruled them. The refugees were in danger of being evicted. The matter reached the public arena, as a result of which, on 13.10.2005, the RA Government adopted a Decree N 1640-A "On reinforcing buildings". This decree stipulates that the disputed building shall come under the State Property Management Department with the purpose to issue property rights to the refugee families for their residences in future.

Upon the Decree of the Government, the Department was given a one-month period to accept the building and to carry out state registration of property rights. As of April 2006, the Department had not enforced the requirement of the aforementioned decree of the RA Government. It took over the building; however, it was not submitted to state registration based on the fact that it had requested the grounds for land allocation of that building from the Mayor of Yerevan, which were not yet provided.

On 02.06.06, the Defender received a reply from the Mayor of Yerevan ,stating that, in order to ensure the enforcement of the requirements of the RA Government Decree N 1640-A dated 13.10.2005 "On reinforcing buildings", the Mayor of Yerevan adopted a Decree N 841-A on 26.05.06 "On restoring the grounds for allocation of the land plot occupied at 227, Nork Gardens belonging to the RA State Property Management Department and formulating the right to land use".

In response to the additional request of the Defender on 25.07.06, the RA State Property Management Department stated that the Municipality had provided only the Decree of the Mayor; for the registration of the property it was also necessary to have the blueprints of the property that the Municipality did not provide. It was necessary to apply to the Municipality again. The Architecture and Urban Development Department of the Staff of the Municipality "clarified" that the representative of the RA State Property Management Department should come to the Municipality and from "one window", receive all the necessary documents. After having acquired the corresponding documentation, the RA State Property Management Department did not submit them to the cadastre for state registration once again. So, the Prime Minister had to be informed about the non-compliance of the RA State Property Management Department with the requirements of the RA Government Decree, ignoring the registration of the refugee residents.

Only after Instruction N 107-6407 dated 06.10.06 of the Head/Minister of the RA Government Staff were the relevant documents submitted for state registration. This example makes it evident that this public administration body ignores and does not enforce the requirements of some legal acts with impunity, that the relations between public administration bodies are imperfect and there is, especially, ignorance of the issue in question when the matter is about the human rights and the reinstatement of violated rights.

This kind of conclusion makes one think that, after having submitted a request or demand

to the Municipality, the RA State Property Management Department did not make any follow-up inquiries about its enforcement, that the Municipality tried to give to its "one window" activity a sense of excluding postal communication by not sending the documents demanded by a public administration body, expecting that the one who sends a request should come and get the answer from the "window".

The submission of Article 218 of the RA Civil Code, Articles 104, 106 and 108 of the RA Land Code and Decree N 1151-N of the RA Government dated August 1, 2002 to the Constitutional Court with a request to consider their constitutionality was carried out due to numerous complaints received and continually being received from the owners, users and other property rights-holders of the seized property about the facts of violation of their property rights with regards to the implementation of urban development programs in Yerevan. The dominant nature of public and state needs for forcibly seizing their property is not justified, the seized property is appraised arbitrarily and no equivalent compensation is given, and a discriminatory attitude prevails during the process.

After the RA Constitutional Court stated on 18.04.06 that those provisions were anti-constitutional, it was implied that the management board of the Yerevan Urban Development Project Implementation Unit, chaired by the Mayor of Yerevan, would undertake a revision of seizure contracts, at least with regards to existing complaints; however, such steps were not undertaken. The aforementioned examples are enough in order to gain a full understanding of the violations of rights committed by the Yerevan Municipality.

It is a positive step that the recommendations of the Defender on the Kond and Kozern districts were accepted by the Mayor; they undertook and implemented the clarification of the status of several dozens of buildings without any clear status in the aforementioned neighborhoods and the property rights of some citizens were recognized, which shows that the discussions and public criticism about the violations committed during the implementation of the "Northern Avenue and Cascade" projects were not baseless. Some conclusions were drawn and steps were taken in order to not repeat those mistakes again.

Based on the studies of the commission formed by the Mayor, the lists of the residents have been established, the persons with property rights towards the buildings and the data for the state registration of those property rights were submitted to the real estate cadastre for state registration. Furthermore, the residents of the Kozern district complained that the district offices of the cadastre created unreasonable obstacles for the registration of their property rights on the basis of the Mayor's decree. It was discovered that there were some inaccuracies in these decrees of the Mayor, in regards to which the cadastre had objections. The Mayor reviewed those decrees.

The residents of the Kozern district were informed that the matter as a whole had been settled and their registration of property rights was completed. However, the issues of around ten families still remain unclear, which continue to be discussed with the Mayor. The

cadastre has some objections with regards to property rights registration for thirteen residents, which also continues to be in the discussion stage (for more on this issue, see the Defender's motion in Annex 2).

3.11. District Municipalities of Yerevan

In 2006 ,there were 116 complaints against the Yerevan Municipality, with 77 complaints in total against the District Municipalities, which is natural in the sense that the jurisdiction to solve the issues concerning Yerevan, i.e. allocation of land plots, issuance of construction permits, enforcement of legislative requirements with regards to facilities constructed without permission and other such issues, are mostly the sphere of the Municipality.

The complaints submitted against District Municipalities of Yerevan were broken down as follows:

- 48 were accepted for consideration,
- in 7 complaints, the applicants were advised about the possibilities of their rights,
- 17 were not accepted for consideration,
- 5 are currently under examination.

These complaints were mostly about the problems of residents of apartment buildings, such as using the common areas of buildings, renovating buildings in nearly-uninhabitable states, seizure of areas of general use, violations of rights of others as a result of constructions without permission, allocations of apartments, registration in the list of people entitled to being registered as one who is need of an apartment, and other similar issues, the implementation of which comes under the District Municipalities, since neighborhood administrations are not fully established.

The settlement of a series of complaints against the Municipalities is beyond their jurisdiction, having to do with approaching the Municipality or public utility services. For example, issues of water supply, gas supply and electricity supply. The District Municipality is in charge of overseeing the facilities built up without permission, preventing their implementation. It prepares protocols regarding facilities built up without permission and undertakes measures aimed at their demolition, whereas the legalization of those facilities and recognition of property rights lies within the jurisdiction of the Municipality.

The Defender's examinations show that, after the privatization of apartment buildings, the issue of maintaining those facilities have been ignored. It was considered that the owners of the apartments would solve such issues on their own through neighborhood administrations. However, there are only a handful of neighborhood administrations that can be considered as established and that, within the scope of their jurisdiction, are ready to solve issues with regards to maintaining and serving apartment buildings.

For example, collecting garbage is a subject of the relevant District Municipality service and, in most of the cases, the neighborhood administration collects fees and provides those services. However, when an inadequate service is provided, the garbage is accumulated for weeks and unhygienic conditions are created, and the neighborhood administrations do not try to submit corresponding claims to relevant service providers. The following cases are characteristic complaints submitted against the District Municipalities:

Example 1

The applicant complained that, in order to re-register the leasing contract of the land plot allocated to him/her by the Malatia-Sebastia District Municipality on 03.08.2003 in March, 2005, he/she submitted the necessary documents to the District Municipality. In order to find out the reasons for postponing the conclusion of the contract, he/she applied to the District Municipality, from where it was stated that, as per the order established by law, the documents were submitted to the Municipality. Further, they stated that the re-approval of the contract was postponed because, instead of the original hard copies, they had sent copies of the contracts. In January 2006, he/she found out that the documents submitted to the Municipality were lost. On 20.02.2006, he/she submitted the documents for a second time; however, those got lost in the Municipality again.

He/she applied to the Municipality, from where, on 07.03.2006, it was stated that those documents had not been input into the database of the Municipality. This time the applicant handed in the new package prepared by the District Municipality and his application to the Yerevan Municipality in person. In April, the Municipality returned the application and additional documents to the District Municipality, explaining that the deadline for the submission of those documents had passed. The District Municipality informed the applicant that, if the Municipality did not ask for the documents, they would not send them.

In response to the Defender's demand to clarify the reasons for such inappropriate conduct towards the application of the citizen and unjustified obstacles, the District Municipality replied that the conclusion of the contract was postponed due to the incompleteness of the documents and that those were filled in and submitted to the Mayor with a corresponding note. In his reply dated 30.10.2006, the Mayor stated that the application was fulfilled by his Decree N 1321-A dated 10.08.2006, and a contract was signed with the applicant.

Example 2

A second-degree disabled applicant complained that the District Municipality of Nor Nork did not take any steps to demolish the wardrobe which hampers his free movement, illegally placed by a neighbor on the balcony of common use. The applicant submitted to the Defender a copy of the letter of the head of the State Inspectorate of Urban Development of the RA Ministry of Urban Development addressed to him and the Nor Nork District Head, dated 30.09.2005, saying that the resident of building No 26 had indeed occupied most of

the balcony of common use without permission, ordering the District Head to undertake measures to restore the former conditions on the balcony of common use.

In response to the applicant's complaint, with the letter dated December 6, 2005, the Nor Nork Community Leader stated that the aforementioned wardrobe was placed on the balcony several years ago and the citizen having placed the wardrobe was instructed to demolish it within one month. Regarding our inquiry, the District Head stated that the resident who had built up the facility without permission is subject to administrative sanctions; however, the wardrobe was not demolished, as similar wardrobes are on approximately all the floors and if that one is demolished as an illegal object, then they will have to demolish the rest as well.

They also submitted to the attention of the Defender the reference of the chairman of the neighborhood administration "Nor Nork 2/6", which says that the wardrobe (container) in question did not hamper the normal functioning of the building, that the complaints in this regard were groundless and the other residents of the building did not have any complaints concerning this.

Upon the consideration of the complaint, it was stated that it is a violation of the requirements of Article 6 of the RA "Law on the management of apartment buildings", according to which, fundamental structures within buildings and constructions between storeys (floors and ceilings) belong to the owners of apartment buildings including property rights, also violating the requirements of Article 37 of the RA "Law on local self-government bodies" and Article 261 of the RA "Law on urban development". This construction without permission was not prevented and in the order established by law, its consequences were not fixed, thus violating the requirements of clause 7 of Article 10 of the RA "Law on the management of apartment buildings" as well, according to which the given district head was in charge of overseeing the observance of the norms mandatory for those buildings.

Taking into account cases of illegal seizure of areas of common use of apartment buildings, by which the rights of other residents to freely move and equally use the areas of common use are violated, leading to day-to-day problems, a decision was made to identify the cases of violation of human rights and to take necessary measures. In response to the decision, the District Head of Nor Nork stated that, due to the fact that the constructor had ignored the demands of the community to demolish the facility without permission in the order established by law and to bring the area of common use to its former condition, the District Municipality filed a suit at the Avan and Nor Nork Communities Court of First Instance.

This is one of those rare cases, when the District Head referred to court in defending the rights of citizens. It would be preferable that, in such cases, the neighborhood administrations also take up the responsibility to make the residents of apartment buildings observe rules of living within a community and the common use of facilities.

Example 3

The residents of building 9, Fuchik Street, Yerevan submitted a collective complaint stating that the roof of their building was in a deteriorated state and required urgent renovation. Six months later, they applied in writing to the Ajapnyak District Municipality; however, their request was not considered. They also applied to their neighborhood administration and were rejected by that as well, although the neighborhood administration did have the resources and possibilities needed to solve the problem. By accepting the complaint for consideration, it was requested to the Ajapnyak District Head to clarify the information mentioned in the complaint.

On 30.05.2006, the District Head gave the following clarification: "The examinations of the specialists show that partial reconstruction of the building would not be effective, as it is in a very bad state and needs capital reconstruction", "the building is included in the list of buildings subject to be reinforced in 2007. It will be reinforced and the roof will be fully renovated". It was also mentioned that "the financial means of the neighborhood administration do not allow the execution of broad-scale construction activities in the building. In this regard, upon the initiative of the District Head, financial and material support from the local budget is provided every year to neighborhood administrations for the reconstruction of sloping roofs of apartment buildings".

In 06.06.2006, in addition to their complaint, the residents justifiably complained against the clarifications given, explaining that, due to rain and snow, they could not wait for the renovation of the roof together with the building's reinforcement in 2007. In all cases, the local self-government bodies are inclined to justify their inactivity and indifference towards the issues of the residents by the scarcity of financial resources. In many cases, there is a need to identify the capabilities of the residents and to bring together those possibilities for the settlement of such issues. In this case, it was only after the Defender's intervention that the authorities used those resources and, within the same month, solved the problem of the roof's renovation.

Similar complaints were received from other communities of Yerevan as well; this comes to prove that the service and maintenance of apartment buildings needs improvement.

3.12. Offices of Governors and Local Self-Government Bodies

In 2006 475 complaints from marzes (regions) were received, of which 117 were regarding the activities or passivity of governors, mayors or village leaders. The rest of the 358 complaints were about other marz (regional) entities. 117 complaints against offices of governors, municipalities and village municipalities were broken down as follows:

- 78 were accepted for consideration,
- In 8 complaints, the applicants were advised about the possibilities of their rights,

- 26 were not accepted for consideration,
- 5 are currently under examination.

Forty-nine out of 117 complaints were against the offices of governors, 39 against municipalities and 29 against village authorities. The aforementioned complaints, among which there were many from the residents of the earthquake zone, were mostly about housing issues, land use issues, the unfair distribution of apartments built in the earthquake zone by public or other resources, ignorance of the increased number of family members by earthquake zone rehabilitation projects, the non-inclusion of homeless people in registration lists and other similar issues, as well as violations committed in the social support sphere.

Housing issues are not fully resolved within the earthquake zone. There are still people who lost their apartments and live in emergency facilities or containers. There are also problems with regards to the increased number of family members that are registered as persons with housing needs and, if this is ignored, the allocated housing space becomes insufficient for the complete fulfillment of housing needs of a given family. Based on the complaints received, cases of non-registration of the homeless on unjustifiable or baseless grounds, illegal evictions, etc. were discovered.

The following cases are characteristic complaints received against the offices of governors, municipalities and village municipalities:

Example 1

A resident of Gyumri from Shirak marz (region) complained that, as a result of the earthquake, he/she lost a one-room apartment on 14, Manushyan Street. In 1989, he/she was registered in the list of homeless people and benefited from the privileges stipulated by paragraph 8 of the RA Government Decree N 432. Upon the unified 8 order issued by the Decision of Gyumri Municipality N 109 dated 11.02.2003, the applicant was given apartment number 8 on 5b, Schedrin street. He/she lived in this apartment up to 04.08.2004. Afterwards, it was found out that the allocated apartment was constructed on cooperative grounds and belonged to another resident of that town, who had handed it over to Gyumri Municipality by a donation contract on 26.10.2002, in return receiving a coupon for a one-room apartment on 22, Yerevan Avenue, which was annulled by the Shirak Governor's office. Thus, the issue of evicting the applicant remained on the agenda.

The Shirak Governor gave clarifications with regards to this case; namely, based on the RA Government Decree N 1935-N dated 21.11.2002, the office of the Shirak Governor allocates apartments built up by public resources in the city of Gyumri according to the list approved by the Gyumri Mayor, as per criteria of inclusion into that list of people rendered homeless due to the earthquake, As the applicant was not included in the 2003 list approved by the Gyumri Mayor of people rendered homeless by the earthquake, according to the aforementioned decree of the RA Government, the RA Shirak Governor's office did not allocate an apartment to him/her, as, in the past, the Shirak Governor's office sent the hous-

ing case of the applicant to the Gyumri Municipality with the purpose to include him/her in the list of people rendered homeless by the earthquake.

According to the response received from the Gyumri Municipality, the housing issue of the applicant was under trial in the Shirak marz (region) Court of First Instance. It was also discovered that the court made a reference on the note S-598 dated March 1, 2004 of the Shirak Governor's office, according to which the criteria established by the Lincy Foundation for residential houses constructed by the Foundation do not permit exchange or sale of the apartments. The court stated that the real estate donation contract concluded between the third party and the Gyumri Municipality on September 25, 2005 was annulled as an illegal transaction.

As a result of the application's consideration, the Defender stated a violation of human rights and decided to undertake relevant measures. It was recommended to the Gyumri Mayor that, in order to restore the rights of the applicant, his/her housing issue must be settled, and disciplinary sanctions must be undertaken against the personnel that did not fulfill their duties in this matter. As per the feedback received, the decision had been discussed in the Gyumri Municipality and the head of the Housing Registration and Distribution Division and the specialist of the same division of the Municipality who committed the violation of human rights were dismissed from their positions as per a corresponding decree of the Mayor. The turn of the applicant on the list, as an earthquake-affected homeless person, was restored and sent to the RA Shirak Governor's office, as per the privilege of paragraph 8 and the list approved by the Mayor of people rendered homeless by the earthquake.

Example 2

The residents of 9, Isahakyan Street in the city of Gyumri complained of the following: Their house, built in 1924, had the status of a fourth-level uninhabitable structure up to 1988, having never been renovated. In the beginning of 1988, reinforcement works were carried out; however, after the earthquake, the renovations were left incomplete. At present, the house, including the sanitary facilities, are completely deteriorated and the roof is in danger of collapse.

In response to the Defender's request, the Shirak Governor clarified that this matter had been discussed many times at the RA Ministry of Urban Development and it was recommended either to demolish the building and recognize the residents as homeless, or to reinforce and reconstruct the building. The latter was financially less feasible. Nevertheless, with in order not to have 48 more homeless families in Gyumri, the Shirak Governor included the reinforcement activities of the building on 9, Isahakyan Street in the 2007-2009 medium-term expenditure framework's bid for 2007 (first priority) and submitted it to the RA Ministry of Urban Development. The issue is still unsettled; 48 families continue to reside in the house with the status of a fourth-level uninhabitable structure and in unhygienic conditions.

Example 3

A group of residents of Shirak marz (region) stated that they used to live in 19 residential modules constructed by the "Leningradshin" organization. As a result of the 1988 earthquake, they became homeless; however, they do not have the corresponding status. As a result of the emigration of a number of residents in 1991, the residential modules were given free of charge to the "Leningradshin" organization. After its liquidation, they were transferred to the account of the "Shirakshin" joint-stock company. At their own expense, the residents maintained and renovated the facilities; "Shirakshin" made no investments at all.

By a verdict of the Economic Court, the "Shirakshin" CJSC was recognized as bankrupt and the assets of the company were auctioned. The office of the Governor and the Municipality are doing nothing to regulate the issue of these families under the threat of eviction from their houses. It was recommended to the Governor and Mayor to take into consideration the housing issue of such citizens again.

Example 4

A resident of Gyumri complained that, as a result of the earthquake, he/she lost a three-room apartment, back when there were five people in the family. In 1992, the family had seven members, and a daughter with a disabled child received a one-room apartment. In 1992, they were registered in the list of homeless people with five members and benefited from the privileges stipulated by Article 13 of the law. On February 27, 2004 he/she resubmitted the documents to the Gyumri Municipality; however, they mentioned two rooms instead of three in the list. Besides, he/she was not included in the property right registration project (PRRP), based on the fact that, up to March 1, 2004 he/she was not registered in the list of the homeless.

In response to the request of the Defender concerning the citizen's application, the Gyumri Mayor clarified that, as a citizen together with his/her family rendered homeless by the earthquake, the applicant had been registered for receiving an apartment in the list of people needing a three-room apartment.

According to the procedure approved by the RA Government Decree N 432 dated 10.06.1999, the registration of earthquake-affected citizens must be completed by March 1 of the current year. During a regular update of the lists, the applicant applied to the Municipality on 27.02.2004; however, he/she did not make any reference to the number of the persons, and the conditions of the house was not ratified with the seal of the Residence Department, as a result of which his/her registration was completed after March 1, 2004.

As for being left out of the list of people needing a three-room apartment, paragraph 16 of the RA Government Decree N 432 dated 10.06.1999 stipulates that "The residential spaces are allocated to citizens within the norms established by this paragraph; however, the size cannot be more than the number of rooms that the tenant or his family occupied in the past".

According to Decree N 4 dated 01.05.1992 of the Gyumri (Kumayri) City Council, two members of the applicant's family received a one-room apartment. Thus, based on para-

graph 16 of the aforementioned decree of the RA Government, the Municipality registered his/her family of five members in the list of citizens needing a two-room apartment.

At present, the applicant is number 297 in the list of citizens needing a two-room apartment and benefits from paragraph 29 of the sequence of the privileges approved by the aforementioned decree. With a note dated 28.12.2006, the RA Shirak marz (region) Governor stated to the Defender that, at the session of the RA Government on 21.12.2006, it was decided to give the applicant, as an exception, a housing purchase certificate.

Example 5

As a result of considering the complaint of the residents of the RA Shirak marz (region) at 59 Khrimyan Hayrik Street, Gyumri, the following was discovered: by the RA Government Decree N 81 dated February 9, 1998, 2,050 sq. m. space was allocated to the office of the Governor out of 1,400 sq. m. space located in Gyumri on 59, Tbilisi Avenue. By the same decree of the Government, the other 350 sq. m. was left to the RA Ministry of Communication, taking into account that with the unified order, it had been allocated to former staff of Ministry of Communication as a place of residence.

By the RA Government Decree N 15, dated 10.01.01, the Shirak Governor was allowed to assign an entity with relevant resources to renovate buildings in emergency conditions as per the points foreseen by Article 605 of RA Civil Code (donation). By a donation contract concluded on 22.04.2002, the RA Shirak Governor fully donated to the "Progress University" industrial cooperative the aforementioned building, including the 350 sq. m. area left to the residents, something that he was not entitled to do. By the donation contract, the receiving party did not have any liability towards the residents.

Based on the aforementioned donation contract, the "Progress University" industrial cooperative was the owner of the entire facility. It filed a suit in the court with a claim to evict the residents from the rest of the 350 sq. m. space. Strangely enough, ignoring the RA Government Decree N 81 of 1998, the district office of the cadastre had issued property rights for the whole building first to the office of the Governor and then to the "Progress University" industrial cooperative.

There are several dozens of complaints on housing issues from Shirak marz (region) residents which are a result of maladministration. There are also incidents of corruption.

There are also unsettled housing issues in the city of Vanadzor in Lori marz. A district where the people live in containers can be found here as well. The Municipality has taken steps towards the development of the town and tries to replace the containers. The people living here are offered housing spaces in dormitories. They do not agree due to the fact that the proposed dormitories are in bad shape and do not have any facilities. The issue is still being discussed, no final solution has been found.

Characteristic complaints received from other marzes (regions) include the following:

Example 6

A resident from Gndadzev village of Vayots Dzor marz (region) complained that, in March 2004, an irrigation pipeline was set up on his arable land, where autumn wheat was sown. Due to construction work carried out, his autumn wheat was trampled upon and destroyed. After the construction, the territory was not leveled and it remained useless for agricultural activities. He/She paid 75,000 dram as land tax for unusable land.

Starting from 2003, he/she applied to relevant authorities with a request for compensation for the damage incurred and they forwarded him/her to the Vayots Dzor Governor's office. The representatives of the Governor's office visited the site and verbally recommended the village community leader to compensate for the incurred damage on the spot; however, the compensation was not provided and the former conditions on the land were not restored.

With regard to the Defender's request, the Governor of Vayots Dzor stated that there was an agreement reached between the community leader and the director of the construction to bring the land to its previous conditions; however, the civil works were suspended due to the beginning of the irrigation season. After the completion of the irrigation season, the claim of the citizen was to be fulfilled. As compensation, the applicant was given 300 kg wheat seeds and building materials.

The issue here is that, in this case of obvious violations of human rights, the citizen needed around three years to get the protection from relevant authorities.

Example 7

A resident from Gladzor village in Vayots Dzor marz (region) complained that the village community leader did not make the necessary changes in the registry in order to register the entirety of the land plot that he inherited; the necessary documents were not issued for him. The head of the Yeghegnadzor district office cadastre made a note on the map of the village's lands and stated that, after the village community leader confirms the committed mistake, the cadastre will make the relevant changes; however, both the present and previous village community leaders refuse to correct the mistake. The claim of the applicant was upheld upon the intervention of the Defender.

Example 8

A resident from Ashotavan village in Syunik marz (region) complained that, during the past land privatization, he/she and his/her mother received 1 ha less land. After complaints, an additional 6000 sq. m. were allocated, which is less than what they were entitled to by 4000 sq. m. But irrespective of that, they were forced to pay for 6000 sq. m. of non-irrigated land the same fee as for irrigated land. Besides, the land allocated to him/her was not of the same quality as the type of land that was supposed to be allocated. In response to the Defender's request, the Ashotavan community leader based the final decision of the matter on the results of the examinations of the Syunik Governor's office's specialist and the Governor stated that the issue was submitted to the consideration of the Government. The issue has not been settled and the consideration of the complaint is to be continued.

Example 9

The residents of a dormitory of the Sevan Vocational College in Gegharkunik marz (region), complained that approximately 46 families resided there, as per the orders of the Municipality. The facilities belong to the RA Ministry of Education and Science. At present, the college director demands the residents to vacate the dormitory, and the dormitories that are being offered to move into are in awful conditions. They have applied numerous times to the Mayor of Sevan; however, the matter has not been settled.

The consideration of the complaint showed: by the RA Government Decree N 1345-A dated August 25, 2005, the dormitory facilities located in the city of Sevan, at 6, Gortsaranayin Street were acquired from the RA Ministry of Education and Science. By the same decree, the Head of the RA State Property Management Department was assigned with donating the aforementioned dormitory facilities to the respective community with a condition to privatize them free of charge, granting them to the homeless residents living in the dormitories as their residence.

In response to the Defender's request on March 15, 2005, the Head of the RA State Property Management Department stated that the dormitory facilities located in the city of Sevan, at 6, Gortsaranayin Street were assigned to the disposal of the Municipality by a handover and receipt act. As for reorganizing the free privatization of the rooms of the dormitory to the residents, the Mayor of Sevan stated that, according to the RA Government Decree N 1345-A dated August 25, 2005, the dormitory facilities located in the city of Sevan, at 6, Gortsaranayin Street were handed over as residential housing to the Sevan Municipality by a handover and receipt act of the RA State Property Management Department for the free privatization of the rooms of the dormitory to the residents.

At present, those facilities are in an uninhabitable state; no renovation activities have been carried out there for more than twenty years. The roof, internal and external communication systems are obsolete, the doors and windows were plundered in the past and the floor has been demolished. There is no gas supply in the facilities, no water supply and the sanitary facilities are not functioning. This is the reason that, during the meeting recently called by the residents, all 37 of them rejected the privatization with the concern that, after the privatization, the entire burden for the renovation of the facilities will remain on their shoulders.

Besides, the Sevan Vocational College also has property issues with the residents, i.e. in the past they received beds, wardrobes and tables; however, there are still pending issues regarding their collection or future provisions. Notwithstanding this situation, the Sevan Municipality is undertaking measures to clarify the building's technical conditions, in order to carry out the state registration of property rights and initiate the privatization process as soon as possible.

At the same time, the Sevan Municipality is undertaking measures to renovate the building through international organizations, existing projects or by mortgaging. The proposal of the Mayor for the aforementioned process is a positive solution of this matter; however,

before that, there was the danger of evicting the residents out of that dormitory and that was the reason of the complaint of the residents.

There are also complaints regarding the violation of labor rights in the local self-government bodies or community budget institutions, i.e. illegal dismissal from jobs, untimely payment of salaries, no final settlement, etc. In this regard, the following example has been singled out:

Example 10

The former director of the kindergarten in the RA Tavush marz (region) Paravakar village stated that, for thirty years he/she had worked in that kindergarten as a teacher and then as a director. He/She holds a university degree in elementary education. On November 30, 2005, with Order N 35, the village community leader dismissed him/her guided by Articles 28 and 32 of the RA "Law on local self-government bodies", justifying this with the dissolution of the former staff of the village authorities, and, instead of him/her, appointed a person without the respective qualifications.

In response to the Defender's request, the village community leader specified that the applicant was dismissed owing to inadequate performance of his/her duties during the last three years; in particular, he/she did not correctly distribute the free food provided by the village authorities. The applicant was dismissed based on Article 32 of the RA "Law on local self-government bodies".

Then the Defender demanded from the village community leader the documents proving that the applicant was not carrying out his/her duties in good faith, a protocol about disciplinary violations or an order on appointing a disciplinary fine, etc. This time, the village community leader replied that the applicant received a verbal reprimand for shortcomings on the job and that the former staff of the village was authorities was dismissed by Order N 35 dated November 30, 2005, guided by paragraph 9 of Article 32 of the RA "Law on local self-government bodies".

These details gave a reason to suspect that the applicant had been dismissed while violating the requirements of the law; her dismissal was not preceded by material or disciplinary sanctions foreseen by the RA labor legislation, with the verbal reprimand being considered as sufficient grounds for dismissal. The applicant was dismissed not on the grounds of the RA Labor Code, but referring to Articles 28 and 32 of the RA "Law on local self-government bodies", which is not applicable in this case.

The kindergarten is considered a community budget institution and, consequently, its director is not a part of the community leader's staff and is not a community servant according to clause "d" of paragraph 1 of Article 3 of the RA "Law on community service", which reads: "a person occupying any position foreseen by the list of officials of local self-government bodies is considered a community servant".

A violation of human rights was identified and it was decided to adopt a decision on

resolving it, by which the Paravakar village community leader was assigned with resolving the violations committed and reappoint the applicant to his/her position. The village community leader responded that an agreement was reached with the applicant and that the latter will take up his/her position at the Paravakar school.

As a result of examinations conducted, the overall conclusion of the Defender is that, in marzes (regions), public administration bodies and local self-government bodies often ignore and do not adequately deal with such cases of the individual, upon which complete enforcement of rights are based.

3.13. Public Administration and Local Self-Government Bodies

Apart from the aforementioned, we have also received complaints against other bodies:

A. RA Ministry of Territorial Administration - 22 complaints.

Two complaints were about job dismissals and the other applications were mostly complaints of refugees regarding housing issues from the Migration Agency. By the complaints about the job dismissals, it was discovered that the applicants have been dismissed due to reaching retirement age. Consequently, such dismissals are not a violation of rights. The rest of the 20 complaints were about the following issues:

Example 1

The applicant complained that, up to 2001, he lived in a container together with his wife in the village of Kasakh in Kotayk marz (region). The same year, he had a divorce and the container remained with his wife. He was still registered in that container, but had no residence. Irrespective of the aforementioned, he was not included in the list of people entitled to housing within the framework of the Norwegian housing project to be undertaken in the village of Kasakh. The RA Migration Agency stated that the applicant could not be included in the list, as, since 2002, he was not living in the given settlement, being registered as homeless; however, he had not submitted any information about his actual place of residence.

Example 2

The applicant lives in a room of a dormitory located on Artsakh Street in Yerevan and the room was provided by an order. The father of the applicant was living in another room of the dormitory. After the death of the father, the applicant tried to occupy that room as well and moved a part of his belongings there. The Migration Agency gave that room to another refugee and that was the reason of the applicant's complaint. The complaint was considered as groundless.

Example 3

A group of applicants, being residents not currently living in temporary shelters or containers, complained that the Agency did not include them in the list of people with priority needs of housing. The meaning and content of the RA Government Decree N 747-N dated 20.05.2004 on the priority program of housing for people forcibly immigrated from Azerbaijan and the scope of the people entitled to be included in that list was explained to them; their status does not comply with the criteria required by that program.

Example 4

A groups of refugees complained that they were included in the list of people with priority needs of housing; however, they were not provided with apartment in the residential ten-storey building located on Arzumanyan Street. It was discovered that the Migration Agency had nothing to do with the aforementioned structure and could not allocate apartments to the applicants from that building.

Example 5

The applicant complained that the Migration Agency did not provide him with temporary shelter. After the intervention of the Defender, the Agency stated that a dormitory room had been assigned to be allocated to him. For further paperwork, the applicant had to go to the Migration Agency. Afterwards, it was discovered that the applicant came to the agency two months later and, in the meantime, another refugee settled in that shelter. The problem was that the applicant did not have any address and communicated with the following address: "Yerevan-10, upon demand". The Agency promised to provide the applicant with a temporary shelter at the earliest opportunity.

Example 6

Another group of applications was about the amounts foreseen by housing purchase certificates. According to the applicants, it is not possible to buy apartments in their places of residence with those amounts. This issue has been presented to the Migration Agency, as well as to the RA Government.

A large number of these types of applications from refugees is the result of the fact that there are still many people who reside in containers and temporary shelters. The temporary shelters are often deprived of the most basic facilities.

B. There were 8 complaints against the RA Ministry of Finance and Economy.

The complaints were about compensation of deposits made to the USSR Savings Bank; due to unsubstantial inconsistency of the documents or non-inclusion in the family welfare beneficiaries lists, those citizens were deprived of the right to get primary compensation for the deposits. These complaints were put together under one general complaint and a rec-

ommendation was submitted to the RA Ministry of Labor and Social Affairs. Afterwards, the RA Government and RA Ministry of Labor and Social Affairs reviewed the disputed details about the rights to get compensation for the deposits, as a result of which quite a few depositors were included in the list of people entitled to compensation.

C. There were 5 complaints against the RA National Security Service.

In one case, the applicant complained against the discriminatory nature of the investigation conducted by an investigator of that service. Upon the consent of the applicant, the complaint was referred to the RA Office of the Prosecutor-General. In three cases, the matter was about the approval of the status of the forcibly imprisoned. It was found that the archival information on the applicant or the applicant's parents being forcibly imprisoned have not been preserved. The Defender tried to support the applicants by means of submitting requests to the central archive of the Russian security service; however, the responses were negative.

D. There were 5 complaints against the RA President's Staff.

In two cases, the applicants complained that the Staff did not provide them with employment record books with the justification that, after terminating their employment, they did not return their official identification documents. As a result of the Defender's intervention, the applicants received the employment record books. In the other three cases, the applicants were persons that were sentenced to death in the past. Upon the decree of the RA President, their punishment was commuted to life imprisonment. They considered that this decision of the President needs to be reviewed. The applicants were consulted about the controversial nature of this matter.

E. Four complaints submitted against the Public Utilities Regulatory Commission were about the decisions made on gas, water and telephone tariffs.

The applicants were explained that the Commission makes decisions based on justifications provided by economic data submitted to it and to see a violation of rights with these decisions based on the opposite economic justifications is not sufficient. There were four complaints against tax and customs authorities each. The complaints were against the customs clearance, registration of customs duties, evaluation of taxed objects and protocols against tax violations. One of the complaints against the customs service was about the dismissal of a customs officer. It was discovered that the officer was dismissed as a result of regular attestation. In the rest of the three cases, the delays of imported goods were connected with examinations. The issue was resolved during the complaint's consideration, i.e. the customs clearance was performed, which satisfied the applicant.

All four complaints against the tax service were about the size of the settled tax obligations, which could be challenged in court. The applicants were explained about their rights, and legal advice was provided as well.

There was only one complaint submitted against the RA Ministry of Nature Protection. The lack of complaints against this entity can be explained by the fact that the population is not well informed about the environmental issues for which the Ministry is responsible. The same thing can be said about the RA State Property Management Department, against which also only one complaint was received.

SECTION 4
RIGHTS OF SPECIAL AND VULNERABLE GROUPS

4.1. Rights of Refugees

The analyses of complaints against the violation of refugee rights shows that some of them have not been provided with permanent shelter so far. The immigrants deported from Azerbaijan during the period 1988-1992 live in dire conditions, especially the refugees living in highly mountainous and border zones. Residents in administrative facilities of the capital also live in such conditions.

Through the program approved by the RA Government Decree N 747-N dated 20.05.2004 "On the priority program of housing for people deported from Azerbaijan", the number of beneficiary families with primary needs of housing were approved; however, in 2005-2006, the refugees living in administrative facilities continued to write to the Defender, in particular refugees from Yerevan, where they were left out, not being included in the list of beneficiaries.

According to the RA Government Decree N 747-N dated 20.05.2004, besides the conditions defined in general, the actual residence of the refugee families in temporary shelters and containers as of August 1, 2003 is also considered as a basis of selecting the beneficiaries (which was the period of a study by the RA Migration and Refugees Department with the purpose of identifying the housing conditions of the refugee families sheltered in temporary shelters and containers and the composition of the families).

In this regard, the Defender received a range of complaints, which were about the unjustified nature of the study results conducted in the established period by the staff of the RA Migration and Refugees Department (MRD). The results of consideration of some complaints show that the studies conducted by the MRD staff to check the actual residence conditions of the refugees in the period as established by the Government was not conducted properly.

One shall also mention that no legal act stipulates any duration of a period based on which a refugee may be deemed absent from the place of residence. As a matter of fact, the procedures to check the present residence of refugee families living in temporary shelters and containers have not been stipulated. Moreover, the RA Government Decree N 309-N dated 24.02.2005 stipulated the selection criteria for persons entitled to get assistance for housing (residential housing) through certificates. In particular, those persons entitled to receive the corresponding support, who, according to the criteria approved by the RA Government Decree N 747-N dated 20.05.2004 "On the priority program of housing for people deported from Azerbaijan", have been registered in the RA Migration and Refugees

Department as of August 1, 2003 and included in the lists approved by the Governors.

According to paragraph 2 of section 7 of the program approved by the RA Government Decree N 747-N dated 20.05.2004, "The price for the housing procurement certificate has been established based on the equivalent of the formulated average market price of the apartments in apartment building in that area, based on the average data of the first nine months of 2003 for one square meter of the RA Real Estate Cadastre State Committee". As a basis for Yerevan, they adopted the prevailing prices in Avan district. Paragraph 5 of the same section stipulates that the data mentioned in paragraph 2 during the project implementation are subject to clarification, based on the average market price of the apartments during the quarter preceding the project implementation. At the same time, paragraph 9 of the procedures established by the RA Government Decree N 309 dated 24.02.2005 stipulates that the amount of the support mentioned in the certificate is determined by the average market value as of May 1, 2005 for the apartment (or number of rooms) of the family (taking the number of persons into consideration) of the persons entitled to support according to the norms established by the same point.

A significant number of the complaints were about the inconsistency between the actual prices of the real estate market and the provided monetary support, as a result of which the persons included in the aforementioned program did not have the means to acquire a respective apartment or residential house.

Example 1

In the complaints addressed to the Defender in September 2005 and May 2006, a group of refugees from the city of Vedi in Ararat marz (region) stated that, in 2005, they received housing certificates; however, as a result of the prices of the real estate market, they failed to buy apartments in the same administrative area. The applicants also mentioned that, for a one-room apartment, they received 1,013,000 dram (one million thirteen thousand drams) and, for two rooms, 2,238,000 (two million two hundred and thirty eight thousand drams).

In order to look into this issue, notes were respectively addressed to the RA Prime Minister and the RA Minister of Urban Development with a proposal that, while considering similar issues for 2006, the issue of providing additional assistance to the beneficiaries of the program implemented in 2005 also needs to be discussed. Also, the RA Ministry of Urban Development mentioned that, in 2005, during the process of settling and providing with the amounts to solve the housing issue of those deported from Azerbaijan in 1988-1992, there were issues which generated the discontent of a number of people who received certificates. Relevant measures have been taken to resolve the mentioned issues and corresponding recommendations were submitted to the RA Government.

Example 2

In a complaint addressed to the Defender on 19.10.2004, two refugees living at 123, Amaranotsayin Street, Yerevan, stated that the RA Migration and Refugees Department

(the Migration Agency of the RA Ministry of Territorial Administration at present) refused to provide them with temporary shelter before providing them with a permanent residence as part of the state program. Investigations have revealed that the Yerevan Central and Nork-Marash Communities Court of First Instance tried and upheld on December 11, 2002 the civil case of H.G. vs. a group of refugees and others about reclaiming property from the disposal of the others and evicting them, and a suit in return of the refugees against H.G. on allocating other residential areas. The court decided to evict from 123, Amaranotsayin Street those persons (former refugees), who have since taken RA citizenship, together with their children; with regards to the refugees, the RA Migration and Refugees Department was assigned with providing each family an acceptable shelter in Yerevan, evicting them from the present one only after having done so. The verdict came into legal force and was partially implemented. According to the RA Civil Court of Appeals verdict dated 16.06.2003, the applicant and the residents that lost the status of refugees as a result of gaining citizenship of the Republic of Armenia on 17.09.2004 were evicted by the Service for Compulsory Execution of Judicial Acts from the rooms they occupied without having been allocated a respective apartment.

The Defender submitted relevant motions to the corresponding bodies with regards to finding an immediate solution to the issue of providing the persons in question with temporary shelter. This issue found an adequate solution in the RA Migration Agency and the applicants received temporary shelters in the first block of the Yerevan Nor Nork student district. The refugees have accepted these conditions.

Example 3

By the RA Government Decree N 1640-A dated 13.10.2005 "On reinforcing buildings", the building at the address 227, Nork Gardens that is not registered on the accounts of any public administration body and which, in the past, belonged to the high school of the Armenian Communist Party, was reinforced with the purpose of handing it over to the "RA State Property Management Department Staff" state administration institution, in order to, in turn, hand it over to the refugee families that reside in that building, inclusive of property rights. By paragraph 2 of the aforementioned Decree, the head of the RA State Property Management Department was assigned to ensure the execution of the construction work on the building mentioned in paragraph 1 of the Decree and to carry out state registration of the property rights within one month as per the order established by law. However, so far the decree of the RA Government has not been enforced. With a recommendation to undertake the respective measures foreseen by RA legislation, the Defender approached the head of the RA State Property Management and the Mayor of Yerevan.

The RA State Property Management Department stated that the building at 227, Nork Gardens was accepted and registered on the accounts of the RA State Property Management Department by a unilateral handover and receipt act on 14.02.2006. In order to implement the state registry of the aforementioned building with property rights on

06.03.2006, the RA State Property Management Department applied to the Yerevan Municipality again to acquire land allocation documents. At the same time, it was stated that, on 11.05.2006, the RA State Property Management Department had shown the building at the address 227, Nork Gardens to the respective officials of the Yerevan Municipality, with the purpose of carrying out topographic mapping and registering the physical details of the property. After that, the Municipality was to supply documentation pertaining to land allocation of that address and the blueprints of the property, upon receipt of which they were to immediately initiate the activities based on the RA Government Decree N 1640-A dated 13.10.2005.

Then, on 26.05.2006, the Mayor of Yerevan passed Decree N 841-A "On rehabilitating the grounds for allocating the land at the address 227, Nork Gardens belonging to the RA State Property Management Department and registering the right of land use", with which the 3,570 sq.m land plot at that address was given free of charge (permanently) to the RA State Property Management Department.

The Defender has submitted to the RA State Property Management Department a recommendation to present the Department's property rights of the building at the address 227, Nork Gardens for state registration. Moreoever, it was recommended to undertake the enforcement of the requirements of paragraph 1 of 13.10.2005 RA Government decree N 1640-A "On reinforcing buildings" after the registration of the rights, i.e. the process of providing the refugee families living in the aforementioned building with property rights in the residential area they occupy. Afterwards, the RA State Property Management Department stated that, in order to have state registration of property rights, it is also necessary to acquire the blueprints of the aforementioned building, which the Yerevan Municipality did not supply to the Department. As a result of this unnecessary obstacle created by the Yerevan Municipality, the RA Government Decree N 1640-A "On reinforcing buildings" dated 13.10.2005 has not been enforced for more than a year. The Defender approached the RA Prime Minister regarding the aforementioned issue.

On 03.08.2006, the RA Government's State Property Management Department submitted the relevant documents to the RA State Committee of Real Estate Cadastre to perform the state registration of property rights of the building. The application is still in the discussion period.

The position of certain military bodies with regards to drafting refugees to military service is also interesting. According to Article 18 of the RA "Law on refugees", service in the armed forces is a right, but not an obligation for refugees. Nevertheless, sometimes there are attempts to draft the aforementioned person, giving a unique interpretation to the mentioned legal norm of the RA "Law on refugees".

4.2. Rights of National Minorities

The examination of the few complaints received from national minorities shows that their complaints are mainly of the nature of general human rights violations, not based on their ethnic or national identity. They do not complain of discriminatory attitudes towards them from authorities or the public in general. However, the opinion of the European Commission Against Racism and Intolerance is completely acceptable; taking into account the small number of minorities living in the country, it is necessary to provide additional measures to these groups with the purpose of maintaining their linguistic and cultural identity[14].

In its 2003 report, the Commission encouraged the adoption of a separate law on national minorities, which would ensure the implementation of the general approaches and strategies to resolve issues concerning minorities in Armenia. In particular, it was mentioned that the adoption of such a law would show that there is political will to resolve issues emerging in this area and would outline the scope of the measures to be taken.

On June 30, 2006, the European Commission Against Racism and Intolerance published a second report on Armenia. The Commission mentioned that, after the Commission's report on Armenia dated July 8, 2003, there had been progress in a range of areas identified in that report. Nevertheless, some recommendations made in the first report of the Commission have not been fulfilled or remain partially fulfilled. Even though a draft law on national minorities is ready, some non-governmental organizations and representatives of national minorities do not approve of it, as they think that it will not make any big changes in the existing situation.

The Yezidi minority still deals with the issues concerning land, water and pastures. It was also mentioned that a system enabling the participation of national minorities in the public and political life of the country has not been established so far. School students belonging to national minorities still need improved textbooks in sufficient quantity.

In this report, the Commission suggests that the Armenian authorities should undertake additional measures in some areas. In particular, a law on national minorities that will take into account the recommendations and opinions of the national minorities to the greatest extent possible should be passed, follow-up steps aimed at the settlement of the Yezidi community's issues should be undertaken, in particular, regarding police surveillance, land, water and pastures issues. The Commission also suggests that the Armenian authorities should undertake measures aimed at providing means for the participation of national minorities in the public and political life of the country, etc.

As for the recommendation of the Commission to adopt a separate law on national minorities, the draft RA "Law on RA citizens of other ethnics and ethnic minorities" is still under discussion. The representatives of the RA Human Rights Defender's staff have also participated in its discussions. The RA Human Rights Defender has submitted his opinion to the RA Government. Although not completely opposed to the idea of adopting a sepa-

[14] See the report of the European Commission Against Racism and Intolerance about Armenia adopted on July 13, 2002

rate law on national minorities, the Defender found that the draft needs further elaboration.

The examination of the draft brings to light the fact that the proposed draft law does not really add anything to what is already stipulated by the RA Constitution and laws regulating other areas. In order to study the issues of national minorities with more detail, the RA Human Rights Defender's staff has actively cooperated with the Steering Committee of National Minority Issues adjacent to the RA President's advisor, the National Minority Issues Council adjacent to the Chairman of the National Assembly and the Department of National Minorities and Religious Issues of the Staff of the RA Government.

The Defender's staff has often visited Greek, Russian, Yezidi, Kurdish and Assyrian villages, met with residents, community leaders, leaders of non-governmental organizations bringing together national minorities, discussed the issues of concern with them. The staff of the Defender has also participated in discussions, seminars and other events regarding national minority issues and also in those organized by them. A sub-committee dealing with the issues of national minorities, refugees, women and children's rights, and a sub-committee dealing with the issues of environment and non-governmental organizations, were set up in the Expertise Council adjacent to the Defender, also including two representatives of national minorities. They were invited upon the proposal of the Defender from the Steering Committee of National Minority issues adjacent to the RA President's advisor, based upon their choosing. The Defender has also frequently met with community leaders of national minorities and discussed the issues that concern them.

4.3. Rights of Persons with Disabilities

In the Republic of Armenia, the issues of the disabled are mainly dealing with health problems, medical, social and physiological issues, rehabilitation, provision of access to public education, transport and communication, employment, social protection and other areas. The employment rate of the disabled in Armenia is unfortunately quite low. In 2006, there were some amendments in a series of legal acts, the purpose of which was to encourage employers to hire the disabled, to include more disabled into employment programs and increase the efficiency of their implementation.

In the employment area, the issues of the disabled mainly deal with the low indicators of employment for the disabled of working age who are able to work, the guarantees and rights reserved for the disabled by employment legislation, the insufficient level of awareness by employers in case of employing a disabled person, and non-compliance with the needs of the disabled in workplaces, as well as insufficient qualifications.

The organization of medical care for the disabled and provision of medicine by government funding is also on insufficient level. There is also a need to implement projects aimed

at preventions of disabilities, as well as provisions of access to medical services for the disabled. While carrying out medical and social examinations, besides recognizing the individual as disabled, determining the reasons for disability and its length of time, the types of the disabled individual's rehabilitation and social protection are also determined. In this regard, it is necessary to specify the criteria used during medical and social examinations, provisions of access, as well as the introduction of modern expertise, rehabilitation and social methods.

Global practices in the area of rehabilitating the disabled are not sufficiently studied and introduced. For the present, there is not much of an infrastructure fit for the needs of the disabled. Although individual cases to provide means for the disabled are stipulated by law, the access of the disabled in all areas of public life is not guaranteed.

Social infrastructure facilities and buildings are not fit for the needs of the disabled, as a result of which the education of disabled children, provisions of employment, and their full participation in public, political and cultural life (participation in elections, visiting cultural or sporting events, etc) are hampered. In order to ensure the enforcement of access to electoral rights of the disabled, paragraph 5 of Article 16 of the RA Electoral Code stipulates that local self-government bodies are bound to undertake respective measures in electoral precincts. Nevertheless, it has to be noted that the precincts are not always equipped for the needs of disabled. There are no equipped vehicles to ensure the movement of the disabled in the country. Accessibility for the disabled on an equal basis as with other citizens are not ensured. Access to vehicles for the disabled in wheelchairs is not ensured (at the airport, railway stations, urban and long distance buses or in urban electric transport).

On April 5, 2006, the Ministerial Committee of the Council of Europe passed Recommendation N Rec 2006)5 "Action plan on the rights of the disabled and their full participation in society", according to paragraph 363 of which, all member states of the Council of Europe are bound to develop a legal framework ensuring full and proper access for the disabled.

Recognizing the importance of the adoption of a special law which will set up sufficient legal grounds for making facilities and transport accessible for the disabled and, in general, for people with limited mobility including the disabled in wheelchairs, movement equipment or with limited sight, senior citizens and people with children's strollers, a letter to the RA National Assembly has been sent to discuss as a priority the draft RA "Law on providing access in public places and public transport to the disabled and people with limited mobility" and the "Law on making amendment to the RA Code on Administrative Violations". The adoption of the aforementioned drafts will set up the legal grounds necessary for solving this issue.

As for issues of the disabled in the educational sphere, let us mention that not all children disabled from childhood are included in the general education and special elementary educational institutions. The education of disabled children at home is not carried out with sufficient standards, there are no integrated preschool children's institutions, the number of

specialists working with children with special needs of education is insufficient (special teachers, teachers for the deaf-mute, typhlo-teachers, child psychiatrists, etc.).

General education and special elementary education institutions are not equipped for the needs of disabled children (for children with special education needs, the curricula, facilities and classrooms are not sufficient, etc.). For disabled children, it is necessary to create such conditions that they study in general secondary schools together with their peers and, in case of necessity, under special programs. As for disability welfare benefits, their amounts remain low.

4.4. Rights of Women

Regardless of the principal of equality of men and women before the law, in exercising political, economic, social and cultural rights, inequalities exist between men and women. As it has been mentioned in the previous reports of the RA Human Rights Defender, the indicators of women's employment and their engagement in public life still remain at a very low level.

In 2006, representatives of the CoE Women and Men Equal Opportunities Committee visited Armenia. In 2007, the Committee published its draft report on the state of women in Armenia, Azerbaijan and Georgia. The report underlined in particular that the situation in the Sothern Caucasus is concerning; the participation of women in political and public life is quite limited. It has also been mentioned that the women's representation is quite low in the parliament, government and other high-ranking public positions and businesses. The health of women, in particular the reproductive health, is not subject to proper attention. In particular, the situation of refugee women, as well as the conditions of penitentiary institutions where the women are kept in custody are concerning.

The report recommended fostering the balanced participation of women and men in decision-making processes, including the increase of the minimal threshold of women's participation in parliament by the means of women's training, increasing awareness, etc. Although some steps have been taken and the Republic of Armenia has ratified a series of international conventions, the participation of women in decision-making processes is very low. In contrast to the decision-making process in political life, the involvement of women in the activities of non-governmental organizations is quite high.

The implementation of effective supervision by non-governmental organizations is also important, regarding the observance of women's and men's opportunities to equally benefit from economic, social and cultural rights. As has been mentioned by the General Recommendation N 16 of the Economic, Social and Cultural Rights Council, the commitments undertaken by the member states of Article 3 of the convention also include the regulation and monitoring of the activities of non-governmental actors in order to ensure their protection of women's and men's opportunities to equally benefit from economic, social

and cultural rights. This commitment is applicable, for example, if public services are partially or fully privatized.

As for issues related to human trafficking, as a rule, it is the socially-vulnerable women who become a victim of this phenomenon. According to data from the RA Prosecutor-General's Office, in 2006, there were 42 cases of crimes pertaining to Articles 132, 1321, 261 and 263 of the RA Criminal Code in the country. The information given in the report shows that the law enforcement bodies of the country have undertaken certain steps to identify the crimes of that nature and to increase the quality of their investigation. However, shortcomings and gaps still exist. In particular, the identification and prevention of crimes of that nature does not corresponding with their widespread nature. Sufficient steps are not taken to identify the conditions and circumstances contributing to the commitment of crimes in such cases.

The cooperation aimed at the prevention and solving of these crimes is not on an adequate level with the necessary authorities, such as those of migration, refugee movement, adoption, tourism, protection of state borders, customs, employment provision, passport regime, formulation of invitations and other similar services.

There is inadequate control over the operative and research activities of police to identify the persons being sought. There is no surveillance of persons not sentenced to imprisonment for similar crimes having taken place in the past. Many persons prosecuted were formerly sentenced for similar behavior. Some culprits continued criminal activities even while being under investigation[15].

Back in 2004, the report by the RA Human Rights Defender stated that there is no entity that works with the victims of trafficking in Armenia by providing them with psychological and legal services; it is mainly non-governmental organizations that deal with those issues. This issue has not been resolved so far. The establishment of such an entity would have an important significance to ensure the reintegration of victims of trafficking into society.

4.5. Rights of Children

The previous reports of the RA Human Rights Defender dealt with the issues of the divorced and parents living separately from their children, as well as cases of parents living with the child and abusing his/her rights. These issues are pressing today as well. The Service for Compulsory Execution of Judicial Acts is in charge of the enforcement of decisions of courts on meetings between parents living apart from the child with the child if there is a lack of facilities for the meeting, or even when the child does not want to deal with that parent.

Studies show that the trusteeship and guardianship body, the participation of which is mandatory during the investigation of such issues, does not study the issue in question with much detail. They do not supervise the behavior of the parent entitled to communicate with

[15] Reference prepared by the division of fight against the trafficking of investigation department of RA Prosecution General about the registered and investigated criminal cases as by the Articles 132, 1321, 261 and 262 of RA Criminal Code in 2006.

the child during the enforcement of court decisions. Investigations show that the cases of ignoring the rights of children whose parents live separately are quite prevalent.

Example 1

The applicant informed the RA Human Rights Defender that, by the verdict of the RA Civil Court of Appeals dated 20.12.2005, he had been entitled to meet with his son (born on 21.05.2003) every Tuesday and Saturday from 11 am till 3 pm. A procedural case was filed in this regard. During eight months of 2006, he should have around 60 meetings with his son, whereas he met his son only three times. The relatives of his former wife always obstructed his meetings with his son. The relevant officials of the Service for Compulsory Execution of Judicial Acts did not perform their duties properly, as a result of which the legal ruling of the court was not enforced and he could not meet with his son.

As a result of considering the complaint, the Yerevan District Office of the RA Ministry of Justice Service for Compulsory Execution of Judicial Acts stated that, on 29.08.2006, the Service for Compulsory Execution of Judicial Acts made a decision on forcing the people in question to undertake some measures and warned that, in case of not complying with this decision, the latter will be subject to administrative sanctions. As of 06.10.2006, those in question did not comply with the requirements of the Service for Compulsory Execution of Judicial Acts and he/she/they continued to obstruct the visit of the son with his father on the established days and times.

Taking into account the aforementioned circumstances, on 06.10.2006, a decision was made to subject the person/s in question to administrative sanctions and an administrative fine was appointed amounting to one hundred times that of the minimum wage. The consideration of the complaint is still continuing.

There was a case in which police officers crossed the limits of their jurisdiction, in violation of the requirements of Article 57 of the RA Family Code. They took the child from the applicant and handed him/her over to the mother.

Example 2

The applicant informed the Defender that, on 06.10.2006, the officers of the Yerevan Police Department's Arabkir division abducted his/her three years old grandchild from the address 69, Kovkasyan Street and handed him/her over to a woman, whom she did not see and with whom he/she is not acquainted. According to the explanations given by the Arabkir division, the child, born on 15.11.2003, was handed over to his/her mother by RA police officers. The process of handing over took place within the legal framework and with all the necessary documents available.

With regards to this application, the Defender made a decision on seeing a violation of human rights in the activities of the officers of the Yerevan Police Department's Arabkir division, and it has been recommended to conduct an internal investigation regarding the officials that violated the requirements of legal acts.

The decision of the Defender was justified by the following facts: according to Article 57 of the RA Family Code, parents can claim the return of their child from the person taking care of him/her without using any legal grounds or without any court decision. In case of a dispute, the parents can go to court to protect their parental rights. The police officers, taking into account the general principles of democratic procedures, i.e. the necessity to listen to both of the parties, should have given an opportunity to the person keeping the child to express his/her position prior to handing over the child. Even if keeping the child is an obvious violation of the parent's rights, the exercise of measures without a court order is not acceptable in such cases.

It is appropriate to briefly deal with some issues connected with the needs of refugee children's legal protection, due to the incomplete legal regulation of the procedures of receiving citizenship. This issue has already been raised by the RA Human Rights Defender's reports of previous years; however, it has not been settled. In particular the matter is about Article 20 of the RA "Law on refugees", according to which "the refugee children lose the status of refugee, if, in the order established by law, their parents acquire the citizenship of the Republic of Armenia…".

After having lost the status of a refugee, in order to clarify the further legal status of the child, Article 16 of the RA "Law on citizenship" must be dealt with, which pertains to the grounds of acquiring citizenship. Article 16 of the law stipulates that children under 14 of parents that acquired Armenian citizenship likewise acquire Armenian citizenship. Thus, if the parents of a child under the age of 14 acquires Armenian citizenship, as a result of which the child loses the status of a refugee, then by the RA "Law on citizenship", the child get Armenian citizenship.

As for refugee children aged 14 to 18 (in this case, the matter is about the persons deported from Azerbaijan during 1988-1992), then, in case their parents get Armenian citizenship, their further status is not legally regulated. Article 22 of the RA "Law on citizenship" regulates the procedure of getting citizenship for 14-18 years old children only in case when their parents change their citizenship. When the matter is about parents acquiring citizenship, then, in this case, the legal status of 14-18 years old children is not regulated. Consequently, in case parents of 14-18 years old children acquire Armenian citizenship, the refugee children lose their status, becoming persons without citizenship. In case of such legal regulation, the legal status of 14-18 years old refugee children becomes even worse.

Taking into account the aforementioned, the Defender has sent a letter to the Chairman of the RA National Assembly, recommending undertaking relevant measures to eliminate the existing contradictions in the RA "Law on refugees" and "Law on citizenship". During 2006, the RA Human Rights Defender visited orphanages and schools regularly. The state of facilities in orphanages can be rated as good, but most of the schools in Yerevan have awful hygienic and sanitary conditions and, the schools are not sufficiently heated in winter.

ANNEXES

Annex 1

Charged 10% shall be returned

The RA Human Rights Defender Armen Harutyunyan continues to follow the activities regarding the return of the 10% income tax charged from residents removed from areas slated for seizure. With regards to this matter, the Defender has applied to and is in permanent correspondence with the Head of the RA Tax Service, the Mayor and representatives of other government agencies, recommending them to return the charged amounts as quickly as possible and give clarifications about the process within the period established by law, . These kinds of transactions cannot be deemed as generation of income and, consequently, charging 10% from the compensation amounts is unacceptable.

The Defender is also working on the RA draft "Law on seizure of property for public and state needs". The Defender has already submitted his preliminary recommendations and comments about the draft, expressing his negative opinion from the very beginning, as some provisions of the draft violate one of the fundamental human rights, the right to property. The Defender is going to submit his final opinion about the aforementioned draft law to the RA National Assembly.

Annex 2

The issue of Kozern district residents continues to remain at the center of the Defender's attention

The RA Human Rights Defender has sent another letter to the Mayor of Yerevan Y. Zakharyan. Based on numerous complaints received at the staff of the Defender and a range of media publications on many occasions, the Defender has already referred to the heads of various government agencies with his recommendations to recognize the property rights of residents of the Kozern district.

The matter in question is that the first lane off Proshyan Street is in the areas slated for seizure and the residents demand that prior to starting the process of acquiring the real estate from them, their rights towards the property in question must be recognized in the order established by law.

Based on all this, in his letter addressed to the Mayor, Armen Harutyunyan recommends making amendments in the respective decree and directly mention that, as a result of the studies of the respective commission, it has been decided to settle the issue of title of the owners of those pieces of property in the first lane off Proshyan Street, and only after that must the activities regarding their seizure be started, in order to ensure the possibilities of the protection of the rights of the residents.

Annex 3

The process of returning the 10% has already started

RA Government has already stipulated the procedure of returning 10% income tax charged from the residents of the alienated areas, according to which 10% income tax, which was charged from the aforementioned citizens, shall be returned within one month upon this procedure's effectiveness.

Let us remind that being consistent the RA human rights defender Armen Harutyunyan has applied to and been in permanent correspondence with the representatives of the relevant government agencies - recommending within the period established by law, as quickly as possible, to return the charged amounts and give clarifications about the process. This kind of transactions cannot be deemed as generation of incomes and consequently charging of 10% from the compensation amounts is inacceptable.

Annex 4

Membership to the ICC of the RA Human Rights Defender

In 2005, the institution of the Human Rights Defender submitted an application to become a member of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). Only those institutions complying with the Paris Principles can become a member of this committee, and, so, it is evident why there are less than fifty members in the committee. The issue of the membership of the RA Human Rights Defender was discussed in April this year and the accreditation committee decided to give the institution "A(R)" status and, in October, the RA Human Rights Defender received "A" status as an institution, which shows that this body fully complies with Paris Principles.

The institution of the Human Rights Defender is also already a member of the Institute of European Ombudsmen and the Institute of International Ombudsmen.

The letter addressed to the RA Human Rights Defender Armen Harutyunyan by the Chairman of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) is presented in English on the next page.

CHAIRPERSON
THE INTERNATIONAL CO-ORDINATING COMMITTEE
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DATE 7 November 2006

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OREF ICC/Acc/2006/11-02

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Dear Human Rights Defender,

In my capacity as Chairperson of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), I am writing to inform you of the results of your accreditation application to the ICC. Please be informed that the members of the ICC endorsed the recommendations made by the Sub-Committee on Accreditation[1] during the 18th session of the ICC on 27th October 2006. The report and recommendations of the Sub-Committee on Accreditation are enclosed with this letter.

The ICC accepted the recommendation of the Sub-Committee that the Human Rights Defender's Office of Armenia be accredited status A.

The National Institutions Unit of the Office of the United Nations High Commissioner for Human Rights in its capacity as Secretariat to the ICC, as well as I, stand ready to provide you any necessary additional information.

Please accept the assurance of my highest consideration.

Yours sincerely,

Morten Kjaerum
Chairperson, ICC

cc. Ms. Maureen Armstrong, Chairperson, Sub-Committee on Accreditation
Mr. O. Nowosad, Coordinator of the National Institutions Unit of the Office of the United Nations High Commissioner for Human Rights

[1] In accordance with the Rules of Procedure of the ICC, the Sub-Committee on Accreditation has the mandate to review and analyze accreditation applications and to make recommendations to ICC members on the compliance of applicants with the Paris Principles.

Annex 5

RA Human Rights Defender's letter addressed to the RA Government

To: The Prime Minister of the Republic of Armenia
Mr. A. Margaryan

Respected Prime Minister,

Article 218 of the RA Civil Code and the Article 104 of the RA Land Code form the basis of the RA Government Decrees during 2001-2005 on seizing land and its property for the needs of the implementation of the Yerevan development projects. By the decision made on April 18, 2006, the RA Constitutional Court recognized Article 218 of RA Civil Code, Articles 104, 106 and 108 of the RA Land Code and Decree N 1151-N of the RA Government dated August 1, 2002, as contradicting Article 31 of the RA Constitution. This makes all the decrees of the RA Government based on those legal acts anti-constitutional.

According to Article 6 of the RA Constitution, "The Constitution of the Republic has supreme legal force and the norms thereof shall apply directly.

All laws shall conform to the Constitution. Other legal acts shall conform to the Constitution and the laws".

According to paragraph 2 of section 2 of Article 8 of the RA "Law on legal acts", "The laws having been recognized as contradicting the Constitution of the Republic of Armenia, as well as the legal acts having been recognized as contradicting the Constitution and the laws of the Republic of Armenia, do not have legal force".

According to Article 74 of the same law, the fact that the Constitutional Court has recognized the legal act as contradicting the Constitution is a basis to annul that legal act. The same article stipulates the ways of annulling the legal acts that have been recognized as anti-constitutional and reinstating the rights violated by such acts.

Consequently, Article 218 of the RA Civil Code and Article 104 of the RA Land Code, Article 218 of the RA Civil Code, Articles 104, 106 and 108 of the RA Land Code and Decree N 1151-N of the RA Government dated August 1, 2002 recognized as anti-constitutional by the RA Constitutional Court cannot have legal force and the constitutional norm concerning this matter shall be applied. In this case, Articles 8 and 31 of the Constitution shall be applied as directly-applicable norms, as long as there is no law passed according to Article 31 of the Constitution in the order established by the aforementioned decision of the RA Constitutional Court.

Under these circumstances, and by the complaints we received, land and property, those real estate holdings which belong to citizens as private property, are still being seized in Yerevan for public needs in the same way based on the acts that were recognized as anti-

constitutional. The developers are going to court once more to force the owners to sign contracts with the offered amount and to evict them from their property.

This process cannot be deemed as legal, if, in the process, the citizen is deprived of:

a/ the right to challenge the justification of the forced seizure of the property,

b/ the right of challenging the amount of compensation and its being an initial payment, even when there is dominant public interest.

As an example, in Yerevan, at the address 3/2 Abovyan Street, the buildings of that property were demolished on 23.05.2005 without having informed the owners or their representatives.

Besides, the eviction took place without prior negotiations with the owner and the latter did not have an opportunity to challenge the justification of the seizure.

The owners of the property's buildings were evicted and the facilities were demolished with the compensation identified by the developer. In order to show just how relevant the sum of compensation was, it is enough to mention that land with an area of 303.6 sq. m. was evaluated at 63 million drams.

These cases absolutely contradict the principles stipulated by the laws based on precedent of the European Court and, in case of having such cases in the European Court, the Republic of Armenia may lose.

In order to prevent further violations of rights of citizens in Yerevan by the implementation of development projects and the need of reinstating the violated rights, I recommend that, by enforcing the requirements of Article 74 of the RA "Law on legal acts":

1. to suspend the forced seizure of the private property of citizens for public needs until the adoption of a law regulating such processes or to implement it in compliance with the aforementioned clause,

2. to discuss the possibility of returning the 10% income tax charged from the amounts granted to the owners and users by the previously-concluded contracts.

Respectfully,

A. Harutyunyan

Annex 6

RA Human Rights Defender's letter addressed to the Mayor of Yerevan

To: The Mayor of Yerevan
Mr. Y. Zakharyan

Respected Mayor,

I am concerned about the fact that, in many cases of the property-seizure process within the Yerevan development projects, the recognition of the property rights of citizens is denied merely on formal grounds.

It is encouraging that, regarding the development of the first lane off Proshyan Street (Kozern district), an inter-ministerial preliminary examination commission has been established. It was assumed that the commission would study the issues of the district and would propose such solutions, which would ensure the protection of the rights of citizens within the law, while, according to the residents of the district, the commission considers its task to be only mapping and does not bring up the issue at the management council of the PIU, of considering the seized property as the ownership of the possessor by Articles 187 and 188 of the RA Civil Code, which is also proposed by the decision of the Defender made on 16.06.2006, as a result of considering the complaint of the residents of the first lane off Proshyan Street.

This insistence of ours arises from the fact that, there are many residents in the seized area whose property was not legalized due to the indifference of public bodies and merely formal rejections and legal gaps.

The fact that in the period of force of the RA "Law on the status of facilities and buildings constructed without permission and land plots occupied without permission", the land plots under the possession of these persons have not been legalized based on the fact that, up to May 15, 2001, they were not registered at the cadastre. The question is, which facilities constructed without permission were indeed registered, if the facilities existing since the 1930s and 40s and the land plots since occupied were not registered ?

Now, when we face the issue of seizing these structures and pieces of property, when we have to provide those residents with apartments, the protection of residents while taking into account these unique circumstances must be ensured.

In response to the complaint addressed to the RA President, with which the property rights towards the facilities and property that have been possessed for many years were apparently recognized on 21.07.2006, the PIU replied, "According to the existing legislation of the Republic of Armenia, one has to refer to court in order to recognize property rights towards real estate by retroactive force".

This answer shows that, right after the mapping of the commission, they will demand the eviction of the residents from their property, recognizing them as tenants, and that the complete implementation of their rights will not be ensured.

One cannot agree with the comment that the property rights of the citizens by the force of Articles 187 and 188 of the RA Civil Code can be recognized only in court.

Our opinion is that the need of settling this matter in court emerges only in case of disagreement between the parties. In this case, if the Mayor, as an authorized body, sees that the grounds established by the law exist, he is entitled to recognize the property rights of the plaintiff. The RA Civil Code does not limit his right.

The protocol decree N 86 dated 05.05.06 of the Yerevan Urban Development Project Implementation Unit (PIU) management board on setting up an inter-ministerial commission has not specified the objective of the commission with regards to recognizing property rights, which serves as a reason for the residents not to trust the commission.

Based on the aforementioned, we again recommend, prior to starting the real estate seizure of the residents of the first lane off Proshyan Street, the issues connected with the recognition of their property rights must be settled and, with this purpose, the aforementioned decision of the PIU management board must make an amendment and directly mention that, based on its studies, the commission concludes to recognize the property rights towards the real estate by its possessor.

Respectfully,

A.Harutyunyan

Annex 7

The Defender's opinion on the RA draft "Law on seizure of property for public and state needs"

O P I N I O N
on the RA draft "Law on seizure of property for public and state needs"

Article 31 of the RA Constitution stipulates that the private property may be seized for the needs of the public and the State only in exceptional cases of prevailing public interests, in the manner prescribed by the law and with prior equivalent compensation.

The need of passing such a law is also important in order to clearly stipulate the circumstances and conditions, only in case of which the seizure of the property can be considered permissible for public and state needs, and also to identify and clarify the meaning and content of the concepts of "public and state needs" and "exceptional cases of prevailing public interest".

We think that the draft law put for discussion does not identify the meaning and content of those concepts and the provisions proposed by it cannot be considered as norms preventing violations of right identified in these procedures.

In this regard, we recommend including and specifying the following concepts:

1. Define the following: what does public and state needs mean and when can those needs be deemed as exceptional for such interests, the necessity of satisfying which can be justified by the seizure of the property?

These definitions shall be based on the principles declared by Article 3 of the RA Constitution, in particular that "The human being, his/her dignity and the fundamental human rights and freedoms are ultimate values".

Consequently, the law should mention which public needs can be considered as prevailing over the human rights declared as ultimate human values.

We think that the definition can contain obviously public needs that must be met, its fulfillment being of vital importance for the public, with undesirable consequences emerging for the public in case of not satisfying them, and the impossibility of satisfying that need, except through the seizure of the property.

Article 4 of the draft can be meaningful only in case of stipulating a definition of prevailing public needs. In case of not having such a definition, the right of the owner to appeal against the Government decree on seizing the property becomes impossible. The court itself cannot select criteria; the court shall be based on the criteria defined by the law.

2. In any given case, the bearer of the public and state needs is the State. Consequently, with the purpose of satisfying that need, the property can be seized only to the State; no

other entity can acquire it. The use of the "acquirer" concept in the draft under discussion, and as such, considering the community and even an organization to be one, is unacceptable.

The State can assign an organization and even an individual to implement this purpose, which, however, cannot act as participants of the property-seizure process; the rights of the property owner and other property rights-holders cannot be fully protected, if a party of the seizure contract is not the State.

The concept of an "acquirer" should be completely withdrawn from the draft.

3. The definition of the price of the seized property is the main arena of the process, which generates discontent and discord.

The draft foresees the market value as the main criteria for compensation. The fact that there cannot be formulated open market value in the areas of real estate seizure is ignored. If it is left up to the court to determine it, then there is the issue of what criteria the court should use. It is not fair to stipulate the market value, as, in this case, the fact that the seizure takes place against the will of the owner is not taken into consideration; the seized property is more valuable for the owner than the market value it possesses. Consequently, while determining the market value of the seized property it is necessary to simultaneously apply other criteria, for example, the possibility of providing similar living conditions for the owner at other places.

If the seized property is an apartment, then why don't we consider providing the owner and the holder of apartment rights with another well-furnished apartment or a land plot to build a house? In parallel with all this, the order and conditions of determining the market value should be stipulated by a separate article. As in all cases, the evaluation of real estate should be done by a licensed evaluator and the licensing is done by a public body, then why can't the owner of seized real estate reserve the right of calling for an evaluation, leaving the evaluation expenses to the State?

4. The draft law accepts the idea of a preliminary examination of the seized property; however, it is constrained by the goals of the "acquirer", to prepare a property description, which will be the basis for not making payment to the owner for further improvements.

In reality, the preliminary examination of the seized property should have an objective of not only stating the property description, but also identifying everyone that has got property rights towards it, including unregistered belongings of the property and possibilities for their legalization, the possibilities of bypassing the property seizure in order to implement the main objective.

We think that the preliminary examination of the property should precede the decision made on seizing the property for public and state needs.

5. The purpose of the law is to contribute to the rehabilitation of the rights violated by the processes already under implementation, while Article 18 of the draft law tries to legalize the entire previous process, ignoring the well-known decision of the Constitutional Court on this. Article 18 of the draft law should be removed and, instead of it, an article should be stipulated, with which a retroactive force can be given to those articles of the law to be passed, which are favorable for the owners of the seized property and other property rights-holders.

6. Article 160 of the RA Civil Code prohibits appealing against Government decrees in courts of general jurisdiction. Consequently, together with the overall package of this draft law, it is also necessary to submit a draft law on making amendments in Article 160 of the Civil Procedures Code.

RA Human Rights Defender

A. Harutyunyan

Yerevan
18.10.2006

Annex 8

Application of the RA Human Rights Defender to the RA Constitutional Court

To: The Chairman of the RA Constitutional Court
Mr. G. Harutyunyan

Applicant: RA Human Rights Defender
A. Harutyunyan
12, Proshyan Street, Yerevan

APPLICATION

on determining the compliance of clauses 2 and 3 of paragraph 2 of Article 31 of the RA "Law on political parties" (July 03, 2002, HO-410-N) with paragraph 2 of Article 28 and paragraph 1 of Article 43 of the RA Constitution

Clauses 2 and 3 of paragraph 2 of Article 31 of the RA "Law on political parties" stipulate the following grounds for the dissolution of the political parties: the political party is subject to dissolution, if, at any two consecutive elections of the National Assembly, it has received less than one percent of total number of votes and inaccuracies cast for electoral lists of all the political parties participating in the elections, as well as if it does not participate in an election to the National Assembly on proportional basis and less than one percent of the total number of votes and inaccuracies cast for electoral lists of all the political parties participating in the elections during the elections preceding or after it.

We find that clauses 2 and 3 of paragraph 2 of Article 31 of the RA "Law on political parties" do not comply with paragraph 2 of Article 28 and paragraph 1 of Article 43 of the RA Constitution for the following reasons:

Paragraph 2 of Article 28 of the RA Constitution stipulates the right of each citizen to form political parties with other citizens and to join such parties. At the same time, paragraph 1 of Article 43 of the RA Constitution foresees that some fundamental human and civil rights and freedoms (including the right stipulated by Article 28) may be temporarily restricted only by the law with the purpose to achieve the objectives stipulated by that article. However, the dissolution of a political party on the grounds of not acquiring the necessary number of votes during the elections does not comply with the objectives of limiting the fundamental rights and freedoms foreseen by paragraph 1 of Article 43 of the RA Constitution.

Also, the disputed provisions of the RA "Law on political parties" contradict paragraph 2 of Article 7 of the RA Constitution as well, according to which the political parties are formed freely, contributing to the formation and expression of the people's political will. It is obvious that those political parties which failed during parliamentary elections as per the disputed provisions of the RA "Law on political parties", can further contribute to the formation and expression of the people's political will even when they continue their activities.

Based on the aforementioned and guided by paragraph 1 of Article 100 and paragraph 8 of Article 101 of the RA Constitution, I request you to determine the compliance of the clauses 2 and 3 of paragraph 2 of Article 31 of the RA "Law on political parties" with paragraph 2 of Article 28 and paragraph 1 of Article 43 of the RA Constitution.

RA Human Rights Defender

A. Harutyunyan

Annex 9

The Application of the RA Human Rights Defender to the RA Constitutional Court

To: The Chairman of the RA Constitutional Court
Mr. G. Harutyunyan

Applicant: RA Human Rights Defender
A. Harutyunyan
12, Proshyan Street, Yerevan

Respondents: RA National Assembly
RA Government

APPLICATION

on determining the compliance of Article 218 of the Republic of Armenia Civil Code, Articles 104, 106 and 108 of the Republic of Armenia Land Code and Decree N 1151-N of the Republic of Armenia Government dated August 1, 2002 "On the implementation measures of development projects in the Yerevan Central District Community" with Article 31 of the Constitution
of the Republic of Armenia

By the law passed by the National Assembly of the Republic of Armenia on June 17, 1998, the Civil Code of the Republic of Armenia was enforced and, on May 2, 2001, the Land Code of the Republic of Armenia was passed.

On August 1, 2002, the Government of the Republic of Armenia passed Decree N 1151-N "On the implementation measures of development projects in the Yerevan Central District Community".

Article 218 of the Republic of Armenia Civil Code, Articles 104, 106 and 108 of the Republic of Armenia Land Code, as well as Decree N 1151-N of the Republic of Armenia Government dated August 1, 2002 "On the implementation measures of development projects in the Yerevan Central District Community" do not comply with paragraph 1 of Article 8 and Article 31 of the Constitution of the Republic of Armenia, as those lack the justifications of "cases of prevailing public interests". Only in case of their existence can the seizure of the property for public and state needs be deemed as consistent with the requirements of the RA Constitution.

Based on the aforementioned, and guided by paragraph 1 of Article 100 and paragraph 8 of Article 101 of the RA Constitution, I request you to determine the compliance of Article 218 of the RA Civil Code, Articles 104, 106 and 108 of the RA Land Code and Decree N 1151-N of the RA Government dated August 1, 2002 "On the implementation measures of development projects in the Yerevan Central District Community" with the Article 31 of the RA Constitution.

RA Human Rights Defender

A. Harutyunyan

“”Tigran Mets”” publishing house CJSC