

Annual Report

on the activities of the Republic of Nagorno Karabakh Human Rights Defender and violations of human rights and fundamental freedoms in the country during the year 2010

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¹ Hereafter "Human Rights Defender" or "the Defender"

Introduction

The aim of the annual report of the Human Rights Defender, addressed to the prevention of cases of violation of human and citizen's fundamental rights and freedoms that have become known to the Defender, caused by local self-government bodies, and to their restoration and other similar cases, is to inform the state authorities and the public about the activities performed by the Defender, as well as about measures suggested for improvement of the situation of human rights protection in the country.

According to Paragraph 1 of Article 17 of the NKR "Law² on Human Rights Defender" during the first quarter of each year the Defender introduces to the President of the Republic of Nagorno Karabakh, legislative, executive and judicial powers a report that documents his activities and details violation of human rights and fundamental freedoms in the country during the previous year, and during the spring session of the National Assembly (NA) the Defender introduces it at the conference of NA. The report is also presented to media and appropriate non-governmental organizations.

In this report an assessment is given to the situation of human rights protection and issues related to it. The report provides information about human rights violations and analysis of their reasons, steps taken by the Defender according to the fields of his activities including the response of state and local self-governing bodies and officials to his suggestions.

The report is prepared on the basis of the NKR present legislation law and the investigation of the situation. It was implemented by summarizing the written and oral complaints of the citizens and the information that have become known to the Defender and his staff during their meetings with people and visits to military units, places of forced detention of people including places of preliminary detention and deprivation of liberty, on the basis of materials received from state and local self-government organisations and published in mass media, as well as due to the investigation carried out by the Defender regarding the occasions and cases of public importance.

So, the report cannot be a whole description of the situation of human rights, for it does not reflect cases of human rights violation, which have become known to state and other relevant bodies or have not been complained to the Defender by citizens.

It must be mentioned that like the legislation regulating activities of the ombudsmen of other countries, the NKR appropriate law, in the same way, does not foresee reflection of information about achievements in the democratic transformations and in the field of human rights state protection. For this simple reason in this report are not analyzed manifold means of legislative and organisational character undertaken by the state for the improvement of economic, law enforcement and other areas, which in their turn contribute to the improvement of the state of human rights protection.

However, taking into account the fact that by the affirmation and development of cooperation with

² Hereafter "Human Rights Defender" or "The Defender"

ombudsmen of other countries and relations with the NKR Human Rights Institution the frames of those who want to get acquainted with the report are constantly broadening, it becomes necessary to slightly step aside from the accepted norms briefly introducing also the institute as a de facto independent state body but still having no legal recognition.

The institute of the NKR Human Rights Defender acts since April 17, 2008.

The institute of the Defender acts in correspondence with the fundamental principles (Paris principles) concerning the status of national institutes dealing with encouragement and protection of human rights which are also enshrined in the NKR Constitution and in the “Law on Human Rights”.

But the creation of the NKR Ombudsman Institute cannot be considered as a natural step that follows the suit of young democratic nations which actively assimilate traditions and experience of the early established democratic institutes in Western Europe.

It was quite a difficult choice, for as different from many other countries for our situation it was necessary to find an exact fundamental answer to an important question: “whether it is necessary for a country which acts in conditions of permanent threat of war resumption and regime of military operations (hostilities) to create an ombudsman institute when the laws of the country being in such a regime, stipulates not the encouragement of human rights, but vice versa, they limit some of them, and if the answer is “yes”, whether it should completely or partially correspond to the classical rules and ideas of such an institute?”

Now we can surely state that the creation of this new state law enforcement body was one of the most important components of democratic reforms in our country aimed at the improvement of state and formation of civil society.

I have to regretfully state that unlike the other internationally recognized states formed after the collapse of the USSR, where the similar law enforcement organizations were created and consisted with the advice and help (methodical and financial) of different international law enforcement structures dealing with human rights protection issues, the NKR Ombudsman Institute is still deprived of such opportunities.

In our opinion the unique fact in the international practice of the creation and functioning of the human rights institute in a country being in conditions of martial law could at least cause to take interest of the mentioned international structures.

It is also noteworthy that during about 20 years the action of the mentioned regime neither legislatively nor in other way, no human right was limited in the country stipulated in the Universal Declaration of Human Rights and in the NKR Constitution, as well as in other laws wholly taken.

Part 1. Main areas of the NKR Human Rights Defender's activities

1.1 Activities related to complainants (applicants)

1.1.1 Statistical analysis of complaints

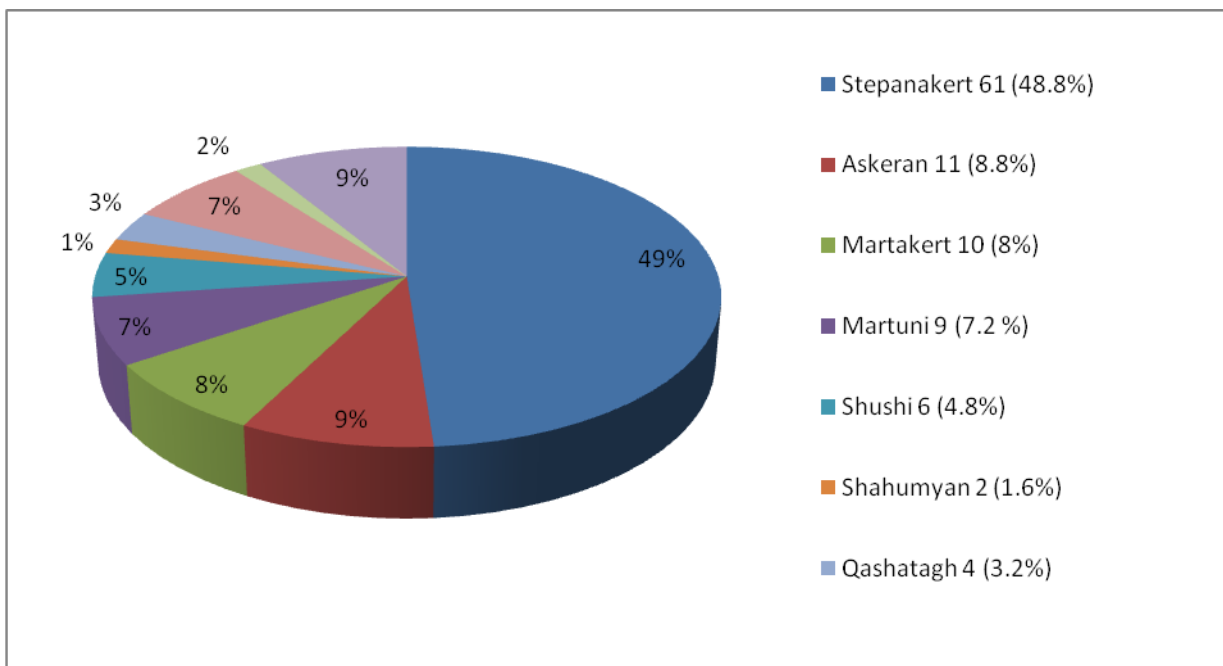
During the year 2010 the NKR Human Rights Defender received 212 complaints from 243, of which 124 were oral, and 88 written (including collective complaints).

Complaints alleging violations of human rights were received from residents of all regions of the Republic of Nagorno Karabakh, as well as from the citizens of the Republic of Armenia and Russian Federation. Table 1 and figure 9 below illustrate the number of written and oral complaints by the NKR regional units and foreign countries.

Table 1. Number and percentage of the complaints by the NKR administrative-territorial units and foreign countries

	Region	Total number	Percent Change
1.	Stepanakert	101	47.6%
2.	Askeran	16	7.7%
3.	Hadrut	9	4.3%
4.	Martakert	23	10.8%
5.	Martuni	21	9.9%
6.	Shushi	26	12.4%
7.	Shahumyan	4	1.8%
8.	Qashatagh	4	1.8%
9.	RA	5	2.3%
10.	RF	3	1.4%

Figure 1. Number and percentage of the complaints by the NKR administrative-territorial units and foreign countries



Complaints addressed to the Defender were received during the Defender's or his staff's visits, as well as via citizens' visits to the Defender's staff or telephone calls.

Statistical picture of the received complaints by the branches of right are illustrated in Table 2 below.

Table 2. Thematic picture of the complaints

	Theme	Number	
		Count	Percentage
1.	Right to judicial remedy	50	23.7%
2.	Labour right	37	17.6%
3.	Right to ensuring of living sufficient standard	28	13%
4.	Property rights	20	9.7%
5.	Social security right	18	8.6%
6.	Right to health care and medical help	12	5.8%
7.	Right to present complaints, suggestions and petitions	9	4.6%
8.	Right to sanctity of the home	7	3.4%
9.	Civil rights	6	2.8%
10.	Civil right relations	6	2.8%
11.	Right to free movement and choice of home	5	2.3%
12.	Right to visiting persons in places of compulsory detention	4	1.8%

13.	Right to live in a favourable environment	3	1.4%
14.	Activities of local self-governing bodies	2	0.9%
15.	Education right	2	0.9%
16.	Right to human dignity	2	0.9%
17.	Information right	1	0.4%

The illustrated data show that inhabitants are most excited for the issues concerning the implementation of right to judicial defence, labour right, property rights, social security right, right to ensuring of sufficient living standard, which are more than 80 percent of the raised issues.

1.1.2. Meeting, visits, undertaken measures as a result of the discussion

To ensure the Defender's direct contact with the public and his swift and effective response to complaints in the reported period the NKR Human Rights Defender continued to pay special attention to meeting citizens. The Defender himself and his staff met with the citizens. Meetings were held in the staff during each working day, as well as in weekends for the comfort of applicants who work. During the year about 200 persons visited the staff, among which is included a part of people applied in oral and written forms. Meetings with people were held during visits made in different institutions and organizations.

In the year 2010 by the assignment of the Defender the staff visited State Non-Profit Organizations "Children Care and Protection Boarding Institution № 1", "Stepanakert Nursing House", Closed Joint Stock-Company "Psycho-Neurological Dispensary", Shushi penitentiary institution and investigative isolation cell.

During the visit to "Children Care and Protection Boarding Institution № 1" it was found out that there are 31 children, of which 27 are of school age, 4 children are smaller.

Although the results of the analysis show that the living conditions of the children can be considered satisfactory, however, we find it that all appropriate bodies should pay more attention to those children.

So, in witness of the headmaster of the institution a double-sided orphaned and two invalid children are not paid pension and the headmaster's attempts to find out the reason of this were all ineffectual.

Given that the acting law stipulates that such persons have the right to receive pension, in order to find out the reason of not paying pension to the above mentioned children I applied to the head of department of social security service of the NKR Ministry of Social Security, as a result they gave positive resolution to the question. By the written response № 403 of the agency dated November 11,

2010, it was cleared that after the adoption to State Non-Profit Organization “Children Care and Protection Boarding Institution № 1” on January 1, 2009, the sum of the pension of one of the children is accumulated in the personal account opened by his name in Stepanakert territorial department of social security, but the relative data are not noted in the child’s personal file. After introducing necessary documents by the headmaster for the appointment of the pension, the other 2 children were also appointed to social pensions, whose sums will also be accumulated in their personal accounts by their names in the territorial department. The mentioned children were also granted pension certificates which were given to the headmaster of the boarding institution to be saved in the personal records of the children.

On the basis of the investigation it was also found out that in September 2010 one of the children became 18 years old, but he was going on to live in the mentioned institution. On the results of the inquire carried out in the NKR Ministry of Social Security, it was found out that according to the order on “Granting flat to children without parents’ care” of the decree № 274 dated July 30, 2004 of NKR Government, the mentioned child is registered in the list of persons in need of house. The solution of this question is kept under the control of the Defender.

During the visit State Non-Profit Organization “Stepanakert Nursing House” it was found out that conditions of persons living there can be considered sufficient, but the territory of the organization needs to be repaired.

According to Article 8 of NKR “Law on Human Rights Defender,” the Defender or his representative is entitled to gain unhindered access to formations, institutions of preliminary detention or implementing criminal punishment, as well as other places of compulsory detention in order to hear the complaints of those people.

During the year 2010 the staff of the Defender several times visited NKR Shushi penitentiary institution and investigative cell, where they met with about 30 persons. During the meeting 12 convicts and 7 prisoners applied to the representatives of the Human Rights Defender’s staff and received corresponding legal consultation.

In the reported period 57 issues were addressed to the heads of different state and local self-government bodies in order to find out the position of competent officials concerning the investigation of complaints and the reasons introduced in it.

On the basis of examination of the received complaints and the investigation carried out on the own initiative more than 30 cases of human rights violation were found out. On this occasion the Defender addressed suggestions of advisory kind to the appropriate penitentiary bodies to eliminate the permitted violations or actions carrying possible damage of violation and to restore the violated rights of complainants.

One of the main aims of the Defender’s activities is giving people judicial consultation, as payable advocatory services are accessible not for everybody.

During the year more than 200 written and oral advice, including by telephone, were given to the citizens by the staff of Human Rights Defender.

1.2 Legislation improvement targeted activities

As has already been pointed in the previous two reports, the Defender's activities to improve the legislation is highlighted by the fact that the gaps, obscurities and discrepancies of the laws related human rights and fundamental freedoms and of other judicial acts may lead to violation of right during the exercise of the judicial act; the gap of a law makes impossible the effective protection of the law, and the obscurities and discrepancies give rise to arbitrary interpretations.

The activities to improve legislation of human rights regulation would be more effective, if practically the executive and legislative bodies had created conditions for the Defender's participation in the proceedings of drafting, discussing and adopting of such bills.

We had positive examples of such cooperation in the stage of harmonizing the acting legislation to the NKR Constitution, but in the year 2010 it was confined by only discussing two bills in the sessions of National Assembly and its commissions with the Defender's participation.

In the reported period during the implementation of the activities by the Defender and his staff aimed at the protection of human rights we met such cases when related to human rights legally unsettled state of the relation raised between a citizen and a state (local self-governing) body included danger of violation of human constitutional rights and practically led to such violations.

Below are presented some cases of this kind.

During the visit to "Psycho-Neurological Dispensary" CJSC it was found out that there was no law regulating relations connected with mental health supposed as human fundamental personal property, protection of rights of persons with mental derangements, due to which the full protection of the rights of people with mental derangement and generally persons engaged in these relations are not secured, particularly in cases of unwilling hospitalization, discharging from medical establishment and in other cases.

In order to fill this gap a petition was presented to the NKR Ministry of health care to discuss the question of undertaking corresponding draft law.

One more example:

A group of residents from Tumanyan street in Stepanakert informed that because of the dustbins set near their building there was an anti-sanitary condition. Taking into account the importance of the mentioned for clarification inquiries was made to the NKR Ministry of Justice to get informed whether any act had been registered (as) prescribed by the "Law on requirements to hygienic rules and norms on sanitary protection of territories of settlements." It was found out that such sub-legislative act was not registered and sanitary hygienic rules and norms are not valid in the country.

The mandatory nature of the adoption of this act proceeds from the requirements of the NKR "Law on

Protection of sanitary-epidemic security of population” adopted in 1998, which stipulates that NKR state hygienic and anti-epidemic service implements the drafting and affirmation of sanitary rules.

Given the above mentioned and following Article 16 of the NKR “Law on Human Rights Defender” the NKR Ministry of health care was suggested to charge the state hygienic and anti-epidemic service to draft and affirm the required sanitary rules and norms for sanitary protection of the territories for population. About a month ago the NKR Ministry of health and care informed that by the decree of the minister were affirmed sanitary rules and norms on “requirements of sanitary protection, gathering wastes of consumption, retention, transportation, drafting, recycling, use, neutralizing and burial, sanitary of the staff implementing works in the sphere of using wastes of consumption”, which were state registered by the NKR Ministry of justice.

Experience of last 3 years shows that the NKR “Law on Human Rights Defender” needs to be seriously improved as well. In November 2010 corresponding suggestions were introduced to executive and legislative bodies, the adoption of which would contribute to the affirmation of the structure of the institution and the effective protection of human rights.

1.3 Development of public relations, information, cooperation with non-governmental organisations

In view of the importance of the development of relations of the Defender with society as well as with mass media, it must be said that it provides the publicity and transparency of the Defender’s activity as well as gives opportunity to social wide arrays of public to be definitely informed of the level of protection of human rights in the country, as well as of the mechanisms of the protection of citizens’ rights.

During the year 2010 one of the main steps taken for the development of public relations were the periodical organizations of press-conferences where took part almost all the representatives of mass media. During the press-conferences journalists were given statistical data of the issues under discussion, and other informative materials concerning the questions raised by them.

During the reported period the Defender and the representatives of his staff repeatedly broadcast radio and TV reports and interviews, appeared in “Azat Artsakh” newspaper, gave interviews to local and foreign media services, such as “Regnum”, “De Facto”, “Armedia”, and others. In March, 2010 the Defender followed by the law presented his annual report to state bodies as well as to mass media.

Given the importance of internet nowadays and the interest of the majority of population in it as it had been foreseen in the year 2010 was created the official web site of the Defender (www.ombudsokr.am). The website contains necessary information concerning the activities of the NKR Human Rights Defender, it is periodically refreshed. Although the web site is not definitely worked out but it is already accessible to the public.

Non-governmental organizations are one of the main parts of the civil society. Challenging for the

protection of human rights they are the most important source of information and play main role in extending and teaching ideas of human rights.

Emphasizing the role of non-governmental organizations the Defender continued cooperation with the NKR and international non-governmental organizations. More close practical relations were set with NKR federation of trade unions, non-governmental organisations “Centre of Civil Initiatives,” “Association of Human Rights Protection” and the office of International Committee of Red Cross in Stepanakert. In the reported period the Defender and his staff participated in a number of measures organized by the above mentioned non-governmental organizations.

1.4 International cooperation

According to Article 2 of NKR “Law on Human Rights Defender” the Defender is favourable to the development of human rights in the field of international cooperation.

In the reported period the Defender continued his active activities in the field of international cooperation.

Yet in August 31, 2009, the Board of European Ombudsman Institute joint with Austrian company of right, followed by clause 1 of point 6 of the EOI Charter, adopted the NKR Human Rights Defender as an institutional member of the European Ombudsman Institute. But the Azerbaijani ombudsman as well as Azerbaijani ministry of foreign affairs and a number of other state bodies were not indifferent to the mentioned acquisition and by all means were trying to lay obstacles before the present cooperation between the Defender and the EOI.

Due to the complaints and objections of Azerbaijani ministry of foreign affairs and the ombudsman the EOI authorities began discussions concerning the issue on the membership of the NKR ombudsman with the EOI and a commission was formed which had to investigate issues on the membership of the NKR ombudsman’s with the EOI as well as with the ombudsmen of other internationally non-recognized countries.

In this connection the Defender through letters addressed to the president of the EOI and members of the authority expressed his position concerning the events and arguments set by the Azerbaijanis stressing that for such an authoritative organization dealing with the protection of human rights should rather emphasize the idea of the protection of human rights, and not the status of the country and he called the EOI authorities to stay above the civil considerations.

However, in May 27, 2010, the executive committee of the European Ombudsman Institute changing the charter of the organization passed a decision “to change all the ombudsmen of the de-facto territories from the status of institutional member to the status of individual member.” With the ombudsmen of a number of counties the status of the NKR Human Rights Defender was changed as well.

In the field of international cooperation it is necessary to distinguish the partnership of the NKR

Human Rights Defender's with the Human Rights plenipotentiaries of the republics of Transdnestrian Moldova, Abkhazia and South Ossetia.

On May 24, 2010 in Stepanakert an agreement on cooperation was signed between the NKR Human Rights Defender and the plenipotentiary of Human Rights of the Transdnestrian Moldovan Republic.

In December 2010 the NKR Human Rights Defender had a working visit to Transdnestrian Moldovan Republic to participate in the measures dedicated to the international day of Human Rights Defender in Tiraspol.

In the frames of the visit to the state university of Transdnestria after the name of Shevchenko a scientific-practical meeting on the theme "Development of the Institute of Human Rights" took place, which was dedicated to the International day of human rights. Participants of the conference discussed the questions concerning the activities of the institute of human rights and freedoms, the present situation, perspectives for development and the improvement of their protection mechanisms in self-recognized countries. In the conference the NKR Human Rights Defender spoke on the theme "History of the establishment and development and the influence of non-recognized NKR factor on some fields of its development." On December 10, 2010 the NKR Human Rights Defender joined the partnership agreement signed between the plenipotentiaries of Abkhazia, South Ossetia and Transdnestrian Moldovan Republic.

Part 2. Violations of Human Rights and Fundamental Freedoms

This part reverberates the data that have become known to the Defender concerning violations of human rights according to those branches of right that were more typical during the year 2010.

While performing analysis of violations examples are brought on the principle of electivity, given the importance of the issue for a citizen, the amount of the damage caused to his interests in the result of violation, and mainly without pointing the personal data of the applicant, which proceeds from the requirements of the Article 14, part 2 of the Law.

2.1. Right to judicial remedy

Articles 44 and 45 of the NKR Constitution stipulate that everyone should be entitled to legal remedies to protect his/her rights and freedoms and the right to a fair public hearing under the equal protection of the law fulfilling all the demands of justice by an independent and impartial court within a reasonable time.

The number of appeals and complaints concerning the activity of the courts continues to rise, and in 2010 it was around 50, in 2009 it was 30 surpassing it by 66.6%.

At the same time it should be noted that as illustrated by the analyses, the quantitative growth cannot be deemed as an index of increase of people's complaints from the quality of justice. It is rather

explained by considerable quantitative increase of civil and administrative cases examined by courts.

44 complaints out of the mentioned 50 were not accepted for consideration by the Defender otherwise the principle prescribed by the Law not to intervene into trial proceedings would be violated, 4 applicants were introduced to their opportunities of the right to defense, 2 complaints were accepted for consideration corresponding means and were taken, which were addressed to the prevention of further violations by courts.

A part of the complaints was addressed to the violations of such requirements of judicial legislation as 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.

Example 1.

In civil case the representative of the plaintiff appealed to the court of first instance of NKR court of general jurisdiction and asked the judge the copy of the protocol of the trial. The appeal was denied by the judge on the motivation that he should have to pay state duty. The denial became ground of the violation of the provision prescribed by part 3 of Article 139 of the NKR Civil Procedure Code, which states that “in the case of clear paper protocol, the copy of the written protocol is given to the persons engaged in the case on the basis of the written appeal.”

Part 10 of Article 9 of the NKR “Law on State Duty” gives an exhaustive enumeration of the list of those documents or their copies which must be given to the parties participating in the investigation of the case or other persons after paying state duty.

In the mentioned provision of the law and generally in any article of the NKR “Law on State Duty” nothing is spoken concerning the protocol of the trial.

Based on the above mentioned and given that the right to file a disciplinary proceeding towards the judge of the court of first instance according to clause 1 of Paragraph 1 of Article 103, is also an authority of the minister of justice, guided by clause 5 of paragraph 1 of Article 15 of the NKR “Law on Human Rights Defender,” minister of the NKR justice was suggested to appeal to the Board of NKR Justice to take under consideration the issue concerning the appealing of disciplinary sanction towards the mentioned judge.

As a result the mentioned judge was appealed to disciplinary sanction.

Example 2.

A convict in criminal case № 081 dated 01/2009 informed that in December 18, 2009 he was sentenced to deprivation of liberty by the court of first instance of the NKR general jurisdiction.

The applicant also informed that he does not speak literary Armenian, however he did not receive the copy of Russian translation of the Armenian sentence due to which he could not enter a reasonable protest to appeal court.

As the mentioned could seriously damage the right to legal protection of a person, a decision was made by the Defender to examine materials in criminal case.

Based on studies it was discovered that the copy of the Russian translation of the decree dated 09.03.2010 of the NKR appeal court on returning the appeal complaint had not been sent to the convict as well. And the fact that the convict does not know literary Armenian, is also approved by the materials in criminal case.

So, courts committed obvious violation of human right, but the sentence had already been recognized by a legally-enforceable court decision and the legal opportunities of eliminating the violation were exhausted.

Based on the aforementioned in order to devoid such violations in the future, the judges of both courts have been explained that Article 15 of NKR Civil Procedure Code obligates the prosecution of investigation body as prescribed by the same code to provide handing of the ratified copies of documents to appropriate people in the language which they speak.

It is noteworthy that a part of applicants even being aware that the Defender has not the right to intervene in judicial proceedings, at the same time ask his representative to be sent to the trial for monitoring. During the year the staff implemented several monitorings of the similar profile.

One of the main conditions of the whole implementation of the analyzed human right is everyone's right to receive legal aid. This is stipulated in Article 46 of the NKR Constitution, according to part 2 and part 3 of which everyone shall have a right to the assistance of a legal defender chosen by him/her starting from the moment of his/her arrest, subjection to a security measure or indictment. An accused having not sufficient means for paying for the service of a defense lawyer, as well as in other cases a person should be entitled to legal assistance at the expense of the state resources.

The latter is implemented by the office of the public defender for the preservation of which each year the state budget allocates 20 million drams.

However, as shown by our observations and the received complaints the quality of legal assistance rendered to people through this method is still far from the required level.

So, during the visits to the NKR Police penitentiary department people serving sentence often complained about disinterested, passive, even formal participation of the public defenders in the preliminary investigation of the case and in the stages of legal investigation pointing that they do not fully protect their interests and merely advise the convicts to plead themselves guilty and to implement urgent trial, sometimes even try to persuade them by all means.

Such behavior on behalf of the public defender, certainly, cannot contribute to the achievement of the aims of justice and causes a possible damage of violation of human rights.

The mentioned complaints of people sentenced to deprivation of liberty may arise due to such subjective circumstances as, for example, not implementation of his expectations regarding the results of the court trial, if not the objective preconditions of the appearance of such conditions.

Investigation showed that they have both organizational and legal nature.

So, there is no division between state funded public defender and other lawyers. Public defense is

implemented not by Article 45 of the NKR “Law on Advocacy” by the advocate working in the office of the public defender who should act on the basis of the labour agreement signed with the Chairman of the Chamber of Advocates, but it is implemented by means of combination by those advocates who mainly work fee-based.

Despite being financed by the state, however, the NKR “Law on Advocacy” does not stipulate provisions according to which the state could either participate in the formation of the office of public defender.

In this regard I think the mentioned law needs to be improved.

2.2 Labour right

The insurance of human right to a dignified life is mainly predetermined by the opportunity of working in relevant conditions and receiving deserved salary for work. That is why state ensured labour rights are one of the important indications for social welfare of population.

NKR Constitution comprehensively and fully defines human labour right as one of the rights of social importance. Everyone shall have the right to fair remuneration in the amount no less than the minimum set by the law, as well as the right to working conditions in compliance with the safety and hygiene requirements.

In the field of labour legal relations the state protection of realization of constitutional rights and freedoms is more concrete regulated by the NKR Labour Code and by other legal acts.

As the employee is a less protected party of the labour relationship the rise of his rights to the effectiveness of state protection is of a particular importance.

In the reported period the NKR Human Rights Defender received about 37 complaints concerning violations of rights to employment which form 17.6 percent of general number of the complaints.

Analysis of the complaints addressed to the Defender shows that in the field of labour relations prevailing violations are related to illegal solution of the labour agreement by the employer, not giving in time the employment record book to the people dismissed from work, unjust counting (accounting) and not paying in time their salaries.

Some of them are introduced below.

Example 1.

A resident of NKR Askeran region has informed that since 2004 she worked in the state non-governmental organization Central library after the name of Gourgen Gabrielyan as a librarian, but because of reducing the position from January 2009 she was dismissed from work and they did not preserve the deadline of the prior written notice, so she asked to restore her violated rights.

As a result of investigation of the mentioned issue, the Defender passed a decision on proposing of identification of human rights violation and implementation of necessary means and he suggested the

administration of the state non-governmental organization to pay the applicant penalty for each delayed day as provided in Article 115 of the NKR Labour Law. They realized the raised suggestion and the question had a positive solution.

Example 2.

By the examination of the application of a former driver of the staff of the NKR Ministry of Culture and Youth Issues it was discovered that his labour agreement was terminated by the order of the Chief of Staff in June, 2010 but the latter refuses to give him his employment record book on the ground that the applicant had spoiled the cell phone provided to him for use.

As the employer's requirement contradicts to paragraph 2 of Article 130 of the NKR Labour Law, due to the Defender's interference the employment record book was handed to the applicant, however, such behavior on behalf of the employer had substantially damaged the legal interests of the citizen depriving him from the opportunity of getting new job for about four months.

Example 3.

A resident of Stepanakert has informed that she worked in "Grigor Narekatsi" University but due to reaching retirement age the employer have terminated the labour agreement signed with her without prior written notice. As ensured by the applicant the employer did not also pay her the two weeks' severance pay.

The applicant asked for intervention in the question of restoring rights prescribed by paragraph 2 of Article 115 of the NKR Labour Code and Article 129 of the same code.

According to paragraph 2 of Article 7 of the NKR "Law on Human Rights Defender" the Defender does not discuss complaints concerning activities of non state bodies and organizations and officials, and "Grigor Narekatsi" is a private university.

Given that the applicant agreed his application to be transferred to the NKR State Inspectorate for consideration which has the jurisdiction to settle the case raised by the applicant followed by paragraph 3 of Article 10 and clause 3 of paragraph 1 of Article 11 of the NKR "Law on Human Rights Defender" it was decided to transfer the application to the NKR State Labour Inspectorate. According to the answer of the mentioned institute due to the investigations of the presented facts of the application it was discovered that the applicant's rights have really been violated by the administration of "Grigor Narekatsi" University and they ordered to satisfy her requirements by paying her severance allowance. As a result the question had a positive solution.

2.3 Right to free movement, settlement selection and civil right

Everyone legally residing in the territory of the Republic of Nagorno-Karabakh shall have the right to freedom of movement and choice of residence in the territory of the republic. Everyone shall have the right to leave the Republic of Nagorno-Karabakh.

Although only five persons applied on this question during the year, the restrictions of this right essentially influences human freedom as the right to free movement and choice of residence is one of the most important components of human right to freedom. The mentioned is illustrated in the following example.

A resident of Stepanakert has informed that after obtaining a flat she applied to the NKR Police passport department Stepanakert in to be registered in the new flat. Her request has been rejected on the basis of the Commission's conclusion on the issue of registration and deregistering from residence of the citizens of Stepanakert according to which registration is permitted only together with the husband.

Due to the Defender's letter to the Chief of police town department that the NKR Constitution as well as paragraph 1 of Article 24 of the NKR Family Code clearly regulate the legal relationship that both of the spouses are free in choosing residence. The mentioned right of spouses are not restricted by any acting law of the NKR. In the territory of the NKR the registration procedure is prescribed by the NKR Government's decree № 53 dated 23.03.1999 according to which these authorities are assigned to the NKR Police and the decisions of the mentioned Commission carry only an advisory and not obligatory nature.

In the result of our intervention the question had a positive solution.

As issues related to obtaining of NKR citizenship and the necessity of their legal regulation are adequately analyzed in the Defender's report of the year 2009 there is no need to repeat it. However it must be noted that despite of the significant reduction of the number of applications concerning these issues addressed to the Defender (in the year 2010 six applications were registered), the issues raised for people sometimes have decisive importance as the existence of citizenship is a precondition of the implementation of other rights, which can be proved in the following example:

A resident of Stepanakert has informed that in the year 2004 he married an Armenian girl born in the Republic of Georgia in 1981. She moved to NKR in 1997 under the age of 16 as an immigrant, consequently she did not receive a passport of Georgian citizenship. During the joint life they had two children which born in Stepanakert. The first child got a birth certificate and the second child was not given which caused obstacles during writing out of the newborn child from the maternity house. According to the applicant the reason of not giving birth certificate is the absence of the passport of the child's mother and for receiving it they had many times applied to the NKR Police department of Stepanakert.

The applicant also said that because of not granting NKR citizenship to his wife and a birth certificate to his second child they cannot benefit from any social assistance program, besides the child was not registered in the NKR health institutions and in fact he was left out of the local doctor's supervision.

In this regard the Defender sent petitions to the NKR ministers of Health Care, Social Security and Justice and to the Chief of the NKR Police.

Recently NKR Police informed that the applicant's wife was granted a passport from the Police department of passports and vizas. According to the written response of the NKR Ministry of Health Care the applicant's child is registered in the register of polyclinic department of the medical unit under a relevant number. The applicant was invited to the NKR Ministry of Justice where he was explained that according to the requirements of the acting law in exceptional cases when the document of identification of one of the parents cannot be presented the Civil registry bodies register information of the child's parents on the basis of their marriage certificate. In fact, in the given case the child's birth could be registered without introducing mother's passport. NKR Ministry of Social Security has informed that within the established deadline in the cases of appealing to health and social security department of Stepanakert Mayor, the applicant's family can use the lump-rights to the child's birth and receive state allowance for the child's care.

2.4. Right to ensuring of living standard. Social Security Rights

The mentioned human rights are analyzed following their importance and close intercommunication.

The universal declaration on human rights stipulates that everyone shall have the right to health and a standard of living adequate for himself/herself and for his/her family, including subsistence, clothing, housing and healthcare and social necessary services, as well as right to security, that is unemployment, disease, disability, widowhood, old age or in cases regardless his/her will to be deprived of other means of living.

This right is also enshrined in Article 37 of the NKR Constitution.

In the year 2010 the staff of the NKR Human Rights Defender received 28 applications regarding the insurance of sufficient life and improvement of necessary means for life, 12 of which were containing request on providing with residence territory and others contained issues of repairing them.

Investigation of applications show that despite of the means implemented by the authorities which were addressed to the repair of the damaged residence territories and to the possible assistance for improvement of housing conditions of the residents, these issues are still contemporary.

At the same time there are cases when such questions are not solved because not because of their difficulty but due to the indifference of the local authority.

Representatives of about three families of Nor Karmiravan community of Martakert region have informed that their houses are not provided with electric energy, as in contrast to others an air line for these houses was not carried and they asked our interference. Due to our interference the mentioned question received a positive solution.

According to Article 39 of the NKR 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 prescribed by the law.

In the reported period about 18 citizens applied to the Defender with questions regarding the mentioned field which mainly regarded allocation of pensions and clarification of the payment order.

Question regarding immediately the exercise of the right to pension is connected with the possibility of confirmation of the working experience as prescribed by law in case of absence of employment record book or other documents as prescribed by law.

For example, in June, 2010 a resident of Stepanakert informed that in October 2008 regarding pension age, he/she handed documents to the agency of “Social Security Service” of NKR Ministry of social security to calculate and appoint his/her pension age .

After the appointment of it the applicant has learnt by chance that the calculation of the length of working experience has been done not correctly. It did not contain two years of length of his/her working experience noted in the employment record book but this note was not properly recorded, in the case when after introducing the documents to the staff of the agency they orally informed the applicant that there were no shortcomings in the documents.

On the basis of the reference introduced by the applicant these 2 years have also been considered as insurance length of working experience and they have re-calculated the pension but she has not been paid the pension corresponding to two years length of working experience, i.e. the period from the time of the appointment of pension until the beginning of the next month.

Upon the request to clarify the mentioned questions due to the inquiry carried out by the Defender On June 22, 2010 the Chief of the agency of the “Social Security Service” of NKR Ministry of social security informed that on October 18, 2008 after introducing application and all the necessary documents the applicant was pointed insurance pension age. On March 19, 2010 after introducing an application and an additional reference her pension has been recalculated.

On the question whether the applicant has been informed about the shortcomings in the introduced employment record book, the Chief of the agency replied that “the territorial department informs the citizen in written form only in the case when not all necessary documents are attached to the application and the pension is denied” and that she has orally been informed about the miscalculation of the length of working experience.

According to the staff of the agency, they did not have to inform the applicant in written form about the missing of the documents introduced by her and about introducing an additional reference for eliminating this shortcoming based on the fact that the applicant is informed in written form only in the case when he/she introduces not all necessary documents and the appointment of the pension is denied.

Meanwhile, according to paragraph 3 of Article 50 of the NKR “Law on State Pensions” in the case when not all necessary documents are attached to the application the department who allocates pension informs the applicant in written form within three working days which kind of documents should be additionally introduced. After being informed in the case of introducing these documents within 3

months, the appealing day is considered the day of acceptance of the application for allocating the pension.

Here is not mentioned that the staff of the agency has such obligation only in the case when the application is denied. Moreover, according to paragraph 4 of the mentioned article after accepting the application for the appointment of pension with all the necessary documents according to the mentioned order the department who allocates pension examines them within seven working days and only after it passes a decision.

Therefore, the responsibility of introducing the citizen in written form about the existing shortcomings in the documents the Law stipulates that not only in the case when the application about allocating pension is completely denied, but in any case when there is any shortcoming in the introduced documents which could cause both complete and partial refusal of the application for allocating pension.

Moreover, according to appendix 1 established by the decision of the NKR Government, for providing the use of the NKR “Law on State Pensions”, at the moment of registration of the applicant’s application to allocate pension the department who appoints pension should have given the applicant a receipt pointing there the list of those additional documents which should have been introduced but they were not, in present case the archive reference that assures the existence of the two-year length of working experience.

These additionally introduced documents (the reference) also obtain the status of necessary documents for pointing pension, as by the mentioned decision of the government in the case of allocating affirmed pension and the death of the pensioner according to the first point of the list of necessary documents for paying funeral benefit for allocating age pension a citizen introduces with the application and other documents a (the) assuring /affirming insurance length of service (working book and its copy, in case of emergency other documents asserting length of service or archival references).

Article 47 of the NKR “Law on State Pensions” mentions about the necessity of the additional introduced reference as well, which stipulates that “in the case of the absence of employment record book or corresponding notes in it or other documents assuring working experience that are defined by law, the working experience is assured by the archival reference and in the case of its absence in legal form.

In fact, we can conclude that the insurance working experience has been initially miscalculated due to the violation on behalf of the staff, consequently according to the period from October 18, 2008 to March 19, 2010 the disparity of sums must be paid as according to paragraph 2 of Article 57 of the NKR “Law on State Pensions” due to the fault of the department who allocates pension the unpaid sums of the pension are paid without time limitation.

Based on clause 1 of paragraph 1 of Article 15 of the NKR “Law on Human Rights Defender,” the Defender passed a decision to suggest the agency of “Social Security Service” of the NKR Ministry of social security to pay the unpaid part of the pension to the applicant.

But in response to the mentioned decision the agency of the “Social Security Service” of the NKR Ministry of social security has informed that it is not possible to realize the Defender’s suggestion motivating that it contradicts to the requirements of the NKR “Law on State Pensions.”

Upon the advice and immediate assistance of the Defender the applicant applied to first (administrative) instance of court of general jurisdiction which satisfied the applicant’s suit against the staff of the NKR Ministry of Social Security state governmental institute and the requirement for obligating them to calculate and pay the unpaid pension of the last period.

Discussion of applications with such problems sometimes requires interference of ombudsmen of other countries. Due to cooperation with them we success solve the raised problems of former nearest foreign citizens inhabited in the country.

So, a resident of Stepanakert informed that in 1983-1985 he had worked in one of the factories in Uzbekistan but they made a mistake in his employment record book due to which there was not included in his length of service his two year work. With the mentioned problem the applicant applied to Stepanakert territorial department of the agency of the NKR “Social Security Service” MSS where he was assured that they would try to solve the misunderstanding but as asserted by the applicant there was no result. Applying to the Defender he asked him to interfere in the mentioned problem. Regarding the raised problem I applied to the plenipotentiary of human rights of Uzbekistan and as a result of his immediate interference the management of the above mentioned factory sent the corresponding documents which witnessed about the working years of the mentioned period. As a result the question received a positive solution.

2.5 Right to submit appeals, recommendations. Other rights

In the year 2010 the Defender received a number of applications regarding human property – 20 applications, health care and medical assistance – 12 applications, inviolability of the home – 7 applications, meetings with persons under compulsory detention places – 4 applications, living in favourable environment – 3 applications and a number of other rights mentioned in Table 2 of the report.

Analysis of the citizens’ applications concerning the mentioned rights is not done in the report as their majority did not witness anything about human rights violations and there was no need of the Defender’s interference. Work with these applications was mainly limited by introducing the applicants other means for defending their rights. The discovered violations did not have an essential impact on people’s legal interests and were rapidly eliminated.

At the same time I find it necessary to return to the situation which was created by state and local self-governmental bodies in the field of discussion of people’s applications.

Introducing applications, suggestions and petitions and receiving due answer in reasonable period is one of the most important human rights. It is stipulated in Article 28 of the NKR Constitution.

In their applications and during meetings applicants very often complaint against officials pointing that they give answer to their applications not in time, they avoid giving written answer or show inattentive and careless attitude towards them.

Regarding the field of these relations now acts NKR “Law on order of examining citizens’ suggestions, applications and complaints” which in its nature, however, cannot regulate administrative procedure, and citizens mainly appeal to the appropriate bodies with the questions, the discussion of which requires such a procedure.

An administrative procedure is implemented only in some state bodies the regulating law of which contains such norms.

For correcting the created reality and preventing such phenomena adoption of the law regulating administrative principles and administrative procedure would be favourable thus following the example of the Republic of Armenia, the action of which would be spread all over the bodies implementing administrative procedure.

Conclusion

I find it necessary to point that in the reported period the analysis of protection of human rights in the country shows that although not all suggestions and advice noted in the Defender’s 2008 and 2009 annual reports have been realized regarding the reasons of violations of human rights and fundamental freedoms, however, violations of the same kind were not characteristic to the reported year. Introducing such even modest results I anticipate an interested discussion of the report on behalf of the state bodies and officials.