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 2011

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1. Hereinafter "Human Rights Defender" or "the Defender"

Introduction

About the report

According to Paragraph 1 of Article 17 of the NKR "Law on Human Rights Defender" during the first quarter of every year the Defender submits to NKR 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 NKR National Assembly, the report is then also presented to media and pertinent non-governmental organisations.

The report will also be sent to the United Nations High Commissioner for Human Rights and Commissioner for Human Rights of the Council of Europe.

In this report an assessment is given to the situation of human rights protection as of the year 2011 and issues related to it, the report touches upon the information about the human rights violations and presents the analysis of their motives, the work done 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 acting law and the investigation of the situation. It was realized by summarizing the citizens' written and oral applications and the information that have become known to the Defender and his staff during meeting with the population, visits to military units, places of forced detention of people including preliminary detention and deprivation of liberty, as well as from the materials received from state and local self-governing organisations and published by mass media and from investigation carried out by the Defender regarding the occasions and cases of public importance.

About the Human Rights Defender Institute

Human Rights Defender Institute was established in April, 2008 by appointing the Defender by the NKR National Assembly. The Defender took his position on April 17 and in May he formed the staff.

The Defender's institute functions according to Paris fundamental principles concerning the status of national institutes dealing with human rights encouragement and protection, which are also enshrined in the NKR Constitution and in the "Law on Human Rights Defender."[2]

According to Article 119 of the NKR Constitution and Article 2 of the Law, the Human Rights Defender is an independent and appointed official who implements protection of human rights and freedoms violated by state and local self-governmental bodies. The Defender constitutes to the improvement of the NKR Law on human and civil rights, ways and methods of their protection and its compliance with universally recognized principles and norms of international law, development of international cooperation in the field of human rights, legal education with issues on human rights and

[2] Hereinafter also "Law"

freedom.

Due to the changes made in the NKR "Law on Human Rights Defender" on December 27, 2011 the scope of the powers of the Defender have been expanded.

Corresponding additions concerning the cooperation with the judicial authorities have also been done in the law according to which the Defender is authorized to apply to the board of chairmen of the courts of Nagorno-Karabakh Republic in order to obtain official clarifications of advising nature concerning law enforcement practice as well as to present a report to instigate disciplinary proceedings against the judge. The person who is authorized to instigate a proceeding after receiving the report shall inform the Defender about the results of the report's discussion within 3 days after passing a decision.

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

1.1 Complainants

1.1.1 Statistical analysis of complaints

During the year 2011 the NKR Human Rights Defender received 125 complaints from 332, of which 60 were written (including collective complaints), and 65 oral.

Complaints were received from residents arriving to the staff and by mail, as well as during the visits of the Defender and the staff to settlements and penitentiary institution.

About 100 persons applied to the staff via telephone with different issues, mainly with requests regarding legal consultation which were not registered in the record book of complaints as it was not impossible to be sure in the personal data of the persons who call although applicants were given corresponding consultation.

So, during the year the Defender received more than 400 complaints.

It is noteworthy that 41 citizens from other countries including Republic of Armenia - 9 persons, Russian Federation - 32 citizens, and complaints of 3 citizens were discussed by the mediation of Human Rights Defender of RoA.

Table 1 and figure 1 and 2 below show quantitative picture of written and oral registered complaints as well as of those who applied (besides the number of those applied via telephone) according to NKR administrative territorial units and foreign countries.

Table 1. Quantitative picture of complaints and complainers according to administrative territorial units, foreign countries and penitentiary institution.

№	Name of region (city)	Total number of complaints	Percentage	Number of complainers	Percentage
1.	Stepanakert	61	48.8%	206	63.3%
2.	Askeran	11	8.8%	36	11%
3.	Martakert	10	8%	10	3%
4.	Martuni	9	7.2%	9	2.7%
5.	Shushi	6	4.8%	6	1.8%
6.	Shahumyan	2	1.6%	2	0.6%
7.	Qashatagh	4	3.2%	4	1.2%
8.	RoA	9	7.2%	9	2.7%
9.	RF	2	1.6%	32	9.8%
10.	Shushi penitentiary institution	11	8.8%	11	3.3%
11.	Total	125	100%	332	100%

Figure 1. Quantitative and percentage picture of complaints according to NKR administrative-territorial units, foreign countries and penitentiary institution

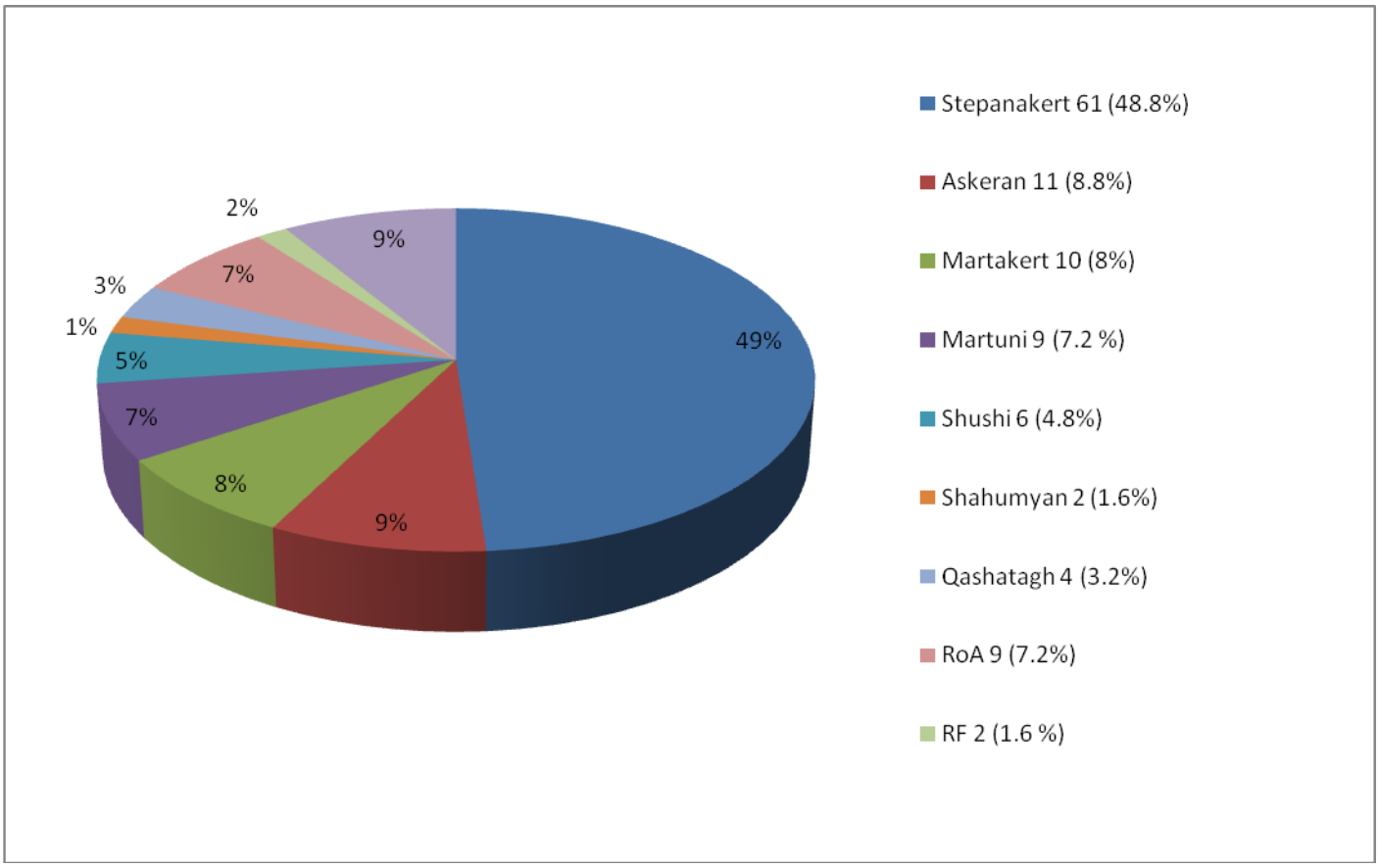
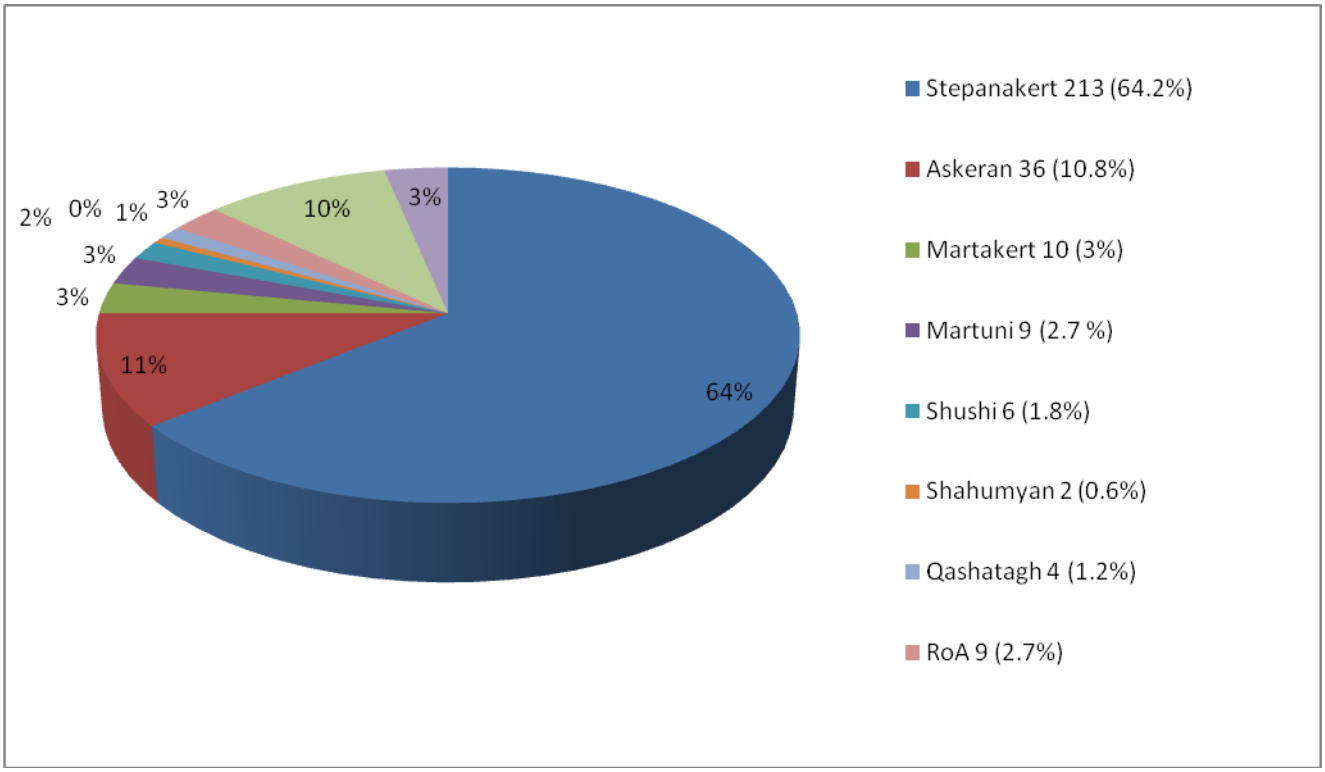


Figure 2. Quantitative and percentage picture of complainers according to NKR administrative-territorial units, foreign countries and penitentiary institution



Statistical picture of complaints according to branches of law is introduced in table 2 below.

Table 2. Thematic picture of complaints

Theme of the complaint	Number	
Right to judicial remedy	34	27.7%
Labour right	21	16.8%
Property right	20	16%
Right of people in places of compulsory detention	10	8%
Social security right	9	7.2%
Right to ensuring of living sufficient standard	5	4%
Right to citizenship, free movement and receiving passport	5	4%
Right to live in a favourable environment	4	3.2%
Right to human dignity	4	3.2%
Right to health care and medical help	3	2.4%
Education right	3	2.4%
Right to freedom of religion	1	0.8%
Family and children's rights protection	6	4.8%

According to these data we can conclude that population is most interested in issues related to judicial remedy, employment, property, social security which make up the majority of the complaints received.

Analysis of the complaints addressed to the Defender shows that in conformity with the year 2010 in the year 2011 complaints concerning violation of some branches of law have decreased.

Particularly, if in 2010 37 complaints concerning violation of labour right were registered in the staff of the Defender which made up 17.6% of the total, in 2011 21 complaints with the same contents

have been received (16.6% of the total). However, it should be noted that comparing with 2010 in this field violations by private organisations have increased which are mainly associated with failure to pay salary or not paying in time.

Comparing with 2010 the number of complaints regarding violation of right to judicial remedy has also decreased. If in 2010 it made up 50%, in 2011 it was 34% decreasing by 16 complaints or 32%.

Analysis shows that there are branches of law concerning the violation of which in 2010 the Defender received complaints, and in 2011 he did not, for example those concerning sanctity of home and activities of local self-governmental bodies. And the vise-versa, in contrast to 2010 in 2011 6 complaints have been received concerning family and children's rights protection.

1.1.2 Meeting, visits, the undertaken measures and results

According to part 3 of Article 9 of the law, all complaints addressed to the Defender should be in written form or orally.

On the purpose to accept complaints, applications from physical persons as well as to give them advice or render help, the Defender organized meetings in the staff and in different settlements of the country, in places of compulsory detention of persons being suspected and accused in criminal case and carrying their punishment by the sentence.

Meetings with citizens were held in the Defender's office both on working days and on weekends.

During the year the Defender and employers of his staff accepted 80 persons 60 of which introduced oral applications, complaints request for legal consultation and other help, and 20 of them came to the meeting wishing to hand their written complaints themselves or to give additional clarifications and materials.

During the meetings organized in the NKR regions people introduced both written and oral complaints and a part of them was given legal consultation.

In the year 2011some employers of the Defender's staff visited communities of Norshen, and Hatsi of Martuni region in NKR.

Experience shows that from the point of view of receiving information about violation of human rights such kind of intercourses with population may be very effective.

Immigrants of Vazgenashen community informed that in 2002 they signed an agreement with the administration of Martuni region on inhabiting there for 5 years. According to the agreement after its expiration the administration should have to provide the inhabitants houses which had been allocated to them as a property. But after the agreement expired those houses were not privatized, moreover, the administration of the region unilaterally extended the agreement for

another 5 years. In this connection the Defender made an inquiry to Ministry of Social security after which in order to set the raised issue, the ministry represented a draft decision on “organizing procedure of giving state-owned houses and land plots to immigrated families for right to ownership” which was adopted by the NKR Government in September 27, 2011.

So, in response to the complaint of residents of 65 houses in Vazgenashen village the Defender intervened in recognition of the right to property of all persons who had been deported from Azerbaijan and immigrated in the territory of the state and who had been provided with living territory by the state. During the meeting the residents also raised the issue if gasification stressing that during the gasification program implemented in 2005 in the village 21 houses of 65 had not been included and gasified up to date. As the residents told they had many times applied to appropriate bodies but without results.

In order to clarify the mentioned issue the Defender submitted a request to the administration of Martuni region and found out that a part of houses in Vazgenashen community had not been gasified, this is mainly due to lack of funds and that authorities are also concerned about this issue. During the year 2011 the staff of the Defender had a series of visits to NKR Police penitentiary institution and investigate isolation adjunct to the NKR Government. During the visits 17 persons came to the organized meetings who were concerned about various issues about the sentence they had been serving.

It is noteworthy that people under detention of those places did not have any complaint about torture or other violations of their rights.

A significant part of the complainers were citizens of the Republic of Armenia, who had committed crime in the NKR territory and were serving their sentence due to the verdict of the NKR courts, and asked the Defender’s mediation to move them to the penitentiary institutions of the Republic of Armenia to serve there the rest of their punishment.

The convicts were explained that there is not an interstate agreement between RoA and NKR due to which it would be possible to solve the mentioned issues on legal level. During the meeting a convict Sedrak Sahakyan asked to assist him to see his three children who were in “Children care and protection boarding institution № 2” SNPO in Berdzor. On the initiative of the Defender due to the previously achieved agreement between administrations of Shushi penitentiary institution and “Children care and protection boarding institution № 2” in August, 2011 father’s meeting with his three children was organized in the room for meetings of Shushi penitentiary institution. The same kind of meeting had been organized on October 11, 2011 by the staff of the Defender during the second visit to Shushi penitentiary institution. Due to the request of the convict Andranik Hakobyan his children

and their mother who did not have sufficient funds to take the children to the city to meet with their father was brought to the penitentiary institution from Berdzor village of Hadrut region.

In order to competently take into account the children's desire and exclude psychological pressure upon them during the meeting in both cases the psychological situation and desire of each child to meet with their father had been previously clarified by educators and teachers and the meeting with the convicted parents for the first time held at the presence of the educator and for the second time at the presence of the mother.

During the visit to penitentiary institution the employers of the staff met a convict who declared a hunger strike since September 26 demanding to move him to the Republic of Armenia.

During the conversation with the convict he said that his relatives had no opportunity to come to NKR from Armenia to see him as a result of which during the period of serving his punishment he did not see his relatives.

Although as assured by the administration of the penitentiary institution that the convict's health care was under permanent control the Defender by an appropriate letter applied to the head of Police adjunct to the NKR Government calling him to be careful to the convict to exclude any possible danger to his life or health and thus including in this a doctor-psychologist.

On October 21 the administration of penitentiary of the NKR Police informed that the mentioned convict renounced the hunger strike and his health is satisfactory.

With reference to investigation of the registered complaints and arguments introduced in them more than 75 requests have been submitted to leaders of various state and local self governmental bodies in order to receive clarifications from the competent officials.

As a result of examination of the complaints received violations of more than 100 human rights have been recorded. In order to eliminate this and restore the complainers' violated rights the Defender addressed recommendations to the competent authorized bodies which have been completely implemented.

Last year as well as during the reported year the opportunity entitled to the Defender by paragraph 4 of Article 11 of the Law to investigate the issue on his own initiative which has an exceptional social importance have been efficiently used.

In this way a research was conducted upon the protection of the owners' right to common share use of flats of multi-storied buildings and territories as well as territories of the same building of common use and the necessary land for protecting and serving the building.

As a result of investigation it was found out that according to NKR Civil Code and the "Law on management of multi-storied buildings" territories of common use of flats of multi-storied

buildings (cellar, the roof, technical floors, etc.) 1.5 metres wide land territory under and around the building are the common joint property of the owners of those flats and non residential territories.

According to decree № 135 dated 27.03.2007 of the NKR Government the mayor of Stepanakert and heads of the boards of administration of the NKR regions were assigned to introduce to the state committee of the NKR Real Estate Cadastre within 6 months the necessary land plans for maintenance and service of flats of multi-storied buildings as well as the passed decisions on self-willingly attached buildings of the mentioned buildings.

On the basis of these documents the head of the NKR Government attached state committee of Real Estate Cadastre ought to have provided the registration of the rights of the owners of flats of multi-storied buildings and (or) not residential territories towards those lands. But during the investigation of the issue from the answers received as a result of the requests submitted to the NKR Government attached SCREC, the mayor of Stepanakert and heads of the boards of administration it was followed that the requirements of the aforementioned decision had not been done, particularly common property rights of the owners of flats of multi-storied buildings to those territories had not been registered. The reason is that heads of boards of administration of the regions and the mayor of Stepanakert had not given necessary documents to the NKR Government attached SCREC in order the latter could do state registration of the right to property.

The created situation may bring and really it brings to violation of right to common property of the owners of the buildings of blocks of flats, constructions (buildings) for it is they who can decide the fate of those territories and not the local self-governmental bodies. Thus, as long as requirements of decision № 135 dated March 27, 2007 have not been done in Stepanakert and in some regions except for Qarvachar where there are no multi-storied buildings such violations have continuous nature and in other places the possibility of these violations is not excluded. Given the afore-mentioned and guided by clause 1 of paragraph 1 of Article 15 and Article 16 of the NKR “Law on Human Rights Defender” by the decision № A-1-008/11 dated 02.10.2011 I suggested the heads of boards of administration of the NKR regions and the mayor of Stepanakert by execution of requirements of clauses 3 and 4 of the NKR Government’s decision № 135 dated 27.03.2007, to take measures aimed at registering the rights of the owners of dwelling and (or) not dwelling territories multi-storied buildings to common share property and to refrain from further violation acts and the adoption of legal acts.

Besides the above mentioned in November 16, 2011 an ad-hoc report has been addressed to the executive authority of the state about the created situation.

The process of state registration of common share rights of owners of constructions of multi-storied buildings is now begun.

In 2011 two more ad-hoc reports on “the results of comparative analysis of some provisions related to human rights of NKR Criminal, Civil and Administrative Procedure codes from the viewpoint of correspondence of NKR Constitution and other laws” have been introduced to the NKR authority. This will be spoken of in the relevant sections of the report.

One of the main activities of the Defender remained allocation of legal consultation as fee based advocatory services are not available yet for the majority.

During the year the Defender and his staff gave more than 75 written and oral including via telephone legal advice to citizens.

A significant part of consultations were provided by the applicant’s request, the other was based on the fact that issues raised by the applicants should be solved by other bodies. There were applications which were solely responsible for requests of civil law, complaints were not against activities of state or local self-governmental bodies but a citizen or those that were against the court’s activities or the final judicial act. In such cases the citizen is given clarification on the fact that the Defender considers complaints related to violations submitted by local self-governmental bodies and their officials and he is not entitled to intervene in any judicial procedure. At the same time in addition to advice the citizen is assisted to formulate this or that document. As a result of the advice and legal assistance provided violated rights of a number of applicants have been restored or prevented their further possible violations.

1.2 Legislation improvement targeted activities

According to paragraph 2 of Article 2 of the Law the Defender contributes to the improvement of the NKR “Law on human and citizen’s rights”, forms and methods of their protection and its compliance with universally recognized principles and norms of international law.

Implementing this important function of the Defender’s activity the staff was regularly analyzing the NKR Law regulating human rights and freedoms by checking its compliance with the Constitution and universally recognized principles and norms of international law, if necessary, by raising questions before the legislative and executive bodies to improve legislation.

With those ends in view a comparative analysis has been conducted over 3 procedure codes directly related to human rights provisions: criminal procedure code, civil procedure code and administrative procedure code.

Through investigation it was found out that some provisions of the mentioned three codes contradicted to the NKR Constitution and the norms of international law.

Below are shown these provisions, suggested amendments and the result according to NKR Criminal Procedure Code.

According to paragraph 2 of Article 455 of the code the right to introduce judicial acts with new circumstances should be entitled only to interested persons related to that circumstance who participated in the case besides cases prescribed by the NKR laws and international agreements.

Thus, Article 455 of the code did not give such an opportunity to those persons to implement constitutional defence of their rights who did not participate in the investigation of criminal cases on different grounds but they had that right.

Restricting the rights of the mentioned people this provision contradicted to Article 44 of the NKR Constitution according to paragraph 1 of which everybody shall be entitled to the right to judicial defence of his/her rights and freedoms.

It was suggested to make amendments to Article 455 that would enable people to restore their rights violated as a result of the implementation of the recognized norm contradicting to the Constitution on the basis of the decision passed by the Constitutional Chamber of the Supreme Court.

The authorities accepted the proposal and this issue has been regulated by the Law on making amendments in the NKR Criminal Procedure Code" adopted in 2010.

In paragraph 1 of Article 295 of the code was enshrined that operative and investigative activities prescribing restriction of the right to telephone conversations, mail, telegram and other privacy of conversations can be realized only by court's decision besides the cases when conversation participants or one of the communicators gave the agreement to previously listen them or to monitor.

This provision contradicted to paragraph 4 of Article 23 of the NKR Constitution which stipulates that everyone shall have the right to secrecy of correspondence, telephone conversations, mail, telegraph and other communications which may be restricted only by court's decision in cases and in conformity with the procedure prescribed by the law. Consequently, restriction of this right without court's decision directly contradicted to NKR Constitution by merely being based on the decision of the operative and investigative activities body and on the agreement of the conversation participants or one of the communicators to previously listen them or to monitor, because it simultaneously stipulates that everyone's right to secrecy of correspondence, telephone conversations, mail, telegraph and other communications may be restricted only by court's decision in cases and in conformity with the procedure prescribed by the law.

NKR Constitution does not prescribe any exception of the mentioned order.

Besides, paragraph 1 of Article 295 with the agreement of one of the conversation participants or communicators without court's decision to enable to listen or monitor correspondence, telephone conversations, mail, telegraph and other communications was in internal contradiction with the provisions of the same code's articles 14, 250, 252 as in the mentioned provisions stresses court's agreement is as well mentioned as a mandatory condition.

Based on the aforementioned it was proposed to remove the following part of the sentence from paragraph 1 of Article 259 of the code: "besides the cases when one of the conversation participants or

communicators had previously given the agreement to listen or monitor them."

Guided by the "Law on making amendments in the NKR Criminal procedure code" dated December 24, 2011, the proposal was adopted.

The above mentioned shortcoming of the code has also been disclosed, the elimination of which will contribute to the formation of free press and respect for journalists' rights.

According to Article 5 of the NKR "Law on Mass Media" adopted in October 20, 2004 in case of court's imposing a journalist and information activities implementer to reveal any information source the court proceeding with the journalist's mediation is conducted closed door.

However, the NKR Criminal procedure code did not contain a provision on this. In order to eliminate the mentioned contradiction it was proposed to make addition in paragraph 2 of Article 16 of the NKR Criminal procedure code with the fourth paragraph:

"In the case a media activity implementer or a journalist by court's decision is imposed to disclose any information source the court proceeding is conducted closed door by the mediation of the media activity implementer or the journalist."

At the same time two more provisions have appeared which contradict to the NKR Constitution but the Defender's proposals to eliminate them have not been realized yet.

In a case these proposals are not adopted by the laws during the year 2012, the Defender will appeal to the Constitution Chamber of the NKR Supreme court with the request to decide the constitutionality of the mentioned provisions.

It goes to the following provisions:

1. According to paragraph 1 of Article 301 complaints against lawful and reasonable decisions and actions of investigation body employer, investigator, prosecutor's operative and investigative activities implementing bodies as prescribed by this law can be filed to court by the suspect, the accused, the Defender, the victim, criminal procedure participants, other persons whose rights and legal interests have been violated by these decisions and actions and if their complaints have not been satisfied by the prosecutor.

Thus, as evidenced by the legal description of the mentioned norm, while realizing the right to judicial protection of his/her rights and freedoms stipulated by the NKR Constitution a person must firstly demand satisfaction of his complaint to the prosecutor, i.e., realize his right to access of justice provided pre-implementation of another means of legal defence.

The existence of such a mandatory condition when the rights and legal interests of criminal proceeding participants or other interested persons have been violated by actions or lack of action of the body implementing criminal proceeding, and he/she cannot realize his/her right to judicial protection without preconditions, does not comply with Article 44 of the NKR Constitution according to paragraph 1 of which "Everyone shall have the right judicial protection of his/her rights and freedoms."

According to paragraph 5 of Article 320 of the NKR Criminal procedure code if during a court

proceeding it is discovered that the legal qualification of the defendant is not right and the prosecutor does not pass a decision on strengthening the requalification of the act or does not submit a petition to postpone the trial court on its own initiative postpones the trial for 10 days proposing the Public Prosecutor or the deputy to reaffirm the bill of indictment. After reaffirmation of the bill of indictment court pronounces a judicial act in correspondence with the bill of indictment.

Unlike the two possible cases of the petition of the accuser which concerned the change of accusation in the sense of both aggravating and mitigating, in the context of the mentioned provision court's initiative may refer to the change of the accusation only in the sense of aggravation, i.e., court "prompts" the accuser to implement the accusation by strengthening in order to change the necessary actions. It is unequivocal that such change cannot be in terms of strengthening as the court will turn out into an implementer of criminal prosecution from the body implementing justice as well as the defendant's right to protection will be violated as he will be deprived of all opportunities to be protected from new accusations.

I think that in this case have not been fully taken into account preservation of the important principle according to which court cannot be a party of accusation or defence and must express only the interests of the law (Article 23 of the NKR Criminal procedure code), the principle which is aimed at the provision of court's independence and impartiality, as well as competitive proceeding and equality of the parts' principles prescribed by Article 45 of the NKR Constitution. Based on the foregoing it is necessary to declare null and void paragraph 5 of Article 320 of the code.

A serious shortcoming was found in the Administrative Procedure code according to paragraph 1 of Article 141 of which in cases on disputing of legitimacy of normative-legal acts, judicial acts of administrative court may be complained to Supreme court only on the grounds of infringement of material right. That is to say the mentioned provision does not enable judicial acts of administrative court to be complained to Supreme court in case of infringement of a judicial norm.

Such a restriction of a person's right to apply to court did not correspond to Articles 5, 44, 45 of the NKR Constitution, as well as to the requirements of Article 6 of "European Convention on protection of Human rights and fundamental freedoms", so it was proposed to declare this provision invalid.

It should be noted with satisfaction that by the proposal of the working group of judicial system reforms at the NKR President on December 24, 2011 guided by the "Law on making amendments to the NKR Administrative procedure code" the mentioned provision has been declared invalid, besides these amendments have been introduced in the order of administrative procedure in challenging legitimacy of the acts. In previous cases such acts were being complained to two judicial instances – court of first instance of general jurisdiction and Supreme court, now it can be realized in three court instances – the decision of court of first instance can be complained first in Appeal court then in Supreme court.

Amendments have been proposed to NKR Civil procedure code as well.

Clause 2 of paragraph 3 of Article 66 of the code defines that individual entrepreneurs and commercial organisations can not be exempted from state imposition.

Thus, clause 2 of paragraph 3 of Article 66 of the NKR Civil procedure code defines privileges only for citizens and does not provide the same to individual entrepreneurs and commercial organisations.

This provision does not correspond to paragraph 1 of Article 44 of the NKR Constitution which stipulates that everyone is entitled to the right to judicial defence of his/her rights and freedoms, and Article 5 of the same code stipulates that justice in civil cases is exercised based on the principle of equality of citizens and legal entities before the law and the court.

Based on the foregoing it is necessary to declare clause 2 of paragraph 9 of Article 66 of the code repealed, but this proposal have not been adopted yet.

The Defender also introduced draft law on making amendments to the on NKR "Law on Human Rights defender", in which he anticipates the government's support for implementation and adoption of the bill.

The necessity of making amendments to the NKR "Law on Human rights defender" has become as important as to fill gaps have occured during the application of the law.

Provisions of the law are aimed to be in compliance with the NKR Constitution, as well as at the strengthening of the institution on the accounts of Paris principles on "National organisations."

NKR Human rights defender institution was established with the aim of effective protection of human rights enshrined by the Constitution.

The basis of the NKR Law on this institution has become UN guaranteed principles on national organisations implementing protection of human rights which were developed and adopted in 1993 in Paris and are known as "Paris principles."

After making amendments to the NKR "Law on human rights defender" the nature of the activities of human rights defender's staff and the legal status of the workers have been clarified, i.e., professional activity of the Defender's staff except for the activity related to the technical services is a public service and the employers holding the relevant positions in the staff are public employers. These amendments have been adopted by the NKR National Assembly in 30.11.2011and signed by the NKR President in 24.12.2011. In previous year the NKR Ministry of healthcare has been proposed to initiate a draft law related to protection of human rights of people with mental disorders. Due to the absence of corresponding law the provision of rights of patients with mental disorders and generally persons engaged in these relations, in fact, were not supported, particularly in the cases of non-willing hospitalization, discharging from hospital and in other cases. As a result on December 21, 2011 National Assembly adopted a "Law on Psychiatric help."

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

About four-year experience of work of the institution shows that pre-conditions for efficiency of the activities targeted at the protection of human rights are its transparency and publicity, development of public relations the main way for achieving this being cooperation with mass media.

Relevant attention has been paid to the given issues also in the reported period.

In a view to clarify means of fundamental human rights and freedoms and their protection, as well as to enlighten the activities implemented by the institution the Defender and his staff have five times performed speech on Artsakh public television, four times by radio, two times in "Azat Artsakh" newspaper, gave a number of interviews to "Regnum," "Azat Artsakh," "Defacto," and other local and foreign media agencies.

Within the current work it was important as well to inform the public about the results of each year's activities which are summarized in annual reports.

In February, 2011, the Defender guided by the law submitted his annual report both to high bodies of state authorities and to mass media, which widely elucidated it by television, in newspapers and by internet.

Given the wide scale use of internet in the Republic of Nagorno-Karabakh, an important part of activities targeted at the development of public relations is conducting the website of Human rights defender (www.ombudsnkr.am).

During the year 2011 pages "News" and "Visits" of the site has been periodically updated, information concerning the activities have been installed related to information about meetings, visits, issues of public importance.

Highlighting the role of non-governmental organisations in the field of civil society in 2011 the Defender continued to keep close relationship with a number of NKR non-governmental organisations, including NKR Federation of Trade Unions, "Centre of Civic Initiatives," "Human Rights Defence Association" non-governmental organisations.

1.4 International cooperation

According to Article 2 of the NKR "Law on Human Rights Defender" the Defender contributes to the development of international cooperation in the field of human rights.

However, the fact that the Republic of Nagorno-Karabakh is not recognized by international society limits the Defender's opportunities for the development of international cooperation, which negatively refers to the development of the institution and the efficiency of human rights protection in the country.

Being aware of the help that is rendered to the ombudsmen of recognized countries of our region,

it just remains to regret that we are deprived of this kind of attention and development possibilities.

At the same time we will keep optimistically believing that international human rights institutions will show allegiance to the provision of Article 2 of the Universal Declaration of Human rights, which stipulates that "no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non self-governing, or under any other limitation of sovereignty", and they will also pay more attention to human rights and freedoms protection state institutions of de facto states.

Based on the afore written I find it appropriate to send the copy of this report to the United Nations High Commissioner for Human Rights and Commissioner for Human Rights of the Council of Europe.

In this situation the cooperation which is realized within the framework of the Defender's membership with the European Ombudsman Institute is more necessary as it gives a great opportunity for studying the leading experience of the cooperation with the ombudsmen of other countries and institutions.

Actively cooperating with the EOI the Defender is in periodical correspondence with the General Secretary of the institute. During the reported period annual reports of the years 2008-2010 and 6 ad-hoc reports were installed in the institute's website.

In the year 2011 the Human Rights Defender participated in the international conference on the theme "Everyday work of the ombudsmen, challenges and exchange of experience" organized by the European Ombudsman Institute.

Ombudsmen of Austria, Belgium, Bulgaria, Germany, Italy, Poland, Lithuania, Netherlands, Sweden, Switzerland, Russian Federation, Serbia, Hungary, Ukraine and other states also participated in the conference.

Next day of the event was convened a general assembly during which were being heard reports on the activities of the board of institute and its members' elections. During the conference and the assembly the NKR Human rights defender had working meetings with the newly elected leadership of the institute as well as with his colleagues of other states.

Among ombudsmen of the region cooperation only with Human Rights Defender of RA is realized, which gives us a methodological help, especially in the exchange of experience and the issues of improvement of professional knowledge and working skills of the staff employers.

An active cooperation is being realized targeted at the protection of citizens' rights of the Republic of Armenia in NKR and those of our citizens in Armenia.

During the reported period we continued cooperation with the ombudsmen of the republics of Abkhazia, Transdnestrian Moldova and South Ossetia which is being implemented in the frames of the agreement signed in December 10, 2010.

By the invitation of the colleagues of the above mentioned states the Defender also participates

in various elections conducted in these countries as an observer.

It is praiseworthy that the Republic of Ireland before assuming presidency of OESC was trying to study the situation in the countries not recognized by the international society, as well as from the point of view of human rights protection.

Thus, on October 18, 2011 Doctor-Professor of Dublin Law and Management University Donnacha O'Beachain visited the Defender's staff.

Such an interest displayed towards unrecognized countries is possibly due to the recently adopted resolution by the European Parliament point 47 of which urges to pay attention to pragmatic proposals and new approaches as well as to establish contacts with the actual authorities and societies of non-recognized states in order to contribute to dialogue.

I hope these developments will have a positive significance for us.

Part 2. Violations of human rights and fundamental freedoms

This section illuminates data concerning human rights infringements that have become known to the Defender according to branches of law that are more typical during the year 2011.

While implementing analysis of infringements examples are brought by the principle of election given the importance of the issue for the citizen, the amount of the damage caused to his interests as a result of violation and mainly without pointing the applicant's personal data which is based on the requirements of paragraph 2 of Article 14 of the Law.

2.1 Right to judicial remedy

Article 8 of Universal Declaration of Human Rights stipulates that "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."

Many countries imitating the above mentioned international legal act have formed or completed their national legal field taking the basis its principles and provisions at the same time creating appropriate mechanisms for putting them in use.

This process has also been realized in the Republic of Nagorno-Karabakh as well. In December, 2006 the adopted Constitution reported a new impetus to the legal reforms implemented in the country.

According to paragraph 1 of Article 47 of the NKR Constitution "Everyone shall have the right to the public hearing of his or her case by an independent and impartial court maintaining all requirements of justice under conditions of equality and fair deadline."

Steps targeted at the improvement of court formation and independence of judges (including those for new social guarantees) have significantly influenced the quality of justice implemented by courts which is noticeable from the decrease of the number of applications on this issue addressed to the Defender; if during the year 2010 the staff received 50 complaints, in 2011 it was 34, i.e. less for 16

applications or 32 percent.

It is also noteworthy that as shown by the analysis of the applications in the reported period while implementing justice on behalf of the judge evident violations of law or human rights have not been committed.

At the same time people's misunderstanding of justice due to the insufficient level of legal awareness remains a concerning matter, especially in civil and administrative cases.

It is not a secret that there are statutory procedures for appealing to the court (application, claim, complaint, petition, etc.) implementation of which just in the way as requires the court is a great difficulty and requires need of legal knowledge and skills. Therefore, if a person does not have legal knowledge it is difficult for him to realize his right to appeal to court and he has to appeal to a lawyer which in its turn is not available for everybody. This is proved by the fact that a significant number of those who have appealed to the Defender on the issues of the given field are people who ask to help them to appeal to court or those who complaint against their advocates.

For example:

The citizen asked a lawyer to assist him in the adoption of the inheritance left by his dead parent. At the same time he said that six-month period of the inheritance had not been missed and that the other heirs brother and sister had refused to adopt the heritage in his favour. The inheritance also included a hunting gun.

The lawyer immediately decided that the question can be resolved only in court.

Whereas, according paragraph 1 of Article 1226 of the NKR Civil code inheritance is adopted by handing the heir's appeal on adopting the heritage or receiving a certificate to the notary of the place of inheritance opening. According to Article 20 of the NKR "Law on arms" donation and inheritance of civil arms is implemented by the order prescribed by the law, in the case of presence of permission on obtaining a civil arm at the inheritor's or the donation recipient.

Therefore, even if the inheritance is adopted through court the lawyer should have known that for the inheritance of the arm it is necessary for the heir to receive in advance a permission on obtaining a civil arm by the state authorized body. Otherwise why should a person appeal to a lawyer when the latter does not properly know the legislation in force?

As a result the court fairly rejected the claim on hereditary supply of the arm and the citizen had to appeal to another lawyer's assistance.

Thus, the lawyer's being ill-skilled made the citizen to incur extra expenses which became the reason of applying to the Defender.

However, as interference in such legal relations is beyond the frames of the Defender's authorities, the citizen was advised to submit a complaint to the Chamber of NKR Advocates.

Formation of the board of Justice in NKR was as well targeted at the efficient implementation of the right to juridical protection. It undoubtedly contributes to the improvement of the judiciary and judges' more

responsible attitude towards each case.

By applying disciplinary proceedings towards the judges who inappropriately do their duties and by subjecting him to responsibility justice seems to be recovered and juridical mistakes are corrected as no reference is made to the already passed decision in a given case and the participant of the trial whose substantive or procedural rights have been infringed as a result of violation by the judge legally his violated rights is not allowed to be restored.

The reason is NKR Criminal, Civil and Administrative codes being newly-emerged circumstances define the crime performed by the judge during consideration of the case which is approved by the court's decision in legal force. However, as a newly-emerged circumstance the decision of the board of Justice is not defined, which approved the execution fact of obvious and flagrant violation of substantive or procedural kind performed by the judge. Due to such kind of legal gaps a situation is created where the Board of Justice approves evident and flagrant execution fact performed by the judge in a given case and the judge for this violation is subjected to responsibility but there are no legislative solutions to review the given judicial act.

In such conditions it is necessary to make legislative amendments as a result of which in procedural codes the decision of the Board of Justice will be as well defined as a newly-emerged circumstance according to which was approved the obvious and flagrant execution fact of procedural kind by the judge.

According to paragraph 4 of Article 44 "Everyone for the protection of his/her rights or freedoms is entitled to appeal to the international bodies for the protection of human rights and freedoms."

However, as NKR is not recognized by the international community this provision carries purely declarative character because applications of our citizens are not accepted by the international bodies including the European Court of Human Rights.

Thus, the possibility of any judicial mistake, even the final judicial act containing violation of human rights and freedoms should be subjected to realisation. And the international experience shows that even European developed countries are not guaranteed against judicial mistakes.

According to the report of the year 2011 of the European Court of Human Rights during this period the court accepted 1157 resolutions of which 987 contained violations by judicial systems of various countries. They are, for example, France (33 resolutions, 23 violations), Germany (41 resolutions, 31 violations), Austria (17 resolutions, 7 violations), Russia (133 resolutions, 121 violations), etc. It is followed that by exercising only one right to appeal to the European Court of Human Rights it was possible to protect violated rights of more than 987 persons.

Consequently, it is necessary not only to increase the level of the quality of justice that is being realized in NKR to that of the level of developed and recognized countries but also to have a more efficient judicial system than that of the latter and relevant guarantees.

To achieve this I suggest to unilaterally join the European Convention on "Protection of Human Rights and Fundamental Freedoms" as soon as possible and while exercising justice it is indispensable to apply the precedent of the European Court of Human Rights.

2.2 Labour rights

For a capable person work is the only source to be survived.

Article 1 of the NKR Constitution describes Republic of Nagorno-Karabakh as a social state the main part of the content of which is that for each adult citizen providing him and his family with standard means of life is the insurance of the possibility of working on his own.

Lack of knowledge and especially ignorance of the requirements of laws related to the labour rights always have negative impact on any society.

Although the number of complaints concerning violations of labour rights addressed to the Human Rights Defender have decreased by 16 complaints compared to the year of 2010 and made only 21 complaints, however, but the number of complainers increased making 49 or about 15 percent of the complainers a part of the complaints being of a collective nature. They mainly related to the signing of labour contracts in a way of violating requirements prescribed by the law.

Concern is that the main part of people who have applied to the Defender are employees of private companies (especially construction companies) which proves the ineffective control of appropriate state authorities of this field. More widespread are such violations of labour rights as employers' payment not in time or generally not payment of the salaries to the employees.

Decisions have been made by the Defender on transferring complaints concerning private companies to the NKR State Labour Inspectorate as according to paragraph 2 of Article 7 of the NKR "Law on Human Rights Defender" the Defender shall not consider complaints regarding non-state bodies and oganisations and their officials.

As a result all 13 complainants have fully received their unpaid salaries.

Regarding complaints against activities of state bodies and organisations and their officials through investigation it was discovered that officials of state bodies basically sign labour contracts with the employees of service staff for a certain period of time even in the cases when as followed by paragraph 1 of Article 95 of the NKR Labour Code they ought to have signed a contract for an indefinite period of time.

Besides essentially limiting people's labour rights by irrelevantly increasing the employee's dependence upon the employer and his non-protection in labour legal relations it also contributes to creation of corruption risks in these relations.

In order to except such violations of employees' labour rights I call the NKR State Labour Inspectorate and the NKR Federation of Trade Unions to show more principal and consecutive approach while exercising state control and supervision over the above mentioned issues.

The above mentioned violations may be elucidated through the following quite typical example.

A resident of Stepanakert informed that since May 16, 2009 she works at NKR "Psycho-narcological dispensary" CJSC at Healthcare ministry as a cleaner but every year the administration of the company signs a term labour contract with her and on 14.12.2011 she was told that on 09.01.2011 the signed labour contract will be annulled.

The applicant asked to protect his rights and to prevent the cancellation of the labour contract.

As a result of investigation of the mentioned issue the Defender clarified to the head of the "Psycho-narcological dispensary" CJSC that according to part 1 of Article 95 of the NKR Labour code a labour contract for a definite period of time is signed if working relations cannot be determined for an indefinite period of time given the nature of the work to be done or conditions of performance if nothing else is stipulated by the code or by the laws.

Under part 3 of the same article are listed other exhaustive cases when a term labour contract is possible to be signed. They are: housework, seasonal and temporary work and other cases the nature of which is not identical to that of the case under consideration.

Consequently, one can assume that while signing the contract with the applicant the administration of the company was guided by part 1 of the same article which states that an employment contract for some period of time is signed if the working relations cannot be determined for an indefinite period. And the possibility of this can prove only the nature of this work or its implementation conditions.

In this regard it is difficult to imagine that the cleaner's work by its nature and implementation conditions can also be labeled as a work of certain period, especially that signing three times a contract with the applicant proves the contrary, i.e., from the outset the working relations should have been determined for an indefinite period and not be signed an employment contract for a definite period of time as the conditions concerning the contracts' period of the above mentioned three employment contracts contradict to requirements of Article 95 of the NKR Labour code. And according to clause 2 of paragraph 1 of Article 6 of the same code if conditions defined by the employment contract contradict to the labour code these conditions have no legal force. Based on this one can clearly say that the provision concerning the term of the effectiveness of the labour contract signed with the applicant on January 9, 2011 has no legal force.

Actually, the employment contract is considered for an indefinite period of time and is not subjected to cancellation on the grounds of the director's notification dated 14.12.2011.

As a result the issue received a positive solution.

2.3 Right to ensuring of living standard and social security rights

The right to ensuring of living standard and social security rights enshrined in Universal Declaration of Human Rights, international charters on Economic, Social and Cultural rights, UN Convention on Children's rights and in other acts is also defined in Article 37 of NKR Constitution which states that everyone is entitled to an adequate standard of living for him/her and his/her family.

During the year 2011 the staff of the NKR Human Rights Defender received five complaints

concerning insurance of living standard which contained request for assistance in house repair issue.

Based on the applicant's housing conditions the Defender intervened in this issue either by giving an urgent resolution to this problem through authorities or by sending the appeal to appropriate authorities for consideration.

In one case the Defender's mediation gave a positive solution to the issue raised by the applicant.

In September, 2011 a resident of Shushi informed that on March 21, 2008 as a result of strong wind the roof of his house had been completely damaged. The applicant informed that the repair process of the damaged roof of his house had been compiled in the list prepared by Shushi municipality but the roof was not repaired. As a result of investigation the Defender clarified that he was really included in the mentioned list but the local authorities were delaying the solution of the problem. In response to the Defender's letter addressed to the head of administration of Shushi, the latter informed that the applicant was provided 41.22 sq.m. tin for the roof repair of his detached house.

Article 39 of NKR Constitution stipulates that everyone has the right to social security in the event of motherhood, many children, old age, disability, sickness, and loss of breadwinner, unemployment and in other cases provided by the social security rights. The limits and forms of social security are stipulated by law.

On the basis of this constitutional norm a number of laws have been adopted in the state which regulate in detail the pension appointment procedure, terms and amount of provided funds in each mentioned case.

In 2011 the staff of NKR Human Rights Defender received only 9 complaints related to social security which mainly contained request for financial assistance. Due to the Defender's intervention such needy citizens received different amounts of financial assistance.

The evidence of the effective policy carried out in these fields by the state (especially regular growth of the size of pensions, provision of housing to certain groups of citizens) is the decrease of the number of complaints addressed to the Defender regarding the rights to social security and ensuring of living standard. If in 2009 66 complaints were received, in 2010 – 46 complaints and in 2011 it made only 14 complaints.

The right to environment promoting health and welfare is one of the basic human rights as it touches upon the natural conditions of his existence. If the living atmosphere is not favourable for human existence and health then all his rights are void of sense.

According to paragraph 1 of Article 36 of the NKR Constitution everyone has the right to live in favourable environment.

During the year 2011 the staff of NKR Human Rights Defender received only 4 complaints regarding the right to living in favourable environment but the number of complaners was 86 which

suggests that many people are concerned about these issues.

For example:

In October, 2011 83 residents from a number of streets of Stepanakert have expressed their dissatisfaction with the fireworks at nights during weddings the strong voices of which prevent the rest of the residents and thus foremost causing discomfort to children and old-aged people.

The applicants asked to take into account the aforementioned and change the procedure of fireworks, to take appropriate measures to protect people's safety and comfort.

Meeting the applicants' request the Defender offered the mayor of Stepanakert to discuss the issue of expediency on prohibiting such fireworks (except for the days prescribed by the "Law on NKR holidays and memorial days") or holding them in a sufficient distant place out of residential spaces of Stepanakert.

On the basis of the decision № 53 dated November 4, 2011 passed by Stepanakert urban community council firework events in Stepanakert have been prohibited (except for the days prescribed by the "Law on NKR holidays and memorial days").

2.3 Right to property

According to Article 33 of the NKR Constitution everyone has a right to determine in accordance with his views, the right to property, use and inheritance of property obtained through legal properties. Nobody has the right to infringe against subjective right of property.

During the year 2011 the staff of Human Rights Defender received 20 complaints from 56 persons regarding violation of the right to property (including collective complaints the number of which makes 17 percent of those who applied).

The applicants' complaints mainly concerned the right to joint property of the owners of residential and non-residential flats of multi-storied buildings and refugees and the delay of privatization of other immigrants' houses.

Information about violations and the Defender's response are introduced in subchapter 2.1.1 of the report.

2.4 Right to free movement, settlement selection and civil rights. Right to favourite environment

Everyone legally in the territory of Nagorno-Karabakh Republic has the right to free movement and choice of residence. Everyone has the right to leave the Nagorno-Karabakh Republic (Constitution, Article 25).

Although only 5 persons applied to the Defender on this issue during this year restrictions of this right significantly impact on human freedom as the right to free movement and choice of residence is an

important component of the right of human freedom. The mentioned can be described in the following example.

A person having the citizenship of Syria and Armenia informed that since 1988 up to date has domiciled in the Nagorno-Karabakh Republic in Stepanakert and since 2004 has obtained the status of NKR resident but he/she is registered in Yerevan. He is architect by profession but in order to be engaged in this activity he/she is unable to obtain a license as he/she is not registered in NKR. In addition, not being registered in NKR causes a number of obstacles for him and members of his family. In July, 2011 he applied to the passport department of NKR Police with the request to be registered in the house belonging to him by the property right which was rejected on the grounds that in order to obtain NKR citizenship he must waive his current citizenship.

By the Defender's letter the employers of the staff of the appropriate subdivision of the NKR Police have been explained that the investigation of regulating law of the above mentioned 2 different processes (registration and acquisition of citizenship) shows that registration in NKR does not mean to become its citizen and citizens of foreign countries can be registered in NKR without changing their citizenship. Registration of foreigners is implemented by the procedure defined by Article 16 of the NKR "Law on legal status of foreign citizens of Nagorno-Karabakh Republic" according to which the registration of a foreign citizen in NKR according to the habitual residence is implemented by police on the basis of documents providing his/her right to residence in the country as well as dwelling area occupied by him/her.

Followed by clause 1 of paragraph 1 and paragraph 3 of Article 15 of the NKR "Law on Human Rights Defender" it was suggested to satisfy the applicant's request to be registered in NKR and the issue received a positive resolution.

Complaints of foreign citizens and a number of stateless persons prove that the right under analysis is frequently violated with their respect requiring the Defender's mediaion.

In order to be registered in NKR or to obtain a passport foreign citizens and stateless persons apply to the police passport department where they send them to military commissariat to take a military registration but they are refused by the commissariat.

The problem lies in the fact that according to clause "a" of paragraph 2 of the NKR "Law on conscription" issuing passport to conscripts, exchange of conscripts, activities of registration by settlement and remove from the registration are carried out in the case of presence of notes on military registration by appropriate military commissariat in their military documents. However passport administration of police irrelevantly distributes this provision over wider frames of people because it refers only conscripts, i.e., pre-recruiting (16 – 18 years old), recruiting aged male citizens (18 – 27) and those registered in depot battalion as well as female citizens having military profession or being on military service.

Conclusion

Investigations carried out in the reported period show that the Defender's recommendations and advice for elimination the grounds of violations of human rights and fundamental freedoms indicated in the report have been adopted and realized by almost all branches of authorities.

I will expect the same attitude towards this report.

NKR Human Rights Defender

Yuri Hayrapetyan