

## Summary of the special report

### On the considerations and suggestions by the Human Rights Defender of the Republic of Nagorno Karabakh concerning the measures aimed at increasing the efficiency of the Public Defender's Office

After reviewing the materials the Defender and his staff raised a question about the necessity of assistance by the state aimed at enhancing the effectiveness of the activities of the NKR Public Defender's Office.

The legal basis of the activities of the structure and the state of exercise of human right to access to free legal aid with funds from the state budget were also examined. The latter was implemented in the following ways: on the basis of the opinion of people having received and having access to the mentioned right and through the data acquired by the judicial department, as well as through the observations carried out in the Office.

Below is the brief description of the above mentioned.

#### A. Legal basis of the Public Defender in the Republic of Nagorno Karabakh.

##### 1. Part 1 and 3 of the Article 46 of the NKR Constitution states:

“Everyone shall be entitled to legal assistance. The accused without sufficient funds for paying the service of the defense advocate as well as in cases prescribed by the law the legal assistance shall be provided at the expense of the state resources.”

2. The NKR Law on Advocacy adopted in November 19, 2005, deems that the Office of the Public Defender is a structural department functioning in the staff of the Chamber of Advocates consisting of the Head of the Office and the public defenders.

The Head of the Office is elected by the general assembly of the Chamber of Advocates consisting of members with at least 5 year length of employment. He supervises the quality and period of legal aid implemented by the public defenders.

A public defender acts in the Office of the Public Defender at the Head of the Office according to the labor contract signed with the Chairman of the Chamber.

The number of public defenders is defined by the board of advocates with state financing.

Thus, the mentioned law defines the principle of formation and administration of the Public Defender's Office by the NKR Chamber of Advocates, and it actually excludes the participation of the state, which possibly is one of the basic reasons of the shortcomings mentioned below.

#### B. Exercise of the right to access to free legal aid according to the persons enjoying it.

As stated by the applicable law, citizens shall be entitled to the right to free legal aid in criminal cases, namely, cases stipulated by the Criminal Procedure Code, in civil cases, namely: cases of collecting alimony, cases of compensation for employment trauma, other health damages, and loss of main income provider.

##### 1. Criminal cases.

During the visits to the NKR penitentiary station and isolation cell, people serving sentence and non-detained suspects complained about disinterested, passive, even formal participation of the public defenders in the investigation of criminal cases and in the stages of legal investigation, stressing that they do not fully protect their interests, besides advise them to request for pleading themselves guilty and to implement urgent trial, sometimes even trying to persuade.

##### 2. Civil cases.

Meetings of the Defender and his staff in civil cases with holders of the right to public defense

show that they are not informed about the existence of such a structure and about their right to appeal to aid. In my opinion the reason of this carries an organisational characteristic. The analysis is presented in point "C."

Of course, negative opinion of those using the service, in some cases can be considered subjective, taking into account the fact that their expectations have not been justified, however this situation shows that there are also legal and organisational objective reasons for forming such an opinion.

In my opinion the main legal reason is the statement in the NKR Law on Advocacy that state shall not participate in the formation of this structure and shall not supervise the quality of the aid by the state despite the fact that the structure is built with state financing. This makes it possible to control the effective use of budget resources, and as the only means of affecting the processes under consideration, it would be desirable to use.

The conclusion is preliminary and the issue is supplementary, thus it needs to be properly studied.

#### C. Results of the investigation conducted in the Office of the Public Defender.

There is no a separate workplace in the Office, thus the Head sits together with advocates of the chamber, in one of the two rooms hold by the NKR Chamber of Advocates.

This negatively affects the exercise of human right to free legal aid, particularly in civil cases, for if in criminal cases the access of the suspect or the accused to free legal aid is clarified by the proceeding or the body implementing control over it (investigator, prosecutor, judge), in civil cases either the citizen must be informed about the mentioned aid, or the advocate whom he applies to. Such attitude on behalf of the advocate becomes more necessary in the case of the absence of a separate workplace.

However, the reality shows the opposite.

So, the Public Defender is not the person who fully holds this position, but the advocate who renders paid legal help, who holds only a part of the position of the Public Defender from 20% to 70%, that is actually he works pluralistically.

This brings to the fact that these defenders pay less attention to public defense and express more interest to the defense that are paid. This can be noted in the following example:

From 2006 till now, i.e., during the whole period of the activities of the Public Defender's Office, free defense in civil cases of only 3 persons have been implemented. Meanwhile, only during the year 2010 the NKR court of first instance investigated civil cases in collecting alimony and a case of compensation for health damages, non of the plaintiffs were provided with the aid and in the cases mentioned above.

In order to develop a more precise picture of the described phenomenon and its reasons, it would be expedient to investigate all these cases by the proper authorities and find out if advocates had participated in the hearing trial and if they had been paid, if it is so, are they public defenders at the same time and why did they not render free aid?

All the reasons presented by the public defenders should be clarified. However, it can be stated that there exist other reasons along with mere human factor.

The reason is, instead providing positions appropriate to the sum allocated from the funds of state budget for salaries and appointing these positions for public defenders, it is shared between more members of the collegium of advocates, i. e., the position of the Public Defender does not have a working office holding the full extent.

So, 19.230000 drams allocated from state budget of the year 2010 for salary were shared between 11 persons, and the same sum of the year 2011 was shared between 13 persons.

One of the negative sides is that persons implementing paid advocatory activities are not bound

to obey the working mode and discipline prescribed by the labor code and the supervision by the Head of the Office is almost impossible.

According to the considerations and conclusions, the newly elected head Y. Danielyan considers at the same time that the implementation of activities with only 4 or 5 positions is not possible because of the abundance of criminal cases which also needs to be reviewed by the appropriate authorities.

The Public Defender is interested in the matter of the improvement of the system but he needs help.

According to the Head of the Office, during the year 2010 public defenders implemented defense of 850 persons in criminal cases in pre-trial and trial proceedings.

It is worth noting that subsequently a considerable part of people with the access to Public Defender's help in criminal cases refuses from this assistance, signing reimbursable agreements with the same or other advocate, owing to which it becomes indispensable to find out the reasons. They may differ, namely by free will on the basis of unreliability, as well as compulsorily, which may witness about the offensive abuse of the Public Defender's power.

Summing up the statement, we arrive at the conclusion that its correctness requires implementation of organizational and legal measures.

As an urgent mere technical means, the Public Defender should be provided with an appropriate work place.

As it is not in powers of the Human Rights Defender to conduct a complete study of the situation and to develop comprehensive suggestions concerning its correctness, for more detailed studies I find it necessary to create a commission consisting of the representatives of the NKR Ministry of Justice, Prosecutor's Office, and from judicial and financial systems.

If the undertaken measures based on the combined studies are insufficient for the essential correctness of the situation, it would also be possible partially or completely to change the status through appropriate recycling of the legislation. Depended on the situation, they may be aimed either at including mechanisms of the participation of the state in the affairs of the formation of the Office, or at granting the Office the status of state authority as a more influential even extraordinary means.

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of the Republic of Nagorno Krabakh

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