

## **Introduction**

### **1. About the Report**

According to Part 1 of Article 17 of the NKR “Law<sup>2</sup> 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 presentation of the report is one of the main and specific components of the Defender’s activities. The report is especially important because it introduces the Defender’s activities to the state authorities and the public and creates an opportunity to touch upon all achievements and shortcomings in the field of human rights during the previous year, enables to speak through analysis about progress or regress in this or that field. The report has been prepared only on the basis of the complaints addressed to the Defender and on own initiative-launched investigations. Consequently it does not cover the whole picture of human rights protection in the country.

First of all the report is called to draw the attention of the state’s President, legislative, executive and judicial bodies to the situation of human rights protection in the state expecting corresponding response to the Defender’s suggestions in favour of its improvement.

The experience of previous years has shown that in general it immediately contributes to the process of address of this or that human rights violation. Sometimes a number of issues concerning the interests of both individuals and some social groups find their solution after the introduction of the report to authorities.

The introduction of the report to mass media and non-governmental organisations provides both transparency and publicity of the Defender’s activities and an effective preventive means for an official’s dishonest attitude toward the citizens is never overlooked and heightens the public interest which must contribute to the possible exclusion of such phenomena.

The report will also be introduced to the international community, particularly to the UN High Commissioner for Human Rights and the Council of Europe Commissioner for Human Rights, the European Ombudsman Institute, all its member ombudsmen which will enable them to once again get informed that in Artsakh there are human rights protection mechanisms which function in line with the international standards.

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<sup>2</sup> Hereinafter, also referred as “Law”

## **2. Human Rights Defender's Institution**

The Human Rights Defender's Institution was established in April 2008 by the NKR National Assembly's election of a Defender. The Defender took his position in April 17 and in May he formed the staff.

Its functions according to the fundamental principles on the status of national institutes dealing with human rights encouragement and protection, which were approved by the resolution № 48/134 dated December 20 1993 of the UN General Assembly (Paris principles).

According to this fundamental document, the Ombudsman (this is the human rights defender's internationally adopted name) is a trustworthy individual who is authorized by the parliament to protect the citizens' rights and exercises extensive supervision over all local and state self-governing bodies and their officials without the right to change the decisions passed by them.

Articles 119 and 120 of the NKR Constitution stipulate that the Human Rights Defender is an independent and irremovable official who implements the protection of human and citizen's rights and freedoms violated by the state and local self-governmental bodies and their officials.

The Defender's authorities, conditions of activities and safeguards are enshrined by the NKR Law on "Human Rights Defender" which has been significantly amended by the newly enacted law in the reported period.

By the amendment in Part 1 of Article 2 of the law during his activities the Defender shall be guided by the following fundamental and initial principles: the fundamental principles of lawfulness, social coexistence and social justice.

If the first principle proceeds from the tenor and logic of this legal act, the other two ones are important novelties in the Defender's authorities which, I believe, are more consistent with the principle of the rule of law rather than with the law itself.

In 2012 the Defender's institution moved from the capital to Shushi. As this was done in the fourth trimester of the year it is still too early to assess the results and influence of the institution's further activities. Still one thing is evident: it is necessary to review the approaches towards the organisation of the activities, undertake such means which would enable to provide the institution's availability for the country's population, particularly to conduct precepts for people to be in intercourse with the officials of the Defender's staff through internet, to implement more frequent visits to different settlements of the country.

If the realisation of the first problem is possible by the own means of the staff, for the second problem it is necessary to have at least one means of transport which will also enable the staff to give a response to complaints regarding violations of human rights requiring urgent mediation. Unfortunately, the Defender's request to the executive and legislative authorities in the view of the solution of this

important issue has received a negative response and no appropriate means were envisaged in the 2012 year's state budget.

## **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 2012 the Human Rights Defender received 117 complaints from 135 persons of which 79 were oral and 56 written.

Besides the mentioned the Defender and his staff rendered legal aid to more than 200 people via telephone but these were not registered because of the lack of verity of their personal data.

A part of complaints were received during the Defender's staff officials' visits to different settlements of NKR.

Table 1 and figures 1 and 2 below introduce the number of written and oral complaints and complainants (with the exception of the number of complainants who applied via telephone calls) according to NKR administrative territorial units and foreign countries.

Table 1. Number of complaints and complainants according to administrative territorial units and foreign countries

№	Name of region (city)	Number of complaints	Percentage of the total number of complaints	Number of complainants	Percentage of the total number of complaints
1.	Stepanakert	70	59.8%	84	62.2%
2.	Askeran	14	12%	14	10.4%
3.	Martakert	5	4.3%	5	3.7%
4.	Martuni	5	4.3%	5	3.7%
5.	Shushi	9	7.7%	9	6.7%
6.	Hadrut	3	2.5%	3	2.2%
7.	Qashatagh	3	2.5%	3	2.2%
8.	Shahumyan	0	0%	0	0%
9.	RoA	5	4.3%	9	6.7%
10.	RF	3	2.5%	3	2.2%
11.	Total	117	100%	135	100%

Figure 1. Number and percentage of complaints according to NKR administrative territorial units and foreign countries

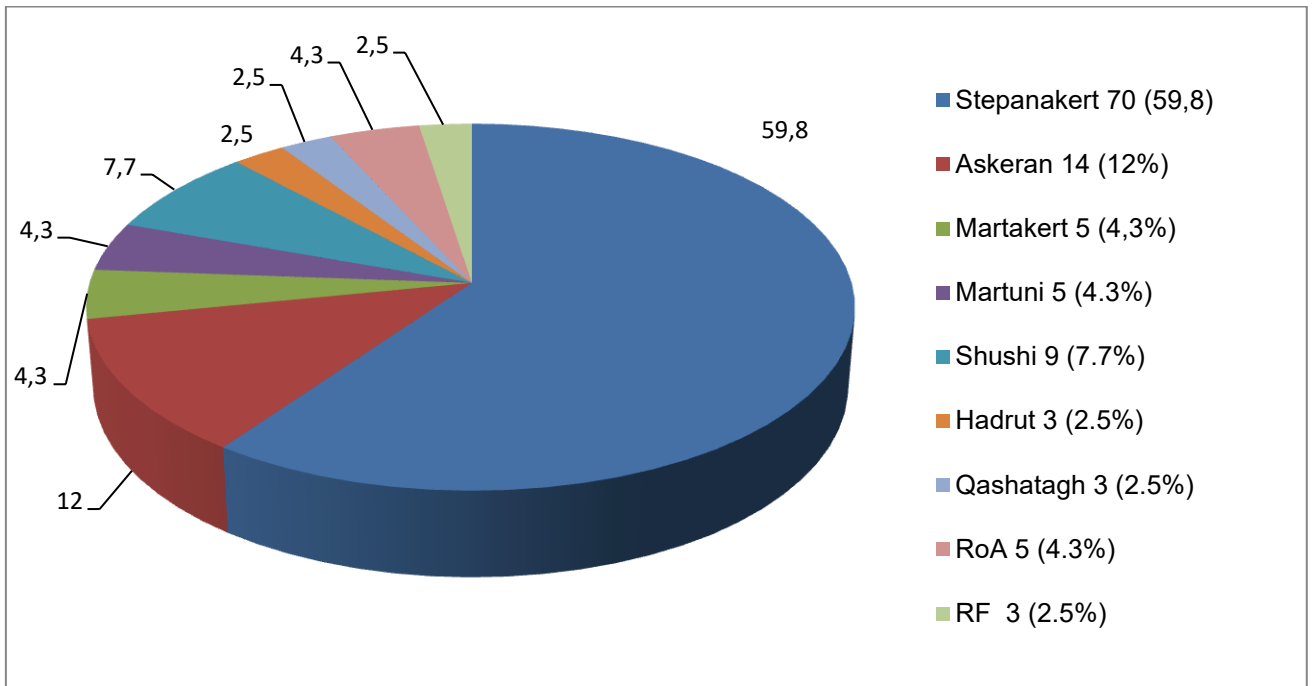


Figure 2. Number and percentage of complainants according to NKR administrative territorial units and foreign countries

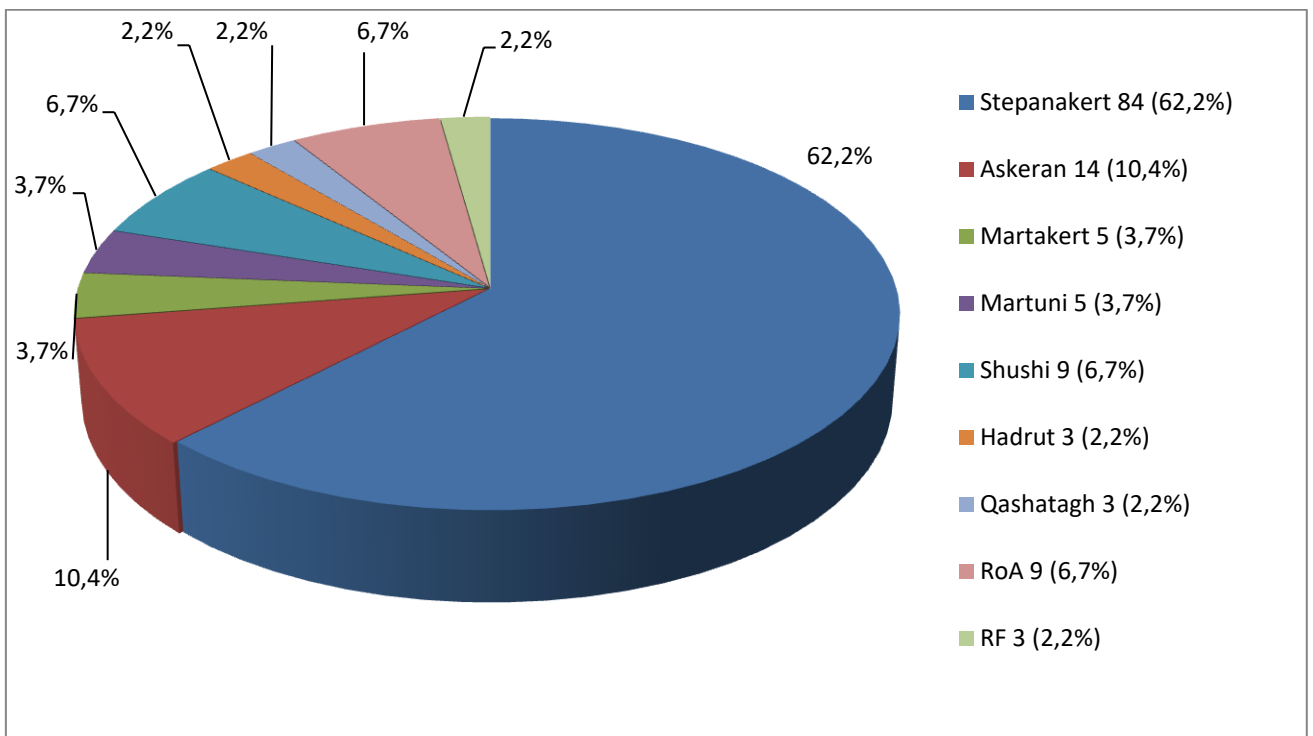


Table 2 below shows the thematic picture of the received complaints.

Table 2. Thematic picture of complaints

№	Theme of complaint	Number	
		Count	Percentage
1.	Right to judicial remedy	26	22,2%

2.	Right to property	21	17.9%
3.	Social security right	20	17%
4.	Labour right	14	12%
5.	Right of people in places of compulsory detention	5	4.3%
6.	Right to freedom of religion	5	4.3%
7.	Right to ensuring of living sufficient standard	5	4.3%
8.	Family and children's rights protection	3	2.6%
9.	Right to citizenship, free movement and receiving passport	2	1.7%
10.	Right to live in a favourable environment	2	1.7%
11.	Other matters	13	11.1%

Compared to previous years in 2012 the number of complaints and complainants declined which can be explained by the following:

1. Decline in the number of complainants

In 2011 the Defender accepted 332 persons and in 2012 – 135 persons, i.e., the number of complainants fell by 197 persons or by 59 percent.

The analysis of the reasons of the considerable decrease of these data shows that it is because in 2011 a great number of complaints were collective, one of which was signed by 86 persons, another one by 31, a number of complaints were signed by one or two decades of people, and in the reported period the number of complaints alike was trivial. Consequently, it may be stated that during the reported year conflicting situations in the relationships of the authority and large groups of people decreased.

2. Decline in the number of complaints

In 2011 the Defender received 125 complaints and in 2012 – 117, i.e., it decreased by 8 complaints or by 6.4 percent. Though the decrease of this datum is not so considerable yet it is consistent with the regularity of the decrease of the general number of recent years' complaints.

Compared to previous years this regularity has the following picture: in 2010 it made up 28.1%, in 2011 – 41%.

The analysis of the reasons of this regularity shows that it is mainly due to the following circumstances:

The main reason is perhaps in the initial stage of his activities the Defender was more concerned to make the institution recognizable as far as possible and together with his staff by means of media and meetings with people he urged to appeal in any case, when they thought their rights were violated even if he/she hesitated whether this or that question was in the Defender's powers.

Such an approach was justified only for this period and such even in some meaning artificial means of annual increase of complaints makes the institution recognizable but this cannot contribute to the formation of an efficient human rights body.

In the course of time this approach was reviewed in favour of more active clarification of the Defender's powers.

Previously one of the main reasons of a great number of complaints was that people began to bind new hopes with the newly established human rights body, especially those who for long years had been complaining to different instances and had remained unsatisfied with the passed decisions. This is the reason that in the first year of the activities from May 2008 up to December 267 persons applied to the Defender and in 2009 it made up 460.

We should also consider the influence of the law on this index which initially stipulated that the Defender should accept a complaint if three years had passed from the day when the complainant became aware or should have had to become aware of his violated right but further this deadline was limited to one year.

In such cases, of course, conjectures may appear concerning the efficiency of the body. Still they would have been justified only if the institution were inactive. As in this case the public does not introduce such assessments we must seek this answer in the experience of other countries' institutions alike, which witnesses the contrary.

In his famous work "Reviews of the state Law-Enforcement Officer" O.Mironov, an authoritative specialist of the Ombudsman institute, ex ombudsman of the Russian Federation writes that an increase of the number of complaints does not witness the efficiency of an ombudsperson's activity. It may witness only the awareness and hopes of population bound with this institute, which is much more positive. A large number of complaints speak about people's lack of fulfillment and security, incompleteness of further problems and human rights mechanisms and an ombudsperson is called to influence on the improvement of such work.

The investigation of other countries' ombudsmen's reports has shown that the index of the number of complainants who applied to the NKR Human Rights Defender in ratio with the total number of population corresponds with the indices of European countries. In the Republic of Nagorno Karabakh out of a thousand of people the number indicator of persons who applied to the ombudsmen is equal to 0.81, in Denmark it is 0.88, in Czech Republic – 0.69, in Finland – 0.51.

So we may come to the conclusion that there has been natural optimization of the number of complainants.

Despite the fact that consideration of complaints is the main mission of the Ombudsman institution, investigation of both international and our experience has shown that the solution of questions raised in the result of the complaints' consideration and on own-initiative-conducted

researches are also of great significance as they contribute to the restoration of more people's violated rights.

These procedures are also important as they have a preventive nature and are targeted at the solution of more general and extended issues.

The above mentioned data show that the main part of complaints were received from Stepanakert (70 complaints or 60% of the total number of complaints). This is most probably both due to the number of population and the Defender's institution's availability for the population of the given territory. And the regions where respectively more complaints were received from were those regions where the employees of the institution made outgoing meetings, especially in Askeran region (14 complaints or 12 percent).

In this regard we must be concerned about the lack of complaints from Shahumyan region which causes necessity of investigation and frequent visits to settlements of the region.

It is also noticeable that the number of complaints of some fields decreased which cannot be unambiguously related to more effective work in these fields as the Defender's institution is not the only body where people can complain against the activities of this or that official, and only the statistical data of persons who complained to the Defender are not enough to give an assessment to general activities of any state body.

Thus, it would be groundless to give a general negative assessment to state structures which have been more complained as well as a positive assessment to bodies that have not or have been less complained. However this factor cannot be excluded.

Thus, not the number of complaints but the number of violations and the level of its gravity can be considered as a more objective assessment of the activities.

In this regard, in my opinion, it will be more objective to take the Defender's assessment for the activities of such bodies as the court, the prosecution, and the police because following the experience, as a rule, almost all people complain to the Defender against about activities.

The results of recent and reported years prove that the law-enforcement authorities of the country managed to get rid of such an intolerable heritage as corruption which came from soviet years.

The considerable decrease in the number of people unsatisfied with the activities of these bodies has also become a regularity.

In 2010 the Defender received 50 complaints concerning the judicial remedy and in 2011 it was 34, in 2012 it made up only 26 complaints.

### **1.1.2 Meeting, Visits, Own-Initiative-Launched Investigations**

In the year 2012 the Defender organized ad hoc meetings with people both in different settlements of the country and in places of compulsory detention of persons being suspected and accused in criminal case and carrying their punishment by sentence.

During the year 2012 upon the Defender's assignment the employees of the staff visited the Vardadzor and Nakhijevanik communities of Askeran region of NKR, "Children care and protection boarding institution № 2" State non-profit organisation, NKR Government attached police penitentiary institution, schools both in Stepanakert and in Shushi.

During the visits to the Vardadzor and Nakhijevanik communities of Askeran region implemented in October 22, 2012 a resident having refugee status said that his son is invalid, he cannot walk and needs a wheelchair.

The child studies in the second form of the village school and his everyday attendance to school causes great difficulties for the child's parents as they take him there in hands. The complainant asked intervention for giving a wheelchair and noted that they had never applied to any state body with this request.

Given the acting law states that a wheelchair is given only on the basis of a disabled person's or his representative's application, the Defender, in a letter addressed to the NKR minister of labour and social affairs, asked to take measures for providing the child with a wheelchair. The ministry immediately gave him a wheelchair for which the Defender sent a second letter expressing words of thankfulness.

Therefore, the mentioned example should be teaching both for the Defender's institution and for all other state and non-governmental structures to be more careful and inquisitive toward citizens and social spheres who cannot protect their rights themselves and provide their minimal requests which the state also takes care of.

The heads of the Vardadzor and Nakhijevanik communities of Askeran region and all the residents who came to the meeting informed that they had a serious problem of drinking water. They have water once a week with futile quantity. They asked the appropriate bodies to put counters for an effective use of the water, but they have not taken any measures yet.

In this regard the Defender made a request to the NKR Prime minister and the head of Askeran region administration in response to which the latter said that "Water supply and water disposal" CJIS was taking measures for putting the pumping station of the territory of "Keter" into use and for cleaning the bore holes.

In June 1, 2012 upon the Defender's assignment the employees of the staff visited "Children care and protection boarding institution № 2" State non-profit organization with presents to congratulate the children's day and to participate in the event organized by them.



At the same time the employees investigated the children's living conditions which were on a favourable level.

In 2012 the employees of the staff made a number of visits to NKR Government attached penitentiary institution of the penitentiary administration and to the inquiry isolation.

It is noteworthy that people in these places did not introduce any complaint concerning infringement or violations of their rights.

In December 10 – 18 in connection with Constitution day and International day of Human rights, the staff of the Human Rights Defender visited a number of schools both in Stepanakert and in Shushi where classes were organized on the Human Rights Defender's institution and NKR Constitution's day.

During the classes the pupils were given booklets which distinctly introduced in which cases a citizen could apply to the Defender.

In the reported period some non-governmental organizations on protection of disabled persons' rights applied to the Defender informing that during constructions in the republic the protection of disabled persons' interests were not taken into consideration, especially in some buildings of public significance necessary places of entrance and exit proper to disabled persons' conditions were not envisaged.

The NKR acting law stipulates that bodies of state power, all categories of employers operating in the territory of the Nagorno Karabakh Republic shall create favourable conditions for persons with disabilities for access to social infrastructure units, residents, social buildings and facilities, the smooth use of public transport and means of transportation, communication and information, places of recreation and leisure activities.

Upon the Defender's assignment the employees of the institution created a special group which was meant to carry some expansive work on investigating the level of access of entrance and exit to public buildings in the whole territory of the NKR that have been constructed or reconstructed during the recent three years for persons with disabilities.

Today the number of buildings for persons with disabilities is quite little despite of the volume of the performed work and success in this field in recent year.

Investigations still go on.

### **1.1.3 Legal Advice**

Legal advice is one of the main components of the Defender's activities.

Almost everybody who apply to the Human Rights Defender receive necessary advice even in the case when the solution of the raised questions is beyond the Defender's jurisdiction.

Throughout the year more than 300 citizens received legal aid 200 of which via telephone.

In the Defender's institution legal advice was implemented mainly in three ways:

1. By the results of a complaint received for review,
2. By the results of investigation of a complaint not liable to review,
3. By mere legal advice.

The first way regards the advice which a citizen receives throughout his complaint's review and its solution. During the review of each complaint it should be explored whether there has been any violation, what is the ground of its origin and what is necessary in order to restore or rectify the violated right. Usually the applicant is informed about the whole thing which enables him to orientate himself in future in situations alike.

The second is the advice when no violation is found in the issue raised by the applicant or it is not liable to review in the Defender's institution.

Both in the first and in the second cases the applicant is explained the acting law, why the arguments pointed by him/her were not considered as violations, in which case it can be considered as such, and in the case when the raised question is liable to solution by other state body and it is beyond the jurisdiction of the Defender, he/she is acknowledged about all ways of the question's solution.

The third way regards the advice when a citizen applies to the Defender to receive legal advice for clarifying any situation or an acting law.

For example with his complaint a citizen requested to clarify why there is no notification in the Constitution or in other laws about the procedure of applying to international law enforcement bodies.

The applicant was explained that everyone, for the protection of his or her rights and freedoms is entitled to receive the assistance of the Ombudsman as stipulated by point 4 of Article 44 of the NKR Constitution.

This provision actually obliges the state to respect everybody's right to apply to the international legal organisations and not to prevent its realisation which is not self-sufficient as the exercise of this right needs a number of other conditions which are not related to the domestic legal system.

Such conditions as well as applying procedures are defined by these international structures.

In order to apply to the Human Rights European Court it's an important precondition that a complaint shall be addressed against the "high conditioned sides", i.e., states which signed the Human Rights European Convention (November 4, 1954, Rome), member states of European Council.

There have been a lot of cases when through the advice received by the Defender's institution citizens can reach success in protection of their own rights.

## **1.2 Legislation Improvement Targeted Activities**

Domestic legislation improvement is the most important issue both for the Human Rights Defender and for all local self-governmental bodies and the whole society, especially in conditions of rapidly developing social relations.

Any social relation not regulated by law can be regulated arbitrarily and raise a series of different violations as in such case solution of any problem will be conditioned only by a subjective factor. In such relations a person is usually deprived of the state guarantees of defending his/her rights and he/she has to effectively combat for justice himself/herself. Thus, the state must not leave a man alone in such a case as from the very beginning it has been created to protect people living in its territory from interior and exterior infringements. That is why we must carefully follow the harmony of laws and social relations, every day to answer the question whether the acting legislation corresponds to today's social coexistence and if it contributes to its development.

The Defender's contribution to legislation improvement is realized in different ways: participating in reviews of draft laws, applying to the constitutional chamber of the NKR Supreme court with the request to decide the constitutionality of laws and in the way of making suggestions to appropriate bodies endowed with legislative initiative about the necessity of improving or adopting any legal act.

In the reported period the Defender made a number of suggestions to the competent government bodies targeted at NKR legislation improvement.

In November, 2012 a citizen informed that she was a widow of a dead soldier of junior officer personnel and as such she received less pension than members of the family of a common dead soldier and asked to intervene in restoring the social justice.

The reason is that during the defence of the Republic of Nagorno Karabakh in the result of participation in the military operations as well as during the implementation of service duties another pension supplements calculation mechanism for the members of the families of common soldiers had been stipulated different from that of officer soldiers.

As a result of the calculation in the prescribed way the size of supplement payments to the members of families of dead soldiers of junior officer personnel became less than that of the members of families of officers and those of common soldiers, which in the Defender's opinion was not a fair approach toward the members of families of soldiers of junior officer personnel. Given this question's solution was related to legal procedures the Defender in a letter addressed to the Chairman of the National Assembly asked to organise parliamentary hearings for discussing this issue.

One more example: pensioners of NKR living beyond the territory of the republic have often been complaining to the staff of the Human Rights Defender about some provisions which prevent receiving their pointed pension sometimes even depriving them of their only income for a long time.

The reason is that a letter of power given by a pensioner allows continuous payment of pension amount for a period of no longer than twelve months beginning from the unpaid pension month, and paragraph 9 of Article 35 of the NKR Law on "State Pension" prescribes that pension may be paid in the case of submitting the power of attorney to the unit assigning pensions verified by a notary performing activities in the Republic of Nagorno Karabakh.

That is, the power of attorney verified by a notary of other state, including Republic of Armenia in our republic has no legal power for receiving a pension, meanwhile with the power of attorney verified by the same notary it is possible to realize a number of civic and legal transactions, including such serious and very expensive objects as trade of real estate, donation, rent and other contracts.

The main part of citizens under this category are lonely, old aged, sick men who need care for the above mentioned reasons which is realized in foreign countries particularly by their relatives living in the Republic of Armenia, and they have no opportunity to come to NKR even once a year to formulate a new power of attorney.

At the beginning of August, 2012 a 98 year old bed-ridden pensioner applied who because of the state of her health had moved to RoA and was under her daughter's care. The applicant sent to his grandchild a verified power of attorney by which she empowered him/her to receive her pension but the power of attorney was rejected for the above mentioned reason.

In this regard the Defender, in a letter addressed to the NKR NA Chairman, made a suggestion to take measures for reviewing the mentioned provision of paragraph 9 of Article 35 of the NKR Law on "State pension" which would contribute to full realisation of everyone's right to social security enshrined in Article 39 of the NKR Constitution.

### **1.3 Development of Public Relations, Information, Cooperation with Non-Governmental Organisations**

About five year experience of the institution's activities has shown that the pre-conditions for the efficiency of human rights protection targeted activities 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 year 2012.

With a view to clarify the means of fundamental human rights and freedoms and their protection, as well as to elucidate the activities implemented by the institution, the Defender and his staff performed a number of speeches on Artsakh public television and by radio, gave a number of interviews to "Azat Artsakh", "Regnum", "Armedia", "Defacto", and other local and foreign media agencies.

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

An important part of activities targeted at the development of public relations is conducting the Human Rights Defender's official website ([www.ombudsokr.am](http://www.ombudsokr.am)) which is periodically refreshed.

Given the role and significance of non-governmental organizations in the activities of any state the existence of this field constantly remains in the centre of the Defender's attention.

Experience of the developed and developing states has shown that a great number of implemented improvements are undertaken by non-governmental organizations. Unfortunately, it must be pointed that

in our country such developments are still missing.

Non-governmental organisations in Artsakh with some exceptions do not act; they do not serve the statutory aims for the realization of which they have been created.

In November, 2012 a representative of the Defender on the invitation of the Chairman of Helsinki Committee in Armenia participated in the international conference on the theme “Problems of life convicts” organized by the committee. The aim of the event was to discuss the experience of European countries concerning legal mechanisms of appointment and application of life imprisonment punishment.

Leaders and representatives of almost all Armenian legislative bodies and organisations took participation in the conference.

In June 1 of the reported year on the occasion of international children day a seminar – round table was organized dedicated to children rights and their protection issues in the centre of youth development.

#### **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.

We regretfully note that the non-recognized state of the Republic of Nagorno-Karabakh by international society limits the Defender’s opportunities to develop international cooperation, which negatively refers to the development of the institution and the efficiency of human rights protection in the country.

The institution is deprived of the attention and chances for development that is rendered to the ombudsmen of recognized states of our region.

At the same time we will keep 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 the state institutions implementing human rights and freedoms protection of de facto states.

Based on the above mentioned reasons, I find it expedient to send the copy of the report to the UN High Commissioner for Human Rights and to the Council of Europe Commissioner for Human Rights.

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 cooperation with the ombudsmen of other countries and institutions.

Keeping active cooperation with the EOI the Defender is in periodical correspondence with the General Secretary of the institute. In addition to annual and ad-hoc reports of the years 2008-2010 in the reported period the annual report of the year 2011 was also installed in the institute’s website.

In April 2012 by the mediation of European Ombudsman Institute the Defender participated at the seminar on the theme “Europe in crises: the challenge of winning citizens’ trust” organized by the European Ombudsman Nikiforos Diamandouros which took place in Brussels, capital of Belgium.

The aim of the seminar was to explore what concrete measures European and national institutions can take to re(gain) EU citizens’ trust.

The keynote speakers of the seminar were President of the European Commission José Manuel Barroso, President of the European Parliament Martin Schulz and Denmark’s Prime Minister, President of the Council of the EU Helle Thorning-Schmidt.

As a member of the mentioned institute in June, 2012 the NKR Human Rights Defender participated at the June session of the conference of INGOs organized in Strasbourg.

It is important to point out the active and effective cooperation with the ombudsmen of the republics of Abkhazia, Transdnestrian Moldova and South Ossetia.

In October 2012 the Commissioner for Human Rights of the Republic of Transdnestrian Moldova, in a letter addressed to the Defender informed that an Armenian, Tigran Serob Abgaryan who lives there, applied to him informing that he could not receive a citizenship of Moldovan Republic because he was allegedly a citizen of Georgia while he never applied for receiving Georgia’s citizenship and did not receive a citizenship.

In the frame of cooperation the Commissioner for Human Rights of the Republic of Transdnestrian Moldova asked for the Defender’s intervention to clarify whether T.Abgaryan was Georgia’s citizen.

In this regard the Defender applied to the Human Rights Defender of RoA and due to his mediation it was found out that T.Abgaryan was Georgia’s citizen.

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

## **Part 2. Violations of Human Rights and Fundamental Freedoms**

Classification of this part was done according to the legal spheres against which more complaints were received in the Defender’s institution in the reported year.

### **2.1 Right to Judicial Remedy**

According to Part 1 of Article 45 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.”

Complaints concerning the right to judicial remedy prevail other complaints related to different

rights addressed to the Defender in the year 2012 making 26 complaints or 22.2 percent of the total number of complaints. Citizens' complaints against the field of justice, as they believe, were mainly related to unfair legal acts and other legal procedures, particularly investigation of cases (basically civil cases) in longer deadline rather than in fair deadline as stipulated by law.

Given Part 1 of Article 7 of the NKR Law on "Human Rights Defender" stipulates that the Defender shall not intervene to judicial processes, all complaints were subjected only to preliminary investigation and the complainants received corresponding legal aid in a view of protecting their rights in the court.

At the request of some complainants officials of the Defender's staff were present in the court hearings of private judicial cases and were observing their process in a view of an observation mission.

The progress qualifying the courts' activities including improvement of the quality of legislation and justice and, as a result, decrease of people's complaints are quite fully elucidated both in previous annual reports and in the first part of the current report.

However, it would be appropriate once again to draw the attention of the competent government bodies to the suggestions introduced in the annual report of the year 2011 regarding the improvement of legislation which are targeted at the improvement of court proceedings and, of course, the exercise of people's right to judicial remedy.

## **2.2 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.

During the year 2012 the staff of the Human Rights Defender received 21 complaints regarding violation of the right to property which make up 15.5 percent of the total number of complaints. Although compared to the year 2011 the number of complaints increased only by one percent they make up the substantial part of the general amount of complaints (17.9 percent).

The right to property belongs to everybody and is one of the most relevant conditions of a person's freedom, as well as the basis of independence from others, even sometimes being the person's only means of existence.

This important factor is not always taken into account by the appropriate bodies which witnesses the following example:

In 2012 officials of the Defender's staff visited communities of Nakhijevanik and Vanadzor of the NKR Askeran region in order to organize meetings with the local population.

During the meeting one of the residents informed that the NKR Defence Army had dug trenches on about one hectare of his own land which had already been sowed with wheat and they could not use even the whole territory of the land.

He informed that he had applied to different state bodies in a view of receiving compensation or bringing the land into the former state but without any success and asked the officials of the Defender's staff to intervene in the restoration of his violated constitutional right to property.

An inquiry was made concerning the mentioned issue to the head of the administration of Askeran region, in response of which the latter informed that "Geodesic, landtenure regulations and real estate assessment centre" non – profit organisation of State committee of the real estate cadastre adjunct to the NKR Government performed measuring and mapping work in the Nakhijevan community during which it was found out that the allegedly land property, though being used by the NKR DA for trenches, would be changed with another area of land.

The Defender made no suggestions concerning this issue given the board of administration pledged in advance to perform reimbursement. As the solution of the issue is being retarded for some reasons and this variance demands the court's solution the complainant was clarified the right to and the order how to apply to the court.

A part of the complainants complained against violation of constitutional rights to property of the residents of flats of multi-storied buildings. In November 3 and 16, 2012, in a view of addressing violations in this field, suggestions were sent to the NKR Prime minister and the heads of the boards of administration, particularly on the protection of landlords' rights to state registration. In 2012 all heads of the boards of administration informed about the launch of this process though the Defender has received no news concerning its termination up to now.

### **2.3 Social Security Rights and Right to Ensuring of Living Standard. Right to Live in a Favourable Environment**

Given the inter-relationship of the mentioned rights usually they are analyzed together.

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.

The Human Rights Defender's staff received 20 complaints of which 11 oral, 9 written concerning social security right.

Compared to previous year both the number and percentage of the complaints increased by two in the total amount of the received complaints (17 percent instead of 8.6).

A part of complaints sought protection of a complainant's rights and was dealt with the interests of a large social group.

For example, recently some pensioners who addressed to the NKR Human Rights Defender's staff have complained about the amounts of the actually paid pensions on the ground that the service for



compulsory execution of judicial acts on the basis of the decision passed by court has withheld amounts from their via debtors' pension with 50 percent of their monthly payable amount which significantly deteriorates their living conditions.

In the result of investigations it was found out that according to Part 1 of Article 58 of the NKR Law on "Compulsory execution of judicial acts" during the exercise of the writ a debtor's salary or equivalent payments (including pension) can be withheld with no more than 50 percent until full pay off of the confiscated amounts while Part 3 of Article 43 of the NKR Law on "State pensions" adopted in November 30, 2011 stipulates that the total amount of deductions shall not exceed 30 percent of the pension.

So, there was discovered lack of correspondence between the mentioned two laws which needed to be removed.

In this view it was suggested to make amendments to the mentioned provision of Article 58 of the NKR Law on "Compulsory execution of judicial acts" removing the word "pension" from part 3 replacing the word "pension" and adding part 3.1 with the following complement: "During the exercise of a writ the debtor's state pension shall be withheld with no more than 30 percent until full pay off of the confiscated amounts".

In response to the suggestion the head of the staff of the NKR Government informed that this issue was discussed, it was approved and sent for review in the NKR National Assembly.

As a result an appropriate amendment has been made in the law and the pension amount of about 20 pensioners has been re-counted.

Article 37 of the NKR Constitution stipulates that everyone is entitled to an adequate standard of living for him/her and his/her family.

During the year 2012 the staff of the NKR Human Rights Defender received five complaints concerning insurance of living standard.

Complainants were mainly either immigrants or refugees but not provided with houses (even temporary).

In a view of clarification of the issue the Defender made inquiries to the Ministry of social security affairs and labour in response to which the minister informed that dwelling houses had been bought, built, reconstructed and repaired for 738 refugee families or immigrants and that following the NKR President's order dated January 19, 2012 today some work are being performed targeted at housing and development of the concept paper on improvement of living conditions of the families deported from Azerbaijan in 1988-1992, and those having not changed their moveable and immoveable properties.

Article 36 of the NKR Constitution stipulates that everyone is entitled to live in a favourable environment.

During the year 2012 complaints received in the Human Rights Defender's staff also included

those which contained information concerning violations of the right to live in a favourable environment.

In April 10, 2012 a resident of Stepanakert informed that the land owned by her was in a sad state because of the dung water of the units which make productive and social food set in the neighborhood. At the same time the complainant informed that because of the drug water which runs through her area she cannot use it, moreover, she cannot enter that territory at all.

Upon the assignment of the Defender the staff's officials visited that territory and became persuaded in the assertion of the complainant's information, moreover, they discovered violation of the right to live in a favourable environment of residents of about 3 houses and a number of land users, i.e., over 10 persons.

The mentioned was also asserted through special investigation conducted by the NKR Ministry of healthcare on the basis of the Defender's request.

In response to the Defender's letter the Major of Stepanakert informed that due to the team work of "Artsakh sewing and shoes" production unit and "Water – sewerage" CJSC, residents of 2 dwelling houses as well as directorate of one public food unit who use the system of slops moving off the mentioned dung water was repaired.

Thus the issue received a positive solution.

## **2.4 Labour Right**

Though the Defender's previous reports covered a number of issues concerning the employers' arbitrariness in labour relationships related to ignorance of labour requirements submitted in the NKR Labour code, still they go on to be actual up to now.

In the year 2012 the Defender's staff received 14 complaints referring violation of labour rights which make up 12 percent of the total number of complaints.

Complaints of this field mainly referred violation of the order of termination of employment contract and the private companies' failure to pay salaries to the employees.

It is a disturbing fact that violations of the order of termination of employment contracts, on the grounds of unawareness and (or) ignorance of NKR Labour code, are often performed by state government bodies and organisations and their officials.

The vicious practice of concluding fixed-term contracts with employees in cases when they should have concluded an indefinite-term contract goes on existing which was also criticized in previous year's report.

This limits a person's labour rights thus irrelevantly increasing an employee's dependence upon the employer and his/her lack of protection in the legal field, besides it contributes to creation of corruption risks in these fields.

Unfortunately, the acting labour law, due to incompleteness of its provisions in the employer-

employee relations, makes the latter less protected preventing the authorized bodies to help the complainant use the constitutional provision of freedom of employment election.

This can be shown in the following example:

A former teacher of Arajamough village school of the NKR Hadrut region informed that his employment contract had been terminated by the order of the mentioned school's headmaster.

The complainant also informed that the only reason of the dismiss was she couldn't manage to be at the head of education department of the staff of Hadrut's board of administration in time by the latter's invitation because of the lack of transport.

Through investigation of the excerpt of the conducted employment contract's order attached to the complaint it was discovered that according to its point 1 the complainant was subjected to a strict reprimand because of the above mentioned reason and "on the basis of the loss of the directorate's confidence in her".

On the basis of point 2 of the order the conducted employment contract had been terminated in accordance with sub-point 5 of point 1 of Article 113 of the NKR Labour code: "In case of an employee's non-implementation of duties preserved for him by the internal regulations without a valid reason" and with sub-point 6 of the same point of the same article: "On the basis of loss of confidence in the employee."

Given in such cases the acting law prohibits the Defender to pass a decision about the violation which has been discovered and to demand to restore the applicant to work, the Defender had to clarify the headmaster of the school concerning the raised issue that Article 222 of NKR Labour code prescribes that only the employee who violated the employment order should be subjected to disciplinary responsibility. In this case a natural question raises whether the teacher's appearance at the head of the region's education department is prescribed by any legal act as one of his employment obligations. It is another thing if the teacher would have been sent on a mission to Hadrut from Arajamough village by the headmaster's order and he would have been paid the travel expenses from the main place to the place of the mission and the vice versa. In this case they should have also taken into account the means of transport.

Even if the complainant committed a violation of the employment order she could have been subjected to disciplinary responsibility but keeping the following requirements of the law:

"Each violation of labour discipline may cause imposition of one disciplinary penalty" (NKR Labour code, Article 225). Following the order the complainant had been imposed to two disciplinary penalties for one and the same violation – strict reprimand and termination of the employment contract.

"Prior to the exercise of disciplinary sanction an employer shall require the employee a written explanation about the violation. If the employee does not provide an explanation within a reasonable time determined by the employer without a good reason, a disciplinary sanction may be imposed without the

explanation” (NKR Labour code, Article 226).

Part 1 of Article 121 of NKR Labour code stipulates that an employer has the right, on the grounds provided by paragraph 5 of Part 1 of Article 113 of the Code, to terminate the contract if the employee who has committed a violation has at least two not allotted or not liquidated disciplinary actions, and the headmaster’s order does not contain any notification that the complainant had such penalties.

As for the termination of a contract on the basis of loss of confidence in an employee, it becomes clear from the purport of Article 122 of the Labour code that paragraphs 1 and 2 absolutely have nothing to do with the teacher’s duties and the fact that she didn’t appear at the head of education department is difficult to consider as an incompatible behaviour with the teacher’s work.

The aim of the mentioned clarification was that the employer would have himself corrected the violation committed by him but as the advice was not accepted the complainant applied to the court with the help of the staff officials.

The court annulled the order on the strict reprimand and dismiss as well as it seized the sum of the salary from the school in the complainant’s favour for the forced waste time.

Still, given the complainant’s opinion on the impossibility of further joint work with the headmaster the court guided by Article 2 of the NKR Labour code did not restore her to work.

It is evident that this provision of the code needs an interpretation and a review in people’s favour.

## **2.5 Civil Right**

Citizenship is a person’s stable legal and civil tie with the state based on a person’s legal recognition by the state as his citizen which in cases prescribed by law brings forward mutual rights, duties and responsibilities for the state and the citizen.

Complaints covering issues on requiring citizenship, change of citizenship and other issues alike decreased in the year 2012.

People who applied to the Defender complained against the activities of the authorized state bodies on acquiring citizenship. In their complaints the citizens have stated that their complaints on acquiring NKR citizenship have been refused just because there is no a dual citizenship institute in the Republic of Nagorno Karabakh. Such an opinion and unawareness of the appropriate officials of the police is groundless and astonishing as in NKR acts the Law on “Main principles of the citizenship of the Republic of Nagorno Karabakh” adopted in November 15, 1995 which regulates these legal relations and this was previously informed by the Defender.

By the Defender’s letter the complainant was explained that his requirement on acquiring passport which had been refused by the head of the passport and visa department NKR Police just because there is not a dual citizenship institute in the Republic of Nagorno Karabakh is groundless as Under Article 4 of the NKR Law on “Main principles of citizenship of the Republic of Nagorno Karabakh” adopted in

November 15, 1995 a citizen of the Republic of Nagorno Karabakh can simultaneously be a citizen of other state (states). This means that citizens of NKR can simultaneously be citizens of two and more states.

## **Conclusion**

Investigations conducted throughout the year 2012 have shown that the Defender's suggestions and advice addressed to the remedy of reasons of human rights violations and fundamental freedoms mentioned in previous reports have been adopted by about all branches of the authorities and have been realized.

The same attitude is expected toward the current report.

Human Right Defender of NKR

Yuri Hayrapetyan