



**REPORT OF THE HUMAN RIGHTS DEFENDER OF RA TO
THE PRE-SESSIONAL WORKING GROUP OF THE UN
COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL
RIGHTS**

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Article 2.

In the domestic context the right to equal opportunity and non-discrimination in employment is enshrined in the Constitution and Labor Code of the Republic of Armenia (hereafter referred to as “the Constitution” and “the Code”, respectively). To that end, Article 14.1 of the Constitution states that “[e]veryone shall be equal before the law. Any discrimination based on any ground (...) shall be prohibited”¹. Furthermore, Article 3 of the Code emphasizes the “equality of [all] parties in labor relationships regardless of their sex, race, nationality, language ... and other conditions not connected with the practical features of the employee.”²

Besides, Article 7.1 of the Code prescribes that the scope of application of the legislation covers labor relations in the territory of Armenia, which according to the Article 14 hereof are “originated on the basis of labor contract concluded in a procedure established by the Labor Code and other normative legal acts containing norms on labor law”³. That purports that the Labor Code protects the employee when he has already concluded a work contract with employer, and it does not cover and, thus, does not protect situations when a person is applying for a job and is denied either on certain grounds or other illegitimate reasons. This is problematic, because majority of discrimination cases (e.g. based on person’s visible disability, sex, gender, age, appearance, etc.) occur not during the course of employment - when an employee has already been hired - but rather when an individual is applying for employment. Ultimately, the Human Rights Defender’s (Ombudsman) Office has arrived at the conclusion that there are simply not enough legislative safeguards to ensure transparent and fair employment opportunity regulations, practices, and policies in the Republic of Armenia.

In response to such frequent cases of discrimination in employment field, and the importance of preventing the occurrence of such discrimination, the Ombudsman’s staff began drafting the «Anti-discrimination» law of the Republic of Armenia in October 2012. This draft law focused on elaboration of definitions of discrimination in its forms and designates the Ombudsman’s Office as the appropriate institution for receiving, reviewing, and settling cases of discrimination. Nevertheless, the Ombudsman does not have the right to bring a law draft directly to the National Assembly (Art. 75, RA Constitution, 1995). And due to the negative situation around the bill and lack of support from different societal groups, Members of the Parliament and Government, the drafted anti-discrimination law was not introduced to a larger public and did not undergo public hearings.

Beyond the frequent violation of equal employment opportunities, the need for drafting anti-discrimination legislation arises from the necessity of more effective implementation of Constitutional provisions prohibiting discrimination, as well as more effective prevention of discrimination and

¹ RA Constitution (with amendments), 1991

² RA Labor Code, 2004

³ Ibid.

promotion of fair and transparent practices in employment sphere. In 2011, the European Neighborhood Policy (ENP) Country Report for Armenia highlighted the lack of comprehensive anti-discrimination legislation as a stumbling block for successful implementation of the 2012 ENP Action Plan for Armenia. Similar recommendation on elaboration of anti-discrimination legislation were mentioned in the relevant recommendations of the Conclusions of the European Committee of Social Rights on the thematic group “Employment, training and equal opportunities” 2012. In July 2012, the UN Human Rights Committee cited “the lack of comprehensive legislation on discrimination in Armenia”, “violence against racial and religious minorities, including discrimination by civil servants and high level representatives of the executive power” and “the failure of the police and judicial authorities to effectively investigate, prosecute and punish hate crimes” (Chapter C (6), Articles 2, 18, 20, 26). Accordingly, the Committee recommended Armenia to “ensure that its definition of discrimination covers all forms of discrimination as set out in the International Covenant on Civil and Political Rights (race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status)”.

Article 3.

In May 2013, the National Assembly of the Republic of Armenia adopted a law on “Equal Rights and Equal Opportunities for Men and Women.” For the past two months, adoption of this piece of legislation has been the topic of an intense debate with participation of very different groups of society. The main topic for the debate has been Article 3 of the law, wherein **gender** is defined as the “acquired, socially fixed behavior of persons of different sexes.” Essentially, the opponents of the legislation interpret the gender related issues as sexual orientation and LGBT issues, which is the most discussed topic in Armenia. Opponents of this law used the word to describe anything perverted and sinful, aimed at undermining traditional Armenian values, families, and even history. Some opponents went further, and equated gender equality with homosexuality. In this context, several civil society organizations have approached the National Assembly with a request to revoke the Law altogether. The opponents of the Law attack not only the Law itself but also women rights organizations who work to promote gender equality and women’s rights, which was demonstrated in a number of offensive publications in mass media, slander on their activities, shaming in the public, open and private threats to the members of the NGOs.

Consequently, a new draft of amendments to the Law was prepared by the Members of Parliament, Heghine Bisharyan and Hovhannes Margaryan, which foresees removal of the terms “gender equality” and “gender” from the law. The amendments were submitted to the National Assembly and, during the Cabinet sitting on October 23rd, they were given a positive resolution regarding that Draft.

The draft amendments were also discussed in the National Assembly's Standing Committee on Protection of Human Rights and Public Affairs and the Committee is considering establishing a working group to develop a compromise definition of "gender".

Another development was around the draft law on domestic violence that was to specifically deal with violence within the home. This was drafted by the Women's Rights Center of Yerevan and submitted it to the Ministry of Labor and Social Affairs of the Republic of Armenian in 2009. In 2011, the ministry put together an inter-sectorial working group to deal with the legislative draft. The Ministry publicized the bill in November 2012, and subsequently submitted it to the government for approval. In 2010, various non-governmental organizations came together to form the Coalition to Stop Violence Against Women to raise awareness of the issue and to pressure authorities to adopt the bill. On January 21, 2013 the Government of the Republic of Armenia turned away a draft law on domestic violence. Instead of approving the bill, the Government recommended that other existing laws be amended to include clauses that would help the courts deal with the cases of domestic violence. The Government has based its rejection of the bill on the fact that the entire Armenian legislative framework is undergoing a number of changes. Specifically, changes are being made in the RA Criminal and Criminal procedure Codes, as well as in the Code of Administrative Offenses, which would cause a number of problems in implementing the overruled bill. On February 14, 2013 the Ombudsman of Armenia made a statement about necessity of adopting such a law to effectively combat against domestic violence.

The necessity of adopting a law on domestic violence was also mentioned in the Concluding observations of the Committee on the Elimination of Discrimination against Women (43rd session, 19 January-6 February 2009), where the Committee urges the State party "to give priority attention to eliminating all forms of violence against women, in particular domestic violence, and to adopt comprehensive measures to address it in accordance with the Committee's general recommendation No. 19. The Committee requests that the State party enact, without delay, legislation specifically addressing domestic violence against women".

Article 6 and Article 7.

Though the right to work is safeguarded in the RA Constitution (Article 32, 48.2) and Labor Code of RA, there are not enough safeguards on the legislative level to protect a job seeker from being discriminated against when applying for a job, besides there are very few court cases concerning discrimination at the workplace.

(See the observations of the Ombudsman concerning anti-discrimination legislation under Article 2 of the instant report)

Persons with disabilities in Armenia are specifically vulnerable in the labor sphere. They are still not integrated into the labor market, which is proved by the high level of unemployment among them. According to the information provided by the NGO UNISON only about 8-9% of the capable persons with disabilities are employed in Armenia⁴. The US State Department Country Reports on Human Rights Practices for 2012 in Armenia inform that unemployment rate among persons with disabilities in Armenia is 90%⁵. The same report also refers to prevalent denial of reasonable accommodation to persons with disabilities, which brings to limitation of work opportunities for them. Besides, Article 3, part 1.3 of the Labor Code of RA (2004) outlaws any form of discrimination in the labor affairs, while “disability” is not directly mentioned among the grounds of discrimination.

Despite of various programs implemented by the State Employment Service (previously under the RA Ministry of Labor and Social Affairs), involvement of different vulnerable groups in them, for example, persons with disabilities, is limited. According to the data of the Program “GORTS”⁶ in the vocational programs implemented from January 1 2012 until June 1 2013 only 117 participants were persons with disabilities (overall 2,484 participants).

The state report mentions that in the result of the vocational training courses 2007-2008 for the unemployed and the persons having disability 46.7% of 734 persons were employed. But the report does not provide any information on the follow-up of the program results to measure its effectiveness, namely:

1. How long the employed persons retained their workplaces and, in case of dismissal what the reasons were;
2. Which percentage of the total employed persons were persons with disabilities and representatives of other groups, etc.

The state report also mentions about partial salary reimbursement programs conducted by the State Employment Service for the persons with disabilities. It is only mentioned that by the 2008 plan 63 persons with disabilities were involved in it. This information does not provide enough data to measure effectiveness of the program.

There is a common practice of not offering a new contract or not prolonging the previous one, once the work contract is expired, especially in cases when an employee works under the partial salary reimbursement program. Instead they employ new persons who have disabilities in order to enjoy partial salary reimbursement privileges. Thus, it is important for the state to collect data and prepare statistics on the follow-up of such programs to measure their effectiveness in the future.

The Ombudsman’s Annual Report of 2012 mentions several systemic issues in the field of social and economic rights which will be presented below.

⁴ See the website of UNISON NGO. URL: <http://unison.am/en/faq>

⁵ See the link for the USA State Department report on Armenia 2012. URL: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dld=204258>

⁶ See the link of “GORTS” program of the State Employment Service: www.employment.am

During the interviews of the Defender's Staff and the legal advisors and experts of the sphere numerous complaints were received in regards to the abuse of dominant position of separate business entities preventing the entrance into market of new businesses during 2012, which prevents development of small and medium businesses limiting work opportunities in the country.

Based on the data presented by the Commission during 2012 two cases of the abuse of dominant position through hampering the entrance into market of new business entities by business entities having dominant position ("Natali Farm" and "City Petrol Group" LLC) were discovered, in regards to which the mentioned entities were subjected to liability. Nevertheless, Commission researches and reveals violations of Competition legislation of the Republic of Armenia based on the data of the year 2011. The above-mentioned testifies that the Commission has not undertaken sufficient measures for raising the level of economic competition in the Republic of Armenia, as in practice; there were numerous complaints in 2012 in regards to the abuse of dominant position through hampering the entrance into market of new business entities. Such anti-monopoly policy can not resolve the disturbing issues of the sphere and cannot promote economic freedom and free economic competition provision of the Republic of Armenia.

The violations of anti-monopoly legislation in different markets and the existence of drastic changes in the prices of the goods still remain a disturbing issue. In regards to the question of the Ombudsman whether the Commission monitors to reveal violations in the spheres, as well as supervising over the requirements of the law, the Commission informed, that it does not have legislative power to carry out monitoring. Instead, the Commission implements oversight (activities aimed at revealing cases of violations of the legislation and supervising over the prices in different markets), the result of which are evidences in the scope of the administrative proceedings in regards to the cases of violations of legislation. At the same time the Commission stated, that oversight is not a direct basis for them to initiate an administrative proceeding against the perpetrator. State Commission for the Protection of Economic Competition Protection is equal to administrative bodies in its function, hence, in case of violation of competitive legislation the Commission files a proceeding in accordance with the RA Law "Fundamentals of Administration and Administrative Procedure", Art. 30.1 based on the application, complaint of a person and with personal initiative. Thus, during the initiated administrative proceeding based on the application, complaint of the person the results of the oversights are the evidences aimed at detection of factual circumstances of that case. And taking into consideration, that in case of instituting proceeding with own initiative the oversight results can indirectly form basis for instituting own initiative administrative proceeding, and already implement the function defined by the legislation, such evading policy adopted by the Commission is unclear. Furthermore, such policy fully devalues the aim of oversight and the results obtained during it.

As a result of the research in the sphere of State purchase during 2012 a number of cases of anti-

competitive agreements between medical facilities as well as between some business entities that carry out activities within the sphere of drug circulation were registered, and those entities were subjected to liability measures. Nevertheless, the measures undertaken by the Commission were not sufficient enough for revealing and preventing cases of anti-competitive activities. It is important to note, that during 2012 the Commission initiated review of the procurement processes by elementary schools, orphanages, elderly people houses, boarding schools and a number of other institutions in order to reveal possible anti-competitive agreement cases by different business entities. However, majority of those cases are still under progress.

In 2012, complaints related to cases when the employers hired employees without concluding employment contracts, did not pay wages, fired for no reason, without final payments, did not pay leave payment were received by the staff of the Human Rights Defender. In response to our inquiry, the Ministry informed that 543 citizens applied to the Labor Inspectorate with cases of violation of their labor rights and administrative proceedings were launched based on those applications. In order to prevent and rule out the violations of requirements under the RA Labor Code revealed in the result of inspections, the employers were given binding recommendations and administrative penalties were imposed. Nevertheless, despite the actions taken, the noted structural issue has not been settled until now. It is alarming that the violations of the labor legislation occurred in the field concern the persons with disabilities as well. The Ministry's answer to Ombudsman's request shows that it responded solely to private applications and did not conduct monitoring or inspection on its own initiative concerning the stated issue.

In application-complaints filed to the Defender an issue was raised that the list of certain category of employees who have the right to extended annual leave defined by the RA Government Decree number 1599 dated 11 August, 2005, does not include the employees of the science field of the RA National Academy of Science (hereinafter NAS), whereas the right of this leave is envisaged for persons teaching in educational institution implementing Secondary mainstream comprehensive, special and professional programs, as well as in higher educational institutions. In response to our inquiry pertaining this matter the Ministry of Labor and Social Affairs informed that in the result of discussions on including the employees of the RA NAS science field into the mentioned list, in January 2011 the Ministry of Education and Science suggested a draft of the RA Government Decree envisaging inclusion of the employees of the RA NAS science field into the list of employees who have the right to extended annual leave up to calendar 35 days. However, in 2011 the draft was removed from the discussion. The Ministry stated its position that not granting similar privileges to them is not a violation, as Article 160, RA Labor Code stipulates the involvement of great nervous, emotional and intellectual strain and professional risk, whereas the above-mentioned article does not envisage the involvement of all conditions.

The issue concerning the reimbursement for damages incurred to health or life of employees as a result of industrial accidents and professional diseases continues to remain unsettled because of the absence of corresponding regulations in case of liquidation of the legal entity. For these cases, no organizations liable for reimbursement for damage or reimbursement system have been elaborated. The Ministry formerly informed that in cooperation with the Central Bank of Armenia they developed a concept of “Investment of Insurance System for Cases of Industrial Accidents and Professional Diseases in Armenia”. In 2012, the Ministry informed that the supplemental version of the draft was discussed during the meeting of Standing Social Ministerial Committee which took place on September 27, 2012.

In the result of the discussion, it was decided to discuss the draft in details again and supplement it with the participation of all the stakeholders. However, that draft has not been adopted until now and the issues related to the reimbursement for damages incurred to health or life of employees as a result of industrial accidents and professional diseases remain unsolved. It is also unknown whether adoption of the concept may solve the issues of people who have not received reimbursement for the damages caused to their health before the adoption of the corresponding law. The fact that the concept, elaborated in 2011, was not adopted throughout 2012 on the excuse of supplementations is highly alarming.

The applications addressed to the Defender revealed that after the industrial accident, reimbursement for damage had been assigned to the employee, however, it was terminated by the employer reasoning that the citizen is empowered to receive an old age pension, while the relevant Article 1078 of the RA Civil Code does not envisage grounds for such termination. However, cases were registered when the RA State Labor Inspectorate administration referred to the civil case decision number 3-2004 dated 14.10.2005 made by the Court of Cassation and the verdict number 06-206 dated 13.01.2006 made by the RA Civil Court of Appeal, according to which the RA Cassation and RA Civil Court of Appeal declared the following position towards Part 1, Article 1078 of the RA Civil Code, that the reasons for reimbursement for damages to health are removed on the basis that the citizen reached the age entitling him/her to an old age pension. We find that the mentioned decision was applicable only in the scope of that certain case and cannot be exercised as a precedential decision. Moreover, the Court of Cassation in its decision from 27.12.2011 declared that the victim shall not be deprived from the right to receiving the lost wages (income) and reimbursement for other damages in case of wages (or income) awarded for the employment after inflicting harm to their health.

Human Rights Defender’s 2012 report on Right to Social Security and Its Implementation in Armenia mentions that during last several years many instances were discovered when employer avoiding from additional duties hires an employee concluding with him a civic contract for a certain period of time instead of an employment contract⁷. In that regard the case of the Court of Cassation

⁷ See the link for the Human Rights Defender’s report on Right to Social Security and Its Implementation in RA: <http://pashtpan.am/library/library/page/101/type/3>

Suren Mkrtumyan vs “VTB-Armenia bank” CJSC was important, because the Court concluded that work contract concluded for certain period of time is an exception from a general rule, which is accepted only in case when taking into account the nature and conditions of the due work it is impossible to conclude an employment contract without time limitation. Meanwhile, in Armenia majority of the employers tend to conclude civic contracts with their employees for a certain period of time. The same report mentions that State Labor Inspectorate usually follows formalistic approach when discussing the cases. For example in a case submitted to the Inspectorate by a group of workers against Sport and Concert Complex after K. Demirchyan CJSC concerning not paying them salary for the performed work (19.02.2009), Inspectorate said that there was no employment contract between the company and workers (instead it was a service contract under civil law), thus, they concluded if there is no employment contract, there are no labor relations, which is a formalistic approach that does not look into the nature of the relations in question.

The other problem in the sphere of employment is that the courts refuse to recognize labor relations retroactively, that is to say the common approach is that in case there is no employment contract, there are no labor relations. Though the Labor Code of RA foresees conclusion of an employment contract between employer and employee, courts in many cases rule that the respondents' claim to force the employer to conclude an employment contract with him were groundless. Meanwhile, the courts should first of all consider existence of labor relations under a civic contract between them, and in case this contract includes analogous elements of employment contract, it should be regulated by the Labor legislation. From this point it is important for the judges to be able to differentiate employment and civic contracts. Thus, retroactively recognizing factual labor relations as such would ensure effective protection of the right to work and related social rights.

Article 8.

In modern democratic societies, the role of trade unions is considered highly significant for safeguarding and protecting the labor rights of people. Though the acting legislation of the Republic of Armenia does not include provisions impeding development of trade unions, the mentioned institute is yet underdeveloped in Armenia. Throughout 2012, the Ministry of Social and Labor Affairs continued to collaborate with the Confederation of Trade Unions of Armenia and Republican Union of Employers of Armenia prolonging the term of the collaboration contract until 2015. However, only the workshops conducted on branch, regional and organization levels fail to ensure the development and activation of social cooperation. As an acting mechanism for the protection of employees' rights it does not promote the establishment of trade unions and their authoritative role in settling labor disputes.

There are several obstacles that impede effective work of the trade unions. For example, Article

119 of the RA Labor Code stipulates that in order to dismiss a representative of employees, the employer should apply to the labour inspector. The latter is obliged to answer to the employer within 14 days starting from the day of receiving the application. The labour inspector shall inform about his/her decision in a writing form. If there is no written notice in the prescribed period of time, then the employer may make a decision on his/her own. However, after the Government Decion N.857 on merging the State Labour Inspectorate of the Ministry of Labour and Social affairs with State Higienic and Epidemic inspectorate of the Ministry of Health and reorganizing these two into a new State Health Inspectorate under the Ministry of Health, there is no special person assigned to replace the Labour Inspector. Moreover, the law on the the State Labour Inspectorate is still in force. Thus, from the point of clarity of the law it is questionable. Besides, the mentioned provision of the Labor Code was often used to ensure the workplace of the employee of trade unions.

At the same time, there has been lack of progress by the State to secure the right to organise and the right to strike in compliance of the Conclusions of the European Committee of Social Rights on the thematic group "Labour rights", as well as Direct request of the ILO Committee of Experts regarding the implementation of the Freedom of Association and Protection of the Right to Organise Convention.

Another drawback of the system is that even though the Law on the Life ensuring minimum basket and life ensuring minimum budget was adopted in 2005, however, it was never implemented up to date, thus, hindering the work of the trade unions.

Article 9

Throughout 2012 and 2013, the Human Right Defender received a number of complaints regarding the cases of arbitrary evaluation and corruption exercised by the competent authorities in the sphere of medical-social expertise. Infringements of a few million Armenian drams were revealed in the Department of Expertise of the Medical-Social Expertise Agency in the result inspections carried out by the Ministry of Labor and Social Affairs. The mentioned violations are mainly the result of arbitrary evaluation of the physical and mental impairments of persons upon which disability groups are given. The reason Ombudsman raised the issue of prevention of arbitrary evaluation is violation of the rights of numerous people due to unfair decisions, as well as corruption in the sphere.

The legislative amendments to the pension sphere introduced in 2010 prescribe that for receiving pension from abroad an authorization letter confirmed by notary registered only in the Republic of Armenia should be brought. The Ombudsman believed that the aforementioned requirement leads to restrictions of rights to social security, entitled by Article 37 of the RA Constitution, and it did not have objective and rational grounds. Moreover, the RA Ministry of Labor and Social Affairs approved their created law enforcing practice according to which the powers of attorney notarized in the Member States

of the International Treaties stipulating other procedures of document recognition, as ratified by the Republic of Armenia, did not serve as basis for pension payment in Armenia. In 2012, based on the Defender's appeal concerning the mentioned issue, the RA Constitutional Court in its decision DCC-1050 dated October 2, 2012 ruled that such interpretation of the RA Law "On State Pension" does not comply with the Constitution requirements and clarified the order of receiving pension with the power of attorney according to which the citizen is entitled to get a power of attorney applying to the corresponding notary's office of his/her country of residence. In other words, the power of attorney rendered by the notary of the foreign country is valid for receiving pension and it is not a requirement for one to return to the Republic of Armenia at least once a year. Though the decision of the Constitutional Court came into force from the date of its announcement, the Ministry did not provide the enforcement of the order stipulated by the decision for nearly 2 months, thus again violating social rights of people. The Ministry made various comments upon its actions and/or inactions. However, in December, they informed us that the stated delays were conditioned by necessity of corresponding modifications made in the database. Thus, the database modifications took nearly 2 months.

Throughout last 2 years, the Human Rights Defender of RA has received dozens of complaints related to the retroactive interpretation and enforcement of certain provisions of the RA Law "On State Pension" by the Ministry of Labor and Social Affairs. The Defender filed a lawsuit to the Constitutional Court concerning the legitimacy of the enforcement of the mentioned provisions. The RA Constitutional Court, in its decision DCC-1061 concerning the following provisions of the RA Law "On State Pensions", namely Article 38 Clause 1, sub-clauses 1 and 2 the recalculation conditions of labor pension (recalculation with privileged conditions), Article 36, Clause 1, sub-clause 2 amounts of pension not provided by the fault of the unit assigning pensions shall be reimbursed for the entire past period when the person was entitled to a pension, Article 14, Clause 3, sub-clause 2 terms and conditions for granting of a partial pension (without counting towards the professional length of service the time period having worked simultaneously in more than one job) Article 29, Clause 2, sub-clause 6 the period of full-time study at educational institutions (other than general educational institutions), shall not exceed six years, defined that for lawful enforcement of the aforementioned norms and the issues related to protection of rights parties directly concerned with them shall be lodged to courts by persons, as the administrative body ex officio is not competent to interpret the norm of the law and form a legitimate law enforcement practice. Within this case, the Constitutional Court made special reference to the legal regulation stipulated by sub clause 2 of Clause 1 of Article 36 of the RA Law "On State Pension" and stated that within 6 months from adoption (19.03.12) of the aforementioned amendment it could not have been applied for those RA citizens who were temporary absent from the Republic of Armenia and were in consular registration in foreign country in compliance with the RA legislature.

Unemployment is one of the major challenges in the social system of Armenia. Until recently,

according to the RA Law on Employment and Social Protection in case of Unemployment of the Population, persons who had at least one year of work experience, along with implementing all appropriate social payments, were entitled to social benefit in amount of 18.000AMD maximum for period of 12 months in case of unemployment. Nevertheless, on October 23, 2013 the RA National Assembly adopted in first reading the amendments into the RA Law on Employment, according to which from January 1, 2014 the Government is to stop allocating social benefits for the unemployed persons. This legislative change was justified through inefficiency of the employment benefits for the further employment opportunities for a person, as well as replacing the benefits with specific tailored programs to promote employment of persons. Taking into account the high level of unemployment, we are concerned that such cut in the social benefits would adversely affect the socio-economic situation in the country undermining the social security of the people.

Article 10.

The issue of child protection is one of the major obligations of the Republic of Armenia. Despite the fact that legal regulations of the sphere mostly meet the international requirements and many projects are undertaken by the government, there are lots of shortcomings and problems to be tackled. Only the fact that the RA Government repealed the 2004-2015 National Plan of the Republic of Armenia for Protection of the Rights of the Child before its accomplishment and adopted another Decree approving the 2012-2016 Strategic Plan for the Protection of the Rights of the Child implies improper implementation of duties, inconsistency towards the fulfillment of program provisions within the set time period by the responsible state authorities.

In the Republic of Armenia the child protection is carried out by a three-level system. At the Community level it is guardianship and trusteeship commission that is assigned to carry out almost 40 functions to assure the protection of the child. However, the current state of the guardianship and trusteeship institute in the Republic of Armenia is alarming. A number of complaints were received related to imperfect legal regulations of this institute's activities as well as the lack of professional training of guardians and trustees and transparency of their activities. Particularly, the guardianship and trusteeship body committees consist of 5-8 people who work on a voluntary basis. Thus, this is not their permanent job and they dedicate only 2 or 3 hours to efforts of tackling the issues of their community families and children who live under unfavorable social conditions. The aforementioned circumstances cannot in practice ensure effective operation of the Committee. The Guardian Committee is obliged to protect the interests of children in courts though the Committee members do not always possess the required legal skills and usually they provide only their physical presence during trial.

With the exception of Civil and Family Codes of RA, which enshrine the general and conceptual provisions regarding guardianship body and its activities, the requirements regulating the

routine functions of the Committee and presented to its members are envisaged only in the Charter of this body. This Charter stands to be a deficient document to regulate such an important sphere. According to the law the mentioned committees and their members undertake all the duties and responsibilities; nevertheless, for the lack of appropriate resources, motivation and skills, the actions performed by them are not efficient. Meanwhile it would be more effective to provide such services through the specialized social services adjunct to the community. Considerable changes should be performed in this sphere to enhance the professional qualifications of the Committee and to increase the motivation towards the work they perform. It is also essential to make legal amendments to clarify the conditions presented to the Committee members and the functions performed by them.

The issue of vagrant and beggar children in Armenia is a topical matter which requires structural settlement. Even though according to the RA Government Decree number 1745-N dated 18.12.2003 it was intended to establish 3 care centers for vagrant and beggar children until 2009, however later this issue lost its urgency: according to the statistics provided by the Police of the Republic of Armenia only 17 vagrant and beggar children were registered in 2012. Yet, according to the statistical surveys of the Human Rights' Defender's Institution (HRDI) the issue of vagrant and beggar children is still a matter of concern in the sphere of child rights. And even though it was planned to create a working group to tackle issues of vagrant and beggar children a year ago, the initiative hasn't launched yet.

The right of the child to an adequate standard of living and upbringing in the family is one of the most important guarantees of social development. Therefore, it is required to implement complex actions and programs leading to the unloading of child care institutions. Within the framework of the abovementioned reforms the government has adopted such a policy. Welcoming these actions, nonetheless, we should state there is no an effective mechanisms to reach the objectives developed to unload child care institutions. Even though the institute of foster families is widely popular in the international practice, the implementation of this type of alternative care in Armenia was not paid required attention. In the RA a project directed at financing foster families was carried out by UNICEF country office, and after it had been transferred to the Government, it ceased to exist.

There are other problems connected with the child care institutions as well. In the State report it is mentioned that there are special care institutions designated for children with different "physical and mental defects". As HRDI raised in its statement of June 4 2013, in order to ensure the minimum number of children required for the institution to operate, children without disability are settled in School N1 for the children with mental disabilities in Abovyan. Here it should be mentioned that this violation is not limited merely to this school in Abovyan, it can be traced in other special care institutions as well throughout the country.

Another breach that has been revealed by the HRDI is specifically traced at Kharberd specialized school for children with grave physical and mental impairments. First of all, even though the school is

intended for children up to 18 years old, there more than hundred people over 30 who live still there. Since this a care institution for juveniles, it is implied that after reaching 18 they should move out from there. According to accepted practice, people with mental disabilities are to be resettled in Vardenis Boarding house. However, since it is also overloaded, these people have no other choice but to continue living with children under 18 at the same institution in Kharberd. Besides, there are no developed mechanisms for resettling people with physical disabilities. Secondly, there are lack of specialists and nursemaids. As the adults have no place to move out and new ones are admitted, the institution has become overloaded and a nursemaid has to take care after 15-18 persons during a day.

In the state report the Decision of the Government of the Republic of Armenia No. 1419-N “On state assistance to graduates of child care institutions of the Republic of Armenia” of 30 October, 2003 is mentioned. This project was aimed at arranging the future life of the graduates of the child care institutions providing them minimum living space, which didn't succeed. As it was expressed in the Statement of the Ombudsman from 03, May, 2013 there are still 270 graduates who have been registered as beneficiaries of the project and are still on the list, while the project is already closed.

Another problem in the sphere of child protection is due to the connivance of governmental bodies responsible for the health care. According to the program, the medical service offered to the children under 7 is free of charge, while the parents, having relevant documents for free healthcare, often are forced to make additional payments to separate doctors.

Article 12.

Human Rights Defender's 2012 report informs that the provision of appropriate quality supervision of the medication circulating in the Republic and realization of the procedure prescribed by the RA Law “On Medicine” is still challenging. The most vulnerable part of this procedure is mainly visible through the circulation of expired medicine. Regarding the issue the Ministry of Healthcare informed that the quality supervision of the medicine circulation in the Republic is occasionally conducted by the Committee created on the bases of the Minister's decree, which is committed to expose the existing violations through study of the market. However, only fragmental implementation of supervision of such an essential sphere is highly alarming. The lack of constant supervision of the medicine circulation leads to the existence of numerous violations in the sphere. Both the signed international treaties and conducted training conferences in 2012 by the Ministry in the framework of fight against counterfeit drugs are welcomed. However, the urgency of the issue suggests establishment of a Standing authority in charge of performing regular quality supervision of the circulating medicine thus raising and preventing the current issues of the sphere.

The sphere of the healthcare of the Republic of Armenia does not stipulate code of medical ethics.

The absence of such code in practice often has a negative impact on establishment of adequate person-patient relationship providing medical aid and service and does not contribute to the creation of atmosphere of trust and respect between them. Moreover, in 2012 according to the information provided by the Ministry, 173 complaints were lodged by the citizens regarding bad treatment performed by the doctors. However the absence of code of ethics in practice makes the respond to such complaints inextricable considering the impossibility of determination of the offence. We find that alongside with the other rules the exemplary code of medical ethics should include the requirement of protection of the medical secret. The fact, that in 2012 the draft of the RA Government Decree “On Approving the Exemplary Code of Medical Ethics and the Exemplary Procedure and Functions of the Committees of Medical Ethics” was prepared by the Ministry, is welcomed. However, the Decree has not entered into force until now.

In 2012 the Defender received a range of complaints related to erroneous medical intervention caused by doctor’s negligence or medical error which led to undesirable consequences. The Ministry asserts that such cases were not detected and as a precaution brings the ministerial order number 2283-A “On Approving the Temporary Procedure of Conduct and Admission of Children under 18 to Surgery Division, Exemplary Forms of Agreement or Rejection Sheets of Surgical Intervention”. The introduction of the term “medical error” to this field is essential and considering the international practice it is important to take actions towards its legal envision as its absence serves an obstacle for precise definition of the offence and imposing the corresponding sanctions on the person who committed the offence. Hence the Ministry should study the definitions of the term existing in the international practice and put into the RA legal system.

The international practice shows that breastfeeding for infants under 6 months of age can contribute to not only reducing overall child mortality rate but also minimization of the probability of causes of respiratory infections and a range of other diseases. Despite the availability of the draft law “On Encouragement of Breastfeeding of Infants under Six Months of Age and Circulation of Artificial Milk Products” it has not been adopted until now. Highlighting the urgency of the issue we find it essential to take instant measures towards adoption of the aforementioned law.

The Defender has received a range of application-complaints regarding the violated rights of persons with disabilities. According to Para 2, Article 2 of the RA Law “On Social Protection of the Disabled People” the disabled people of the Group I and Group II and the disabled children should be provided with the free medicines by the prescription, and the disabled people of the Group III - at 50% discount, if they don’t use the right to receiving the medicines in the more privileged terms. Moreover, the RA Government Decree number 1717-N clarified the social groups of population entitled to receive free medicine and the diseases in case of which the medicine is to be provided without charges. However, violations of the mentioned norms were stated which disclose the inconsistency of the

Ministry in the mentioned field and absence of measures for prevention of corruption in many cases.

Ombudsman welcomes the policy adopted by the Ministry which provides a range of medical interventions, namely heart surgery, orthotics and prosthetics, lithotripsy for kidney stones, cochlear implant surgery, kidney transplantation for children between 0 and 7 on free basis. The latter are charged only the money for metal constructions used during the operation. Nevertheless, according to the information rendered by the Ministry the state targeted programs do not envisage provision of medical service with innovative and expensive technologies. In other words, in case when health rehabilitation of children between 0 and 7 is possible only by means of such equipments the latter have to pay the fee despite the existing program. We urge the authorities to settle this question in the shortest possible timeframes through rendering the adequate opportunities to children.

Article 13.

In its annual report 2012 the Ombudsman mentioned that the measures taken to reduce the corruption in education sphere, namely in general, middle level vocational and especially higher education institutions have not been sufficient yet. Besides, the studies have shown, that pupils in a large number of education institutions around the country have been distributed (except textbooks) working (test) books, some additional educational materials for which money has been collected. The Ministry has given instructions to the regional administrations, general education institutions, as well as Yerevan municipality recommending to undertake measures in order to exclude any money collecting activities during the organization of March 8th or April 7th or “Last Class” celebrations or for distribution of textbooks or any additional material. It is commendable that in some cases even disciplinary penalties have been imposed. However, despite the measures taken, the above-mentioned serious problem continues to remain unresolved.

The Defender has received many complaints through 2012 and 2013 concerning the poor condition of schools, which is a serious obstacle to ensure the right to education and to organize appropriate education process. The Ministry stated that the issue of renovation of state educational institutions is in the center of their attention. However, according to complaints received, the Ministry has failed to carry them out repeatedly mentioning the lack of resources as a justification. There are also cases, when the Ministry allocates funds to the same state educational institution to make renovations each year, while there are institutions where no renovation has been carried out during recent 2-3 years. Despite the positive developments in the sphere, it is a matter of concern that in 2012 about 30 percent of general education schools (overall 450 schools, 28 of which in Yerevan and 422 – in different regions) were not provided with heating system. The latter is an urgent issue, since poor conditions interfere with the normal processes of education and cause the delay of lessons and even health problems for students.

The politicization of student representative bodies, e.g. Student Councils, in some higher education

institutions is one of the serious problems. The student representative bodies are to defend the interests of students and represent them in front of the faculty. The politicization of student representative bodies excludes from the outset the independence and objectivity of this structure. Often there are situations, when members of student representative bodies, being also a member of a political party, use the provided opportunity for party propaganda and for defending the party's interests which has nothing to do with the genuine interests of students and the quality of the courses offered at universities. It is a matter of concern, that the Ministry has never made clarifications on whether it has examined the complaints about the politicization of student representative bodies in various universities of the country.

The Education Development State Program of the Republic of Armenia for 2011- 2015 envisages to provide effective mechanisms for developing the inclusive education, optimizing the special schools, identifying the special educational needs for each child, assessing it and organizing the education taking into account the results of assessment. The National Assembly adopted in the first reading the draft law "On Amendments and Changes in the RA Law On General Education" developed by the initiative of the RA Ministry of Education and Science, which envisages to complete the implementation of inclusive education. However, since 2011 inclusive education is implemented in around 120 schools out of 1400⁸, while the above-mentioned program envisages expanding the opportunities of children with special needs, ethnic minorities and other vulnerable groups for receiving high quality basic education by creating opportunities for inclusive education in all general education schools until 2015.

The other problem of implementation of the inclusive education is accommodation of the school facilities for the students with disabilities. Though inclusive education is implemented in many schools, not all of them are adequately adjusted for the needs of students with reduced mobility, visual and hearing impairments. For example, a rampant would be built in front of the school, which is cannot be used by a person on wheelchair on his/her own, the restrooms are not adjusted and there are no elevators to help them to move within the building. Accommodation for the groups of population with reduced mobility is a requirement for any construction or renovation both under the Governmental decision N362, February 16, 2006 and under decree of the Minister of Construction N253, November 10, 2006. Nevertheless, the law requirements are not reinforced by the Ministry of Urban Development, not is there liability for the entities breaching the law. This was the case with the recent renovation of the school N174 in Yerevan⁹.

According to the RA Law "On Higher and Postgraduate Professional Education" Article 5, the state guarantees opportunities for citizens to receive free higher and postgraduate professional education on a competitive basis in state higher education institutions. According to the RA Law "On Education", Article 28, paragraph 6 the Government of the Republic of Armenia establishes a state-funded scholarship program for each year according to professions and educational institutions. The right to

⁸ See the link for the list of the schools providing inclusive education:

<http://www.edu.am/DownloadFile/349arm-nerar-dprocner.pdf>

⁹ See the link for the situation in school N174: <http://disabilityinfo.am/23-09-2013-1/>

education, as well as the right to receiving an education on a competitive basis in state-funded higher and other professional education institutions, is enshrined by the Constitution and a number of international conventions. The Government Decision No 554 has established places for bachelor degree program according to professions in respect of which tuition fees are fully refunded (free) and places in respect of which tuition fees are partially refunded (fee-paid) by the State in the form of student benefit for 2012/2013 academic year in a number of higher education institutions. However, regardless of the Government's above-mentioned decision giving guarantees to receive free education, no state-funded place is provided for 2012/2013 academic year in a number of educational institutions including the Department of Law and International Relations in Yerevan State University. It is worth mentioning, that there has been similar problem during previous two academic years. That is, the citizen, who wants to take advantage of his rights enshrined by the Constitution, deals with a situation when in fact the right to receive free education on a competitive basis is not provided. So, taking into account the abovementioned issues and the complaints addressed to the Ombudsman on this issue, the RA Defender of Human Rights applied to the Constitutional Court to determine the constitutionality of the Government Decision No 554 and its compliance with Article 39 of the RA Constitution. The Constitutional Court did not ruled in the favor of the state-funded places in the educational institutions, meanwhile reaffirming the importance of the right of the citizens to receive free education on a competitive basis, noting, that tuition fee is funded on a competitive basis according to the results of current academic year for the students who entered higher education institutions and demonstrated good academic standing, for socially vulnerable students as well as for students from close-border and high-mountainous settlements regardless of learning system. We are concerned that such developments are in conflict with the provisions of Article 13.2 (c), which articulates accessibility of higher education to all, by progressive introduction of free education.

According to Paragraph 1 of Article 6 of the RA Law "On Higher and Postgraduate Professional Education" the higher educational institutions within the scope of their competence should organize, according to educational programs, the admission, educational process of applicants, including foreign citizens and stateless students. Meanwhile, complaints concerning the failure to provide the requirements of this Article have been received. In particular, according to RA Government Decision No 597 dated 26.04.2012 the admission examinations are of unified, centralized and among universities. "Assessment and Testing Center" state non-profit organization arranges and holds the admission examinations. According to the Article 86 of the RA Law "On Legal Acts", "a legal act shall be interpreted according to the literal meaning of the words and expressions contained therein". That is, the study of above-mentioned provisions brings to a conclusion, that the higher education institutions within the scope of their competence should organize, according to educational programs, the admission, educational process of applicants, including foreign citizens and stateless persons. So, according to Article 14 of the RA Law "On Legal Acts", Government Decisions of the Republic of Armenia should not be in contradiction with

RA Laws.

The Ombudsman of Armenia made a statement concerning the increase of the education fees in four Armenian universities for the academic year 2013/2014. He expressed his concern that increase in fees would make higher education less affordable and, thus, less accessible for representatives of socially vulnerable groups of society. The government brings the argument that socially vulnerable students are offered financial assistance in case they have good academic standing during the first term of the academic year. The point is that before receiving any financial aid those students have to pay the educational fee for the first term of the academic year. The Ombudsman recommended postponing payment of this fee for the socially vulnerable students until they pass their exams and become eligible for the financial aid. This change, we believe, would positively affect the right to higher education of the socially vulnerable groups of population.

Article 15.

In terms of participation in cultural life, there are still many impediments for the persons with disabilities. Public transportation continues to be totally inaccessible for the persons with disabilities, which hinders their participation in the social and cultural life of the country. About two years ago the Municipality of the city Yerevan imported 66 “Hyger” buses from China, which were initially not accommodated, but later were planned to be adjusted by the Yerevan city Municipality. After two years of exploitation under the public system, the buses are still inaccessible for persons with disabilities and persons with reduced mobility. During first year after import of the buses municipality explained the situation with the fact that the buses are still under warranty and no works can be implemented on it. A year later the Ombudsman requested the intergovernmental contracts on the import of buses between Armenia and China, in the result of which it was found out that the warranty contracts are expired and are no longer in force. Nevertheless, the Yerevan municipality included accommodation of public transportation into its annual 2013 program. Namely, the program envisages accommodation of 10 city buses through building elevators on them. But, nothing was done in this direction from the beginning of the year and, municipality does not provide any further information on the time framework of the planned works.

Majority of the public leisure places, including cultural centers and places of leisure are not accommodated for the needs of people with disabilities. This issue always has been raised by the HRDI not only in his statement from the 17th of July 2013, but also in the Annual reports of the Ombudsman and during different interviews, press conferences.

As for the protection of the moral and material interest resulting from any scientific, literary or artistic production of which he is the author, then it should be mentioned that the sphere is a newly

developing one in Armenia. Even though there are some legal grounds for these rights to be protected, however has not been enough. There are several drawbacks in the system, and one of them is that at the moment of applying for the trademark to be registered there is no special document to be given to the natural or legal entity as a proof of his/her application. The only evidence of the application to be handed in is the copy of the whole package of the documents that the applicant is provided with. However, this is not safe, as there are lots of rooms to leviate and fraud the procedure. Another issue is that there are no trained employees that work at the responsible body, one reason for this is that the field is relatively new, and the employees do not have the appropriate qualifications.