

Human rights, Good Governance and the Rule of Law:

Role and Relevance of the Human Rights Defender of Armenia

Manual for Trainers

This manual was prepared within the “Promoting Human Rights and Facilitating Public Awareness of the Public Defender’s Office in Armenia” joint project of the National Assembly and UNDP Armenia. The project is financed by the Netherlands Minister for Development Cooperation.

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Foreword

This manual, titled “Human rights, Good Governance and the Rule of Law – Role and Relevance of the Human Rights Defender of Armenia”, was prepared by the UNDP international expert Frank Orton and the national expert Genya Petrosyan for the purpose of training of trainers. The manual was developed by means of the project “Promoting human rights and facilitating public awareness of the Human Rights Defender’s office in Armenia”. The Project is funded by the Ministry for Development Cooperation of the Netherlands and jointly implemented by the National Assembly of Armenia and the UNDP.

The objective of this manual is not to give a full and detailed view on all aspects of the Institution of the Human Rights Defender of Armenia and its activities. It is designed to be useful when sensibilizing public servants regarding

- the relevance and importance of Human Rights, the Rule of Law and Good Governance,
- the general role of the Institution in this context,
- the Institution’s policies, especially its view concerning the expected and desired behaviour of public servants towards ordinary people and the way deserved criticism is expressed and conveyed, when such behaviour is not provided,
- the Institution’s work methods with special respect to individual cases, and,
- not the least important, the way public servants and the authorities concerned should respond, if contacted by the Institution.

The Ombudsman concept in general

Background, international occurrence, Armenian implementation

The Office of the Human Rights Defender was established in Armenia through a law, which entered into force on 1 January 2004.¹ It became the then latest member of a world-wide family of institutions with conceptual traditions, ranging back to the early 18th century and beyond. These institutions are labelled “Ombudsman Institutions”, the word “Ombudsman” being a Scandinavian word, used in October 1713 by the Swedish King, when establishing the institution “The King’s Highest Ombudsman”.

The task of this Ombudsman was to ensure that the judges, military officers and civil servants in Sweden were observing the laws of the country and the rules laid down for them. Having at that time been away from Sweden, since he left thirteen years earlier on a campaign against Russia, the King felt a need to have someone monitoring things in his home country on his behalf.

Today, Ombudsman Institutions exist in more than 100 countries all over the world. They are, however, in a fundamental way different from the 1713 institution. This institution was - and still is² - an institution of the executive branch of the state, not as independent as an Ombudsman is nowadays supposed to be. The more direct Forefather of all the world’s Ombudsman Institutions is instead considered to be the Swedish Parliamentary Ombudsman, established after a coup d’état through the new Swedish Constitution of 1809.³

The Human Rights Defender of Armenia is established on the concept of the Ombudsman Institution, an institution which has a very long historical tradition and today exists in more than 100 countries.

The typical main task of an Ombudsman Institution is to independently monitor the public administration and investigate complaints against this administration, made by the citizens. The Institution should see to it that the rights and liberties of the citizens are respected and that public authorities are observing not only the laws of the country and the rules laid down for them, but also all relevant international treaties. The Institution should keep public servants in check with its inspections and its criticism in individual complaint cases, but also help public servants with useful advice and examples of good governance. To strengthen the role and the independence of the institution, the mandate of the Ombudsman is often enshrined in the constitution of the country, while further rules are defined by ordinary law and by regulation, independently decided by the Ombudsman.

¹ At the same time, the Human Rights Issues Commission adjacent to the President of the Republic of Armenia ceased to exist, having been in action since April of 1998

² In 1721 renamed into its current designation “the Chancellor of Justice” (*Justitiekanslern*)

³ For further information on the historical background of the institution, see Annex 1

The Human Rights Defender of Armenia is an independent institution which pursuant to the Constitution, the laws and recognised international norms and principles shall protect human rights and fundamental freedoms, violated by state and local self-governing bodies and their officials.⁴

Following an International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris in October 1991, the Workshop's conclusions were eventually endorsed by the United Nations' Commission on Human Rights in 1992 and by the United Nations' General Assembly in December 1993.⁵ These conclusions are generally referred to as the "Paris Principles" and state that an independent "national institution shall be vested with competence to promote and protect human rights" with as "broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence".⁶

The Human Rights Defender of Armenia is established not only on the concept of the Ombudsman Institution, but also in line with the Paris Principles on National Institutions for the Promotion and Protection of Human Rights.⁷

Ombudsman Institutions like the Human Rights Defender of Armenia act first and foremost on individual complaints. An individual, who considers his or her rights to be violated by a public authority, can turn to the Ombudsman, who will accordingly investigate and assess whether the findings confirm the complaint, and, if so, take due action. There is no standard procedure applying to all Ombudsman Institutions, and complaints can consequently be pursued somewhat differently. Normally, any person can file a complaint without any restrictions. Yet, in some countries the complainant must be a citizen of the country and in a few countries a complainant can only access the Ombudsman via a member of parliament.

In Armenia any physical and - under certain conditions - any legal person can complain to the Human Rights Defender, including persons who are detained or in prison or otherwise deprived of their freedom.⁸

The Ombudsman investigates complaints on the basis of the domestic legislation, and, in some countries, also directly on the basis of the conventions of human rights and other international treaties, ratified by the country. If the complaint is substantiated, the Ombudsman will informally suggest the situation at hand to be rectified or issue a formal

⁴ Article 2 of the Law of the Republic of Armenia on the Human Rights Defender (LHRD)

⁵ General Assembly resolution 48/134 of 20 December 1993, annex, on the "Principles Relating to the Status of National Institutions"

⁶ Art 1 and 2.

⁷ The structure of the Institution of the Human Rights Defender is briefly described in Annex 2

⁸ LHRD art 8

recommendation. A common feature of all Ombudsman Institutions is the lack of power to issue binding decisions, legally sanctioned. This is the very core principle of an Ombudsman Institution. If the Ombudsman had had the power to issue such binding decisions, the Institution would act as a court of law, which would have required the usual fair trial safeguards and thereby impeded quick, practical and efficient, yet obviously always strictly legally correct measures. Thus, an Ombudsman can act swiftly on all kinds of allegations, thereby providing the citizens with professional service and relieving the courts from the burden of a multitude of administrative cases.

The Human Rights Defender of Armenia does not issue binding decisions, which are legally sanctioned, but recommendations. The Institution can often quickly, practically and efficiently rectify what went wrong, many a time without any profound and arduous investigation.

A particular feature of the Ombudsman Institution is the investigative powers endowed to the Institution. These powers vary from one Institution to another, yet the stronger investigative powers vested in the Institution, the greater the authoritative character of its activities and the greater the impact of the public transparency, which the Institution can display. Typically, the Ombudsman has full access to whatever document and other information, kept by the authority in question, be it an authority within the Ombudsman's jurisdiction including military units and prisons. For the Ombudsman, there should be no restrictions in terms of confidentiality.

In Armenia the Human Rights Defender has extensive investigative powers and is inter alia authorized to

- ***have free access to any public institution, including military units, prisons, preliminary detention facilities and penitentiaries.***
- ***require and receive any information and documentation from any public authority with some exceptions regarding the courts.***
- ***instruct any relevant public authority to carry out expert examination in order to clarify specific issues, related to a complaint.***⁹

The recommendation of an Ombudsman is an advice on how to handle the irregularity in question. It might require the authority to reconsider an unlawful or inappropriate decision, but it might also be that the Ombudsman tries to find a "friendly settlement" between the complainant and the authority, or requests that compensation should be awarded the complainant. If appropriate, the Ombudsman is striving to find feasible, enforceable and equitable solutions to problems, and can in the search for solutions be creative and flexible, not bound by all usual public authority formality.

However, the Ombudsman can also initiate other, more forceful measures. First of all, a non-complying authority can be publicly criticized in the media. Given the credibility of the Ombudsman Institution, its moral authority and the demonstrated strength of its arguments,

⁹ LHRD art 12

public authorities will seek to avoid such criticism. Criticism and recommendations can also be presented to a higher level than the authority in question, including the relevant ministry, the parliament and the head of state. An option, open to some Ombudsman Institutions, is the possibility to take a case to a court of law.

In Armenia the Human Rights Defender can inter alia

- ***propose any measure appropriate, including elimination of decisions, disciplinary measures or request for compensation.***
- ***bring a case to a court.***
- ***publish a case in the mass media.***
- ***submit special reports to the National Assembly or the President.***¹⁰

The typical Ombudsman Institution has a most special place in the constitutional system and works in many respects quite differently from all other public bodies. The Institution is not part of any of the three branches of power as devised in the Montesquieu theory on the separation of public power, *i e* the legislative, the judicial and the executive branch. It works independently under and according to the law.

In Armenia the Human Rights Defender “shall be independent in executing his/her powers and shall be guided only by the Constitution and the Laws of the Republic of Armenia, as well as recognised norms and principles of International Law”¹¹.

The unique feature of the Ombudsman Institution implies and entails special regulation in a number of ways. The Ombudsman works without orders from any other body, no other body may interfere with the Ombudsman’s work, and no decision by the Ombudsman can be appealed. This independence is a core feature of the Institution and most important for its credibility, which in turn is a prerequisite for a successful work.

In Armenia, the “Defender shall not be subordinated to any state or local self-governing body or official”¹².

“Interventions into the activities of the Defender that is aimed at influencing the Defender’s decision or hindering implementation of Defender’s statutory responsibilities, or failure to submit the required information or documentations in due time, or threatening or offending the Defender shall incur liability in the procedure and scope stipulated for similar violations against the Court or Judge.”¹³

To safeguard the independence of the Ombudsman Institution, the Ombudsman and the staff normally enjoy an extensive immunity against criminal charges and related deprivation of

¹⁰ LHRD art 15

¹¹ LHRD art 5

¹² *ibid.*

¹³ LHRD art 18

freedom. To serve the same aim, the Ombudsman can only be dismissed during the time of his or her mandate under certain, very limited and in the law carefully described conditions, and he or she normally has a high salary.

In Armenia the Human Rights Defender enjoys extensive immunity, can only be dismissed under very particular conditions and has by law the same salary as the President of the Constitutional Court of Armenia

The *independence* goes hand in hand with *impartiality* and *integrity*. The Ombudsman is not the representative of the complainant, but shall make his or her findings and recommendations not only independently but also with impartiality and integrity.

In Armenia, the Human Rights Defender acts inter alia on complaints from individuals, but is not the representative of the complainant, working independently with impartiality and integrity.

The competence and jurisdiction of the Ombudsman Institution varies from country to country. A common and efficient structure is a strong institution at state level, covering all public authorities from municipal to state level. However, certain spheres or persons might sometimes be excluded from the Ombudsman's jurisdiction or regulated in a particular way, as is always the judiciary due to the necessary respect for its independence. Sometimes particular Ombudsman Institutions are created for special spheres or themes, such as the Ombudsman for children, for minorities or for gender issues. In some countries there is no state level Ombudsman Institution but only regional Institutions or such Institutions in addition to a state level Institution.

In Armenia the Human Rights Defender has general competence to investigate complaints against all state and local self-governing bodies and their officials, the relation to the judiciary, however, regulated in a particular way, not allowing the Defender to intervene into the adjudicative functions of courts of law in any way.¹⁴

In some countries Ombudsman Institutions have jurisdiction not only over public bodies, but also over private companies and organizations. However, this is rather unusual and normally combined with legal restrictions as to the possibilities for the Ombudsman to intervene. It goes without saying that a national Ombudsman Institution has no jurisdiction over international organizations or missions of foreign countries such as foreign embassies.

In Armenia the Human Rights Defender may in principle not investigate complaints against non-governmental organizations or private bodies of any kind¹⁵ and has no jurisdiction over international organisations or foreign missions such as foreign embassies.

¹⁴ LHRD art 2

¹⁵ LHRD art 7

Normally, there is a deadline for complaining to the Ombudsman against actions of a public body. If there are procedures set up for appeal against the action in question, these procedures should sometimes be exhausted before a complaint is brought to the Ombudsman. However, whether the Ombudsman shall reject a complaint on the ground that an appeal is possible can be an intricate and delicate issue. Depending on the situation, the Ombudsman might properly and wisely choose to handle the complaint, but in a particular respect or in a particular way.

In Armenia a “complaint shall be submitted to the Defender within one year from the day when the complainant became aware of or should have become aware of the violation of his/her rights and freedoms.”¹⁶

The general idea of a modern Ombudsman Institution is to promote the Rule of Law, good governance and human rights. There are various measures open to accomplish this duty. In addition to ordinary case handling the Ombudsman can initiate inspections, review laws and issue general statements. However, it is also rather common that the Institution will undertake other proactive measures, such as advocacy campaigns with the aim to raise awareness among public servants or ordinary people. Such activities can be pursued through the media or by direct outreach campaigns. The Ombudsman can also lobby the government for legal amendments and innovations.

In Armenia the Human Rights Defender can inter alia initiate inspections, review laws and lobby the Government and the National Assembly in legislative matters, not the least by having the right to participate and speak at Cabinet meetings and Assembly sessions, and can also undertake other proactive measures, such as advocacy and outreach campaigns.

The Defender also has the right to “instruct relevant state agencies to carry out expert examinations” during the handling of a complaint.¹⁷

The Ombudsman Institution has normally a very flexible mandate and is free to use its creative capacity in the fulfilment of this mandate. The work of the Institution therefore tends to vary somewhat between different countries. However, through exchange of experience via international contacts and networking some kind of general Ombudsman practice has developed.

A number of such networks exists. National Ombudsman Institutions with a human rights mandate are networking with other National Human Rights Institutions such as Human Rights Commissions under a UN umbrella, guided by the fore-mentioned Paris Principles. In between this network’s biennial global meetings, the European members of this network have separate regional meetings under the auspices of the Council of Europe and its Commissioner for Human Rights.¹⁸

¹⁶ LHRD art 9

¹⁷ LHRD art 12 para 1 4)

¹⁸ Recommendation No R (97) 14 and Resolution (97) 11 of the Council of Europe Committee of Ministers.

Ombudsman Institutions with or without a clear human rights mandate are networking under the umbrella of the International Ombudsman Institute (IOI), seated in Alberta, Canada. Here, too, there are global activities and regional ones, global meetings every four years, and in Europe, biennial Round Tables organised with the help of the European branch of IOI, together with the Council of Europe and its Commissioner for Human Rights.¹⁹

On the European level, there is also the independent European Ombudsman Institute (EOI) and networking organised and promoted regionally by *inter alia* UNDP and OSCE.

The Human Rights Defender of Armenia participates in international networking, organized inter alia under the umbrella of the United Nations and the Council of Europe

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¹⁹ Recommendation No R (85) 13 of the Committee of Ministers of the Council of Europe to member states on the institution of the *ombudsman* and Resolution (85) 8 on co-operation between the *ombudsmen* of member states and between them and the Council of Europe, both adopted by the Committee of Ministers of the Council of Europe on 23 September 1985

Human Rights, the Rule of Law, Good Governance

Human Rights

By embracing democracy and ratifying international human rights treaties, such as the European Convention of Human Rights, Armenia made a commitment to a society based on respect for and fair and equal treatment of all citizens. Human Rights involve a relation between the state and the individual. It is a universal aspiration to find a common system of mutual respect for everybody's equal value. Human rights have a constitutional character. They bind the government to a certain set of rules and they entitle individuals with a minimum level of rights and liberties.

Most people experience human rights as rather alien and removed. These rights are presented in ceremonial documents, yet appearing to have a weak connection to actual reality and common life of the people they are intended for. When statesmen time and again reiterate the importance of concepts like human rights, the rule of law and good governance, they tend to use them as politically correct and rather hollow phrases. By ratifying conventions of human rights, politicians can purport themselves as advocates of a good society, yet when it comes to implementing them in reality, they might be less interested in providing sufficient means. With all the abuses occurred ever since the initial declaration of the conventions of human rights, one may question, if human rights really are based on an honest commitment?

It is justifiable to question, whether human rights are always based on an honest commitment

However, human rights, just as democracy, are not a solution in itself, they provide a framework for a better society, yet it takes an effort of the society as a whole to realize these standards. Human rights adopted by the state must be transferred to the people. In this exercise the institution of the Ombudsman can play a crucial role.

Realizing human rights requires active involvement of all people. In this exercise the Human Rights Defender can play a crucial role

In the aftermath of the carnage of two world wars, the world stood horrified of the human capacity of evil. The declaration of human rights was an attempt to compile a set of universal values in one document. These were to be entrenched in the constitutions of all the free states of the world and thereby preclude states or actors to concede to violence and massive abuses. By upholding these principles, a state would be protected from derailing into such disorder and mayhem as witnessed in the first half of the last century. The United Nations Universal Declaration of Human Rights from 1948 and the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 may not embody the codes to absolute human justice, yet they represent an attempt to reach such an understanding.

The 1948 Universal Declaration of Human Rights and the 1950 European Convention on Human Rights present key human rights texts

The United Nations Economic and Social Council recognised already in a resolution in 1960 the unique role of “National Human Rights Institutions”, such as the Human Rights Defender of Armenia, in protecting and promoting human rights.²⁰ National Human Rights Institutions should be independent representatives at national level of the universal human rights commitment. They were empowered to work for a universal aim, but at a local grass root level. Against the background of this resolution, the Paris Principles were eventually formulated in 1991, promoted by the 1993 World Conference on Human Rights in Vienna²¹ and endorsed by the United Nations General Assembly in December 1993.²² The Council of Europe adopted similar documents in 1997, recommending all member states to establish a National Human Rights Institution in accordance with a certain set of principles regarding the legal and organizational design of the institution.²³

The United Nations as well as the Council of Europe has recommended the establishment of a National Human Rights Institution as the institution of the Human Rights Defender of Armenia to promote and protect human rights in the country

Commissioned as a guardian of the conventions of human rights, the National Human Rights Institution is in a unique position to actually turn the lofty words of these international texts into deeds. When the Institution receives complaints from ordinary people and accordingly invokes the European Convention on Human Rights of 4 November 1950 or the United Nations International Covenants on Civil and Political Rights, respectively Economic, Social and Cultural Rights, both of 16 December 1966, a connection is established between the reality of the individual and the aspiration of the document. In this context the Human Rights Defender provides a national infrastructure for the protection and promotion of these principles.

The Human Rights Defender of Armenia shall act as the guardian of the implementation of the international principles on national level

²⁰ ECOSOC resolution 772 B (XXX) of 25 July 1960

²¹ The Vienna Declaration and Programme of Action, Part I, para 36, adopted by the World Conference on Human Rights, Vienna, 25 June 1993, (A/CONF.157/24 (Part I), chap III)

²² See footnote 4

²³ Recommendation No. R (97) 14 of the Committee of Ministers of the Council of Europe to member states on the establishment of independent national institutions for the promotion and protection of human rights, adopted on 30 September 1997 together with an Explanatory Memorandum and alongside Resolution (97) 11 on co-operation between member states' national institutions for the promotion and protection of human rights, and between them and the Council of Europe

Among international texts on human rights, the European Convention on Human Rights is rather particular in as much as violations can be sanctioned by the European Court on Human Rights in Strasbourg. In summary the European Convention of Human Rights regards the following:

- *Everyone's right to life shall be protected by law.*
- *No one shall be subjected to torture or to inhuman or degrading treatment or punishment nor held in slavery or servitude.*
- *Everyone has the right to liberty and security, protected from unlawful detention, arrest or imprison.*
- *Everyone is entitled to a fair and public hearing. Everyone shall be presumed innocent until proved guilty according to law. No one may be held guilty of any criminal offence, which did not constitute a criminal offence at the time when it was committed.*
- *Everyone has the right to respect for his private and family life, his home and his correspondence.*
- *Everyone has the right to freedom of thought, conscience and religion and the right to freely express his mind.*
- *Everyone has the right to freedom of peaceful assembly and to freedom of association with others.*
- *Men and women of marriageable age have the right to marry and to found a family.*
- *All these rights and freedom shall be secured to all people without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*

Violations of the European Convention on Human Rights can be sanctioned by the European Court in Strasbourg

Human rights provide first and foremost general norms and principles for national legislation and for the functioning of the judiciary and the public administration. They are guidelines for the drafting of laws. They set standards in terms of discrimination, property rights, the right to free speech and religion. They also set norms for the behaviour of public institutions, such as the police and the courts. However, human rights are not only aimed at contributing to the well-being of the citizens, and complying with these principles is not primarily an issue of decency and modesty of the government. Adhering to these principles should be an act in the very self-interest of any pragmatic and enlightened government and public official.

It is sometimes said that by complying with these principles, a contract is established between the state and the people. The people will know what could be expected from the government, and as long as the government respects these principles, the people will reward it with its confidence. A people that put its trust in the public institutions, is prone to respect regulations, laws and fees. With such confidence in the institutions, decisions and decrees of public authorities stand a better chance to be properly enforced. In effect, a society that respects human rights provides stability and predictability. Citizens can rely on the authorities to apply rules equally for everybody and in similar circumstances. This sense of stability and predictability is a prerequisite for economic prosperity and democracy. A person who trusts

the rules to prevail will also be ready to invest in society and develop his or her private property. A person, who is ensured that the rules will apply equally for all, will entrust politicians with the power to rule, knowing that they can be held accountable for their actions.

Respect for human rights is a prerequisite for long-lasting economic prosperity and democratic development

- ***Human rights represent a universal aspiration to find a common system of mutual respect for everybody's equal value.***
- ***Human rights imply an ambition to find the absolute principles of justice and to prevent massive scale of violations***
- ***The ratifying state has made a commitment to build a society based on fair and equal treatment of and respect for all citizens in accordance with the particular principles enshrined in the ratified treaty on human rights***
- ***Realizing human rights requires active involvement of all people***
- ***Ensuring human rights generates stability and predictability***
- ***Respecting human rights engenders a mutual trust in society***
- ***Fulfilment of human rights is a prerequisite for long lasting economic prosperity***

The Rule of Law²⁴

However, the understanding of the concept of human rights is not enough. One needs also to understand the essence of the expressions “the Rule of Law” and “Good Governance”. Human rights provide universal rules, which should be incorporated in national laws or enshrined in the constitution of the country. The Rule of Law represents the principle how to abide to the law and Good Governance presents the actual conduct of the public official. These two principles, together with the human rights, determine the approach of an institution such as the Human Rights Defender. The Rule of Law may just as human rights stand out as an expression, used by politicians and representatives of the international community, who have seemingly not reflected on the implication of this concept. These sentences below will try to offer a concrete explanation.

²⁴ For a practical one-page compilation, see Annex 3

Respect for human rights calls for the Rule of Law. Too often, this term is used as a hollow phrase or a political correct mantra without reflection on its implication as well as intention as to its implementation.

The rule of law means a steadfast commitment to the law as the ruling principle for all public authorities. The rule of law means that a reasonable interpretation of the law shall govern society and the activities of each public servant, be it a minister, a judge or an ordinary administrative officer. They should always do their best to sensibly follow the law. Public servants must not follow the advice of the party secretary, not the rule of friendship, not the law of money, be it the Armenian Dram or the US Dollar. There must be no external factors beside the law determining the decision of the public servant.

The Rule of Law means that a reasonable interpretation of the Law shall rule society and the activities of each public servant.

Moreover, the Rule of Law means that everybody is equal before the law. Nobody should be above the law, and everybody should be bound by the law. The Rule of Law provides order and stability in society. It means reasonable predictability concerning authority decisions. It means enforceable and enforced decisions. It means a safeguard against discretion not foreseen by the law. Accordingly, it also opens to investments and economic development. Investors will simply hesitate to place their money in a country, where they are not sure that a breach of a contract will be duly sanctioned.

The rule of law means that everybody is equal before the law and that everybody is bound by the law. "Land Shall Always By Law Be Built".

Good Governance²⁵

The Rule of Law and the respect for human rights must be transformed into actual practice by the public servant. The public servant is the representative of the state and as such he or she carries an important duty on his or her shoulders. The public servant is the actual interpreter and implementer of the legal principles, adopted by the parliament and the courts. While citizens merely encounter politicians and ministers via television, and many citizens will never come in contact with a judge or a prosecutor, public servants in the public administration will deal directly with the citizens on a daily basis. Therefore it is not an overstatement to claim that it is in this relation, that the legitimacy of the state is produced. It is on the assessment of this relation, that the state will be judged.

It is the frustration of ordinary people with the public officials that causes the most of the complaints to an institution as the Human Rights Defender. The most common cases, complaints regarding protracted administrative procedures, requests of unwarranted fees,

²⁵ For a practical one-page compilation, see Annex 4

failure to receive certain information etc, concern the day-to-day relation with the public administration. These cases may regard minor issues, yet in their totality they may breed more distrust to the government than cases of corruption, unlawful detentions, police brutality etc. Of course, such grave human rights abuses are very serious. However, while such cases receive a lot of attention, the minor abuses may build up a profound and persistent distrust among the citizens.

The legitimacy of the state is also assessed by behaviour of the public servants.

The totality of minor maladministration can be more harmful to the government than major cases of human rights abuses.

Good governance implies a set of principles on how governmental officials and other public servants should deal with citizens. These principles promote an efficient and equitable conduct of the public authorities. The belief is, that by respecting these principles the public servant will provide a **transparent, accountable and participatory** government. A government characterized by these elements should be the desirable aim of any democracy.

Institutions as the Human Rights Defender are set up as an instrument in realizing these three elements. The strong investigative powers of such institutions should be able to penetrate the government and thereby reassuring transparency, accountability and participation. Nevertheless, the responsibility to maintain these standards should at the end of the day be with the public administration. The principles of good government can be summarized by the words **properly, fairly and impartially**. These principles represent practical guidelines for the public authorities how to behave, but also guidance to ordinary people as to what to expect from the public authorities and thus also what conduct that could be subjected to complaints to an institution as the Human Rights Defender. Put differently, they could be labelled guidelines for the authorities on how to behave to avoid contact with and criticism from the Human Rights Defender.

By aligning with the principles “properly”, “fairly” and “impartially” the public authorities will provide an equitable treatment of all citizens, but also a more efficient administration.

“Properly”

Properly means above all to act correctly in accordance with the law and other rules governing the public authority in question. In practice this means that every public servant should strive to maintain **a consistent administrative behaviour**, and try to follow the normal administrative practices of the institution. If these practices appear to be in contravention with the law or with human rights, then the public servant shall convey such aspects to his or her superior or to the Human Rights Defender.

Properly also means *being sensible* in all situations. This is a matter of principle, but such an attitude may also increase the confidence in the institution. The public servant should always explain, in a comprehensible fashion, the practice applied by the institution to the person in question, paying heed to his or her capacity to understand complex rules, age, possible disability and feelings, privacy and convenience.

Being service-minded, helpful, correct, cautious and accessible in relations with the public is also a matter of principle, but may also be beneficial to the institution. A service-minded approach is proven to entail in smoother and more efficient procedures. This implies that the public servant should inform the citizen on all details that might be relevant in his or her case. He or she should be directed to the most appropriate and useful authority, in case he or she has approached the incorrect institution. The public servant should also duly reply to correspondence in a language comprehensive to the addressee. To ordinary people the administrative bureaucracy might appear impenetrable and Kafkaesque. Of course, this conception will make the citizens negatively predisposed to the public servants. Changing this attitude would severely simplify the work of the public servants.

The Human Rights Defender does often receive complaints from individuals, frustrated by rules, which they experience as confusing and which they may have misunderstood. A lot of complaints are caused by rude or inflexible public servants, who boss and bully the citizens.

In addition, properly means that issues should be handled *duly without delay*. This implies to issue documents promptly, enforce decisions in time and respond to requests for information swiftly etc. Public servants may be overburdened with work and short of resources, yet they must see to it that the citizen is immediately notified, should any new decision or circumstance emerge, vital for the outcome of the citizen's case. And it goes without saying that it is simply unacceptable, if a case is not dealt with unless the public servant in question find some personal gain in pursuing it.

Administrative silence is frustrating and painstaking for the affected individual and a common ground for complaints. Maintaining constant communication with the citizen will increase the confidence in the authority and impede complaining to the Human Rights Defender.

“Fairly”

Being fair means that people should be treated *similarly in similar circumstances*. They should be handled in the same manner and the law should be equally interpreted in corresponding cases. Thereby, every individual should be able to make a reasonable prediction of the outcome of a case. Adequate differences in similar cases should however be taken into account, preventing rigid and inflexible routines, which inevitably lead to inequity and inefficiency.

Being fair also implies that public servants should be ready to *review rules and change procedures*, if necessary or appropriate. In this regard the public authorities should always try

to remain posted on the relevant recommendations and reports by the Human Rights Defender. The recommendations by the Defender in an individual case, whether presented in a formal or informal way, should be read as precedents and potential suggestions to changes of the administrative procedures. Of course, this does not prevent the public authorities from initiating on their own an internal review and possibly consider redeeming adverse decisions.

Being fair further means to inform a person about his or her possibilities to appeal a negative decision and, when appropriate, about the possibility to turn to the Human Rights Defender.

People should be treated similarly in similar situations, decisions should be duly reviewed if appropriate, and possibilities to appeal a decision or complain about a treatment should be presented in a way, easily understood.

“Impartially”

Impartially means to ensure that all decisions are based on an equal judgment, ***free from any preconceptions or biased considerations***. Different treatment must for instance be avoided because of a person’s colour, sex, marital status, ethnic origin, culture, language or sexual orientation, unless the law specifically states otherwise. Decisions must not be influenced because of who the concerned persons are or who they know. It is said about courts of law that it is most important not only that they are impartial, ***but also that they are seen*** as being impartial. This principle is undoubtedly also relevant to any public authority. Discriminatory undertakings are not only extremely painstaking for the aggrieved party, but they are also prone to engender general divergences and instability, harmful to the whole society.

It goes without saying that impartially also means that the decision-making should never be influenced by ***the public servant’s own interest***, whether of a financial or other nature. And in case the public servant experience ***improper pressure from outside***, he or she should report it to the relevant superior, as appropriate, but may also approach the Human Rights Defender.

Decisions must not be biased because of irrelevant circumstances or facts. Discrimination must be avoided. A public authority must not only be impartial, but also strive to be seen as being impartial.

* * * * *

Handling of individual complaints

General methods of work

One of the distinctive features of an Ombudsman institution as the Human Rights Defender of Armenia is its freedom in selecting its methods of work. Unlike a court of law, the Defender is not restrained to one certain practice, but can explore various measures when handling a case. The role of the Defender is not primarily to produce legal decisions, but to seek feasible solutions regarding public administration activities, subject to substantiated complaints, and to see to it that these solutions are implemented. An Ombudsman Institution as the Human Rights Defender should not replace the public authorities or take over or be responsible for their tasks, but see to it that they undertake their responsibilities - fairly, properly and impartially in accordance with the law.

While a court of law brings a judgment on the basis of the relevant legal source, an Ombudsman institution like the Human Rights Defender seeks an appropriate solution, given the actual circumstances related to the case. In effect, every case is handled in accordance with its specific merits and the handling may differ from case to case. Hence, the Defender acts as a “problem solver”, applying a creative approach in seeking solutions by methods such as persuasion, cajoling and arbitration, when not issuing official criticism. Thereby the Defender is flexible to choose - within the framework of the law - whatever method that may suit the particular case, but should - naturally and wisely - never recommend a solution which may not be possible to implement.

The Human Rights Defender is not restrained to a set of formal practices, but is free to seek any appropriate solution, supported by the law

The mandate of the Human Rights Defender is wider than that of a court of law. It includes to promote and protect human rights, the Rule of Law and good governance, which implies operating not only reactively, but also proactively. Necessarily, the Institution should profess expertise on the practical implications of these concepts and should always act within the framework of the law. All measures and decisions should be based on a thorough legal analysis, yet the proposals on how the relevant authority or public servant should react and the way such proposals are conveyed or otherwise displayed are subject to the inventiveness of the Defender. These methods of work differ crucially from other public institutions such as the courts of law, the prosecutors and the public auditors.

The Human Rights Defender’s measures are based on a thorough legal analysis and are implemented by a creative exploration of the most appropriate solution at hand

The comparison below between a court of law and an Ombudsman Institution as the Human Rights Defender may be useful for a good understanding of the differences between these institutions.

A Court of Law

- Delivers enforceable binding decisions.
- Deals exclusively with the judging, not the execution of a decision
- Bases its decisions on the law and precedents and does not take into account practical aspects on efficiency or implementation
- Must respect the high-level procedural standards of “fair trial”, thus formal, sometimes even rigid and often costly and protracted
- Deals with litigants
- Is basically reactive and only proactive through the standard which an individual decision may set

The Ombudsman

- Delivers proposals and recommendations, not binding decisions
- Monitors also the implementation of proposals and recommendations
- Bases its proposals and recommendations on law but pays also heed to what can realistically and efficiently be implemented
- Can deal with cases swiftly and informally
- Deals with authorities and individuals
- Is free to choose any measure within the framework of the law and the competence and jurisdiction of the institution
- Is reactive as well as proactive, trying to prevent violations

Who can complain and how?

The Human Rights Defender is an institution providing a remedy accessible to all citizens. In case an individual has an objection to the conduct of a public servant or authority, from municipal to state level, he or she can approach the Defender. A complaint should preferably be in writing, stating all relevant facts. The individual may however also contact the institution by telephone or e-mail or even be received by a lawyer, who could advise on what measures the complainant may take. Legal persons, such as companies, organizations and foundations can also - under certain conditions - file complaints. The basic idea is that the Defender should be accessible to everybody and be able to respond immediately, in contrast to courts of law, whose requirements of formal procedure prevent them from act in a speedy and informal manner.

The Human Rights Defender should be easily accessible to everybody and be able to respond speedily

Persons who turn to the Human Rights Defender are often frustrated or annoyed by not having successfully accomplished a certain administrative claim. Many complaints are frivolous, groundless or outside the competence of the institution. On the other hand, many of them could have been precluded, if the public servant or authority in question had been more accommodating in the first place and had explained the situation to the citizen in a clear and

understandable way. Nevertheless, in these cases the Defender can bring clarity to a case and advice the complainant, what usefully to do or where usefully to turn, however, taking into account that the institution is by nature not a traditional legal aid centre.

Many complaints to the Human Rights Defender are inadmissible, but the Defender may nevertheless provide relief to the complainant by clarifying the situation or informing him or her about the most appropriate body to turn to

A pivotal aspect in the work of the Human Rights Defender is to be accessible to all citizens and present as many entries to the Institution as possible. Thus, since the Defender is permanently only present in the capital, the Institution makes outreaches by visiting municipalities and public authorities. Many cases are forwarded to the Defender by solicitors or private lawyers, who recommend the individual to turn to the Institution. Non-governmental organizations engaged in human rights issues can also be of great help in directing individuals to the Defender. In addition, public servants should preferably also inform a person about the possibility to complain to the Defender, if the person displays discontent with the activity of the public servant or authority in question. Notifying the citizens whom to approach in case of dissatisfaction should in fact be part of standard procedure. Moreover, public servants may sometimes have a self-interest in bringing issues to the Defender. This might be a useful way to rectify a possible irregularity or to initiate a legal review or to prevent future complaints.

The Human Rights Defender strives to be accessible to all citizens, and should thereby also be able to rely on information about the existence and role of Institution being provided by various agents in society such as solicitors and NGOs, but also by challenged public servants and authorities

A complaint can be made anonymously, but the Human Rights Defender is not obliged to accept such a complaint. The Defender can also handle a complaint without revealing the identity of the complainant. However, anonymity makes normally a complaint more difficult to handle, given that the Defender in such cases for instance cannot get further information from an unknown complainant or must - as a consequence of the rule *Audiat et altera pars*²⁶ - disregard facts, which might reveal the identity of the complainant. Complainants are therefore generally recommended not to request anonymity.

Complaints could be filed anonymously, but such cases are normally complicated to handle efficiently, and the Human Rights Defender is not obliged to accept such a complaint

²⁶ Also the other party should be heard (cmp Seneca, *Medea*, v 199)

A complaint should preferably be submitted in writing, stating all the relevant facts, thereby reducing the risk that the case gets on the wrong foot. However, if necessary or useful, the case lawyer might take all the notes for a complaint over the phone or at a visit to the Institution by the complainant. The subsequent handling of the case might be exclusively in writing, if the situation so requires, but could very well, wholly or partly, be conducted orally, not the least through telephone calls. The characteristics of a case might also be such that it needs urgent intervention by the Human Rights Defender and a delay, due to the providing of a written a complaint, would be unfortunate. This could be the situation, if a flagrant violation is ongoing or about to happen, such as an unlawful detention or extradition. The Defender might also handle cases *ex officio, i e* without having received a complaint. Such cases will be discussed further below.

A complaint to the Human Rights Defender should preferably be submitted in writing, stating all the relevant facts, but could if necessary be lodged over the phone or informally stated at a visit to the Institution.

Is the complaint admissible?

When a complaint is submitted to the Human Rights Defender, it has to be reviewed in order to establish whether it can be considered admissible or not.

All complaints, which are frivolous or obviously unfounded, are considered inadmissible. The complainant may have misunderstood the law or the issue at stake or is unaware of the legal qualifications of the case.

The complaint might also regard an institution outside the competence of the Human Rights Defender. Naturally, the Defender may not monitor any institution that is not under the reign of the Republic of Armenia. Consequently, the Defender does not have a mandate to monitor foreign diplomatic missions, such as embassies, or international organizations. If such a complaint reaches the Institution, it may be immediately rejected. However, in particular cases, the Defender may choose to inform the mission or organization in question and sometimes try to establish some kind of dialogue between the parties. Any form of public criticism or formal recommendation would, though, be quite inappropriate.

Non-governmental organizations as well as private companies are further not under the competence of the Human Rights Defender, unless they are contracted by a state body, such as water, electricity and gas suppliers etc, or are otherwise providing public service. A complaint regarding aspects of such a contract could, however, be the subject of Defender review.

The Human Rights Defender is also not obliged to consider complaints, submitted more than “one year from the day when the complainant became aware or should have become aware of the violation of his/her rights and freedoms”,²⁷ but may choose to do so in particular cases.

²⁷ LHRD art 9

The Human Rights Defender does not have a mandate to interfere with the adjudicative functioning of a court. Nevertheless, the Defender may monitor the executive and administrative functioning of the judiciary and criticize the courts in cases of maladministration. Such cases could for instance regard delays in scheduling of court proceedings, a litigant not receiving documents and information, maladministration in the preparatory work or failure to execute decisions. Where to draw the borderline between the independence of the courts and the investigative powers of the Defender might naturally sometimes be intricate and subject to some disparity of views.

Reasons for a complaint to be considered inadmissible could be that it

- *is frivolous or unfounded or anonymous*
- *concerns a foreign diplomatic mission or an international organization*
- *concerns an NGO or a private company*
- *is submitted more than one year after the complainant became aware or should have become aware of the violation in question*
- *relates to the adjudicative functioning of a court of law*

What happens then?

At first sight it may sometimes be difficult to assess whether a complaint is to be considered admissible or not. Obviously, a complaint is presented from the perspective of the complainant and will normally not give a full view of all relevant facts. A complaint may therefore motivate some further, sometimes rather thorough, checking before identified as inadmissible.

The Human Rights Defender' complaints handling is characterized by openness and its communicative style. It is presumed that the public servants and authorities in question will collaborate openly and honestly with the Defender. Yet, the Defender has naturally to take into consideration that this is not always the case.

The annexed chart gives a general view of the potential paths of the handling of a complaint.²⁸

Adjusted case examples²⁹

Solution at initial contact

Following the reception of a case the case lawyer will begin an initial and general inquiry. As a rule, the Defender would first of all - after a legal analysis, appropriate to the stage of the handling - contact the public servant or authority, subjected to the complaint, to informally notify them of the case and ask for basic information. Many cases are solved at this stage. The

²⁸ Annex 5.

²⁹ All case examples in this text are free interpretations of true cases, not related to any authorities or institutions of the Republic of Armenia, but presented here in a pedagogical perspective

bulk of complaints to the Defender are caused by minor flaws, unwittingly committed by the public servant, through carelessness, lack of knowledge or a plain mistake. In for instance cases A, B and C below the Defender was only required to make one phone call in order to obtain sufficient information on the background of the case and to solve it.

Case A

In 2003 Mr A requested the Land Register Office to send him a copy of a document from 1946 related to his father's estate. Having reminded the office in vain for more than one year, Mr A complained to the Defender. The Land Register Office claimed that the register had been transferred to another authority and it was no longer their responsibility to issue documents regarding the related period. The case lawyer informed Mr A about whom to address. Soon thereafter Mr A received the copy of the relevant document. – In addition, the Defender issued a resolution in which the Land Register Office was criticized for not having informed its clients, Mr A included, about the new practices.

Case B

In the autumn of 2001, Mr B addressed the Ministry of Health, requesting an invalidity decision to be reconsidered. In the beginning of 2003, Mr B complained to the Defender having still not received any reply. The case lawyer contacted the Ministry, and the public servant in question declared that he would immediately look into the issue. Soon thereafter the public servant informed the Defender that the file in question seemed to be lost, but would be re-established. Two weeks later, Mr B informed the Defender that he had received a positive decision.

Case C

A Labour Inspector refused Mr C access to the minutes regarding an inspection, conducted due to alleged irregularities in Mr C's work. Mr C complained to Defender. After contact with the case lawyer, the Labour Inspector immediately sent a copy of the inspection minutes to Mr C.

In these three cases the handling of the complaint was completed after the first contact with the responsible public servant. These cases are rather representative of standard complaint handling procedure. None of them concerned an issue of profound legal nature and the conversation between the case lawyer and the public servant was enough to disclose all relevant facts and to reach a solution. The public servant was clearly interested in finding a

quick and proper solution and neither he nor the Defender was inclined to have a lingering dispute.

If the public servant in the Land Register Office in case A had been more accommodating, when Mr A approached the Office, and had informed Mr A about the new procedures, the case would assumingly never had been subject to a complaint. Public servants often comprehend their liability to be limited to a strictly defined area, and issues or actions not obviously relating to their responsibility or not literally and clearly stated to be so, will accordingly be disregarded. This was the situation in case A and the authority in question was accordingly criticized.

A person approaching a public authority will have difficulties in attaining a comprehensive image of the relevant practices. It is therefore important that public servants always try to perceive the situation from the perspective of the ordinary citizen. If a person has approached the wrong department, the public servant is expected to inform him or her on where usefully and correctly to turn and not to tell only that it is the wrong department (“It is not my table”) or to forward to a body, which would formally be competent to handle the case, but would not be usefully approached. Citizens must never get lost in a bureaucratic maze.

In spite of the fact that case A was quickly settled, the Defender chose to issue a formal recommendation in which the Land Register Office was admonished to inform clients on new practices. Such recommendations have a preemptive aspiration and seek to preclude similar incidents in the future. It is presupposed that recommendations of this kind are forwarded to all concerned staff, and they may in addition be published in the Defender’s Annual Report to be observed and followed throughout the country. Such recommendations might also be followed up by up the Defender after some time in order to ensure that the authority in question has truly complied with the recommendation.

In case C, it is beyond doubt that the Labour Inspector had taken an unlawful decision Thus he found no reason to argue with the case lawyer, but handed over a copy to the complainant instantly. Knowing that the decision was legally unfounded, it would not have put the Inspector in an advantageous position to object the claim of the Defender. Yet, if the Inspector had maintained that the minutes regarding the inspection was protected information and inaccessible to the complainant, then it would be in place for the Defender to issue a formal recommendation. However, in a situation as this one, it is rarely necessary to issue a formal written recommendation to solve the problem in question. Nevertheless it could be appropriate to do so to state a principle or to make an unaccepted practice better known.

At the first contact between the Defender and a public authority, the terms of the complaint should be elucidated and a solution should be searched, if reasonable and advisable. Many cases are solved at this first contact.

Helpful complaints

The first contact does often reveal that the complaint is based on a misunderstanding or an incorrect interpretation of the law by the complainant. Obviously, there is no inherited or

implied animosity between the Defender and the public authorities. In general, public servants act in pursuance with the law and with good intention. Given the impartial position of the Defender, handling of a complaint may free a public servant from frivolous accusations. On the other hand, public servants are often overloaded with work and may not always be able to enter into to all the legal merits of a case. In addition, public servants may not always possess the same legal competence as the Defender staff. Accordingly, the Defender handling of a complaint may result in help to public authorities. The Defender may even receive requests for legal opinions on specific cases and other types of inquiries by public servants. Case D is a typical such case.

Case D

Ms D submitted a request to acquire her labour booklet and other documents, related to her employment history, which was kept by the Department of General Administration of the Municipality in which she resided. The municipality claimed that in order to receive what she requested, she had to pay a fee as prescribed by a Municipality Decision on Fees. Ms D turned to the Defender. The case lawyer addressed the Department and explained that the requested fee was in contradiction of the Law. The secretary of the Municipality, allegedly legally untrained, asked the case lawyer for advice on how to rectify the situation and was accordingly told to propose the abolishment of that part of the Municipality Decision at the next session of the Municipal Council. Some time later the Defender received a copy of a decision, repealing the article in question, as well as information that Ms D had promptly and free of fee received what she had requested.

In case D the public servant chose to draw on the experience of the case lawyer, which led to the subsequent Municipal Council decision. In this case there was no need for a formal Defender recommendation. The conversation was simply enough. A legal opinion could, of course, have been conveyed in writing, if such an opinion would have been helpful in the Council's decision-making process.

It is often difficult for a public authority to have an overview over all the aspects of an issue. The Defender is sometimes better placed to make a legal analysis of the situation. The case lawyer may receive information from various authorities and sources. A complainant may actually reveal mistakes, which are important for the public authority to get to know. Case E presents an example of an issue, which might have remained unknown to the public authority, without the complaint.

Case E

Ever since a road was reconstructed in front of her house, Ms E had had problems with sewage water pouring out of the road drainpipes, flooding her property. A municipal inspector had looked into the matter without the problem being solved. Ms E contacted the Defender. Having been contacted by the case lawyer, the Municipality initiated a second, somewhat more thorough investigation, which revealed that illegal connections by other citizens caused the leakage, since the drainpipe had become overcharged. A new drainage system was installed on Ms E's property and the sewage problem was thus solved.

As seen in these cases, a solution did not require any formalistic paper work. The informal discussion with the public authority in question was sufficient. Solving problems in an open dialogue between the Defender and the public servant is time-efficient for both parties. The merits of a case are generally rather obvious, and with a pragmatically disposed public servant, a complaint will not require a time-consuming and cumbersome procedure. The authority presumption should usefully be that the Defender is committed to find a feasible solution and will not give in, until the problem in question is solved. By not attending to the issue at once, the public servant will face a laborious struggle with the Defender, which is likely to be more burdensome than beneficial.

The Defender can often act be of help to public authorities, elucidating procedures and legal interpretations.

Creative solutions

The Defender is not endowed with any power to issue binding decisions as for instance a court of law. This is in a way compensated by the ability to find informal, swift and efficient measures to solve a problem, a way of handling not open to the court. The basic concept is not to act as a representative of the complainant or normally as a prosecutor nor as a defender of the public servant. The objective is to find reasonable and useful solutions in accordance with the Rule of Law. Rather than necessarily express formal criticism, the task is to be creative and find feasible solutions to administrative and legal problems. Cases F and G will further illustrate this approach.

Case F

Ms F, who was serving a seven year prison sentence for the murder of her husband, turned to the Defender as she was unable to visit her minor child. This child was during her imprisonment put in the custody of the child's uncle, but according to a decision of the Centre of Social Work in her Municipality, Ms F was entitled to meet her child once every month at the premises of the centre. However, the decision had never been implemented. The Defender contacted initially the Centre and the responsible department within the Municipality to induce them to comply with the decision and the Law on General Administrative Procedure. After several subsequent phone calls by the case lawyer, a transport was organised by the Municipality and a first meeting between the mother and the child after several years took place at the Centre. Meetings have since been regular.

In order to find a solution in this case the Defender had to initiate and foster a dialogue between the various departments within the municipality and the Centre of Social Work. Eventually, a common understanding of the issue was accomplished. Thereafter, the case lawyer actively participated in the discussion on how the meetings were to be arranged. In promoting this solution, the Defender provided the necessary input and a forum for the contact. In this case, there was no dispute on what was actually stipulated by the Law, yet the

executive branch could not determine, who would be responsible nor how to act. In situations where two or more administrative branches have enmeshed into disagreement, the Defender can act as a mediator, arrange roundtable discussions and initiate dialogues in order to solve the problem.

Case G

Mr G, an inmate of a psychiatric hospital, had unsuccessfully complained to the head of the hospital about one of the hospital psychiatrics. By suggestion of a relative, Mr G complained to the Defender. The psychiatric vividly denounced any wrong-doing. The case lawyer then contacted the head of the hospital, who claimed that there was nothing he could do. The case lawyer subsequently turned to the Minister of Health. By suggestion of the Defender, the Ministry formed an ad hoc commission, which visited the hospital and came to the conclusion that both the inmate and the psychiatric should undergo medical treatment and that the two should henceforward be separated from each other. The head of the hospital was accordingly ordered by the Ministry, and was to inform the Ministry about all measures undertaken.

In this case the Defender could neither rebuff the claim of the complainant nor of the psychiatric. However, by suggesting to the Ministry to set up a commission, the Defender saw to it that the issue was eventually thoroughly investigated and subsequently solved.

In both of these two cases, there was no pat solution. The parties needed a third, impartial party that could promote necessary communication and propose measures on how to get to terms with the problem. The intervention was naturally facilitated by the concerned officials in the related institutions being collaborative.

The Defender can operate as a mediator, helping involved parties to find a solution. In many cases the Defender attempts to apply a rather informal approach in order to find creative solutions to legal issues.

Superior contact

As has been exemplified above, it is sometimes useful or even necessary to bring a case to a higher level, *i e* to the superior of the public authority or servant complained about. In such cases it may or may not be useful, first to issue a formal written recommendation. However, many a time a continued, more informal approach is enough, as is demonstrated by the following case examples.

Case H

In April 2002 Ms H requested the Ministry of Finance to enforce a Customs Office decision, granting her the reimbursement of a deposit for temporary imported goods. Not having received the deposit back after some time, she complained to the Defender. After being contacted by the case lawyer, a public servant within the Ministry claimed changes of some regulations as an excuse for the decision not being enforced. Subsequently, the Ministry prescribed how to reimburse the deposit, but Ms H did still not receive it. After the case lawyer having approached the Minister in person, the deposit was finally handed back and the decision enforced.

This case illustrates, aside from the usefulness of taking a case to a higher level, that a case, filed with the Defender, will remain pending not only until a solution is found but until this solution is implemented. As long as the case is open in the Defender's office, the handling will proceed and follow-ups will be undertaken.

A case will be pending within the Defender's office until it is out of doubt that the solution reached is properly implemented. If an acceptable solution is not otherwise to be found or a solution found is otherwise not duly implemented, the Defender may take the case to a higher level.

Case I

Mr I turned to the Defender, being dissatisfied with a first instance court, which had failed to ensure the enforcement of a decision, delivered during a previous court hearing. After the case lawyer having contacted the court, the enforcement was duly scheduled. Afterwards, when the case lawyer over the phone requested the minutes concerning the enforcement to be sent by fax to the Defender, the judge asked for a written request. Upon phone contact with the case lawyer, the Court President agreed that such request was not prescribed by law and not necessary and the minutes were faxed right a way.

This case is also an example of a rather common authority malpractice, namely to make difficulties of various kinds, when copies of documents are rightfully requested. It is a practice that might even, as in this case, create some - minor - delay and nuisance to the Defender, while creating lots of unnecessary delays and other problems to the citizens. It is consequently distinctly fought against by the Defender.

The Defender decisively counteracts authority practice to make difficulties for the citizens to rightfully get copies of official documents and the like.

Multiple violation cases

When handling a complaint, it might occur that the Defender comes across maladministration, not actually complained about. It might also happen that the handling of a complaint reveals that several wrongdoings have contributed to the situation, complained about. Case J presents such an example.

Case J

Mr J obtained a building permit by the Urban Department of the Municipality for the establishing of a gas station at a certain location. Soon afterwards, the Municipality decided to use this location for the building of a school, but offered Mr J another location, which he accepted. When the Department for unclear reasons subsequently offered a third location, totally unacceptable to Mr J, he complained to the Defender about not getting any permit with respect to the second location. After questions and reminders, it appeared that the second location had been seemingly illegally granted to a third party, who was to use it for a tennis court and a connected clubhouse. This decision had allegedly been delivered on an arbitrary basis, and it was suggested that the tennis club had even bribed the public servant in question.

The case lawyer recommended the Department to immediately grant Mr J a building permit for the second location or to offer another location, acceptable to Mr J. The case lawyer also requested the Department to provide all relevant documentation regarding the establishing of the tennis court and the clubhouse. Noticing that the Department had not come up with an adequate location to Mr J, and that it had also failed to provide the requested documentation, the Defender forwarded the case to the Minister of Urban Affairs within the Municipality and to the Mayor. Subsequently, the Department annulled the decision regarding the tennis club and gave Mr J the requested permit for the second location.

In this case, the Defender naturally expressed criticism not only regarding the issuance and non-issuance of building permits, but also regarding the slow handling of the whole case and the obstruction with regard to providing documentation.

Although the proposals and recommendations of the Defender are not binding in the sense that legal sanctions are attached to them and enforcement by means of public force is at hand, they have in reality a heavy impact on the authority or official concerned. The reasons are multiple. It is for instance cumbersome to have to stand up against the Defender with his or her good arguments and persistence. It is uncomfortable to risk public criticism, given the recognition and moral authority of the Defender. It is risky to have the case forwarded by the Defender to a higher level, which might very well accept the Defender's view.

In case J, the issue ended at a minister's and the Mayor's desks. Thereby it remained not only a solely legal issue, but entered also the political sphere. An official in a political position might very well have different concerns as compared to an official in an administrative position before rejecting a complaint.

It is difficult and troublesome not to follow the Defender's proposals.

Urgent/severe cases

Sometimes, in urgent cases the Defender might want to get access to the highest authorities immediately in order to intervene in ongoing or imminent abuses as for instance in cases like the example below.

Case K

Mr K was born in North Africa and had legally attained a citizenship after having married a woman, who he had met soon after his arrival in the country some ten years earlier. They had lived together in the country until 2002, when they divorced. In 2003 the Ministry of Interior suddenly issued a decision on the revocation of Mr K's citizenship on the basis that it had been rewarded on a fictive decision. Mr K turned to the Ministry, claiming that the revocation decision was groundless, substantiating his case with some documents. Three months later Mr K received a decision, ordering him to leave the country within two weeks or otherwise facing an extradition by force. Mr K turned to the Defender, who immediately contacted the Minister of Interior in person and warned the Minister that the extradition before the citizenship issue being settled would generate severe, public criticism from the Defender. The Minister immediately deferred the extradition and soon after issued a decision, cancelling the decision on extradition as well as the citizenship revocation.

This case demonstrates how the Defender can act swiftly in an emergency situation. In cases like protracted detention, impending extraditions, police violence or cases of torture etc, a quick action of the Defender is not impeded by any phlegmatic safeguards. The Defender can very quickly, having properly analyzed the legal ramifications, issue general warnings and recommend the authority caution, otherwise subject to elaborated public criticism. Not complying with such words of warning may usually lead to formal investigations and legal procedures, which may be costly for those concerned.

The Defender can act swiftly and alert authorities of intended abuse, if need be.

Referral to the court

It is generally rare that a case reaches the political level. As mentioned earlier, most cases are solved at an earlier stage by finding a solution, which is legally and practically acceptable to all parties concerned. Nevertheless, an authority or official might resist and for different reasons refuse to comply with the Human Rights Defender's views. One remedy open to the Defender is to bring the case to a court of law. Such cases are often diligently prepared, given that the Defender has been following the case during a longer period of time. It is usually unwise of an authority or official to let a case proceed to become a court case.

The Defender can normally bring a case to a court of law.

Public criticism

In cases of flagrant violations or when an authority stubbornly refuses to respect a recommendation, the Human Rights Defender may choose to publicly criticize the authority or official in question through the mass media. The Defender and the mass media can in fact be seen as two somewhat parallel bodies. They have similar roles in independently monitoring the authorities, achieving transparency and revealing injustices. In a way, the Defender and the mass media could be considered to have a mutual interest to "support" each other's work. Reports of the Defender are interesting to the mass media, while publicity enhance the criticism of the Defender. Generally, nobody appreciates to be exposed negatively in the mass media and criticism, there presented, may have grave consequences for those exposed. Criticism from the Defender, generally recognized as an impartial and highly competent institution with high moral authority, is normally rather undesirable and unwelcome by everybody criticized.

The Defender and the mass media have similar monitoring roles.

Public criticism by the Defender is normally rather undesirable and unwelcome by those exposed.

* * * * *

Other activities

Ex officio cases

Ombudsman Institutions as the Human Rights Defender can normally deal with individual cases also without a complaint but on its own initiative, *i e ex officio*. Such an initiative might relate to an issue or event, which the Institution has learnt about through the mass media or through an anonymous complaint³⁰ or during an inspection³¹ or via an affected individual, who him- or herself does not want to make a complaint.

The handling of an *ex officio* case is in principle the same as the handling of a complaint case. However, it causes sometimes difficulties to deal with a matter where the aggravated party may not be at hand or may be uninterested of participating with information. It is naturally also of concern that the aggravated party may not want a case to be opened or be at all dealt with, *e g* due to his or her unwillingness to be publicly exposed or to take the time and strain to be involved in an investigation. An Ombudsman is therefore normally rather cautious to open *ex officio* cases.

An *ex officio* case may, however, also deal with a situation or a routine, where there is no aggravated party or no identifiable individual party. As other cases, such a case may result in an informal advice to the authority in question or in an ordinary formal recommendation, but may also lead to a special report or a legislative proposal.

The Human Rights Defender may ex officio open individual cases. Such cases are generally handled in the same way as complaint cases.

Formal Inspections

Ombudsman Institutions as the Human Rights Defender may normally undertake formal inspections of all authorities and other bodies under its jurisdiction. Practically, this means that the Ombudsman visits the authority together with a part of his or her staff, talks to the leadership of the inspected institution and its staff as well as, if applicable, the inmates of the institution, and checks premises and documents.

The inspected institution may under no circumstances and in no way impede or obstruct the inspection. The inspectors shall have full access to all persons of the institution, all documents and files and all parts of the premises and shall be able to take copies and obtain specifically requested information on the spot.

³⁰ The Public Defender is not obliged to deal with anonymous complaints, which can be rejected with reference to LHRD Art 10.2, but may do so, then in the form of an *ex officio* case.

³¹ See the part on Formal Inspections below.

The reason for an inspection could be a matter of routine or received information about alleged deficiencies or wrong-doings on the part of the institution to be inspected. Routine inspections are common concerning detention institutions such as prisons of various kinds, mental institutions and orphanages and also concerning the security police, the military intelligence service and wiretapping bodies to the extent that such institutions are under the jurisdiction of the Ombudsman.

The Human Rights Defender may undertake inspections of any authority under his or her jurisdiction. The inspected authority shall provide the Defender all possible service and help and must in no way hinder the inspection.

Inspections could be announced in beforehand or be undertaken unannounced. The latter may be the case, if there are allegations about ongoing abuses in for instance a prison or there is reason to believe that documents or other objects will be changed or disposed of, if the inspection is not undertaken without warning.

However, normally inspections are announced in beforehand, not the least in order to give the authority a possibility to reschedule other tasks and prepare for the inspection. This includes informing staff and inmates that everybody will - to the extent practically possible - get an opportunity to speak in private with the Ombudsman or a member of his or her staff.

The announcement of an inspection will often cause the authority to be inspected to look through old files in order to undertake overdue measures and similar measures. As long as no irregularities then take place, such actions are quite accepted. In fact, one motive for announced inspections often is to make the authority in question undertake such measures.

Inspections could be unannounced or announced in beforehand. If announced, the authority shall prepare for the inspection and thereby inter alia inform staff and inmates, the possibility included to meet one of the inspectors in private.

An inspection generally results in a report or an inspection protocol, containing remarks concerning specific observations as well as more general reflections, including criticism and recommendations directed first and foremost to the inspected institution but sometimes also to its superior body or, for legislative measures, to the government or the parliament.

The inspected institution is required to pay heed to the criticism expressed and comply with the recommendations presented within a certain time limit and should report back on measures undertaken to the Ombudsman, who might opt for a second inspection as a matter of follow-up. The report is handed over by the Ombudsman to the institution in question and - normally not abridged or otherwise curtailed or censored, but in full - to other relevant authorities, including the superior body, subordinate bodies and corresponding bodies.

It is natural that the talks in private with staff members and inmates might comprise the submitting of formal individual complaints. Such complaints are normally handled just as any other formal individual complaint.

An inspection normally results in a report or inspection protocol with criticism and recommendations, which the inspected authority and other addressed authorities are expected to follow within a certain time-limit. The Human Rights Defender will undertake relevant follow-up measures.

Law reviews and legislative proposals

Ombudsman Institutions as the Human Rights Defender is well placed to review laws and other legislation and to monitor their implementation and effect in practice. Neither the law drafting bodies nor the parliament can envisage all the implications a law might render. In this respect the Ombudsman can be very instrumental, given that the Institution observes society at the level, where the law is actually employed, and can thereby perceive flaws in both the implementation and the design of the law. Likewise, the Ombudsman is especially attentive in assessing whether the legislation fulfils all relevant human rights criteria and are in line with relevant international instruments. The law reviews and legislative proposals, which the Ombudsman submits, could therefore be expected to be weighty and well substantiated.

The Human Rights Defender is well placed to monitor legislation and present legislative proposals. The Defender is especially attentive to human rights perspectives.

Reports to Treaty Bodies and International Organizations

Modern Ombudsman Institutions as the Human Rights Defender might choose to independently provide information on domestic short-comings in relation to ratified human rights conventions of various kinds to the body, which may have been set up to receive reports and monitor the adherence to the convention in question. Such information might entail in international criticism, to which a government is normally most sensitive.

The Human Rights Defender might choose to provide information to Treaty Bodies and such International Organizations as the United Nations and the Council of Europe and their sub-bodies on domestic short-comings with respect to human rights.

Proactive and pre-emptive measures

In addition to reactive formal measures, such as case handling, inspections, law reviews, and reports to international bodies, modern Ombudsman Institutions as the Human Rights Defender can engage in a wide range of proactive and pre-emptive measures. In order to protect and promote human rights, good governance and the Rule of Law, the Ombudsman may initiate or undertake awareness-raising campaigns and educative measures.

This can be done through work meetings and discussions with NGOs as well as public authorities. It can also be done via the mass media or through outreach campaigns, where appropriate together with other concerned or affected bodies such as schools, universities, religious bodies and NGOs. It can include TV-spots, posters, newspaper ads, leaflets, policy papers, circulars, wall calendars, parliament speeches, press conferences, press breakfasts, press releases, public statements, public lectures, inviting high-level foreign guests, video material for law schools as well as ordinary schools, seminars and conferences. Not the least this multitude of potential alternative activities, illustrates the flexibility of modern Ombudsman Institutions as the Human Rights Defender.

The Human Rights Defender can undertake a wide variety of public proactive and pre-emptive measures to promote human rights, good governance and the Rule of Law.

The Birth of the Ombudsman

In the year of 1697 and at the age of fifteen, Charles XII became King of Sweden. Three years later, in the fall of 1700, he won a fabulous victory over Tsar Peter's allegedly tenfold stronger Russian army at Narva at the present border between Estonia and Russia, a victory that forever made him a hero of his time and the subject of a famous Voltaire biography. However, nine years later, in 1709, he was thoroughly defeated by Tsar Peter on the banks of the Vorskla outside Pultava in today's Ukraine, a defeat that gave his hero's aura a tragic gleam - and eventually gave rise to the world's very first Ombudsman institution.

Following the defeat, Charles proceeded to Bender in today's Moldova and for five years became the sometimes welcome, sometimes undesired guest of the Sultan. In fact Sweden, a mighty European power at the time, was governed from this region until the fall of 1714, when Charles finally decided to return to his kingdom and undertook a spectacular two-week horse ride to Stralsund in Pomerania at the Baltic Sea, then a Swedish city.

A year before this ride, in October 1713 and in the castle of Timurtasch, Charles signed an ordinance by which he established the institution of the King's Highest Ombudsman. The task of this Ombudsman was to ensure that the judges, military officers and civil servants in Sweden were observing the laws of the country and the rules laid down for them. Having at that time been away from Sweden since he left thirteen years earlier on his campaign against Russia, the King obviously felt a need to have someone monitoring things in his home country on his behalf.

Timurtasch, where the ordinance was signed, is situated in today's Turkey, just south of Adrianople or Edirne. However, correspondence kept in the Swedish National Archives shows that the decision was preceded by thorough deliberations, including a close examination of the arguments for and against the use of the Swedish word "Ombudsman", by then already in existence for centuries. This correspondence is undated, but it is reasonable to believe that before King Charles left the Bender area, the idea was born in his mind to set up an Ombudsman institution, a concept, according to some scholars not only rooted in Ottoman administrative tradition as well as the Koran, but arisen even further back in the shades of history.

After arriving from Pultava in late July 1709, Charles and his followers soon took up residence outside Bender in the village of Varnitsa on the western banks of the Dnjestr. The location is known and the spot is now in the care of the Moldovan National Museum. Here he stayed until 1 February 1713, and thus Varnitsa in Moldova, together with Timurtasch, could claim to be the birthplace of the Ombudsman concept as well as of the word "Ombudsman" in its current internationally recognised sense.

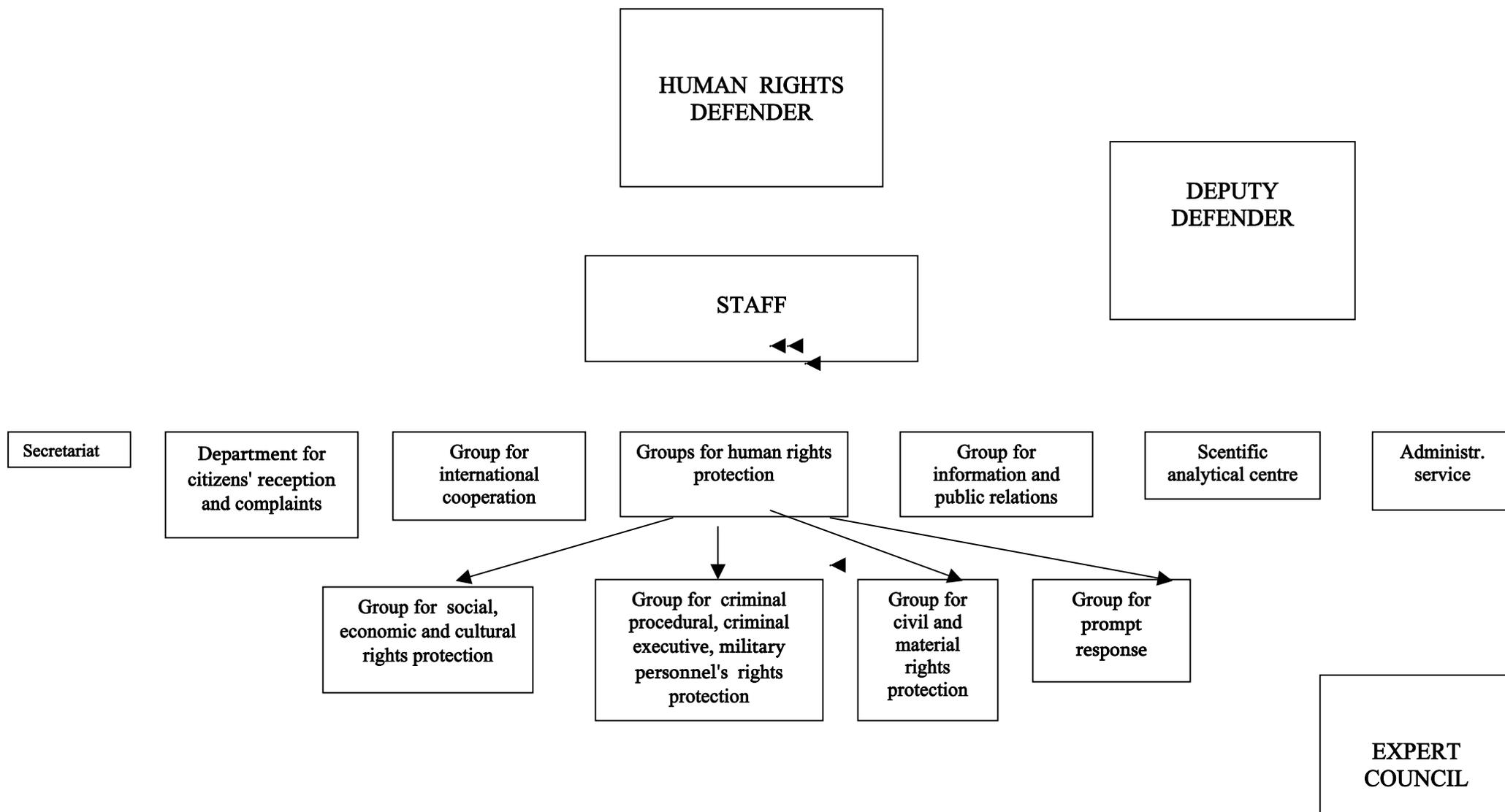
The event resulting in the King's departure from Varnitsa is itself worthy of a place in the history books. It is referred to as the Bender Riot or, in Swedish using a loan from Turkish, *Kalabaliken i Bender*. It is famous above all because it allegedly is the last time in European

history when a crowned head took part in the fighting himself, weapon in hand. It came about when the King's hosts had become less enthusiastic about having to care for their eminent guest, who totally ignored all suggestions that he return home or, at least, leave a country, which felt it had by then already housed him for far too long. The King left, under guard and eventually for the castle of Timurtasch, only after a horde of thousands of janissaries had set the royal house on fire and he and his few men had been overpowered, when making a rush for a safer house close by.

The reason, why the Ombudsman institution, thus established by the King in 1713, sometimes is not mentioned as the Forefather of all the world's Ombudsman institutions, is precisely its close connection with the executive power, its not being as independent as an Ombudsman is nowadays supposed to be. Its role in relation to the development of the Ombudsman concept is nevertheless significant. Strong under King Charles and his predecessors, the monarchy became weak soon after his death in November 1718, while Parliament grew correspondingly strong. As a result, this 1713 institution, in May 1719 renamed the Chancellor of Justice, *Justitiekanslern*, in reality became an institution of Parliament rather than of the King. When, however, the King again became absolute ruler in the latter part of the 18th century, the institution returned to being associated with the executive. But Parliament did not forget its value.

After a coup d'état following another lost war against Russia, the new Swedish Constitution of 1809 therefore established the Parliamentary Ombudsman of Sweden, *Justitieombudsmannen*, as a new independent institution of Parliament. This 1809 institution is still, almost 200 years later, a well-functioning institution in Swedish society, keeping public servants in check with its inspections and its criticism in individual complaint cases, helping others with useful advice and examples of good governance, seldom exercising its original role as a prosecutor bringing wrong-doers before a court of law.

It might be added that the Chancellor of Justice, too, remains an integral and well-functioning part of the Swedish constitutional framework, that the first Ombudsman institution outside Sweden was the one in Finland, established in 1918 when the country became independent of Russia, that the first Ombudsman institution outside the Nordic countries was the one in New Zealand, established in 1962, and that Ombudsman institutions today exist in more than 100 countries all over the world, particularly due to the early information activities of the first Danish Ombudsman, Professor Stephan Hurwitz, who took office as *Folketingets Ombudsman* in the year of 1955.

STRUCTURE OF INSTITUTION OF THE HUMAN RIGHTS DEFENDER OF ARMENIA

The **Secretariat** is composed of the executive secretary of the Staff, two advisers of the Defender, assistants to the Defender, the Deputy Defender, and the Defender's secretary. They co-ordinate cooperation with different state institutions, public groups, and international organizations, develop programs for qualification and requality of the staff members, and assist to the work of the Defender and the Deputy Defender.

Staff members working in the **Department for citizens' reception and complaints** receive people and provide them with necessary legal advice, receive and preliminarily process complaints, register and examine them, organize reception of people by the Defender or the Deputy Defender, accomplish functions of general department. At present a computer program for the registration and summarizing of complaints is used in the Department, the requirements of which were developed by the Staff members and the program's preparation and introduction was performed by the appropriate specialists.

The **Groups for human rights protection** provide advice to people complaining to the Defender. Besides, the Group for protection of social, economic and cultural rights, the Group for protection of criminal procedural, criminal executive, military personnel's rights, and the Group for protection of civil and material rights, mainly examine cases in their respective fields and perform works of restoration of those rights. Specialists of these groups also participate in the visits and inspections of the Group for prompt response and give legal assesments to the violations of human rights, revealed during the inspections. The group for prompt response immediately reacts and examines communications on violations of human rights in particular places as hospitals, children's home, old people's home, places of coercive detention, preliminary detention facilities and penitentiaries, courts, prosecutor's office, police, communities, state and local self-governing bodies, and monitors judicial processes when need be.

Collaborators of the **Scientific analytical centre** for the purpose of contribution to the improvement of legislation related to human rights protection, make analysis of legislation and law drafts and prepare recommendations emphasizing the need for bringing them in conformity with international law norms and principles. They analyse and summarize works carried out on the complaints, prepare annual and other reports of the Defender, messages, and requests.

The **Group for information and public relations** makes coverage of the Defender's activities through mass media, develops and performs the arrangements for raising public awareness of the Defender's and the Staff's activities in public and international community, publishes informational material related to human rights, and monitors cases and events concerning human rights protection published in mass media, which can give occasion to the Defender's own initiatives.

The **Group for international cooperation** assists in the establishment and development of international relations in the field of human rights and fundamental freedoms protection, initiates accomolishment of joint programs with international organizations, and ensures:

- cooperation of the Defender's staff with similar international institutions
- participation of the Defender and staff members in different events, organized by international organizations
- analysis of reports and other materials relating to human rights protection, prepared by international organizations.

Employees performing **Administrative service** functions ensure the Defender's, the Deputy Defender's and Staff's normal activities.

The Rule of Law

The Rule of Law means that *the Law shall rule, that a reasonable interpretation of the Law shall rule society and the activities of each public servant*, be it a Minister, a judge or an ordinary administrative officer. They should always do their best to sensibly follow the Law. And if the Law is bad, then the Law should be changed.

Public servants should not follow the advice of the party secretary, not the rule of friendship, not the law of the Dram, paid neither above nor under the table, but let the Rule of Law prevail. And public servants are there not to boss but to serve the citizens according to the Law. That is why they are public *servants*.

The Rule of Law means order and stability in society. It means reasonable predictability concerning authority decisions. It means enforceable and enforced decisions. It means a safeguard against discretion not foreseen by the law. It opens to investments from abroad, foreign investors will continue to hesitate to place their money in a country where they are not sure that a breach of a contract will be duly sanctioned.

The Rule of Law is a cornerstone in a modern democracy. Without it, all sweet talk about Human Rights and Freedoms is wasted as not in touch with the everyday life of the people. Without it Human Rights and Freedoms cannot be duly implemented and violations neither duly sanctioned nor usefully corrected.

The well-offs, the people at top level, those in power, they may manage without the Rule of Law, they will always be able to further and promote their own interests. The Rule of Law protects in particular ordinary people, people at grass root level, the man in the street and the woman in the field, offering them an orderly and decent life.

The Rule of Law is today a very popular idea. Internationally, its importance is underlined more or less in every speech, and domestically, politicians repeat it daily, it has become a political most correct mantra.

However, few speakers explain what they mean by “the Rule of Law” and many speakers seem not to have reflected on its implication nor to have pushed for its implementation.

But it is very simple. Everybody should be equal before the Law. Nobody should be above the Law. Everybody should be bound by the Law. The Rule of Law is a hallmark of a modern European democracy.

Land Shall Always By Law Be Built

Guide to Good Practices for Public Servants

Public authorities should strive for the highest standards of administration in their dealings with people. With a view to achieving this aim, they should ensure that people are dealt with **properly, fairly and impartially**. The following checklist, although not exhaustive, is the Ombudsman's Guide to Good Practices for Public Servants. It is a useful checklist for those public servants, who want to provide a better service to their customers.

Dealing **“properly”** with people means dealing with them –

- promptly, and without undue delay
- correctly, in accordance with the law and other rules governing their entitlements
- sensitively, by having regard to their age, to their capacity to understand often complex rules, to any disability they may have and to their feelings, privacy and convenience
- helpfully, by simplifying procedures, forms and information on entitlements and services, maintaining proper records, and providing clear and precise details on time limits or conditions which might result in disqualification
- responsibly, by not adopting an adversarial approach as a matter of course where there may be fear of litigation

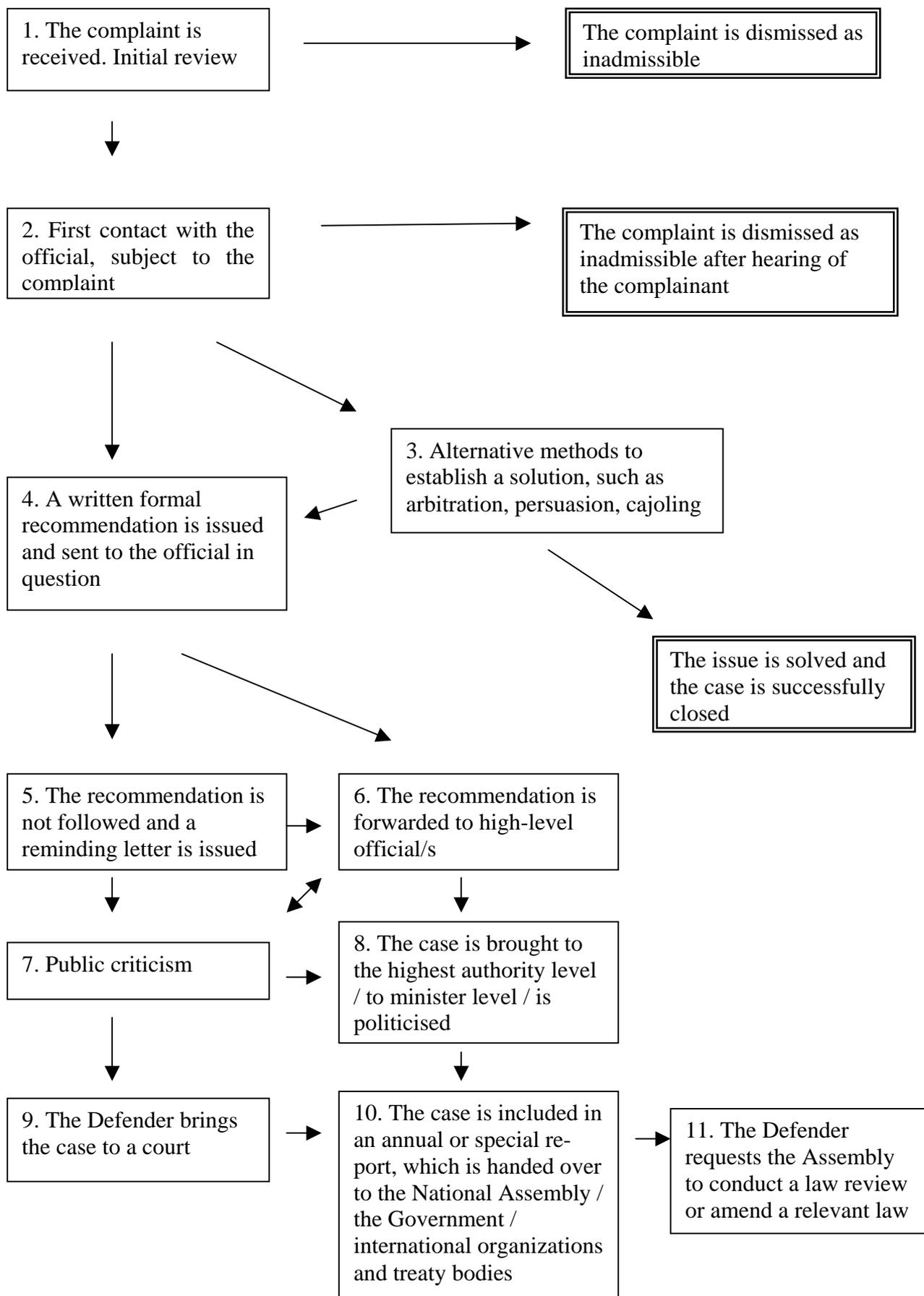
Dealing **“fairly”** with people means –

- treating people in similar circumstances in like manner
- accepting that rules and regulations, while important in ensuring fairness, should not be applied so rigidly or inflexibly as to create inequity
- avoiding penalties which are out of proportion to what is necessary to ensure compliance with the rules
- being prepared to review rules and procedures and change them if necessary
- giving adequate notice before changing rules in a way which adversely affects a person's entitlements
- having an internal review system so that adverse decisions can be looked at again and reviewed by someone not involved in the first decision
- informing people how they can appeal, co-operating fully in any such appeal and being open to proposals for redress

Dealing **“impartially”** with people means –

- making decisions based on what is relevant in the rules and the law and ignoring what is irrelevant
- avoiding bias because of a person's colour, sex, marital status, ethnic origin, culture, language, religion, sexual orientation, attitude, reputation or because of who they are or who they know
- ensuring, where a service is based on a scheme of priorities, that the scheme is open and transparent
- being careful that one's prejudices are not factors in a decision

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Annex 5**The Handling of Complaints**

Promoting Human Rights and Facilitating Public Awareness of the Public Defender's Office in Armenia

Training seminar for Trainers

Friday 23 – Sunday 25 September 2005

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Case examples to discuss

Example 1. A hospital in the centre of a capital is about to be closed down. The deciding political organ claims that the money is needed elsewhere in society – pensions are too low, salaries to civil servants are not fully paid, the police needs more resources. Shall the Ombudsman intervene, invoking the right to enjoy good health care for those, who used to turn to the hospital, or even stating that there's a human rights violation?

Example 2. A number of people in a country have enjoyed citizenship of not only that country but also a neighbouring country. The relevant political organ of the country plans to request those citizens to choose, if they want to keep the citizenship of the country in which case they have to give up that of the neighbouring country. Shall the Ombudsman intervene?

Example 3. A public company is assigned to tow away wrongly parked cars, fully in line with duly adopted laws and regulations. The cars in question cannot be repossessed until the car-owner pays the parking fine, the tow-away costs, and a certain fee for each day the car is not reclaimed, but has to be stored by the tow-away company. Shall the Ombudsman intervene, invoking the car-owner's right to his private property? And if so, is there any difference with regard to the parking fine, the tow-away costs, and the storing costs? What about the right of others to free traffic and for pedestrians, handicapped people included, not to have sidewalks blocked by wrongly parked cars?

Example 4. Ombudsman staff observes road signs, which seem to unwisely direct traffic or are unclear or even misleading. Shall the Ombudsman intervene? And if so, shall he or she request the revision of already imposed fines?

Example 5. Some sailors complain by radio-telephone to the ombudsman and claim to be unfairly kept on a ship outside a foreign country by the authorities of that country. Shall the Ombudsman intervene?

Example 6. Complainants to the Ombudsman claim that they can hardly bear the price of electricity, provided by public companies, and request the Ombudsman to intervene and protect their human rights. Some of these complainants are pensioners, who also complain about state pensions not being paid in time and not to their full amount. The Ombudsman's reaction?

Example 7. Prisoners claim that the food in the prison is too bad. They also claim that the noise in the prison factory is that loud that it jeopardizes their hearing, and that it's unfair that the prison gym has been closed down with the motivation that the prisoners might otherwise train themselves to be more bodily fit for further criminal activity. The Ombudsman's reaction?

Example 8. As a result of worsening relations between a neighbouring country and one of its neighbours, the neighbouring country hampers the transit of cars from this latter country. Complaints are submitted to the Ombudsman. The Ombudsman's reaction?

Example 9. A political party in a municipality complains to the Ombudsman that the political majority plans to insert into the municipality school curricula "too much" of one particular religion. The party claims this to be a breach of the education law and a violation of the right to freedom of religion. The Ombudsman's reaction?

Example 10. The financial police raids a daily newspaper, allegedly suspecting tax evasion. The newspaper complains to the Ombudsman, stating that the raid is solely politically motivated and implies an infringement of the freedom of the press. The Ombudsman's reaction?

Example 11. Another newspaper claims that the circulation tax for newspapers in the country is too high and implies a violation of the right to free speech and an infringement of the freedom of the press. The Ombudsman's reaction?

Example 12. An association of holders of so called occupancy rights regarding apartments in houses, nationalized by an earlier regime, claim to be discriminated against, not being able to buy their apartments on the same conditions as others. At the same time, an association of former owners of such houses claim it to be a violation of their right to property, not to get either those houses back or due compensation. The Ombudsman's reaction?

Example 13. The Ombudsman gets frequent complaints against a public agency, who allegedly discriminates people from a certain part of the country when hiring short term help. No report to the police has led to any prosecution, the

prosecutor in question stating that he has not evidence to substantiate legal action. The public servant responsible for the hiring practices vigorously denies any discrimination and states that he is in fact very opposed to any form of discrimination. What would you suggest the Ombudsman to do?

Example 14. The Ombudsman is approached by the head of a family, which has recently moved into an area, perceived by the family members as hostile towards their kind of people. The family has twice written to the local public water company to get connected to the community water system, but without any result. The family suspects them being foreigners to be the reason. The head of the family now asks, if he could complain to the Ombudsman. What would you suggest the Ombudsman to do?

Example 15. The Ombudsman has investigated a complaint against a police officer for maltreating a person due to that person being homosexual. Word is against word and further investigation can not be expected to lead to any further clarification as to what has happened. What would you suggest the Ombudsman to do?

Example 16. The Ombudsman in a predominantly Christian country is approached by a Muslim woman, who has returned to her position as a receptionist in a public agency. During her maternity leave, her religious faith has deepened and she now wants to wear a head scarf at work as a sign of her belief. The manager tells her to wear, as before, the agency uniform, which includes no head scarf. The Ombudsman fears that public attention to the conflict might polarize the sentiments in the community - "Don't we have the right to exercise our religion? We invoke our constitutional freedom of religion" vs "Don't we have the right to keep our country the way it has always been? Must we stand all this fundamentalist crap that eventually might overthrow our regime?". What would you suggest the Ombudsman to do?

LAW OF THE REPUBLIC OF ARMENIA ON THE HUMAN RIGHTS DEFENDER³²

Article 1. General Provisions

The present Law defines the procedure of appointment and dismissal of the Human Rights Defender, as well as the powers, forms and guarantees of his/her activity.

Article 2. Human Rights Defender

The Human Rights Defender (hereinafter referred to as the Defender) is an independent official, who, acting pursuant to the Constitution and the Laws of the Republic of Armenia, as well as recognized principles and norms of International Law, protects human rights and fundamental freedoms, violated by the state and local self-governing bodies or their officials.

Article 3. Appointment of the Defender

1. The post of the Defender shall be held by a citizen of the Republic of Armenia having attained the age of 35, who has a university degree, sufficient knowledge and experience in the sphere of protection of human rights and fundamental freedoms and has a high degree of prestige in the society.
2. The Defender shall be appointed by the National Assembly by the votes of more than 3/5 of the total number of deputies from candidates nominated by the President of the Republic and at least 1/5 of the National Assembly deputies.

The Defender should take the following oath upon his/her appointment:

“Having accepted the commitments of Human Rights Defender I hereby swear to be faithful to the RA Constitution and laws, the principles of justice, and social co-existence and to defend the human rights and fundamental freedoms of individuals and citizens. I swear to act in an impartial, honest and diligent manner.”

3. The Defender shall be appointed to office for a term of 6 years.

The same person shall not be appointed to the office of the Defender for more than two consecutive terms.

Article 4. Restriction on Other Activities of the Defender

1. The Defender shall not hold any state or other office or perform other work for compensation, except for scientific, pedagogical or creative activities.
2. The Defender shall not be a member of any political party, nor shall he/she nominate his/her candidacy for elections or participate in pre-election campaigns.
3. Within 14 days after assuming Office, the Defender shall discontinue any activity that is inconsistent with the requirements of this Law.

³² Adopted on 2003-10-21, signed on 2003-11-19 and entered into force on 2004-01-01. Unofficial translation.

Article 5. Independence of the Defender

1. The Defender shall be independent in executing his/her powers and shall be guided only by the Constitution and the Laws of the Republic of Armenia, as well as recognized norms and principles of International Law.

The Defender shall not be subordinated to any state or local self-governing body or official.

2. The Defender shall not be obligated to provide clarifications, not even as a witness, about the nature of a complaint or a document in his/her possession. He/she shall not make them accessible for familiarization with the exception of the cases and procedure not stipulated by the Law.

Article 6. Termination of Defender's Powers

1. The Defender's powers shall terminate on the day following the date of the expiry of his term.

2. The Defender's powers shall be terminated prior to the end of the term only if:

- 1) the requirements of Article 4 of this Law are violated;
- 2) a verdict of the Court convicting the Defender enters into legal force;
- 3) the Defender loses his/her citizenship of the Republic of Armenia;
- 4) the Defender submits a letter of resignation to the National Assembly of the Republic of Armenia;
- 5) the Defender is declared incapable, missing or deceased by an effective decision of the Court;
- 6) the Defender fails to perform his/her official responsibilities for more than 6 subsequent months due to his/her health conditions; and
- 7) in case of Defender's death.

3. In the case of early termination of the powers of the Defender, this issue can be put on the agenda of the National Assembly by the people authorized to do so in accordance with article 3 of the present law. The issue of early termination of the powers of the Defender is settled by a vote of more than half of the total number of deputies.

4. In case of termination of the Defender's powers, the new Defender shall be appointed within a month from the date of the termination of the powers of the previous Defender. Before appointment of the new Defender, the responsibilities of the Defender shall be performed by the Deputy Defender.

Article 7. Complaints that are Subject to the Defender's Consideration

1. The Defender shall consider the complaints of individuals (including citizens) regarding the violations of human rights and fundamental freedoms provided by the Constitution, the laws and the international treaties of the Republic of Armenia, as well as by the principles and norms of International Law, caused by the state and local self-governing bodies and their officials.

The Defender cannot intervene into judicial processes. She/he may ask for information on any case that is on the stage of trial and direct recommendations/comments to the court, as to guarantee the rights of citizens to fair trial as enshrined in the Constitution of the Republic of

Armenia and norms of International Law.³³ The defender has the right of providing advice to those that wish to appeal the decisions and judgments of the court.

2. The Defender shall not consider complaints concerning the actions of non-governmental bodies and organizations or their officials.

3. The Defender shall have the right to attend and speak at Cabinet meetings, as well as at meetings in other state agencies when issues related to human rights and fundamental freedoms are discussed. The Defender shall also have the right to propose for discussion at these sessions issues related to violation of human rights and fundamental freedoms as well as violations of the requirements of this Law by state agencies or their subordinate agencies or their officials.

4. The Defender shall have the right to attend the sessions of the National Assembly of the Republic of Armenia and make a speech in accordance with the procedure defined by the law of the Republic of Armenia on the “Statute of RA National Assembly” when issues related to rights and fundamental freedoms are discussed.

Article 8. The Right to Complain to the Defender

1. Any physical entity regardless of his/her nationality, citizenship, place of residence, sex, race, age, political and other views, and capabilities can complain to the Defender.

The Defender or his/her representative has the right of free access, by his/her own initiative, to military units, police detention centers, and pre-trial or criminal punishment exercising agencies, as well as other places of coercive detention in order to receive complaints from the persons being there.

Persons who are under arrest, in preliminary detention or serving their sentence in penitentiaries, as well as persons in other places of coercive detention shall also have the right to complain to the Defender.

The Defender or his/her representative shall be guaranteed to have confidential, separate, unrestricted communication with persons in military units, in preliminary detention or serving their sentence in penitentiaries, as well as persons in other places of coercive detention. Conversations of the Defender or his/her representatives with persons mentioned in this paragraph shall not be subject to any interference or eavesdropping.

Having complained to the Defender shall not result in any administrative, criminal or other liability, nor in any discrimination towards the complainant.

2. Legal entities may also complain to the Defender.

A complaint, made on behalf of a legal entity, shall relate to violation of human rights and fundamental freedoms, if the legal entity’s rights entails violation of the rights and fundamental freedoms of participant physical persons of the entity (shareholders, stockholders, members, etc) and its officials, or if the violation of the legal entity’s rights has caused them damage or there exists the potential for damage.

³³ At present, the second sentence of Article 7, para 1, part 2, is not in effect according to the Constitutional Court decision no 563 of 2005-05-06.

3. With the purpose of protecting other persons' rights, only the representatives of those persons as well as family members and devisees of deceased persons can complain to the Defender.
4. State and local self-governing bodies, except for the agencies of trusteeship and guardianship, shall not have the right to complain to the Defender.
5. State officials shall have the right to complain to the Defender only for the protection of their violated human rights and fundamental freedoms as a physical entity.

Article 9. Appealing to the Defender

1. A complaint shall be submitted to the Defender one year from the day, when the complainant became aware of or should have become aware of the violation of his/her rights and freedoms.
2. Within the first year of the effectiveness of this law, complaints about violations of human rights and fundamental freedoms of the past three years can be submitted to the Defender. There shall not be a specific complaints form, but it shall contain the first name, the last name, the place of residence (address) of the physical entity, or the name, organizational-legal structure and location of the legal entity submitting the complaint. Information on the human rights and fundamental freedoms that were or are being violated shall be contained in the complaint.

If the complainant has the documents required for clarification and settlement of the case, as well as acts adopted in judicial or administrative procedure in relation to the complaint, these documents may be attached to the complaint.

3. The complaint may be submitted either in written or in oral form. The content of an oral complaint and the data provided in the second part of this Article shall be recorded by the Defender or his/her staff.
4. The complaints and other documents, sent to the Defender by persons under arrest, in preliminary detention or serving their sentence in penitentiaries, as well as persons in other places of coercive detention, shall not be subject to inspection or censorship and shall be directed to the Defender within 24 hours by the administrative staff of those institutions.
5. Upon the request of the complainant, the agency receiving complaints addressed to the Defender shall be obligated to provide a confirmation (receipt) on receiving the complaint.
6. No state duty shall be collected for the complaints directed to the Defender.

Article 10. Complaints that are not subject to the Defender's Consideration

1. The Defender shall not consider those complaints that must be settled only by the Court. Likewise, the Defender shall discontinue consideration of a complaint, if, after commencing the process of consideration, the interested person files a claim or an appeal with the Court.
2. The Defender shall be entitled not to consider complaints that are anonymous, do not contain enough grounds of violation of human rights and fundamental freedoms or lack a claim.
3. If the issue raised in the complaint is of such a nature that may be settled by another state agency or official, and if there was no prior discussion of the case by the said official, the

Defender may with the consent of the complainant assign the complaint to that official for consideration and oversee the process of discussion.

In this case the complainant shall be notified about the assignment of the complaint to another state official.

Article 11. Reception of Complaints

1. Upon receiving a complaint the Defender shall make a decision on:
 - 1) accepting the complaint for consideration;
 - 2) presenting to the complainant possibilities of the protection of his/her human rights and fundamental freedoms;
 - 3) upon complainants' consent assigning the complaint to those state or local self-governing bodies or a their officials, who have the jurisdiction to settle the case;
 - 4) not considering the complaint.
2. The refusal to consider a complaint shall be substantiated according to the first part of Article 10 of this Law. If the Defender decides to decline a complaint s/he shall explain to the complainant the statutory procedure for consideration of that complaint.
3. The Defender shall send a copy of the adopted decision to the complainant as soon as possible, but no later than in 30 days time from the date s/he received the complaint.
4. The Defender shall by his/her own initiative make a discretionary decision about accepting the issue for consideration, particularly in cases when there is information on mass violations of human rights and freedoms, or if these violations have exceptional public significance or are connected with the necessity to protect the rights of such persons, who are unable to use their legal remedies.
5. After making a decision on accepting a complaint for consideration, the Defender shall be entitled to apply to the relevant state agencies or their officials for assistance in the process of examining the circumstances subject to disclosure.
6. Examination of issues indicated in the complaint cannot be performed by the state or local self-governing body or official, whose decisions or actions (inaction) are being complained against.

Article 12. Examination of Issues Raised in a Complaint

1. After making a decision on accepting a complaint for consideration, the Defender shall be authorized to the following for examination of the issues raised in the complaint:
 - 1) have free access to any state institution or organization, including military units, prisons, preliminary detention facilities and penitentiaries;
 - 2) require and receive information and documentation related to the complaint from any state or local self-governing body or their officials;
 - 3) receive from the state or local self-governing bodies or their officials with the exception of Courts and judges, information clarifying the issues that arise in the process of examination of the complaint;
 - 4) instruct relevant state agencies to carry out expert examinations and prepare findings on the issues subject to clarification during investigation of the complaint;
 - 5) familiarize with those criminal, civil, administrative, disciplinary, economic and other cases of violation of rights on which the respective Court verdicts and decisions

have entered into legal force, as well as materials related to such cases on which no proceedings have been instituted;

6) familiarize with any information and documentation related to the complaint.

By the written decision of the Defender, the powers provided in items 1, 2, 5 and 6 of this paragraph can be exercised by members of the Defender's staff or by members of the Expert Council.

2. Through the relevant statutory procedure the Defender can be familiarized with information containing state and commercial secrets or other information qualified as confidential by law.

3. Officials of the state and local self-governing bodies within the framework of their jurisdiction shall transfer to the Defender, free of charge and without hindrance, the required information and documentation, which is necessary for the review of the complaint.

4. Materials, documents or information required by the Defender shall be delivered as soon as possible, but no later than within 30 days after the Defender's request, unless a later deadline is indicated in the request.

5. In exercising his/her powers the Defender shall enjoy the right of urgent reception by state and local self-governing bodies and their officials as well as by top management of organizations and other officials and coercive detention facilities.

Article 13. Clarifications given by the State and Local Self-governing Bodies on the subject of the Complaint

1. While examining the complaints, the Defender shall give an opportunity to the state and local self-governing bodies or the official, against the decisions or actions (inaction) of whom the complaint has been filed, to give clarifications on the subject of the complaint and the results of examinations, and give grounds for their position in general.

2. For the above purpose, within 10 days after completing examination of the complaint, the results of the examination shall be provided to the state and local self-governing body or the official, against the decisions or actions (inaction) of whom the complaint has been filed. The agency shall send its position statement and explanations to the Defender no later than within 15 days after receiving the results of the examination. The mentioned deadline can be extended by the Defender.

Article 14. Publication of Complaints or their Content

1. The complaints under review or the content of those complaints shall not be subject to publication before the Defender makes a final decision on the complaint.

2. The Defender shall not have the right to publish any personal data about the complainant or any other person that were disclosed during examination of the complaint without their written consent.

Article 15. The Defender's Decisions

1. Based on the findings of the considered complaint, the Defender shall take one of the following decisions:

1) to propose to the state or local self-governing body or the official, the decisions or actions (inaction) of whom have been qualified by the Defender as violating human

rights and freedoms, to eliminate the committed violations, indicating the possible measures necessary and subject to implementation for the restitution of human and civil rights and freedoms;

2) on the absence of violations of human rights and freedoms, if during the examination of the complaint no violation of human rights and fundamental freedoms by the state and local self-governing bodies or officials has been revealed;

3) to apply to the Constitutional Court of the Republic of Armenia on the issues of violations of human rights and freedoms;

4) to bring an action before the court on invalidating in full or partially the normative legal acts of the state and local self-governing bodies or officials that violate human rights and fundamental freedoms and contradict the law and other statutes, if the state and local self-governing bodies or officials, who committed the named violation, do not invalidate in full or partially their corresponding legal act within the prescribed period;

5) to recommend that the authorized state agencies execute disciplinary or administrative penalties or file criminal charges against the official whose decisions or actions (inaction) violated human rights and fundamental freedoms and (or) violated the requirements of this Law.

2. Within 5 days after adopting the decision, the Defender shall transfer a copy of the decision on the complaint, indicated in paragraph 1 of this Article, to the state and local self-governing bodies or the officials whose decision or actions (inaction) have been complained about.

3. Having received the Defender's motion, indicated in item 1 of this Article, the state and local self-governing body or the official shall inform the Defender in writing about the measures taken within 20 days after receiving the motion. If required, this deadline may be extended upon the Defender's consent.

4. The Defender shall transfer to the complainant a copy of his/her decision on the complaint, indicated in item 1 of this Article, within 5 days after adoption of the decision.

The Defender's decision cannot hinder the person from protecting his/her rights, freedoms and legal interests by other means not prohibited by law.

5. Upon necessity the Defender can submit special reports to the President of the Republic of Armenia and the National Assembly.

6. The Defender shall publish in mass media special information about the state and local self-governing body or official, who failed to respond to his/her motion or did not comply or only partly complied with the requirements of the motion, together with the responses of the state and local self-governing body or their officials to the Defender's decision and motion, if all other means of resolving the issue through state authorities have been exhausted.

Article 16. Clarifications Given by the Defender

Based on the results of review and analysis of information on human rights and freedoms and in relation to finalizing the results of reviews, the Defender shall be authorized to provide advisory clarifications and recommendations to the state and local self-governing bodies and officials.

Article 17. The Defender's Report

1. Each year, during the first quarter of the year, the Defender shall deliver a report on his/her activities and on the human rights situation in the previous year to the President of the Republic of Armenia and the representatives of legislative, executive and judicial authorities. The reports shall be presented to the National Assembly during the first sitting of the National Assembly's spring session. The Defender also presents his/her report to the mass media and relevant NGO-s.

2. In cases that produce widespread public response, or in cases of flagrant violations of human rights or mass occurrence of non-elimination of the violations, the Defender shall have the right to deliver unscheduled public reports.

Article 18. Liability for Non Compliance With the Requirements of the Law

Intervention into activities of the Defender that is aimed at influencing the Defender's decisions, or hindering implementation of the Defender's statutory responsibilities, or failure to submit the required information or documentation in due time, or threatening or offending the Defender shall incur liability in the procedure and scope, stipulated for similar violations against the Court or the Judge.

Article 19. The Defender's Immunity

1. The Defender shall have immunity over the whole period of the execution of his/her powers. No criminal prosecution shall be brought against him/her; he/she cannot be detained or arrested. The Defender and his/her apartment cannot be searched without the consent of the National Assembly. The immunity of the Defender shall be extended also to his/her luggage, correspondence, communication means used by the Defender, as well as documents belonging to him/her.

2. In case the Defender is caught in the act of crime, the official person executing the arrest shall immediately inform the National Assembly about the fact so as a decision is made on granting consent that allows further enforcement. If such consent is not received within 24 hours, the Defender shall be released immediately.

3. The Defender shall have the right to refuse to testify as a witness in a criminal or civil case on circumstances, which became known to him in the course of performing his/her responsibilities.

Article 20. Social Guarantees for the Defender

1. The salary of the Defender shall be equal to the salary of the President of the Constitutional Court of the Republic of Armenia.

2. The Defender shall be entitled to an annual paid vacation of 30 working days.

3. Throughout the duration of his/her term, the Defender shall be exempt from military service, drafting and military training.

Article 21. Security of the Defender

The Defender and the members of his/her family shall be under the protection of the State. Based on the request of the Defender, the competent state agencies shall take all the necessary measures to ensure the security of the Defender and the members of his/her family.

Article 22. The Deputy Defender

1. The Defender shall have a deputy, who shall be appointed upon the suggestion of the Defender, in the same procedure and on the same conditions as this Law defines for the Defender, and shall have the same guarantees for independence and actions.
2. The Deputy Defender shall perform the responsibilities of the Defender in the absence of the Defender or at the Defender's instruction, and also in the case of early termination of the Defender's powers. In these cases the Deputy Defender shall enjoy all the rights of the Defender, social guarantees and personal immunity.
3. Other competencies of the Deputy Defender shall be assigned by the Defender.

Article 23. The Status of the Defender's Staff

1. The Defender shall form a staff to ensure the fulfillment of his/her activities.
2. The Defender's staff shall provide legal, organizational, analytical, informational and other support to the Defender's activities.
3. The Defender's staff is a state institution with its own seal, bearing the Coat of Arms of the Republic of Armenia and the name of the institution.

Regional representative offices of the Defender may be established in the marzes.

4. Members of the Defender's staff shall not be considered civil servants and shall work by term employment contracts. The Defender's staff retains the rights to return to civil service, providing they were involved in this field before. The work as a member of the Defender's staff is equaled to the work at civil service.
5. Those persons that hold any position in the Defender's staff cannot be convicted, persecuted, detained, arrested or brought to court for any action performed, opinion expressed or decision made, while performing their responsibilities under the Defender's instructions. In all these circumstances, when any person holding a post in the staff is detained, arrested or brought to court, the enforcing agency shall inform the Defender of this occurrence in the defined procedure and due time.

Article 24. Financing of the Defender's Activities

1. The Defender and the Defender's staff shall be financed from the state budget through a separate line item.

The budget request of the Defender and the Defender's staff shall be prepared and submitted to the Government of the Republic of Armenia by the Defender, pursuant to the defined procedure. The budget request shall be included into the total state draft budget without amendments.

Should the Government deem that that less money can be allocated from State budget than stated in the budget request, then the Government should include its own proposal and grounds for decreasing the budget request during the discussions of the state budget in the National Assembly.

2. The Defender shall independently prepare the expenditure estimates of funds at his/her disposal.

3. The Defender shall submit a financial report in accordance with the procedure stipulated in Article 17 of this Law.

Article 25. Structure of the Defender's Staff

1. The Defender shall approve the structure and the charter of the Defender's staff and shall directly supervise the activities of the staff.

2. Within the limits of expenditure estimates, the Defender shall determine the number and positions of the staff.

3. The Defender shall issue orders on matters related to the management of the staff.

Article 26. The Expert Council

1. To benefit from advisory assistance, the Defender may establish an Expert Council, composed of individuals with respected background in human rights and fundamental freedoms.

2. Members of the Expert Council shall be invited by the Defender.

3. The Expert Council shall not exceed 20 members.

4. Members of the Expert Council shall be involved on a voluntary basis and shall perform their activities without any compensation.

Article 27. Transitional Provisions

1. Article 3, para 2, Article 6, para 2, point 4, and Article 15, para 1, point 3, of this Law shall enter into force upon establishing by the Constitution of the Republic of Armenia provisions related to the appointment of the Defender and the right to the apply to the Constitutional Court.

2. Until the constitutional amendments are adopted, the President shall

1) appoint the Defender after consulting with the groups and fractions of the National Assembly

2) provide by Article 6 the consent required by Article 19, para 1 and 2.

The powers of the first Defender shall expire according to the point 1 of the present article on the 30th day upon the entry into force of the Constitutional amendments.

The first Human Rights Defender shall be appointed within two months after enactment of this Law.

The present law enters into force on 1 January 2004.

Law of the Republic of Armenia on the Administration foundations and Administration on Process

Chapter 2

Fundamental Principles of Administration

Article 4. Legitimacy of Administration

1. Administrative bodies shall follow the preservation of laws.
2. Authorities of administrative bodies are prescribed by laws or by other legal acts in cases stipulated by law.

Article 5. Prohibition of abuse of formal requirements

In the course of administration, administrative bodies are prohibited to overload individuals with obligations or refuse providing them any right for the purpose of preserving formal requirements, if obligations incumbent on them have been performed in the perspective of content.

Article 6. Restriction of discretionary authorities

1. Discretionary authority is a right provided to an administrative body by law to choose one of several possible lawful solutions.
2. During performing a discretionary authority administrative body shall be guided by the need of protection of human and citizen's rights and freedoms enshrined in the Constitution, principles of their equality, proportionality of administration and prohibition of discretion, as well as shall pursue other aims stipulated by law.

Article 7. Prohibition of arbitrariness

1. Administrative bodies are prohibited to display unequal approach towards similar factual circumstances, if there is not any ground for their differentiation.
Administrative bodies shall display individual approach towards significantly different factual circumstances.
2. If an administrative body has fulfilled its discretionary authority in a certain manner, then in the future in similar cases it has the obligation to perform its discretionary authority in the same way.
Administrative body can decline this restriction, if it intends to permanently make another discretionary decision in the future for preminent interest reasons.

Article 8. Proportionality of Administration

Administration shall be directed to an objective pursued by the RA Constitution and laws, and the measures for achieving those aims shall be suitable, necessary and moderate.

Article 9. The Principle of the Greatest

1. Administrative bodies do not have the right to require from individuals performance of such actions, which have already been performed by them in the scopes of other activities or are included or can be included by their content in these scopes.
2. If documents (data, information), presented by individuals to administrative bodies, include in themselves content of other necessary documents, then they cannot be required anymore in a supplemented or separate manner.
3. If permissions provided to individuals by administrative bodies in content include other permissions, then they are also considered to be provided.

Article 10. Presumption of Authenticity

1. Information presented by the individual on the factual circumstances considered by the administrative body is deemed to be authentic in any case until an administrative body has proved the opposite.

It is prohibited to require from individuals documents or other additional data confirming the information presented by them, if there is no such requirement by law.

If the administrative body has a substantiated suspicions about the authenticity of the information presented by individuals, then it can independently and at his own expense take measures for ascertaining the authenticity of it.

2. Individuals bear responsibility for presenting false data or information to administrative bodies.

Article 11. Economy

Administrative body in executing its authorities shall act in such a manner as without detriment to performance of its authorities undertake ensure more effective utilization of means provided for it for achieving more favorable result.

Article 12. Implementation of other principles

Fundamental principles established by this chapter are not exhaustive and can not be interdiction for implementing other administration principles.

Principles relating to the status of national institutions³⁴

Competence and responsibilities

1. A national institution shall be vested with competence to promote and protect human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, inter alia, have the following responsibilities:
 - (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
 - (i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
 - (ii) Any situation of violation of human rights which it decides to take up;
 - (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
 - (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;
 - (b) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

³⁴ "The Paris Principles" as defined at the First International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris on 7-9 October 1991, adopted by the UN Human Rights Commission Resolution 1992/54 of 3 March 1992 and the UN General Assembly Resolution 48/134 of 20 December 1993.

(c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

(d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;

(e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;

(f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

(g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

(a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;

(b) Trends in philosophical or religious thought;

(c) Universities and qualified experts;

(d) Parliament;

(e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

Methods of operation

Within the framework of its operation, the national institution shall:

- (a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;
- (b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
- (c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
- (d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;
- (e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
- (f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);
- (g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

Additional principles concerning the status of commissions with quasi-judicial competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

- (a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;

- (b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
- (c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
- (d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

LISTS OF BASIC HUMAN RIGHTS

List of Civil and Political Rights

ECHR	EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS
Article 2	Right to Life
Article 3	Freedom from Torture , Inhuman or Degrading Treatment or Punishment
Article 4	Freedom from Slavery
Article 5	Right to Liberty and Security of Person [no arbitrary arrest or detention]
Article 6	Right to a Fair Hearing
Article 7	Freedom from Retro-Active Criminal Law or Punishment
Article 8	Right to Respect for Private and Family Life , Home and Correspondence
Article 9	Freedom of Thought, Conscience and Religion
Article 10	Freedom of Expression
Article 11	Freedom of Peaceful Assembly
Article 12	Right to Marriage and to Found a Family
Article 13	Right to an Effective Remedy [for interference with rights in ECHR]
Article 14	Freedom from Discrimination in respect of rights contained in ECHR
Art. 1, Prot. 1	Right to the Peaceful Enjoyment of Possessions
Art. 2, Prot. 1	Right to Education
Art. 3, Prot. 1	Right to Free Elections [for the legislature]
Art. 1, Prot. 4	Freedom from Detention for Debt
Art. 2, Prot. 4	Freedom of Movement
Art. 3, Prot. 4	Right of Access to the State of which you are a National
Art. 4, Prot. 4	Freedom from Collective Expulsion
Art. 1, Prot. 6	Abolition of the Death Penalty
Art. 1, Prot. 7	Right to Appeal against Expulsion
Art. 2, Prot. 7	Right to Appeal against Criminal Sentence
Art. 3, Prot. 7	Right to Compensation for Miscarriage of Justice
Art. 4, Prot. 7	Right not to be tried twice for same offence [Ne Bis in Idem]
Art. 5, Prot. 7	Equal Rights Between Spouses

List of Civil and Political Rights

ICCPR	INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
Article 1	Right to Self-Determination of Peoples
Article 2	Right to an Effective Remedy [for interference with ICCPR rights]
Article 3	Equal Rights for Men and Women [for ICCPR rights]
Article 6	Right to Life
Article 7	Freedom from Torture , Cruel, Inhuman or Degrading Treatment or Punishment
Article 8	Freedom from Slavery
Article 9	Right to Liberty and Security of Person [no arbitrary arrest or detention]
Article 10	Right to Treatment with Dignity in Detention
Article 11	Freedom from Detention for Debt
Article 12	Freedom of Movement and Right of Access to one's own State
Article 13	Right to Appeal against Expulsion
Article 14	Right to Fair Hearing [including rights to appeal , compensation and "ne bis in idem"]
Article 15	Freedom from Retro-Active Criminal Legislation
Article 16	Right to Recognition Before the Law
Article 17	Right to Respect for Private and Family Life , Home and Correspondence
Article 18	Freedom of Thought, Conscience and Religion
Article 19	Right to an Opinion and Freedom of Expression
Article 20	Prohibition of Hate-Speech and propaganda for war
Article 21	Right of Peaceful Assembly
Article 22	Freedom of Association
Article 23	Right to Marriage and to Found a Family
Article 24	Rights of a Child to Equal Protection, Name and Nationality
Article 25	Right to Vote and be Elected [right to participate in public life]
Article 26	Prohibition of Discrimination [equality before the law]
Article 27	Minority Rights to Culture, Religion and Language
Art. 1 Protocol 2	Abolition of the Death Penalty

List of Economic, Social and Cultural Rights

ICESCR	INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS
Article 1	Right to Self-Determination of peoples (including natural wealth and resources)
Article 2	Progressive Realisation of ESC rights without Discrimination
Article 3	Equal Rights for Men and Women [for ESC Rights]
Article 4	Permitted Limitations on ESC Rights
Article 5	Destruction or Derogation from ESC Rights
Article 6	Right to Work
Article 7	Right to Just and Favourable Conditions of Work
Article 8	Right to Trade Unions
Article 9	Right to Social Security and Social Insurance
Article 10	Special Protection for the Family, Mothers and Children
Article 11	Right to an Adequate Standard of Living [Right to Food, Clothing and Housing]
Article 12	Right to Health
Article 13	Right to Education
Article 14	Progressive Implementation of Free Compulsory Primary Education
Article 15	Right to Enjoyment of Benefits of Culture , Science and Arts