HUMAN RIGHTS DEFENDER
OF THE REPUBLIC OF ARMENIA

AD HOC
PUBLIC REPORT

ON SECURING THE RIGHTS OF REFUGEES AND ASYLUM SEEKERS IN THE REPUBLIC OF ARMENIA

YEREVAN 2017

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[1] Hereinafter referred to as UNHCR.

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Introduction

Securing the rights of refugees and asylum seekers and providing guarantees for their practical exercise is one of the principles of countries governed by the rule of law. Protection of the rights of persons in the category above requires special attention. In its turn, this is conditioned by the fact that refugees and asylum seekers are usually not fully aware of the rights deriving from their status. Therefore, various states and international organizations passed a variety of legal acts guaranteeing protection of the rights of refugees, asylum seekers and other forcibly displaced population.

Article 14 of the Universal Declaration of Human Rights, states as follows: *"Everyone has the right to seek and to enjoy in other countries asylum from persecution."*

Asylum and refugee status are means of international protection provided to foreign nationals or stateless persons to fill in the gap of the national protection not available to them. Upon getting the refugee status, refugees living in a foreign state and amid other ethnic groups face problems with exercising their linguistic, socio-economic, cultural and other rights and call for maximum efforts on the part of the states. Any state that is or strives to become a full member of the international community should not only in pursuance of their commitments exclude any infringement of the rights of asylum seekers and refugees, but also create legal guarantees fully applicable in practice for them to exercise their rights and integrate into the society.

The refugee rights protection system highlights protecting and ensuring security of the persons who fled their country due to any threats and persecutions that made them leave their homes. However, protection does not merely mean security. Here, it also means providing rights and freedoms to such an extent and creating such an environment for exercising them that will provide secure and comfortable life for those persons.

According to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, protection of refugees first of all covers their entry into the country of asylum and further securing their rights by that country, including complying with the prohibition of returning such persons to their country of origin or any other

country where they may face persecutions or where their life or freedom may be threatened. The Republic of Armenia joined the Convention on July 6, 1993.

Protection of refugees' and asylum-seekers' rights is guaranteed both in the general human rights context and through enshrining "special rights" for refugees that provide additional safeguards for their protection.

The rights of asylum-seekers and refugees can be broken down into the main groups below:

- *rights enjoyed by refugees and asylum-seekers equally with foreigners residing legally in their country of residence;*
- *rights enjoyed by refugees and asylum-seekers equally with the nationals of the country of asylum;*
- *special rights of refugees and asylum-seekers arising from the international protection mechanisms.*

The Republic of Armenia faced the issue related to asylum-seekers and refugees especially after the collapse of the Soviet Union. In 1988-1992, about 500,000 Armenians were forcibly displaced from various Azerbaijani residential areas, and about 360,000 of them settled in Armenia. Such situation called for relevant measures to protect their rights and settle issues especially related to their nationality.

As stated in the 2016 Annual Report of the Human Rights Defender of RA[2], *most of the persons granted refugee status in Armenia, asylum-seekers and other forcibly displaced persons came from Azerbaijan, Syria, Iraq, Iran, African states (Côte d'Ivoire, Mali, Congo) and Ukraine. After the April war of 2016, displaced persons also came from Artsakh.*[3]

Given the challenges facing the rights of refugees and asylum-seekers, the Defender initiated a relevant study; its findings are presented within current report.

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[2]Hereinafter referred to as Defender.

[3]See the Annual Report on activities of RA Human Rights Defender and the situation of human rights and freedoms protection during 2016, p.308, http://pashtpan.am/resources/ombudsman/uploads/files/publications/28731eccde752a30c70feae24a4a7de7.pdf.

Methodology

The report is based on the studies of securing and protection of the rights of refugees and asylum-seekers in the Republic of Armenia.

To this end, official statistical data on asylum seekers and persons granted refugee status in Armenia were considered. Also, data on the number of asylum applications and the sex and age groups as well as country of nationality of the asylum seekers possessed by the State Migration Service of RA Ministry of Territorial Administration and Development[4] were examined.

To research the matter in question, priority was given to analysis of the legislation and its practical application. The national legislation on the rights of refugees and asylum seekers was examined, particularly in terms of its compliance with Armenia's international commitments. Also, certain legislative solutions were proposed to improve law-enforcement practice and bring the relevant legislation in compliance with the international standards.

The study underlying this report also covered the situation of securing the rights of the asylum seekers and refugees, who are kept or living at special institutions. Particularly, a visit has been conducted to the "Accommodation Center" SNPO under the State Migration Service offering temporary housing for asylum seekers. The visitors examined the housing conditions of asylum seekers as well as their access to food, medical care and adequate sanitary and hygienic conditions, etc.

Visits were also made to those penitentiary institutions of the RA Ministry of Justice, where refugees or asylum seekers were deprived of their liberty. During the visits the situation of securing the rights of such persons based on their status, religion and other grounds, as well as their living conditions, medical care and other issues has been examined.

Also, the decisions of the State Migration Service have been studied, in order to analyze their validity and security of the asylum seekers' rights under the asylum procedure, as well as their compliance with RA international commitments and national legislation.

[4]Hereinafter referred to as State Migration Service.

I.General information and statistical data on persons granted refugee status and asylum-seekers in Armenia

According to the UNHCR official data, the number of forcibly displaced persons around the world totaled 65.6 million. Among them, 22.5 million are persons with refugee status and the rest, about 50%, are under the age of 18.[5]

In the early 1990's, as a newly-independent state, Armenia faced numerous challenges, including a mass influx of forcibly displaced persons. This is supported by the illustrative example of our compatriots displaced from Azerbaijan to the Republic of Armenia in 1988-1992 and granted asylum. According to official data of the State Migration Service, over 360,000 persons of Armenian background were forcibly displaced from Azerbaijan to Armenia.[6]

It is noteworthy that UNHCR established its presence in Armenia in December 1992 to support over 360,000 refugees of Armenian background displaced in mass influx from Azerbaijan in the context of the Nagorno-Karabakh conflict.[7]

The next large influx to our country was from the Republic of Iraq starting from late 2004 as a great number of its residents with Armenians background arrived in Armenia.[8]

Due to the Syrian crisis, persons of Armenian origin who had lived in the Syria for years had to seek asylum in Armenia. According to UNHCR official data, over 5 million people have fled Syria since 2011 and millions more are considered internally displaced persons.[9] According to the official data of the RA Ministry of Diaspora, since the beginning of the conflict in Syria till the 1st half of 2015, the number of displaced persons was approximately 22,000.[10] The statistical data of the State Migration Service show that from 2010 through mid-2017, 865 citizens of the Syrian Arab Republic got refugee status in the Republic of Armenia. The pending challenge

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[5]See UNHCR official website, http://www.unhcr.org/figures-at-a-glance.html.

[6]See the official webpage of the State Migration Service, http://www.smsmta.am/?menu_id=93.

[7]See the official webpage of the United Nations High Commissioner for Refugees Office in Armenia, http://www.un.am/hy/agency/UNHCR.

[8]See UNHCR official website, http://old.un.am/am/UNHCR.

[9]See UNHCR official website, http://www.unhcr.org/syria-emergency.html.

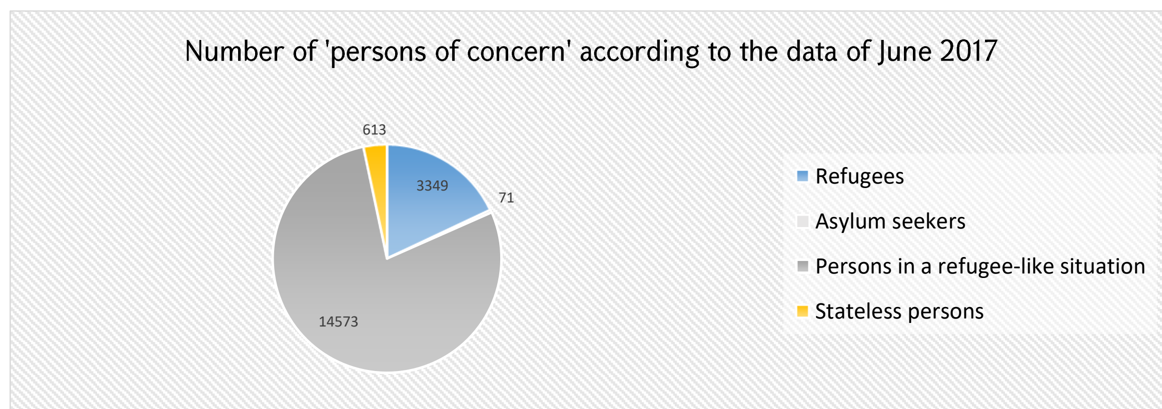
[10]See Adrine Shirinyan's Assessment Report on Study on Migration-Related Considerations of Displayed Syrian Population, December 2015, http://www.un.am/up/library/Study_migration_syrians-2015.pdf.

still causes influx of Syrians into the country. Studies of the European Friends of Armenia show that Armenia is the third European country after Germany and Sweden, welcoming the biggest number of refugees from Syria. Moreover, Armenia is the first among the European countries to welcome most Syrian refugees per capita: 6 newcomers per 1000 citizens.[11]

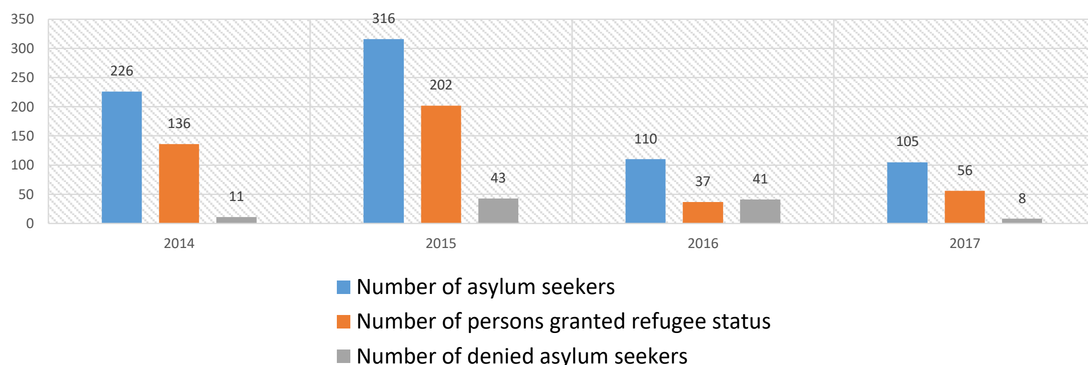
As a result of the four-day war unleashed in Nagorno-Karabakh on the night of April 2, 2016 and the escalation of the Nagorno-Karabakh conflict, some new displacement occurred in Armenia from Artsakh and a large number of Armenians living there got asylum. According to the data offered by the UNHCR Office in Armenia, after the April hostilities 2247 persons (around 681 families) sought protection in Armenia and 1429 persons (411 families) of them benefitted from UNHCR cash-based interventions.[12]

Apart from the influxes above, nationals of other countries, including Iran, African states (Côte d'Ivoire, Mali, Congo), Ukraine, etc., also sought asylum and were granted refugee status in the Republic of Armenia.

The data offered by the UNHCR Office in Armenia suggest that as of June 2017 the number of 'persons of concern' under the UNHCR mandate totaled 18,606.[13]

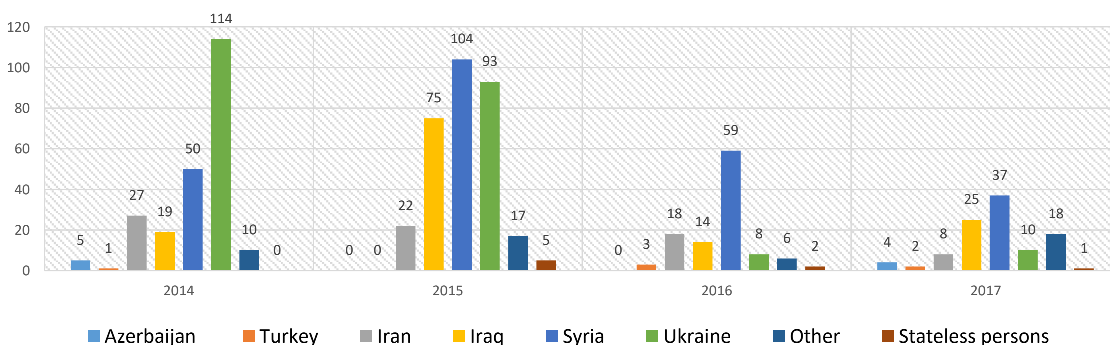


[11]See European Friends of Armenia Report on European values and the Syrian exodus: EU, Armenia and the neighbours' response, October 15, 2015, p. 6, http://eufoa.org/wp-content/uploads/2016/12/SyrianRefugees-1.pdf.
[12]See the official webpage of the United Nations High Commissioner for Refugees Office in Armenia, http://www.un.am/hy/agency/UNHCR.
[13]See the official webpage of the United Nations High Commissioner for Refugees Office in Armenia, http://www.un.am/hy/agency/UNHCR.

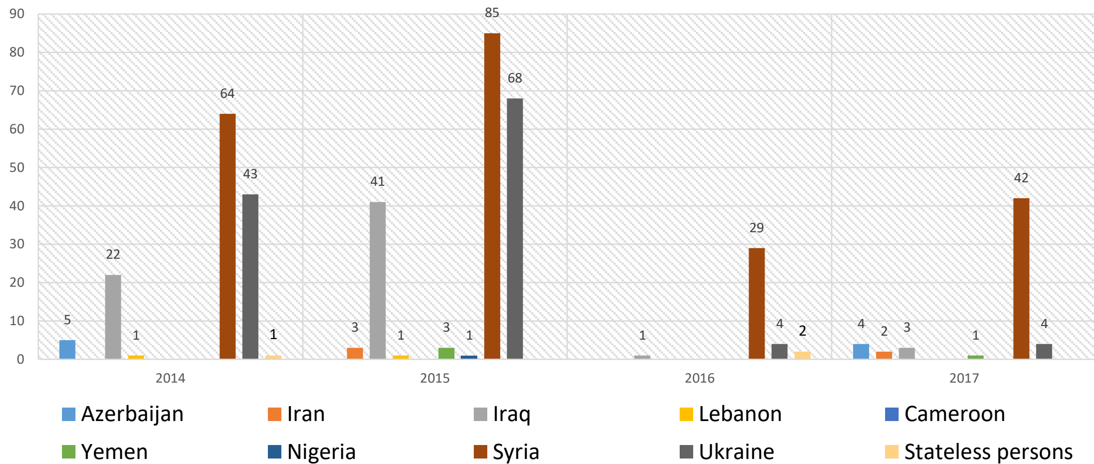


The study underlying this report covers the statistical data possessed by the State Migration Service on asylum seekers and persons granted refugee status in Armenia from 2014 through September 2017.

In the said period, a total of 757 persons sought asylum in Armenia and 431 persons were granted refugee status.[14] It should be highlighted that applications for asylum filed in the previous years may be considered, with resulting positive or negative decisions, within 2017 and also applications for asylum filed in 2017 may be considered in 2018. Consequently, it appears impossible to conduct an integral analysis of the number of asylum applications and incidences of granting refugee status to find out their correlation.



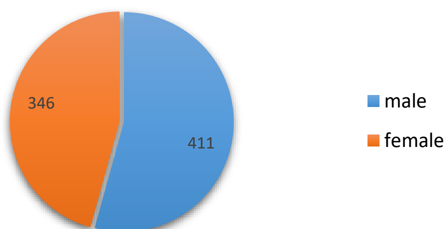
[14]See the official webpage of the State Migration Service, http://www.smsmta.am/?menu_id=151.



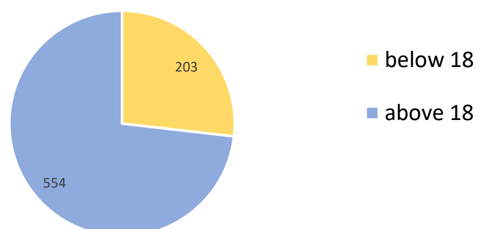
As suggested by the annual numeric data of asylum seekers, over the years influx of asylum seekers to the Republic of Armenia was largely from countries with war situations or human rights violations at a particular point of time. For instance, most of the asylum seekers in Armenia from 2014 through September 2017 came from Syria and totaled 250 persons. In 2014 and 2015, the number of Ukraine nationals seeking asylum in Armenia made a large number, 207.

The charts below also provide statistics on the sex and age details of the asylum seekers in Armenia from 2014 through September 2017.

Statistical data on the sex of asylum seekers in Armenia from 2014 through September 2017



Statistical data on the age of asylum seekers in Armenia from 2014 through September 2017



The statistical data show that the numbers of male and female asylum seekers in Armenia in the period in question were almost equal but the number of adults prevailed.

It is noteworthy that according to the submission on Armenia filed by the UNHCR to the High Commissioner for Human Rights, as of 2013 there has been one asylum application filed in Armenia by an unaccompanied minor.[15]

[15] See Submission by the UNHCR to the High Commissioner for Human Rights, p. 6, http://www.refworld.org/pdfid/54c0f9424.pdf.

II.Major developments and issues in RA legislation related to the rights of refugees and asylum seekers

Since its independence, the Republic of Armenia, in its pursuit to become a full member of the international community, has ratified a number of international treaties and committed to put into practice the provisions set out therein, by harmonizing the national legislation with the international requirements. Such international treaties also include the 1951 Convention relating to the Status of Refugees[16] and the 1967 Protocol thereto.[17]

The Republic of Armenia joined the Convention on October 4, 1993 and the Protocol on 6 July, 1993. Later, in 1999, further to the international commitments, RA National Assembly adopted the Law on Refugees. While the adoption of the Law was quite a progressive step, however it contained some provisions that needed further development and improvement. Those gaps created essential obstacles for full exercise and protection of asylum seekers' and refugees' rights in practice. Therefore, on November 27, 2008, the National Assembly of the Republic of Armenia adopted a new law, namely the Law on Refugees and Asylum[18], which came into force on January 24, 2009.

The adoption of the Law was driven by the need for a comprehensive approach to resolve issues related to refugees and asylum as well as to regulate the relations not settled by the former law. The Law enshrines the legal status, rights and duties of asylum seekers and refugees as well as basic principles of refugee protection, namely non-discrimination, non-refoulement, family unity and reunification, no criminal or administrative prosecution for illegal entry into the Republic of Armenia, the legal status of unaccompanied minors and minors separated from their families as well as the scope of authority of competent state agencies on asylum issues, etc. However, there are some gaps that can interfere with the effective enjoyment of the rights of asylum seekers and refugees in Armenia. Such gaps are considered further in this report.

Also, the legal acts below on protection of refugee rights and the process of

[16]Hereinafter referred to as Convention.
[17]Hereinafter referred to as Protocol.
[18]Hereinafter referred to as Law.

granting asylum are to be mentioned: RA Law on Citizenship of the Republic of Armenia (1995), RA Law on Foreigners (2007), RA Law on Political Asylum (2001), RA Law on the State Border (2001), RA Law on Border Guard Troops (2001), etc.

As to improvement of the legislative framework in this sector, it should be stressed that the period of 2015-2016 was marked with legislative amendments, in order to improve the legal framework of asylum procedure and bring it into compliance with the international standards.

Article 5(3) of the Constitution (2015) stipulates that *"In case of any conflict between the norms of international treaties ratified by the Republic of Armenia and those of laws, the norms of international treaties shall apply."* According to Article 54 of the Constitution, *"Everyone subjected to political persecution shall have the right to seek political asylum in the Republic of Armenia. The procedure and conditions for granting political asylum shall be prescribed by law."* Furthermore, Article 55 bans expulsion or extradition, with its Part 1 stating as follows: *"No one may be expelled or extradited to a foreign state, if there is a real danger that the given person may be subjected to death penalty, torture, inhuman or degrading treatment or punishment in that country."*

The RA Law on Refugees and Asylum states regulations related to financial assistance to asylum seekers, including those not residing at a temporary accommodation center. The Law provides for free legal assistance to asylum seekers and refugees.

On October 17, 2016 the National Assembly of the Republic of Armenia passed the RA Law on Making Changes and Amendments to the RA Law on Advocacy; accordingly, asylum seekers were also granted the right to free legal assistance. In particular, Article 41(5)(9) of the amended Law provides as follows: "*The Public Defender's Office, apart from provision of legal assistance to suspects or accused in criminal proceedings and in cases referred to in paragraph Part 6 of this Article, shall provide refugees with free legal assistance as provided for in this Article*."

Also, there is an obligation for the administration of the detention facilities to accept requests for asylum in Armenia and forward them to the State Migration Service. Particularly, according to Article 12(4), Penitentiary Code of the Republic of Armenia, *"Any foreign national or stateless person detained as a convict at a correctional facility shall have the right to file with the administration of the*

penitentiary facilities or institution a request for asylum in Armenia as set forth in Article 13, Republic of Armenia Law on Refugees and Asylum and the administration of the penitentiary facilities or institution shall, under the procedure established by the Armenian Government, forward such requests to the migration agency authorized by the Armenian Government."

Article 13(5), RA Law on Treatment of Arrested and Detained Persons reads as follows: *"An arrested or detained foreign national or stateless person shall be entitled to filing a request for asylum in Armenia as set forth in Article 13, Republic of Armenia Law on Refugees and Asylum and the administration of the relevant facilities shall, under the procedure established by the Armenian Government, forward it to the migration agency authorized by the Armenian Government."*

Moreover, the RA Government Decree № 1147-N on Establishing the Procedure for Receiving Asylum Requests and Forwarding them to Authorized Agency by the border guard troops of the National Security Service under the RA Government, RA Police under the RA Government or Administrations of Detention Facilities dated November 10, 2016 regulates the legal relations within the procedure under which the agencies above receive and forward asylum requests to the State Migration Service.

The RA Government Decree № 1268-N dated December 15, 2016 on Making Amendments to the RA Government Decree № 1440-N of November 19, 2009 sets out the guarantee for priority placement in the temporary accommodation center of asylum-seeking unaccompanied children or children separated from their families, and the RA Government Decree № 239-N on Setting the Terms and Conditions of Appointing a Representative within the Asylum Procedure dated March 3, 2017 sets the terms and conditions of appointing a representative within the asylum procedure for asylum seekers with a special need thereof.

Despite the developments in the legislation on securing and protecting refugees' and asylum seekers' rights, this sector still faces some issues calling for legislative solutions.

Particularly, Article 9(1) of the Law provides for the non-refoulement principle; accordingly, *it is forbidden to return in any way the refugee to any territories where their life or freedom may be threatened for reasons of race, religion, nationality, membership of a particular social group or political opinions*

or due to widespread violence, external attack, domestic conflicts, massive human rights violations or any other serious violations of the public order. According to Part 3 of the said Article, *"No foreign national or stateless person may be expelled, removed or extradited to a foreign state, if there is a substantial threat that they might be subjected there to cruel and inhuman or degrading treatment or punishment, including torture."*

In respect to the above, it is unacceptable that the right to life is not among the quoted reasons. Particularly, as a result of the amendments made in 2015, Article 55(1) of the RA Constitution reads as following: *"No one may be expelled or extradited to a foreign state, if there is a real danger that the given person may be subjected to **death penalty**, torture, inhuman or degrading treatment or punishment in that country."* Such an approach is consistent with the regulations in Article 19(2), Charter of Fundamental Rights of the European Union.[19]

Therefore, the relevant article of the Law on the non-refoulement principle should also cover the prohibition against expulsion or extradition of a person in the event of a threat of death penalty as well.

In its definition of the concept of refugee in Article 6(1), the Law reflected the concept as defined in relevant provisions of the Convention and Protocol, i.e. that: *"The term "refugee" shall apply to any foreign national who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it."* Paragraph 2 of the said Part covers the events due to which the person left the country of his/her nationality or former habitual residence because of widespread violence, external attack, domestic conflicts, massive human rights violations or any other serious violations of the public order.

The Law provides for no other protection and the legislation in general establishes no procedures for providing any additional remedies that would make such persons eligible for protection and relevant status if the grounds set by the non-

[19]See Article 19(2), Charter of Fundamental Rights of the European Union, http://www.europarl.europa.eu/charter/pdf/text_en.pdf.

refoulement principle are in place, to ensure their security in the Republic of Armenia. It is noteworthy that Article 58(3) of the Law stipulates that the Police shall be responsible for resolving, in line with the RA law, any issues related to the residence status of a foreign citizen denied asylum by a final decision. This is particularly important in cases where the refoulement of the person denied asylum is impossible by the regulations of the international human rights law.

In this respect, the European Court of Human Rights,[20] for instance, stipulates in its judgments the state's discretion to deny a person entry to the country or expel them for well-founded reasons. Nevertheless, the Court also attached importance to ensuring within such discretion the prohibition of absolute nature as implied in Article 3, European Convention on Human Rights. Particularly, according to § 46, *Said v. the Netherlands,* July 5, 2005, *"Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations, to control the entry, residence and expulsion of aliens" (...). However, expulsion by a Contracting State may give rise to issues" in the light of prohibition of torture under Article 3 and hence engage the responsibility of that State under the Convention "where substantial grounds have been shown for believing that the person concerned, if deported, faces a risk of being subjected to treatment contrary to Article 3."*[21]

Furthermore, unlike the Convention providing for some exceptions to the non-refoulement principle, Article 3(1) of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) states that *"No State Party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."*[22]

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[20]Hereinafter referred to as the European Court.

[21] See § 46, European Court's judgment on *Said v. the Netherlands*, (Application no. 2345/02), July 5, 2005, http://hudoc.echr.coe.int/eng?i=001-69614.
See § 52, European Court's judgment on *M.A. v. Switzerland* (Application no. 52589/13), November 18, 2014, http://hudoc.echr.coe.int/eng?i=001-148078.

[22]See Article 3(1), United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984, http://www.ohchr.org/documents/professionalinterest/cat.pdf.

Article 89(1)(f), Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (2002) provides that *"No one shall be extradited if there are solid grounds to believe that the request for extradition aims to prosecute the person for reasons of race, gender, religion, ethnicity or political opinion."*[23]

The analysis of this position, national law and its application practices suggests that there may be cases when a person is to be expelled to his/her country of origin if he/she is not granted refugee status or if such status is terminated. Nevertheless, no one may be expelled if there is a substantial risk that they will be subjected to torture, cruel, inhuman or degrading treatment or punishment.

The lack of the legal framework for practical resolution of this issue puts such persons in a vulnerable position in terms of legal protection. In such cases, the international jurisprudence provides for an opportunity for additional protection. For example, *Georgia grants, apart from refugee status, a* ***humanitarian status*** *granted temporarily to persons who do not meet the criteria for refugee status but have been forced to leave their country of origin due to violence, external aggression, occupation, internal conflicts, mass violation of human rights or significant breach of public order as well as to persons coming from neighboring countries and seeking asylum due to natural disaster.*[24]

A similar protection mechanism is also enshrined in Portuguese law. Particularly, *it provides for subsidiary protection for asylum seekers not eligible for refugee status but unable to return to their country of citizenship or habitual residence due to the systematic violation of human rights therein or due to the risk of suffering severe harm.*[25] The provision above makes it possible for persons enjoying the right to non-refoulement to reside with a specific legal status in a foreign country and avail themselves of the international protection instead of non-effective national protection.

Therefore, the RA law should lay down a new legal status for persons to provide additional protection for foreign nationals and stateless persons not

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[23]See Article 89(1)(f), Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (2002), http://www.parliament.am/library/APH/195.pdf.

[24]See Article 4, Law of Georgia on Refugee and Humanitarian Status, http://mra.gov.ge/res/docs/2014022416564743748.pdf.

[25]See Article 7, Asylum Law No. 27/2008, http://www.refworld.org/docid/48e5c13c8.html.

eligible for refugee status but enjoying protection under the non-refoulement principle.

According to Article 7(5) of the Law, "*The **refugee status** granted under Parts 1, 2 or 3 of this Article to the family members of a person with a refugee status **shall be revoked** if the status of the refugee filing a joint asylum request on behalf of his/her family has been revoked under Article 53 of this Law. The family members of such persons shall not be deprived of an opportunity to file immediately thereafter an asylum request based on their personal reasons."* Part 6 of the said Article of the Law provides that *"The **refugee status** granted under Parts 1, 2 or 3 of this Article to the family members of a person with a refugee status **shall be terminated** if the status of the refugee filing a joint asylum request on behalf of his/her family has been terminated under Article 53 of this Law, except for the cases provided in Article 10(2) of this Law. The family members of such persons shall not be deprived of an opportunity to file immediately thereafter an asylum request based on their personal reasons."* The regulations above prescribe revocation or termination of the refugee status of a refugee's family members or dependents, respectively, in the event the status of the refugee filing a joint asylum request on behalf of his/her family has been revoked or terminated. This formulation somehow deviates from the international standards for asylum procedure. In particular, it makes it impossible to examine individually the grounds for terminating or revoking the status of the family members of a person granted refugee status; this can interfere with the proper exercise of their rights.

Moreover, the analysis of the complaints addressed to the Defender suggests that revoking or terminating the refugee status of family members due to revoking or terminating the refugee status of the person who has filed a joint asylum request on behalf of the family, causes unnecessary complications in practice. Particularly, both Part 5 and 6 of Article 7 of the Law provide the family members of the person, who filed a joint asylum request, with the **possibility of filing another asylum request** immediately after revocation or termination of their refugee status, based on their personal reasons. In this case, the person is entitled to filing another asylum request and its full, impartial and comprehensive consideration by the State Migration Service. This results in double work of the state agency and an unnecessarily complicated process for asylum seeker. Hence, both to save the

resources of the authorized state agency and to create an effective remedy to secure asylum seekers' rights, it is most reasonable to consider revocation or termination of each family member's refugee status individually.

Based on the above, the Law should lay down a provision stating that in case of revoking and terminating the refugee status of a person who has filed a joint asylum request, the status of his family members or dependents shall not be terminated unless a relevant investigation is carried out under individual procedures established for such purposes and there are sufficient grounds for revoking and terminating their status.

Article 51(5) of the Law relating to the interview procedures states that "*If the asylum seeker does not have sufficient command of the Armenian language, **the authorized agency for migration issues shall provide him/her with free interpretation services** (...).*" As shown above, the State Migration Service shall provide free interpretation services during interview as and when prescribed by law. It is also noteworthy that according to the Article 46(4) of the Law, apart from the State Migration Service, **the Border guard troops, the Police and the administration of the detention facilities** are also authorized to interview asylum seekers. At the same time, it remains unclear why the clauses on the powers of the receiving agencies lack any provisions on the obligation to provide interpretation services. Particularly, despite the fact that the agencies receiving asylum requests are under obligation to provide necessary information and interview any person seeking to file a request for asylum in Armenia, the law still provides no access to interpretation services in such cases.

Therefore, it is necessary to amend the Law so that it obliges any state agency receiving asylum requests to provide free interpretation services during interviews.

By positive deviation from the Convention standards, the Law provides both asylum seekers and persons already granted refugee status with the right to paid employment by equating them with Armenian citizens. In particular, Article 21(1) states as follows: "***Asylum seekers** and refugees granted asylum in Armenia shall be entitled to seek employment and be employed within the Republic of Armenia on the same terms as the Armenian citizens, unless otherwise prescribed by law.*"

At the same time, the regulation on exceptions to work permit requirement as

set forth in Article 23(1)(k), RA Law on Foreigners left out asylum seekers: *"The persons below may work in the Republic of Armenia without any work permit: foreign nationals and stateless persons granted refugee status, and foreign nationals and stateless persons granted political asylum in the Republic of Armenia - for a period not exceeding their residence permit period."* This can cause unnecessary confusion and restrict the asylum-seekers' access to practical exercise of their right to work. Therefore, work permit for asylum seekers in Armenia should be laid down through a harmonized uniform legislative framework.

To this end, the RA Law on Foreigners should be amended to add asylum seekers as well in the list of persons entitled to work without work permit.

Clause 44, of Internal Disciplinary Code of Conduct for Asylum Seekers Residing at Temporary Accommodation Center, appendix to the RA Territorial Administration and Development Minister's Decree on Approving the Internal Disciplinary Code of Conduct for Asylum Seekers Residing at Temporary Accommodation Center dated August 10, 2016, states as follows: *"If the resident commits 2 or more violations of the internal disciplinary rules of residence, the referral for 'Placement at Temporary Accommodation Center' issued to him/her **may be revoked** upon the Center's manager's suggestion **by the State Migration Service, Ministry of Territorial Administration and Development of the Republic of Armenia."***

According to Article 53(1), RA Law on Fundamentals of Administration and Administrative Proceedings, "*an administrative act is a **decision**, decree, order or any other individual legal act **with external impact passed by the administrative agency to settle a particular case within public law and aimed at** setting, **amending, reducing** or recognizing **rights** and obligations **of persons**."* As administrative body's decisions on revoking referrals issued by the State Migration Service to ''Placement at the Temporary Accommodation Center'' are made within the public law, have an external impact and aim to reduce asylum seeker's rights, they are considered administrative acts. Therefore, the issue should also be considered under administrative proceedings.

Hence, Article 66(3), RA Law on Fundamentals of Administration and Administrative Proceedings stipulates the grounds for revoking favorable administrative acts. According to the Paragraph (b) of the same Part, *a favorable*

administrative act may be revoked once such revocation is permitted by law or is conditioned by a relevant reservation in a lawful administrative act. Obviously, the law should prescribe a provision setting forth such a restriction to revoke a favorable administrative act, unless a relevant reservation is envisaged.

It follows from the above that the law should stipulate the authority to revoke the referrals issued by the Migration State Service to asylum seekers granted the right to reside at the Temporary Accommodation Center and declare void Point 44 of the Internal Disciplinary Code of Conduct for Asylum Seekers Residing at Temporary Accommodation Center.

The concepts of "**Reception Center**" and "**Temporary Accommodation Center for Asylum Seekers"** used in the national law with regard to refugee rights and asylum procedure may seem somewhat confusing.

Article 14, entitled ''Living Conditions of Asylum Seekers'' after the amendments in 2016, RA Law on Refugees and Asylum (2008) states that asylum seekers in need of shelter shall be placed at a **temporary accommodation center for asylum seekers,** a special facility set up for such purposes till a final decision on their asylum request is made.

Following the RA Government Decree № 407-N of April 3, 2003, "**Reception Center**" State Non-Profit Organization was set up in the Republic of Armenia through reorganizing the "**Reception Center**" public institution under the Migration and Refugee Department under the RA Government.

The RA Government Decree № 1440-N on Approving the Procedure for Placement in **Temporary Accommodation Center for Asylum Seekers** and Provision of Living Conditions dated November 19, 2009, uses the term **Temporary Accommodation Center for Asylum Seekers**.

While the legal acts above use different terms, both of them refer to the same facilities offered to asylum seekers in Armenia in need of shelter.

Therefore, all the national legal acts regulating the relevant field should use a uniform name for the facilities offered to asylum seekers in Armenia in need of shelter.

III.Securing refugees’ and asylum seekers’ rights at special institutions

While preparing the Report, the special institutions within the Republic of Armenia, with persons granted refugee status or seeking asylum in Armenia among their residents or inmates were monitored. As such institutions “Accommodation Center” State Non-Profit Organization of the State Migration Service; Republic of Armenia state border crossing points, and penitentiary institutions of the RA Ministry of Justice were identified and visited.

“Accommodation Center” State Non-Profit Organization of the State Migration Service

According to Article 14(1) of the Law, *the Accommodation center is a special institution intended for temporary accommodation of asylum seekers,* where *asylum seekers in need of shelter* reside *till a final decision on their asylum request is made.* Based on the above wording of the Law, the RA Government Decree № 407-N of April 3, 2003 resulted in setting up the ‘‘Accommodation Center’’ State Non-Profit Organization[26] managed by the State Migration Service.

By virtue of Article 24(2) of the Law, *the authorized agency shall accommodate any asylum seekers and their family members turning thereto in a temporary accommodation center. According to Part 1 of the said Article, the temporary accommodation center shall provide them with meals (thrice per day), linen, personal hygiene items, and clothing and footwear as necessary.*

Any relations within accommodating asylum seekers in the Accommodation Center and providing them with livelihoods are also regulated by the Procedure approved by the RA Government Decree № 1440-N of November 19, 2009. Clause 6 of the said Procedure provides that *upon asylum seekers’ request for placement in the temporary accommodation center, the authorized agency shall give them a referral.* Yet, according to Clause 7 of the said Procedure, *the referral is issued if there are spare rooms in the temporary accommodation center.* It is noteworthy that Clause 10 of the Procedure for Placement in the Temporary Accommodation Center

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[26] Hereinafter referred to as Accommodation Center.

and Provision of Livelihoods stipulates that *the number of members of family, sex and age of asylum seekers and other factors shall be taken into account when placing them in the temporary accommodation center.*

To find out whether the livelihoods and services offered to asylum seekers and their family members at the Accommodation Center comply with the standards of the international and national law, the Defender's competent representatives visited that institution.

The Accommodation Center is located on the 1st and 2nd floors of building 70/1, Moldovakan St., Nor Nork, Yerevan. The Accommodation Center has 20 rooms for asylum seekers and 45-50 asylum seekers can live there at a time. The staff of the Accommodation Center consists of 8 people, namely executive manager, accountant, procurement officer, 4 watchmen and 1 cleaner.

During the visit, the Defender's competent representatives held private interviews with both the asylum seekers residing in the Accommodation Center, and its administration. As of December 2017, the Accommodation Center hosted 31 asylum seekers. Based on their national origin, the visit was facilitated by Arabic, Farsi and Spanish interpreters.

The examination of the premises showed that apart from the 20 separate rooms for asylum seekers, the Accommodation Center also has a shared kitchen, a recreation room, a children's room and lavatories. The recreation room is equipped with a computer and Internet connection (Wi-Fi) making it possible for the residents to contact their relatives. Also, the Accommodation Center has 3 rooms with necessary furniture and furnishings for persons with disabilities. The common area in the Accommodation Center is monitored by video cameras.

The visit also revealed some urgent issues. Particularly, the administration keeps a "Discipline and Safety Regulation" register and makes records there on the consequences of violating manager's written warnings by asylum seekers who breached the internal disciplinary rules of residence at the premises laid down in Clause 12.1 of the Procedure for Placement in the Accommodation Center and Provision of Livelihoods. It is noteworthy that according to the Clause above, *if the resident commits 2 or more violations of the internal disciplinary rules of residence, the State Migration Service, shall, by suggestion of the Center's manager, revoke the referral issued to him/her.*

The internal disciplinary rules of residence at the Accommodation Center are laid down by the RA Territorial Administration Minister's Decree № 10-N of August 10, 2016 stipulating the rights and duties of the asylum seekers residing in the Accommodation Center as well as the consequences of non-compliance. Given that asylum seekers can be deprived of the right to reside in the Accommodation Center for non-performance or improper performance of their duties, as set forth in the said Decree, it is essential to ensure their right to be informed about such duties and their practical application.

During the visit, it became clear that asylum seekers are actually notified of the said internal disciplinary rules upon entering the Accommodation Center and they sign in the entry and exit register of the Center. Nevertheless, there is only the Armenian version of the internal disciplinary rules. This means that introducing such rules to the asylum seekers would appear as a mere formality if they are not provided to the asylum seekers in a language they can understand. This causes problems in terms of proper exercise of the person's right to be informed in a language they may understand both of their rights and duties, and any possible steps in any situations that may arise thereof. Furthermore, examination of the premises showed that there are no relevant posters in the common areas or other easily noticeable sections of the Accommodation Center or any other ways to notify the asylum seekers of the internal disciplinary rules.

Particularly, apart from the lack of any translations of the documents in question in the languages the asylum seekers at the Accommodation Center can understand, there are no available interpretation services either. This is also due to the lack of a full-time interpreter's position in the staff list. However, according to the administration, in their daily life, the staff speak to the asylum seekers in English, Russian or any other language they can understand. The issue above can practically and directly prevent the asylum seekers in the Accommodation Center from proper exercise of their rights.

The European Court also referred to the right of asylum seekers in special institutions to be informed of their rights and duties in a language they may understand. In its judgment on *M.S.S. v. Belgium and Greece* of January 21, 2011, the Court noted that *the shortcomings in access to the asylum procedure also cover insufficient information for asylum-seekers about the procedures to be followed and*

no reliable system of communication between the authorities and the asylum-seekers caused, among others, by a shortage of interpreters.[27]

It should be also noted, however, that currently free Armenian language trainings are held at the Accommodation Center twice a week. The visits showed that it was in Armenian that the residents somehow communicated with each other.

Therefore, the residents of the Accommodation Center seeking asylum in Armenia should be provided with accessible written and verbal information on their rights and duties in a language they can understand.

According to Clause 19, Procedure for Placing Asylum Seekers in the Center and Provision of Livelihoods, *the center's administration shall provide asylum seekers in the Reception Center with livelihoods, namely meals (thrice per day), linen, personal hygiene items, and clothing and footwear, as necessary*. Clause 21 of the said Procedure prescribes that *the daily portions of the meals and bedding items provided to the asylum seekers at the Reception Center shall be determined by the minimum standards set by Annexes №№ 2 and 4, respectively, to the Republic of Armenia Government Decree № 730-N on Approving the Minimum Care and Social Services Standards for Elderly Persons and Persons with Disabilities dated May 31, 2007.*

Here, the problem first of all concerns the food and foodstuffs provided to asylum seekers. Particularly, asylum seekers at the Accommodation Center are served the same foodstuffs, without any regard to their religious and ethnic background preventing them from using certain food. Nevertheless, the staff attempts to handle the problem practically by discussing the foodstuffs with all the residents. Despite this, the problem still persists in this case as well.

This problem was also raised by the asylum seekers in the Accommodation Center during their private interviews. Particularly, they claimed to have faced frequent problems with the served meals, due to peculiarities of their religious background.

The next issue relates to the sanitary and hygienic conditions for the residents of the Accommodation Center. During their private interviews, asylum seekers complained about the sanitary state in the kitchen (e.g. insects in the kitchen).

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[27] See § 301, European Court's judgment on *M.S.S. v. Belgium and Greece* (Application no. 30696/09), January 21, 2011, http://hudoc.echr.coe.int/eng?i=001-103050.

The standards and peculiarities for the food to be provided to asylum seekers in special institutions are also set in the UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention (2012). In particular, Paragraph 48(xi) provides that "***Food of nutritional value*** *suitable to age, health, and cultural/ religious background, is to be provided"* *to asylum seekers in detention. "Special diets for pregnant or breastfeeding women should be available.* ***Facilities in which the food is prepared and eaten need to respect basic rules on sanitation and cleanliness****."*

The European Court also referred to the hygiene and sanitary conditions in accommodations for asylum seekers. In its judgment on *M.S.S. v. Belgium and Greece* of January 21, 2011, the Court held that *the overcrowding as well as* ***inadequate sanitary and hygiene conditions*** *in the reception centers for migrants might amount to a violation by the State of the principle of prohibition of torture as laid down in the European Convention on Human Rights.*[28]

Therefore, food provided to asylum seekers in the Accommodation Center should be suitable to the ethnic and religious backgrounds of each of them as well as their physical state. Adequate sanitary and hygienic conditions should be ensured in the Center, particularly in the kitchen.

Reception Centers of the RA state border crossing points

During preparation of the Report, the Human Rights Defender's Office worked jointly with the National Security Service of the RA Government and particularly with the Border Guard Troops. The National Security Service plays a crucial role in protecting the rights of persons crossing the state border of the Republic of Armenia and ensuring proper treatment to them. In this regard, the issue becomes more sensitive when it comes to asylum seekers.

The RA Government Decree № 703-N of May 12, 2011 sets out the Republic of Armenia state border crossing points. Since 2010, Armenia has initiated the process of modernizing and equipping the RA state border crossing points with up-to-date technologies. As a result, modernized ''Gogavan'' and ''Bagratashen'' border

[28] See §222, European Court's judgment on *M.S.S. v. Belgium and Greece* (Application no. 30696/09), January 21, 2011, http://hudoc.echr.coe.int/eng?i=001-103050.

crossing points were launched in 2016 and "Bavra" border crossing point was launched in 2017.

The RA Government Decree № 783-N of July 18, 2013 sets out the procedure for operating Reception Centers within the Republic of Armenia state border crossing points and transit zones and for placing foreigners there. The Reception Centers as defined in the document above offer accommodation for persons seeking asylum in Armenia for a period set by law.

As mentioned above, to ensure the rights of asylum seekers, it is essential for the border guard troops to possess the necessary knowledge about the asylum procedure as well as a person's rights and duties within such procedure, and their own powers. This follows from the international commitments. Particularly, the second paragraph of Clause 3, UNHCR Refugee Protection and Mixed Migration Plan of Action states that Border guards and immigration officials would benefit from training.[29]

According to the Recommendation No. R (98) 15 of the Committee of Ministers to member states on the training of officials who first come into contact with asylum seekers, in particular at border points (adopted by the Committee of Ministers on 15 December 1998), *"Officials who first come into contact with asylum seekers should receive training."*

Paragraph 1 of the same Recommendation states that for those of such officials who are required to refer these asylum seekers to the competent asylum authority, their training should lead to the acquisition of:

1.1. basic knowledge of the provisions of national legislation related to the protection of asylum seekers and refugees (...);

1.2. basic knowledge of the provisions of the 1951 Convention and 1967 Protocol Relating to the Status of Refugees and general principles of refugee protection as provided by international law (...);

1.3. basic knowledge of the provisions relating to the prohibition of torture and inhuman or degrading treatment or punishment as enshrined in the European Convention on Human Rights;

1.4. basic knowledge concerning limitations under national and international law to the use of detention;

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[29]See second paragraph of Point 3, UNHCR Refugee Protection and Mixed Migration: A 10-Point Plan of Action, revision 1, January 2007, http://www.unhcr.org/4742a30b4.pdf

1.5. skills to detect and understand asylum requests even in cases where asylum seekers are not in a position clearly to communicate their intention to seek asylum (...);

1.6. the skill to make the correct choice and use of an interpreter when necessary."[30]

In this regard, it should be emphasized that within the projects of the Armenian Red Cross Society[31] and the UNHCR Office in Armenia, trainings on the international and Armenian national standards for protection of refugees and asylum-seekers, were held *inter alia*, for border guard troops officers. The trainings were organised for the border guard troops officers serving at "Bagratashen", "Gogavan", "Bavra" and "Agarak" crossing points of the RA state border as well as at "Zvartnots" and "Shirak" airports. They mostly targeted the international protection mechanisms and national legislative regulations for refugees and asylum seekers and also presented the changes and amendments made to the Law in 2016.

The trainings were particularly essential as they were attended by competent representatives of the border guard troops who are responsible for the issues covered by the training. Such trainings were also attended by the representatives of the Defender's Office.

The trainings aimed to raise awareness among the participants of RA international obligations as well as the national and international regulations on country entry, the principle of non-refoulement, access to asylum procedure and identification and referral of asylum seekers.

In 2017 round-table discussions were also held under the said project. They were attended by the Border Guard Troops officers responsible for border control as well as representatives of the other competent state agencies. The round-tables were also attended by the representatives of the Defender's Staff, UNHCR, European Border and Coast Guard Agency ("FRONTEX"), ARCS and the State Migration Service. The topics discussed mostly concerned provisions of the Convention and Protocol, the basic principles of refugee protection, the UNHCR mandate, identification and referral of asylum seekers as well as reception and assistance to refugees at border crossing points. Also, the Human Rights Defender's powers laid

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[30] See Point 1, Recommendation No. R(98) 15 of the Committee of Ministers to member states on the training of officials who first come into contact with asylum seekers, in particular at border points (adopted by the Committee of Ministers on 15 December 1998), http://www.refworld.org/pdfid/3ae6b39d10.pdf

[31] Hereinafter referred to as ARCS.

down in the RA Constitution and the Constitutional Law on the Human Rights Defender as well as the efforts taken to protect the rights of refugees and asylum seekers were presented. The ARCS also presented the Organization's functions in terms of providing interpretation services for asylum seekers and refugees.

Discussions play a key role in raising awareness among the border guard troops on the rights of refugees and asylum seekers. They make it possible not only to examine the legislative regulations in place in the sector but also to discuss the peculiarities of their application in practice; this positively contributes to ensuring the rights of refugees and asylum seekers. Also, such trainings cover the topics set out in the Committee of Ministers Recommendation.

Trainings are crucial also in terms of fostering productive collaboration among the participants, especially the Human Rights Defender's Office and the National Security Service Border Guard Troops officers. Currently, such collaboration has resulted in joint efforts in case of relevant alerts of potential violations and exchange of information, as necessary.

To prepare the Report, visits were conducted to the Reception Centers. The rights situation of asylum seekers and conditions in the reception centers, etc. were examined.

According to Article 35 of the Law, the Border Guard Troops at the RA state border crossing points shall check asylum seekers' documents and thereafter, those of them who entered the country legally shall be informed about the necessity to apply to the State Migration Service by informing about the address and asylum procedure and those who entered the country illegally shall be registered in a relevant registry and placed in the Reception Center located at the border crossing point.

The visits and examinations revealed that the conditions in part of reception centers needed improvement; they should be equipped with more furniture and household items. ‘‘Shirak’’ state border crossing point has no reception center at all.

Therefore, it is hereby recommended that by necessity the conditions at reception centers are improved by equipping them with necessary furniture and household items and a reception center is set up at “Shirak” state border crossing point.

By virtue of Article 46(4) of the Law, the Border Guard Troops, along with other authorities, shall interview asylum seekers to obtain necessary information about their intend to seek protection, personal data of the asylum seeker and all the accompanying family members and description of their trip from their country of origin to the Republic of Armenia, as set forth in Part 3 of the Article. When necessary multilingual interpretation services should be provided to ensure proper interviews with asylum seekers as well as presentation of the rights and duties of asylum seekers residing at the reception centers in a language they may understand.

As to ensuring proper interpretation services throughout the legal relations of the authorities with the asylum seekers, the European Court held in its judgment on *M.S.S. v. Belgium and Greece* of 21 January 2011 that *the shortcomings in access to the asylum procedure also cover insufficient information for asylum-seekers about the procedures to be followed and no reliable system of communication between the authorities and the asylum-seekers caused, among others, by a shortage of interpreters.*[32]

Provision of interpretation services at the RA state border crossing points and particularly at reception centers is of key importance both to ensure that asylum seekers are informed in a language they may understand and their other rights are properly secured, and to ensure that the Border Guard Troops fulfill their powers prescribed by law properly. It is also necessary to hold foreign language courses for Border Guard Troops officers.

Therefore, it is recommended to ensure multilingual interpretation services at the RA state border crossing points by necessity, so that all asylum seekers' rights and duties are explained to them in a language they may understand and relevant interviews are held with them and Border Guard Troop officers can fully communicate with the persons placed in reception centers.

Penitentiary Institutions of the RA Ministry of Justice

Both the annual reports on the Defender's activities in his capacity of the National Preventive Mechanism, and the *ad hoc* public reports on the relevant field

[32]See § 301, European Court's judgment on *M.S.S. v. Belgium and Greece* (Application no. 30696/09), January 21, 2011, http://hudoc.echr.coe.int/eng?i=001-103050:

have repeatedly targeted the issues of securing the rights of persons at detention institutions, including the penitentiary institutions of the RA Ministry of Justice.[33] The issues on the penitentiary institutions raised in the said documents mostly concerned securing the prisoners' right to health, placement, contact with the outside world, conditions of their detention, etc.

By virtue of Article 2(2) of the Constitutional Law of the Republic of Armenia on the Human Rights Defender, *"The Defender shall be entrusted with the mandate of the National Preventive Mechanism provided by the Optional Protocol — adopted on 18 December 2002 — to the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as 'the National Preventive Mechanism')."* By virtue of these regulations and for the purpose to carry out a comprehensive study of ensuring and protection of refugees' and asylum seekers' rights in Armenia, the Defender's representatives visited *"Armavir", "Sevan", "Abovyan", "Artik", "Nubarashen"* and *"Vardashen"* penitentiary institutions. At the time of preparing the Report, there were persons with refugee status and persons seeking asylum in Armenia among the convicts and detainees at those institutions. During the visits private interviews with the refugees and asylum seekers who were deprived of their liberty were held. The issues identified through the visits mostly concerned ensuring the rights arising from refugee and asylum seeker status.

Person's access to information or documents about themselves in a language they may understand is one of their most crucial rights. This is even more vital for persons deprived of liberty. According to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), *the prison law and applicable prison regulations shall provide every prisoner with written information about his or her rights to authorized methods of seeking information and access to legal advice, including through legal aid schemes, and procedures for making requests or complaints. Also, his or her obligations, including applicable disciplinary sanctions, and all other matters necessary to enable the prisoner to adapt himself or herself to the life of the prison shall be provided.* Another Rule in the said instrument states that the *information above shall be available* ***in the most commonly used languages*** *in accordance with the needs of the prison population.*

[33] Hereinafter referred to as penitentiary institutions.

If a prisoner does not understand any of those languages, interpretation assistance should be provided.[34]

The principle of detained persons' access to necessary information in a language they understand is also laid down in Rule 30.1, Recommendation Rec (2006)2 of the Committee of Ministers to Member States on the European Prison Rules. Particularly, it reads as follows: "*At admission, and as often as necessary afterwards all prisoners shall be informed* ***in writing and orally in a language they understand*** *of the regulations governing prison discipline and of their rights and duties in prison."*[35] This commitment of the state aims to ensure that persons at penitentiary institutions are provided with information on their rights and duties in a language they may understand.

Article 12(1)(1), Penitentiary Code of the Republic of Armenia stipulates that *"Convicts shall be entitled to be informed in their native language or any other language they understand of their rights, freedoms and duties, the manner and conditions of serving the sentence imposed by the court, the changes in such manner and conditions, if any, suggestions, applications and complaints, and relevant international documents."*

According to Article 13(1)(1), RA Law on Treatment of Arrestees and Detainees, *"An arrested or detained person shall be entitled to access information in their native language or any other language they understand on their rights, freedoms and duties."*

The right of persons deprived of liberty on access to information on their rights and duties in a language they may understand becomes particularly vital if the non-performance or improper performance of their obligations may result in liability, or when dealing with their medical records.

In practice, this may give rise to some issues. Particularly, the visits to penitentiary institutions and the complaints raised by the persons deprived of liberty during their individual interviews suggest that the right of refugees and asylum seekers deprived of liberty on access to information verbally and in writing in a

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[34] See The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) Rule 54 and Rule 55, https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf.

[35] See Rule 30.1, Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules, https://rm.coe.int/16806f5b92.

language they may understand on their rights and duties is not ensured in practice. The problem is mostly caused by the lack of translation in the penitentiary institutions. Actually, this, in its turn, leads to other problems. For instance, to understand what is written in their medical records, the persons deprived of liberty have to turn to the administration of the penitentiary institution or their cellmates; this, in turn, may bring the issue of breaching the confidentiality of health data.

Hence, to resolve this issue, the practices at the penitentiary institutions of the RA Ministry of Justice should be changed to ensure that refugees and asylum seekers who are deprived of liberty have access to the information on their rights and duties and any document regarding them in a language they may understand, through ensuring translation thereof.

As a condition for safeguarding the dignity and security of person, the right of persons deprived of their liberty - regardless of such deprivation - to privacy and family life implies that the state is under obligation to take any necessary step to ensure that the detained person may exercise such right.

Securing the right to privacy and family life of persons deprived of liberty is an important safeguard in their adequate re-socialization process. Ensuring re-socialization of persons deprived of liberty requires adequate conditions for them not to lose the behavior patterns and skills they once developed in the society. Deprivation of liberty should not undermine or ruin family and social relations.

In fact, regular contact with the family is crucial first of all in the sense that they will safeguard such persons' reintegration into the society after they are released. Also, the current practice suggests that the lack of family life is often the root cause of self-Injuries or suicides committed in places of deprivation of liberty. Also, family ties are of such a nature that they cannot be replaced even under the most advanced social work system in prison.

The Defender's staff considers the idea important and therefore developed and circulated a legislative package proposing regulations aimed to stipulate a clear mechanism for banning visits to detainee by their close family and legal representatives and ensure compliance of national legislation with international standards.

The international instruments on the rights of persons deprived of liberty also provide for legal regulations guaranteeing such persons' contact with the outside

world and close family. Particularly, Paragraph 37, Standard Minimum Rules for the Treatment of Prisoners Adopted on August 30, 1955 stated that "Prisoners shall be allowed under necessary supervision *to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits."* And according to Paragraph 38(1) thereof, *"Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong."*[36]

According to Rule 24.1 of the Recommendation on the European Prison Rules, *"Prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organizations and to receive visits from these persons."*[37]

According to the jurisprudence of the Council of Europe European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,[38] *"It is also very important for prisoners to maintain reasonably good contact with the outside world. Above all, a prisoner must be given the means of safeguarding his relationships with his family and close friends."*[39]

Given that asylum seekers and refugees, away from their home country, often live far from their family members and other close relatives, if deprived of liberty, they become most vulnerable in terms of their communication with the outside world. This also undermines their re-socialization.

In this regard, Paragraph 48(vii) of the UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention (2012) provides that *"Asylum-seekers in detention should be able to make regular contact (including through telephone or internet, where possible) and*

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[36] See Point 37 and Paragraph 38(1), Standard Minimum Rules for the Treatment of Prisoners Adopted on August 30, 1955, http://www.ohchr.org/EN/ProfessionalInterest/Pages/TreatmentOfPrisoners.aspx.

[37] See Rule 24.1, Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules, https://rm.coe.int/16806f5b92.

[38] Hereinafter referred to as CPT.

[39] See Point 51, 2nd General Report on the CPT's activities covering the period 1 January to 31 December 1991, https://rm.coe.int/1680696a3f.

receive visits from relatives, friends, as well as religious, international and/ or non-governmental organizations, if they so desire."[40]

The RA law also stipulates provisions to ensure the contact of persons deprived of liberty with the outside world. Moreover, according to the legal acts regulating the sector, contacts with close family are of crucial importance in terms of preparing the convicts for their release. In particular, Article 76 (1.2) (9) of the RA Criminal Code states that *"When assessing the likelihood that the convict may commit another offense, their contacts with their family or the outside world is also taken into account."*

According to Article 12, RA Penitentiary Code, *"Convicts have the right to communicate with the outside world, including exchanging correspondence, receiving visits, using telephone or accessing media outlets as possible."*

According to Article 92(1), RA Penitentiary Code, *"The administration of detention institutions shall create adequate conditions to ensure convicts' contacts with their family and the outside world. For this purpose, rooms for short-term and long-term visits,* ***possible communication facilities*** *and possible conditions for media access shall be provided."* Furthermore, Article 70(2)(3) thereof states that *"The regulations set at the penitentiary institution shall aim to ensure contacts with family and the outside world."*

According to Article 13(1)(9), RA Law on Treatment of Arrestees and Detainees, *"An arrested or detained person shall have the right to communicate with the outside world."*

According to Article 17 thereof, *"The administration of the arrest and detention institutions shall create appropriate conditions to ensure the arrestees' and detainees' contacts with their family and the outside world. To this end, visit rooms shall be set up and access to* ***possible means of communication*** *and media outlets shall be provided."*

The foregoing come to show that the re-socialization of convicts and detainees is also based on their contacts with the outside world.

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[40] See Paragraph 48(vii), Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention (2012), http://www.refworld.org/docid/503489533b8.html.

Yet, the problem grows even more complicated when the convicts' or detainees' family are outside the Republic of Armenia and therefore unable to avail themselves of visits and using the pay telephone at the penitentiary instruction requires financial resources that the convicts or detainees often do not have. The analysis of the applications addressed to the Defender also reveals the complications caused by this issue. Such applications particularly concern the lack of any alternative means of communication and lack of money to use the pay telephone. In such cases, the convicts' or detainees' contacts with the outside world reach a minimum or stops.

Practically, such situations mostly face foreign convicts and detainees, including those granted refugee status or seeking asylum in Armenia. A way to solve this problem involves provision of alternative means of communication, e.g. video calls for persons at penitentiary institutions to contact their families and relatives. Conducting studies of relevant changes is prescribed in Clause 15 of the Annex № 1 to the RA Government Decree on Approving the Action Plan for 2017-2019 of the National Strategy for Human Rights Protection dated May 4, 2017. While provision of such steps is considered positive, there are some key points worth attention when stipulating legal regulations on video calls as a means to ensure contacts of the persons deprived of liberty with the outside world in some individual cases. Such points particularly cover equipping penitentiary institutions with relevant technical devices, providing for an opportunity to replace long-term or short-term visits as well as phone calls with video calls, fixing the minimum number of times a person might apply for such opportunities, securing confidentiality during video calls, etc.

The above analysis suggests that legislative regulations necessary to introduce video calls as a means of providing persons deprived of liberty with contact with the outside world should be developed and adopted as well as penitentiary institutions should be re-equipped respectively to ensure practical application of such regulations.

In differing cultural environment, asylum seekers and refugees often face problems related to the freedom of religion and belief.

A person's right to freedom of religion is enshrined by international human rights instruments. Particularly, Article 18 of the Universal Declaration of Human Rights states as follows: *"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and*

freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. "

Article 9(1), European Convention on Human Rights, stipulates, inter alia, a person's right to freedom of religion: *"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance."*

Article 4 of the Convention stipulates refugees' right to freedom of religion: *"The Contracting States shall accord to refugees within their territories treatment at least as favorable as that accorded to their nationals with respect to freedom to practice their religion and freedom as regards the religious education of their children"*.

The international legal safeguards are applicable to every person – whether in places of deprivation of liberty or not. Particularly, according to Part 3, Basic Principles for the Treatment of Prisoners Adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990, *"It is, however, desirable to respect the religious beliefs and cultural precepts of the group to which prisoners belong, whenever local conditions so require."*[41]

According to Paragraph (ix), Clause 48, providing the minimum rights of asylum seekers in detention, UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention (2012), *"The right to practice one's religion needs to be observed."*[42]

Furthermore, Rule 29.1, Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules states that *"Prisoners' freedom of thought, conscience and religion shall be respected."*[43]

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[41] See Paragraph 3, Basic Principles for the Treatment of Prisoners Adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990, http://www.ohchr.org/EN/ProfessionalInterest/Pages/BasicPrinciplesTreatmentOfPrisoners.aspx.

[42] See Paragraph 48(ix), UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention (2012), http://www.refworld.org/docid/503489533b8.html.

[43] See Rule 29.1, Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules, https://rm.coe.int/16806f5b92.

The right to freedom of religion is also guaranteed by Article 41, RA Constitution particularly stating that *"Everyone has the right to freedom of thought, conscience and religion."*

The right to freedom of religion of persons deprived of liberty is also enshrined in the Penitentiary Code of the Republic of Armenia; accordingly, Article 91(5) thereof states as follows: *"Correctional institutions may invite priests for the detainees. They may practice religious rituals, use objects of religious worship and religious literature. The administration of the correctional institution shall provide relevant space for such purpose."* Moreover, Clause 131 of the RA Government Decree № 1543-N of August 3, 2006 on Approving the Internal Regulation of Detention and Correctional Institutions of the Ministry of Justice of the Republic of Armenia provides that *"Detainees and convicts shall have a guaranteed right to freedom of thought, conscience and religion"* and Section XV thereof establishes the procedure for detainees and convicts to practice religious rituals.

Despite the said international and national legal requirements guaranteeing the exercise of the person's right to freedom of religion, in practice refugees and asylum seekers in detention face a number of shortcomings in exercising their right to freedom of religion.

Particularly, the analysis of the applications submitted to the Defender reveals that some cases were identified in practice when refugees and asylum seekers in penitentiary institutions were not provided with adequate conditions to exercise their right to freedom of religion as no confidentiality requirements were provided for some special rituals and they had thus no opportunity to private communication with a religious representative.

Another issue concerns availability of religious literature at penitentiary institutions. In this regard, Clause 133, RA Government Decree № 1543-N of August 3, 2006 states that *"Detainees or convicts shall be permitted to have, receive and obtain through parcels and* ***keep religious literature****, keep and use religious worship items, except for any objects in pruning or cutting form, items produced of precious metals or stones, or items of historical or cultural value."* Moreover, the visits to penitentiary institutions revealed that the literature available at some of them was limited. The individual interviews with the detainees showed that some penitentiary institutions had no available religious literature on the particular

denominations they practiced or religious literature in a language they could understand (Arabic, Farsi, etc.). Given such impossibility to ensure diversity of religious literature at penitentiary institutions, a person is at least deprived of any opportunity to practice their religion during their detention and at worst has to obtain such literature at their own expense. Of course, such situations also interfere with the proper exercise of the right to freedom of religion.

The next major issue concerns providing persons deprived of liberty with food suitable to their religions background. Paragraph 48(xi) of the UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention (2012) provides that ***Food*** *suitable to age, health, and cultural/**religious** background, is to be provided. Special diets for pregnant or breastfeeding women should be available."*[44] The analysis of the invoked international standards suggests that provision of adequate food is often considered a mandatory condition for the exercise of a person's right to freedom of religion.

The international instruments safeguarding the right to freedom of religion of persons deprived of liberty also cover special regulations on providing prisoners with special food suitable to their religious background. Particularly, according to Rule 22.1, Recommendation Rec (2006)2 of the Committee of Ministers to Member States on the European Prison Rules, *"Prisoners shall be provided with a nutritious diet that takes into account their age, health, physical condition, **religion**, culture and the nature of their work."*

The visits to penitentiary institutions and individual interviews with persons deprived of liberty revealed that the detainees using special food due to their religious background are not provided with special food different from the general one that might practically ensure the proper exercise of their right to freedom of religion. Besides, the relevant legal framework lacks any regulations stipulating provision of specific food suitable to the religious background of persons deprived of liberty.

[44] See Para 48(xi), UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention (2012), http://www.refworld.org/docid/503489533b8.html.

In order to properly secure the right to freedom of religion of asylum seekers and refugees at penitentiary institutions, the steps below should be taken:

Provide in practice adequate conditions for religious rituals. It is also essential to give refugees and asylum seekers in detention access to religious literature, as necessary.

Lay down legislative regulations providing persons deprived of liberty with special food suitable to their religious background. Also, such regulations shall enshrine provision of special food to persons in detention in need of such food.

Ensuring the right to health of everybody - whether in detention or not- shall be mandatory. This right was laid down in both international instruments, and RA laws.

Hence, according to Article 25, UN Universal Declaration of Human Rights, *"Everyone has the right to a standard of living* ***adequate for the health*** *and well-being* ***of himself and of his family****, including food, clothing, housing and* ***medical care*** *and necessary social services, and the right to security in the event of unemployment,* ***sickness, disability****, widowhood, old age or other lack of livelihood in circumstances beyond his control."*

In its position on this matter, the European Court held that *Situations in which the responsibility of the State would normally not be engaged may result in positive obligations when a person is deprived of his or her liberty and hence comes within the direct control of State authorities.*[45]

It follows from the above that the state's responsibility to ensure the proper exercise of the right to health of persons deprived of liberty is the most highlighted in the sense that due to their status, they are dependent on the authorities. Moreover, any action or inaction of the state will most likely have a major impact on the physical well-being of persons deprived of liberty. Hence, the obligation of the state to secure the right to health of persons deprived of liberty is obviously at a higher level due to their status.

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[45] See Thematic Report on Health-related issues in the case-law of the European Court of Human Rights, June 2015, p. 17, http://www.echr.coe.int/Documents/Research_report_health.pdf.

With reference to the right to health of persons deprived of liberty, the Court emphasized the right of all prisoners to have their *"health and well-being adequately secured by, among other things, provision of the requisite medical assistance."*[46]

Rule 22.1, Recommendation Rec (2006)2 of the Committee of Ministers to Member States on the European Prison Rules, states that *"Prisoners shall be provided with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the nature of their work."* According to Rule 40.3 thereof, *"Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation."* Furthermore, Rule 46.1 states that: *"Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals, when such treatment is not available in prison."*[47]

A similar requirement is also set forth in Para 22(2), UN Standard Minimum Rules for the Treatment of Prisoners Adopted on August 30, 1955; accordingly, *"Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals."*[48]

According to Paragraph (vi), Clause 48, providing the minimum rights of asylum seekers in detention, UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention (2012), *"Appropriate medical treatment must be provided to asylum-seekers where needed (...)."*

Provisions on the right to health of the population, including persons deprived of liberty, are also enshrined in the RA national legislation. Particularly, Article 85(1) of the RA Constitution states that *"Everyone shall, in accordance with law, have the right to health care."*

Article 12(1), Penitentiary Code of the Republic of Armenia defines the fundamental rights of convicts and paragraph Part 4 thereof establishes *the right to health, including adequate food and medical assistance.*

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[46] See § 104, European Court's judgment on *Ashot Harutyunyan v. Armenia*, (Application no. 34334/04) of June 15, 2010, http://hudoc.echr.coe.int/eng?i=001-99403.

[47] See Rules 22.1, 40.3 and 46.1, Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules, https://rm.coe.int/16806f5b92.

[48] See Para 22(2), UN Standard Minimum Rules for the Treatment of Prisoners Adopted on August 30, 1955 , http://www.arlis.am/DocumentView.aspx?docid=18499.

According to Article 13(1)(4), RA Law on Treatment of Arrestees and Detainees, *"Arrestees and detainees shall have a right to health, including to receive sufficient food and urgent medical aid as well as be examined by a doctor of their choice at their own expense."*

Article 12 of the RA Law on Medical Care and Services for the Population enshrines the right of persons deprived of liberty to medical care and services: *"Persons in custody, detention and imprisonment shall have the right to receive medical care and service as prescribed by the legislation of the Republic of Armenia."*

Despite the relevant legislative solutions are in place, actually, failures to properly secure the right to health of persons deprived of liberty still persist.

In its Report on Armenia of 2016, the CPT also referred to the interference with the right to health at the penitentiary institutions in RA. Particularly, the Report refers *both to the medical understaffing at penitentiary institutions and issues within provision of medical care to persons deprived of liberty.* [49]

The Defender also referred to these gaps in the sector in question in his Ad Hoc Report on Securing the Right to Health of Persons in Penitentiary Institutions. The Report particularly reads that *"As evidenced by the findings of the monitoring carried out by the Human Rights Defender's Office and examination of the complaints of persons deprived of liberty, the inadequate medical care and service in the penitentiary institutions are conditioned by a number of factors that all together predetermine the level of health protection of persons deprived of their liberty. The key conditions for ensuring medical care and service cover as follows: independence and appropriate qualifications of the medical personnel, adequate staffing, adequate technical equipment, adequate room conditions as well as sufficient medicines of proper quality and ensuring state-guaranteed free medical care and service."*[50]

The Defender's Ad Hoc Public Report on Securing the Right to Health of Persons in Penitentiary Institutions addressed this issue as well.

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[49] See Chapter 5, CPT Report on Armenia (2016), https://rm.coe.int/16806bf46f.

[50] See RA Human Right Defender's Ad Hoc Report on Securing the Right to Health of Persons in Penitentiary Institutions, http://pashtpan.am/resources/ombudsman/uploads/files/publications/b8beba20cc5240c574dd202b118ce109.pdf.

The other issue raised in individual interviews related to interference with the confidentiality of health data concerning the persons deprived of libertydue to the lack of interpretation/translation services in penitentiary institutions. Particularly, to understand what is written in their medical records, persons deprived of liberty have to turn to the administration of the penitentiary institution or their cellmates. With reference to the significance of the medical secrecy, the European Court held in its judgment on *Z. v. Finland* of February 25, 1997 that *respecting the confidentiality of health data is a vital principle in the legal systems of all the Contracting Parties to the Convention. It is crucial not only to respect the sense of privacy of a patient but also to preserve his or her confidence in the medical profession and in the health services in general.*

Therefore, refugees and asylum seekers deprived of liberty should be provided with necessary medicines in a timely and adequate manner. It is necessary to create conditions in practice to exclude any violations of the health data confidentiality principle.

IV.Securing Asylum Seekers' Rights within Decisions of the State Migration Service

Requests for asylum in Armenia are examined by the State Migration Service. Upon examining such requests, it decides either to grant refugee status or to deny asylum. Such decisions also cover an analytical section with their underlying grounds and meet the standards set out by applicable international and national legal regulations on securing the rights of refugees and asylum seekers. According to Article 34(1)(2) of the Law, *"The authorized migration agency* (the State Migration Service) *shall carry out the asylum procedures as set out herein and have* ***exclusive competence*** *to make relevant decisions thereon*."

Article 45(1) of the Law stipulates that *"any administrative procedure carried out by the State Migration Service on provision of refugee status and asylum shall be deemed asylum procedure."* Also, if the person seeking asylum has already been declared refugee by any other State Party to the Convention, the State Migration Service decides on only granting or not granting asylum to the refugee.

While preparing the Report, all the decisions made by the State Migration Service on denying asylum and several decisions on granting refugee status and asylum within 2014 – September 2017 were analysed to track their compliance with Armenia's international commitments and national legislation. During the period in question, 757 persons sought asylum in Armenia and 431 persons were granted refugee status.[51]

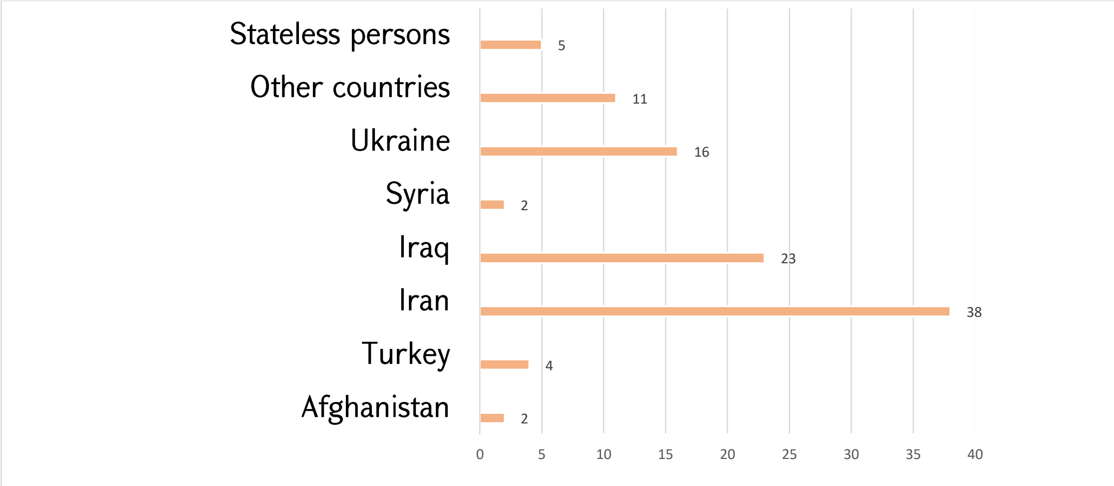
The analysis of the State Migration Service decisions on granting refugee status and asylum suggests that such decisions take into account the information from well-known and reliable sources on the situation at stake at the asylum seeker's country of origin. Also, these decisions assess the reliability of the information gathered through the interviews with the asylum seekers and refer to application of the principle of non-refoulement. The decisions also contain references to the facts, as well as international and local applicable legal regulations.

The timeframe of asylum procedures has been also analised at the Office of the Human Rights Defender. For example, asylum requests filed by nationals of the

[51] See the official webpage of the State Migration Service, http://www.smsmta.am/?menu_id=151.

Syrian Arab Republic were examined within the shortest time possible. The fact that such requests were obviously well-grounded, given the internal conflicts in Syria, served as a basis for declaring such persons as refugees under Article 6(2) of the Law. It is noteworthy that all the persons who filed asylum requests were granted refugee status.

In the period in question, the State Migration Service denied asylum to 103 persons. Such decisions were examined and the table below shows statistical data on such decisions, by countries of origin of asylum seekers.



61 decisions of the State Migration Service on denying asylum in Armenia were appealed before the RA Administrative Court and 8 of such appeals were granted fully or partially.[52]

The study of the State Migration Service decisions on denying asylum in Armenia revealed a number of crucial issues in terms of securing the rights of asylum seekers.

Particularly, special attention was paid to the validity of the grounds supporting such decisions. According to Article 52(3) of the Law, *"When deciding on asylum requests, the State Migration Service shall also rely on the available information about the asylum seeker's country of origin that must be accurate, up-to-date and obtained from a variety of reliable sources (...)."*

[52]See the official webpage of the State Migration Service, http://www.smsmta.am/?menu_id=141.

With reference to reliability of the country of origin information, the European Court held in its judgment on *Sufi and Elmi v. the United Kingdom* of June 28, 2011 that *in assessing the weight to be attributed to country material, consideration must be given to its source, in particular its independence, reliability and objectivity.* In respect of reports, *the authority and reputation of the author, the seriousness of the investigations by means of which they were compiled, the consistency of their conclusions and their corroboration by other sources are all relevant considerations.*[53]

With reference to gathering information and its comprehensive analysis while considering asylum requests, the European Court especially highlighted the cases when there is a substantial risk that if denied asylum and expelled, the asylum seeker in question will be subjected to torture, ill-treatment, or inhuman or degrading treatment or punishment. Particularly, in his judgment on *Abdolkhani and Karimnia v. Turkey* of September 22, 2009 the Court held that *the notion of an effective remedy under Article 13 requires independent and rigorous scrutiny of a claim that there exist substantial grounds for believing that there was a real risk of treatment contrary to Article 3 in the event of the applicant's expulsion to the country of destination.* [54]

Furthermore, in its judgment on *M.A. v. Switzerland* of November 18, 2014, the European Court stated that *the States have the right, as a matter of international law and subject to their treaty obligations, to control the entry, residence and expulsion of aliens (see also R.C. v. Sweden, no. 41827/07, § 48, 9 March 2010).* ***However, expulsion by a State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if deported, faces an individual and real risk of being subjected to treatment contrary to Article 3.*** [55]

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[53]See § 230, European Court's judgment on *Sufi and Elmi v. the United Kingdom* (Applications nos. 8319/07 and 11449/07) of June 28, 2011, http://hudoc.echr.coe.int/eng?i=001-105434.

[54]See § 108, European Court's judgment on *Abdolkhani and Karimnia v. Turkey* (Applications no. 30471/08), September 22, 2009, http://hudoc.echr.coe.int/eng?i=001-94127.

[55] See §52, European Court's judgment on *M.A. v. Switzerland* (Applications no. 52589/13), November 18, 2014, http://hudoc.echr.coe.int/eng?i=001-148078.

The European Court's logic behind the subject matter suggests that the state should consider asylum requests by a thorough analysis of the reliable and relevant information obtained. Moreover, in cases where there is a substantial risk of violation of Article 3 of the Convention, the competent authority shall take the most effective remedies to eliminate it.

According to Guideline No. 5, Para 35, Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, UNHCR, December, 2011, *"(...) Detailed country of origin information is required to determine whether a fear of persecution is objectively well-founded."*[56]

With regard to collecting country of origin information, Paragraph 1, UNHCR Country of Origin Information: Towards Enhanced International Cooperation adopted in February, 2004 states that: *the paper focuses on policy concerning the provision of country of origin information and attempts to explore the possibilities in this regard for enhanced co-operation among States, and between UNHCR and States, through a more systematic exchange of information based on common standards*. According to Paragraph 9 of this Paper, *"The information needed to assess a claim for asylum is both general and case-specific. Decision-makers must assess an applicant's claim and his/her credibility and place his/her "story" in its appropriate factual context, that is, the known situation in the country of origin."* Furthermore, the Chapter on legal safeguards, standards and limitations define within its Paragraphs 22-50 the ***principle of the benefit of the doubt, selection and evaluation of sources, accessibility of information and its sources, information sources in the country of origin, protection of personal data, credibility and authoritativeness of the information provider***[57] in collecting and using the country of origin information and making decisions on granting refugee status based thereon.

According to Clause 39, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and

[56]See Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, UNHCR, December 2011 Guideline No. 5, Paragraph 35, http://www.unhcr.org/3d58e13b4.pdf.

[57]See Para 1, 9 and 22-50, UNHCR Country of Origin Information: Towards Enhanced International Cooperation, February, 2004, http://www.refworld.org/pdfid/403b2522a.pdf.

withdrawing international protection (recast), *"In determining whether a situation of uncertainty prevails in the country of origin of an applicant, Member States should ensure that they obtain precise and up-to-date information from relevant sources such as EASO, UNHCR, the Council of Europe and other relevant international organizations."*[58]

The European Asylum Support Office also highlights the quality and accuracy of the country of origin information. As a decisive criterion in gathering country of origin information, it states that *targeted, relevant, reliable, accurate and up-to-date information should be gathered in a transparent and impartial manner.*[59] Furthermore, EASO also developed a country of origin information gathering and report methodology; its key directions cover gathering further information on the country of origin, verification and evaluation of the sources of research, etc.[60]

Also, a number of manuals have been published on this matter. Particularly, the Researching Country of Origin Information Training Manual by the Austrian Red Cross and Austrian Center for Country of Origin & Asylum Research and Documentation provide the quality standards for country of origin information and the international principles of researching and using it. Particularly, to be considered quality information, country of origin information should be *relevant, reliable, balanced, accurate, current, transparent and traceable.*[61]

According to the 2nd paragraph of Recommendations, Chapter on The Use of Country of Origin Information in Reasons for Refusal Letters, The Use of Country of Origin Information in Refugee Status Determination: Critical Perspectives (May 2009), *"Country of origin information should be used where necessary to address contextual issues as well as for the assessment of case specific questions in relation to the credibility of a claimant's account as well as the assessment of future risk,*

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[58]See Para 39, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013, http://eurlex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:32013L0032&from=EN.

[59]See the official website of the European Asylum Support Office, https://www.easo.europa.eu/country-origin-information.

[60]See EASO Country of Origin Information report methodology, https://coi.easo.europa.eu/administration/easo/PLib/EASO_COI_Report_Methodology.pdf.

[61]See Researching Country of Origin Information Training Manual, Austrian Red Cross and Austrian Center for Country of Origin & Asylum Research and Documentation, 2013, p. 30, https://www.coi-training.net/handbook/Researching-Country-of-Origin-Information-2013-edition-ACCORD-COI-Training-manual.pdf.

should the claimant be returned to his/her country of origin." Furthermore, 8th paragraph provides that *"Good practice guidelines in the use of COI should be developed and incorporated into the Asylum Policy Instructions as well as the standard training and accreditation process (...)."*[62]

However, the study of the State Migration Service decision on denying asylum suggests as follows: to ensure better grounds for such decisions, the methods of gathering asylum seekers' country of origin information should be improved and the sources of their country of origin information should be extended. Practically, information used in most such decisions is often not up-to-date (at least 3 months old). As evidenced by the study of international practices, the country of origin information should be fresh and its sources should be broad enough to ensure validity of asylum decisions.

To properly meet the said requirements, first of all, a sustainable and clear mechanism for gathering information should be developed also to secure asylum seekers' rights therein. In this regard, the principle of confidentiality of asylum seeker's information is also worth particular attention since some mechanisms for gathering information that may be applied in practice may lead to imparting information to a third country. It is important to ensure gathering and proper translation of country of origin information in various languages. This will make it possible to study more reliable information about the country of origin, including in the language of that particular country.

Based on the above, the international standards on practices and methodology of gathering asylum seekers' country of origin information should be studied to ensure their practical application through providing trainings for competent personnel, as well as gathering and translation of information in the language of country of origin of asylum seeker.

To ensure well-grounded decisions, it is also essential to comply with the requirements set forth in the judicial practice. The analysis of the State Migration Service decisions on denying asylum suggests that they mostly fail to reflect the

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[62]See 2nd and 8th paragraphs, Recommendations, Chapter on The Use of Country of Origin Information in Reasons for Refusal Letters, The Use of Country of Origin Information in Refugee Status Determination: Critical Perspectives, May 2009, http://www.refworld.org/pdfid/4a3f2ac32.pdf.

positions of both the European Court, and the Armenian courts, whereas application of the judicial practice and the case-law practice arising from it would reduce both the incidences of improperly securing the rights of asylum seekers and the number of the State Migration Service decisions contradicting the court positions, and ensure a uniform approach. This will in its turn promote predictability of the State Migration Service practices.

Below are relevant positions presented in the European Court's judgments on validity of authorized agency's decisions on denying asylum as well as the positions of the domestic courts both on the validity of administrative acts and particular decisions of the State Migration Service.

Particularly, in its judgment on *M.S.S. v. Belgium and Greece* of January 21, 2011, the Court held that *the competent authority examining asylum applications shall be independent and ensure close and rigorous scrutiny of such applications.*[63]

In its judgment on another case, namely *Chahal v. United Kingdom* of November 15, 1996, the European Court held that *the competent authority must examine the merits of the case*.[64]

Based on the fact that the State Migration Service decisions on denying asylum are considered administrative acts, validity of such decisions should be considered based on the RA Cassation Court's position. Particularly, in its Ruling on case № VD/6781/05/12 of April 4, 2015, the Court stated as follows: *"The Cassation Court holds that defining the administrative authority's duty to provide grounds for its administrative act aims to ensure in practice efficient protection of the legal rights and freedoms of the administrative procedure participants."* Furthermore, the Court also held that ***"(...) the requirement on the part of the legislator to provide relevant grounds in the administrative act is not an end in itself but rather makes it possible for the relevant parties arguing on the administrative act to exercise in practice their fundamental right to effective legal remedy and right of access to court by filing an administrative appeal or a claim.*** *Also, well-*

[63]See § 387, European Court's judgment on *M.S.S. v. Belgium and Greece* (Application no. 30696/09), January 21, 2011, http://hudoc.echr.coe.int/eng?i=001-103050.

[64]See Para 8. Asylum procedure and effective remedies, European Court of Human Rights, http://www.echr.coe.int/Documents/COURTalks_Asyl_Talk_ENG.PDF.

See also European Court's judgment on *Chahal v. United Kingdom*, November 15, 1996 (application no. 22414/93), http://hudoc.echr.coe.int/eng?i=001-103050.

grounded administrative acts of the administrative authority practically provide another administrative authority or court examining administrative appeals with a real opportunity to find out the factual and legal grounds underlying the administrative authority's decision."[65]

With reference to the domestic judicial acts on the validity of the RA State Migration Service decisions on denying asylum, it is noteworthy to mention a key principle for examination of asylum requests set forth by the RA Court of Administrative Appeals and also defined in Article 7(1) of the RA Law on Fundamentals of Administration and Administrative Proceedings. Particularly, *"The administrative authority also ignored and grossly violated the provisions of Article 7, RA Law on Fundamentals of Administration and Administrative Proceedings stating as follows: "**1. Administrative authorities shall be prohibited from showing an unequal approach to similar factual circumstances, unless there are any grounds for such differentiation. Administrative authorities shall be under obligation to take individual approaches to substantially different factual circumstances."***[66]

According to the RA Administrative Court's position as stated in its Ruling on case № VD/6630/05/11, ***"As an activity with an external impact on the part of the administrative authorities and resulting in legal and factual consequences for natural and legal persons, administration is directly linked with the process of disclosing objective truth. And it is only through comprehensive and thorough administration that establishment and disclosure of facts can meet the requirements of the principle of supremacy of human rights and freedoms making an integral part of the states governed by the rule of law***.

It follows from the above that upon getting an asylum request, the State Migration Service of the RA Ministry of Territorial Administration should:

- collect all the information provided by the asylum seeker or any other party concerned;

- interview the asylum seeker and verify the provided data;

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[65]See RA Cassation Court's Ruling on case №VD/6781/05/12 of April 4, 2015, http://www.arlis.am/DocumentView.aspx?DocID=97974.

[66]See the RA Court of Administrative Appeals ruling on case № VD/5155/05/12 of September 5, 2013, http://datalex.am/?app=AppCaseSearch&case_id=38562071809615938.

- find out whether the applicant, who is a foreign national, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his/her nationality and is unable or, owing to such fear, is unwilling to avail himself/herself of the protection of that country, or is forced to leave his/her country of nationality due to widespread violence, external attack, domestic conflicts, massive human rights violations or any other serious violations of the public order;

- find out whether there are any circumstances hindering the applicant's return.

Furthermore, taking into account the requirements for comprehensive, thorough and impartial administration, presumption of credibility and the administrative authorities' duty of mutual assistance, the State Migration Service of the RA Ministry of Territorial Administration shall take any possible steps to disclose to the maximum the aforementioned circumstances. The administrative authority may not confine itself merely to the evidence provided by the parties to the proceedings but rather shall be under obligation to take measures to ensure finding out all the facts related to the subject matter of the proceedings, including all the facts in favor of the parties thereto. Moreover, any suspicion or non-established fact about the subject matter shall be interpreted in favor of the applicant. ***Only by meeting such requirements, the State Migration Service of the RA Ministry of Territorial Administration can make well-grounded and reasoned decisions.****"*[67]

Also, in its judgment on case № VD/6630/05/11, the RA Administrative Court held that *"(...) the administrative authority shall be under obligation to comply with the law and in pursuance of this requirement it must ensure a comprehensive, thorough and impartial examination of the factual circumstances of the case through establishing all the facts of the case, including the facts in favor of the participant to the proceedings and this regulation is completely applicable to refugee and asylum proceedings as well."*[68]

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[67]See the RA Administrative Court's judgment on case № VD/6630/05/11 of December 17, 2012, http://datalex.am/?app=AppCaseSearch&case_id=38562071809546737.

[68]See the RA Administrative Court's judgment on case № VD/1597/05/15 of January 22, 2016, http://datalex.am/?app=AppCaseSearch&case_id=38562071809881974.

Hence, it follows that applying the positions of the European Court and domestic courts will practically promote further improved protection of asylum seekers' rights as well as enhanced validity and quality of relevant decisions of the State Migration Service. This will also ensure the compliance of the decisions by the State Migration Service with the positions and feedback of the above entities.

However, it should be emphasized that in order to enforce the above provision in practice, competent staff members of the State Migration Service should be provided with trainings on relevant matters. The need for trainings for competent migration officials is also referred to in the UNHCR Refugee Protection and Mixed Migration: A 10-Point Plan of Action, revision 1, January 2007; accordingly, the second paragraph of Clause 3 states as follows: *"Practical protection safeguards are required to ensure that measures are not applied in an indiscriminate or disproportionate manner and that they do not lead to **refoulement**. In this respect, border guards and **immigration officials** would benefit from training (...)."*[69]

Furthermore, the Recommendation No. R (98) 15 of the Committee of Ministers to member states on the training of officials who first come into contact with asylum seekers of December 15, 1998, and particularly its Paragraph 2 states that: *"For those officials whose responsibility is to receive and **also to process asylum applications, and also whose responsibility might be to take a decision**, (...), their training should lead to the acquisition of:*

2.1. detailed and thorough knowledge of all the provisions and skills listed under 1.1 to 1.6;[70]

2.2. interviewing techniques, including skills of interpersonal and intercultural communication;

2.3. knowledge concerning the human rights situation in the countries of origin of asylum seekers and in other relevant third countries;

2.4. skills in establishing the identity of asylum seekers;

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[69]See the 2nd paragraph of Point 3 , UNHCR Refugee Protection and Mixed Migration: A 10-Point Plan of Action, revision, 1, January 2007, http://www.unhcr.org/4742a30b4.pdf.

[70]See "Reception Centers Located at the Republic of Armenia State Border Crossing Points" Section of "Securing Refugees' and Asylum Seekers' Rights at Special Institutions" Chapter of the Report.

2.5. knowledge of the application of the «safe third country» concept by some member states."[71]

Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) and particularly its Article 6(1)(3) states that: "*Member States shall ensure that those other authorities which are likely to receive applications for international protection such as the police, border guards, **immigration authorities** and personnel of detention facilities **have the relevant information and that their personnel receive the necessary level of training which is appropriate to their tasks and responsibilities** and instructions to inform applicants as to where and how applications for international protection may be lodged."*[72]

Hence, it follows from the above that one way to ensure that the State Migration Service takes account in its decisions of the positions as well as regulations and recommendations of the competent international and national entities and that these decisions comply with such standards, is to provide its competent officers with relevant training. This will make it possible to ensure compliance of such decisions with the international standards through practical application of the gained knowledge. Moreover, this may also ensure that the State Migration Service take a similar approach to applications with similar factual circumstances.

Hence, it is essential to study the European Court of Human Rights judgments as well as RA Cassation Court's decisions and the acts of the other courts in RA on asylum issues, as well as relevant positions and recommendations of the international entities. The competent officers of the State Migration Service should be provided with trainings on the peculiarities in application of the judicial practice requirements and positions set forth in the international instruments. Such trainings can mostly cover the positions

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[71]See Paragraph 2, Recommendation No. R(98) 15 of the Committee of Ministers to member states on the training of officials who first come into contact with asylum seekers, in particular at border points (adopted by the Committee of Ministers on 15 December 1998), http://www.refworld.org/pdfid/3ae6b39d10.pdf.

[72]See Article 6(1)(3), Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), http://www.refworld.org/docid/51d29b224.html.

held by the European Court of Human Rights in its judgments as well as the Court's logic on specific matters.

The study of the State Migration Service decisions on denying asylum also revealed issues related to the legislative requirements for the appeal procedure. Particularly, according to Article 57(1) of the Law, *"Asylum seekers and refugees shall have the right to appeal to a court of law any negative decision made by the authorized agency following an asylum request or an asylum procedure for granting a refugee status as well as other administrative procedures set forth by the Law,* ***within 30 days upon being notified of such decision****."*

At the same time, Article 72, RA Code of Administrative Procedure sets appeal deadlines. Part 1(1) thereof states that *"Contesting claims may be filed with a court of law* ***within 2 months after the administrative act takes effect****." According to Part 1(2), "Enforcement claims may be filed with a court of law* ***within 2 months upon being notified of denial to accept the administrative act.***

The above legal regulations clearly contradict each other. While the Law sets an appeal deadline of **30 days,** the Code of Administrative Procedure sets a **2-month** deadline. Moreover, pursuant to Article 9(6), RA Law on Legal Acts, *"All other laws of the Republic of Armenia within the legal relations regulated by the Code must comply with the codes."* By virtue of this provision, the 2-month appeal deadline as set forth in the Code must apply. Yet, in practice the State Migration Service decisions on denying asylum indicate that such decision takes effect on the day following the date of notifying the applicant and may be appealed to the RA Administrative Court within 30 days after such notification.

In considering the appeal deadlines for decisions denying asylum deemed as administrative acts, reference should be made also to the European Court's judgment on *I. M. v. France* of February 2, 2012. Particularly, the Court took a position that *the speedy processing of asylum claims should not hinder the procedural guarantees aimed at excluding any arbitrary decisions on deportation of asylum seekers. An unreasonably short appeal deadline may impact the effective application of this remedy.* [73]

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[73]See Point 8, Asylum procedure and effective remedies, European Court of Human Rights, http://www.echr.coe.int/Documents/COURTalks_Asyl_Talk_ENG.PDF.

Hence, in order to remove the contradiction between the Law and the RA Code of Administrative Procedure, the Law should be amended so that the appeal deadline for the State Migration Service decisions on denying asylum in RA complies with the deadline for bringing a claim before the court of law as set forth by the RA Code of Administrative Procedure. This will also remedy the current shortcomings in the law enforcement practice.

See also European Court's judgment on *I. M. v. France*, (application no. 9152/09) of February 2, 2012, http://hudoc.echr.coe.int/eng?i=001-108934.