

FINAL REPORT

On the Findings of the

“Analysis of Issues related to the Free Movement
of Persons and Goods through Border-Crossing
Points between the Republic of Armenia and the
Republic of Georgia” Project

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*“For the Protection of the
Rights of Taxpayers and Businessmen”*

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The opinions, comments, and conclusions presented in the Report may not coincide
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Preface; Brief Overview of the Project

What is the state border of the Republic of Armenia? What is the relationship at the state border between Armenia and Georgia? What is the importance of the right to cross the border and the right to freedom of movement? These and numerous other related questions arise when attempting to understand the peculiarities of protecting and managing the Armenia-Georgia border. In about 20 years that have passed since the collapse of the Soviet Union, social, economic, political, and legal changes take place every day: some of them lead to liberal democracy, while others impose additional restrictions on human rights. *The world no longer tolerates closed borders and isolated economies; disproportionate restrictions on the cross-border movement of persons and goods between neighboring states are inopportune.*

The centuries-old neighborhood of Armenia and Georgia has relied on a friendly relationship that continues till now. The Constitution of the Republic of Armenia stipulates that the foreign policy of Armenia shall be carried out with a view to establishing friendly-neighborly and mutually beneficial relations with all states.¹

In pursuit of building a relationship with Georgia on the basis of the aforementioned principles and of respect for the principle of territorial integrity of each of the two states, it has become necessary to clarify the state border between the two countries. In the meantime, each state has introduced legal regulations, in line with its domestic national and economic security concerns, on procedures of border crossing, movement of persons, and transportation of goods, which at times pose problems to the exercise of personal rights.

A key function of the state bodies managing the border is to ensure proper oversight of the movement of persons and goods across the state border² and the border-crossing and protection procedures. The movement of persons and goods across the state border must respect the procedure stipulated by the legislation.

The Armenian side's terms and procedure of cross-border movement of persons and goods through the Armenia-Georgia border are stipulated by the legislation of the Republic of Armenia, which provides that the exercise of the right to freedom of movement based on certain procedures is a vital and urgent consideration underlying the integrity of procedures on crossing the Armenia-Georgia border, movement of goods across the border, and securing state and economic security.

Global and regional economic and political developments have not spared Armenia the change, and it has become necessary to put in place dynamic systems for managing the state border and conducting external economic policies, in which the rights of the person will prevail.

Nowadays, any national economy strives to become more open, competitive, and free market-oriented. Hence, for a national economy to integrate regionally,

¹ Article 9 of the Constitution of the Republic of Armenia.

² Although Article 2(a) of the Customs Code of the Republic of Armenia defines "goods" as all types of objects and items moved across the customs border of the Republic of Armenia, including currency, currency values, electrical energy, heat energy, other types of energy, vehicles (with the exception of those prescribed in Article 2(b), which stipulates the definition of a "vehicle"), the term "goods" as used in this Report also includes vehicles, because segregation of goods and vehicles in the context of the right to freedom of movement would have no practical significance. Article 2 of the Customs Code also defines "movement of goods across the customs border of the Republic of Armenia" as the carrying of goods and vehicles into or out of the customs territory of the Republic of Armenia, including mail deliveries and transportation in pipelines and electricity transmission lines.

greater attention should be paid to issues related to the free movement of persons and goods, which are increasingly more important in modern economic conditions.

The economic prosperity and security of Armenia depend on border control, supervision of the movement of persons and goods through border-crossing points, passport checks, customs control, and phytosanitary and other types of checks performed at such times.

The aforementioned considerations have justified the project underlying this Report and its objectives.

BRIEF OVERVIEW OF THE PROJECT

To fulfill the objectives set forth in its By-Laws, the non-governmental organization “For the Protection of the Rights of Taxpayers and Businessmen” has engaged in complex projects aimed at protecting the rights and lawful interests of persons and analyzing the causes of violations of such rights and related other issues, including the *“Analysis of Issues related to the Free Movement of Persons and Goods through Border-Crossing Points between the Republic of Armenia and the Republic of Georgia” Project*.

Taking into account the issues raised by different stakeholders in the course of activities of the Organization in relation to the exercise of the right to freedom of movement and, in this context, the large and increasing volume of traffic of persons, goods, and vehicles across the Armenia-Georgia border, a wide range of issues identified need to be addressed in order to greatly facilitate the exercise of the right to freedom of movement.

A simple fact is sufficient to illustrate the growing volume of traffic of persons and goods between Armenia and Georgia: during 2008 and 2009, a total of 607 flights took off and landed between Armenia and Georgia, meaning that carriers have increased the frequency of flights between Armenia and Georgia, resulting in a dynamic increase in the traffic of persons and goods through the air border-crossing point.³ The numbers of rail and automobile transport crossing the Armenia-Georgia border have grown, too: in 2008 and 2009, the border was crossed by a total of 810 passenger trains, 4,594 cargo trains, and 273,478 vehicles.⁴

The flow of natural gas in the “Karmir Kamurj-Sevkar-Berd” pipeline also “crosses” the Armenia-Georgia border. There are Armenia-Georgia interconnection electricity transmission lines,⁵ and work is currently underway to build a new electrical line. The Armenia-Georgia border is also “crossed” by the fiberoptic cables supplying international telephony and Internet to Armenia.⁶ Bearing in mind that the pipelines and electricity cables do not physically cross the border at the border-crossing points, it was decided to omit them from the scope of this analysis.

Thus, the present analysis is aimed at dwelling upon the numerous issues that arise in the context of the significant flows of persons and goods⁷ moving across the Armenia-Georgia border.⁸

³ For details, see Figure 1 of this Report.

⁴ Figure 2 and Table 2 of this Report. For passenger transportation between Armenia and Georgia alone, there are about 24 regular routes for automobile transportation of passengers, which are currently operated by over a dozen companies.

⁵ Table 1 of this Report.

⁶ The information was obtained from the Public Services Regulatory Commission of the Republic of Armenia in letter SA1318H dated 30 June 2010.

⁷ Table 3 of this Report for detailed information on volumes.

These flows of persons and goods justify the heightened interest in border security matters and the improvement and development of customs procedures.

Table 1

Interconnection Electricity Transmission Lines between Armenia and Georgia		
	Voltage (kV)	Capacity (mW)
1. "Alaverdi" (Alaverdi-Tbilisi Thermal Power Plant)	220	245
2. "Lalvar"(Alaverdi 2-Sadakhlo)	110	80
3. "Ninotsminda" (Ashotzk-Ninotsminda)	110	80

Table 2

Vehicles Crossing the Armenia-Georgia Border and Customs Declarations Filed		
	2008	2009
Vehicles	124,060	149,418
Customs declarations	113,538	145,970

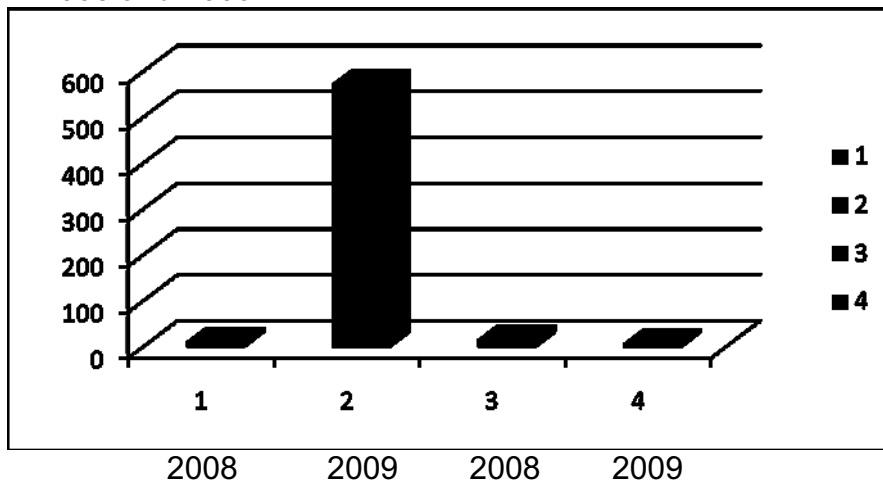
Table 3

State Budget Revenue Collected for Goods Moving across the Armenia-Georgia Border and Total Trade Turnover (in Armenian drams)		
	2008	2009
Amount paid to the state budget	199,154.7 million	180,247.8 million
Total trade turnover	1,396.5 billion	1,422.2 billion
Trade turnover with Georgia	267.4 billion	356.3 billion

⁸ NB: the information reflected in Figures 1 and 2 and Tables 1-3 of this Report are based on official data provided by public administration bodies and competent organizations of the Republic of Armenia, namely, letter 01/21.1/1615-10 of the Minister of Energy and Natural Resources, letter 16902/7-1 of the State Revenue Committee, letter 066 of the General Department for Aviation, and letter H-754 of the Chief Executive Officer of the "South Caucasus Railway" CJSC received during the performance of this analysis in 2010.

Figure 1

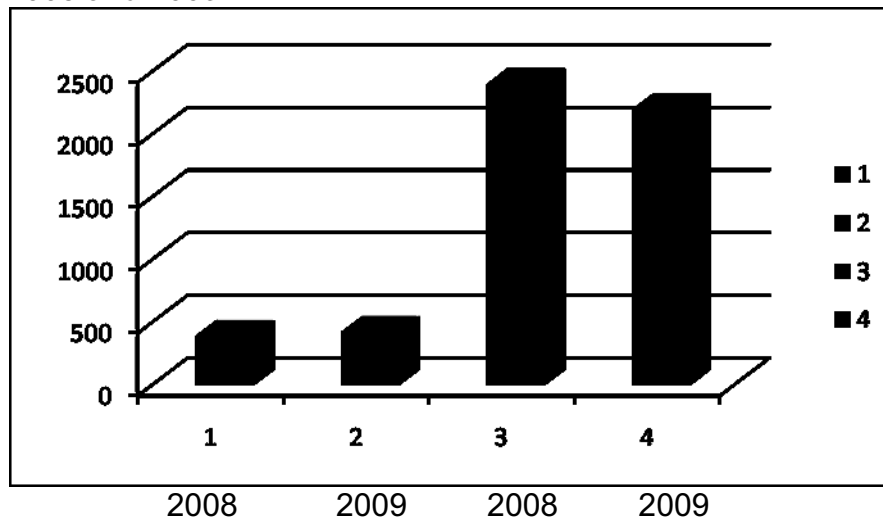
Number of Armenian and Georgian Air Carrier Flights between Armenia and Georgia in 2008 and 2009



1. Armenian carriers (a total of 11)
2. Armenian carriers (a total of 573)
3. Georgian carriers (a total of 16)
4. Georgian carriers (a total of 7)

Figure 2

Number of Passenger and Cargo Trains Crossing the Armenia-Georgia Border in 2008 and 2009



1. Passenger trains (a total of 390)
2. Passenger trains (a total of 420)
3. Cargo trains (a total of 2,398)
4. Cargo trains (a total of 2,196)

The Project aimed at identifying the issues affecting the free movement of persons and goods through the border-crossing points between Armenia and Georgia, analyzing the situation based on the review of the issues, revealing the causes of the issues, and recommending solutions. As the analysis of issues in this sector required a complex approach, the study engaged a wide range of stakeholders, including experts, public figures, government servants, businesses representing the tourism, freight forwarding, import, and other sectors, Armenian and foreign citizens crossing the Armenia-Georgia border, and other persons invited to various meetings and round tables conducted on the topics of interest to the project. Settlements close to the Armenia-Georgia border and the border-crossing points, including the Zvartnots Airport, were visited in order to study the specific problems affecting the free movement of persons and goods across the border and their causes at the sites. The findings of opinion polls and the monitoring conducted at the border-crossing points shed more light on the existing problems. *The findings of these efforts were consolidated to produce this final report, which encompasses the analysis of the most urgent issues related to the free movement of persons and goods through border-crossing points between the Republic of Armenia and the Republic of Georgia.*

The Final Report of the analysis presents the issues related to the free movement of persons and goods through border-crossing points between the Republic of Armenia and the Republic of Georgia and the causes of these issues, including some shortcomings and gaps in the legislation of Armenia and its practical application. This Report also contains some recommendations and proposed solutions for improving the situation in this area.

Section 1. Legal Bases of the Free Movement of Persons and Goods through Border-Crossing Points: the Law

1.1. The Right to Free Movement of Persons and Goods through Border-Crossing Points: the Key Principles of Movement

Freedom is a natural human right that is exercised in society in the form of a right that, upon recognition by the state and prescription in legal rules, becomes a subjective entitlement that defines the permitted boundaries of the freedom. Everyone has the right to freedom of movement and residence. This right is enshrined in the domestic legislation of Armenia and various international legal instruments, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Constitution of the Republic of Armenia, and others. The Universal Declaration of Human Rights provides: “Everyone has the right to freedom of movement and residence within the borders of each State.”

“Freedom” is related to the person’s autonomous rights in various areas. The right to freedom of movement is a fundamental right, a breach of which directly jeopardizes other fundamental human rights. The right to freedom of movement is a cornerstone of the state’s constitutional order, which must enjoy the state’s attention at all times.

Everyone has the freedom of movement from one place to another. Article 13 of the Universal Declaration of Human Rights provides: “Everyone has the right to

freedom of movement and residence within the borders of each State.”⁹ Article 12 of the International Covenant on Civil and Political Rights provides: “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.” **Everyone shall be free to leave any country, including his own, and the right to enter his own country.** States shall be obliged to secure the right of their citizens to freely choose necessary and convenient residence, to move freely within the territory of the state, to leave the state, and to return to it. Article 25 of the Constitution of the Republic of Armenia provides that everyone lawfully within the territory of the Republic of Armenia shall, within that territory, have the right to liberty of movement and freedom to choose his residence. Everyone shall have the right to leave the Republic of Armenia. Every citizen and everyone lawfully residing in the Republic of Armenia shall have the right to return to the Republic of Armenia.”¹⁰

The monitoring of these rights in the context of the free movement of persons across the Armenia-Georgia border shows that these rights of persons, as clearly safeguarded by the legal rules, are not encroached upon.

The right to freedom of movement may be limited only in exceptional cases. In some situations, the citizen’s right to freedom of movement and choice of residence may be limited in accordance with the procedure provided by law. “For example, it is prohibited to enter into the frontier area, closed military districts, environmental disaster sites (in case of an earthquake, fire, flood, and other disasters), and areas in which a state of emergency (related to warfare, the spreading of epidemic disease, and the like) has been declared.”¹¹

The exercise of the right to freely choose residence requires compliance with certain rules concerning the registration of conscription-age persons, the permanent registration of Armenian citizens changing their residence upon arrival at the new place of residence, and other matters. Registration and deregistration of citizens in the Republic of Armenia is performed for purposes of creating the necessary conditions for the exercise of their rights and freedoms and the performance of their obligations vis-a-vis the state and other citizens. Such situations cannot be viewed as limitations on the right to freedom of movement.

The Constitution clearly prescribes also the citizens’ right to leave and return to the Republic, which comprise the core legal basis of the matters examined for purposes of this review and the safeguard of the exercise of persons’ right to move freely across the Armenia-Georgia border.

The legislation of the Republic of Armenia stipulates certain limitations on the right to leave and return to the Republic: for instance, if a citizen possesses information that contains state secrets, a criminal case has been instigated against him, he is subject to army conscription, he has been convicted for a criminal offence, he has intentionally provided wrong data about himself, avoids the performance of duties imposed on him by court, a civil claim against him has been filed with court, and the like.¹²

It should be noted here that the right to freedom of movement, which is in any case safeguarded by the state, may be limited on the basis of clear principles provided by the legislation, such as national and state security, international friendly relations, and peace.

⁹ Article 13 of the Universal Declaration of Human Rights.

¹⁰ Article 25 of the Constitution of the Republic of Armenia.

¹¹ “ՀՀ Սահմանադրական իրավունք,” Yerevan 2000.

¹² “ՀՀ Սահմանադրական իրավունք,” Yerevan 2000.

The right to freedom of movement is also based on the principle that citizens that freely left the country are free to return to their homeland. Armenian citizens do not require any entry permit or authorization. Armenian citizens that have left Armenia under certain circumstances even in breach of law have the right to return.

What is the basis of the free movement of goods, and how will it be manifested when moving goods through the border-crossing points? Article 3 of the Civil Code of the Republic of Armenia provides that goods, services, and financial resources shall move freely throughout the Republic of Armenia territory. Limitations on the movement of goods and services may be imposed in accordance with law, if they are necessary for the security of persons, the protection of life and health, and the preservation of nature and cultural values.¹³

In addition to defining the right to freedom of movement inside the territory of the Republic of Armenia, the Civil Code also safeguards *the right to export goods out of and import goods into the Republic of Armenia; when goods cross the state border of the Republic of Armenia, the general principle of civil law that applies is that anything that is not prohibited is permitted.* The legislation of Armenia prescribes various rules on the right to free movement of goods and the limitations on the right: namely, it is prohibited to export certain valuable objects of the cultural heritage from the Republic of Armenia regardless of their creation time or ownership.¹⁴ Cultural values registered or subject to registration in the list of protected cultural values may be exported only when the state does not exercise its right of first refusal within a one-month period. Cultural values permanently kept in state reserves such as museums, archives, and libraries may not be exported, with the exception of temporary export. Cultural values exported from or imported to the Republic of Armenia territory unlawfully shall be subject to return.¹⁵

Article 18 of the Customs Code of the Republic of Armenia provides that persons shall have the right to import to and export from the Republic of Armenia goods and vehicles on equal grounds in accordance with the procedure stipulated by the Customs Code of the Republic of Armenia. **This rule directly enshrines the principle of equal freedom to move goods across the border.**¹⁶ *The rights of persons moving goods and vehicles across the customs border of Armenia may be limited only in cases provided by law.* Goods and vehicles shall be moved across the customs border of Armenia in accordance with the different customs regimes stipulated by the aforementioned Code. Regardless of the nature and quantity of goods and vehicles, the person may choose or change the customs regime, unless the Customs Code prescribes otherwise. The Government of Armenia may prescribe a simplified procedure for the movement of certain goods by natural persons or international postal deliveries across the customs border of the Republic of Armenia.

The legislature of the Republic of Armenia has defined the cases in which the import and export of goods and vehicles is prohibited. Under Article 19 of the Customs Code of the Republic of Armenia, the import of goods to and their export from the customs territory of the Republic of Armenia may be prohibited in cases stipulated by the Customs Code and other legal acts, if such goods and vehicles

¹³ Article 3 of the Civil Code of the Republic of Armenia.

¹⁴ Article 5 of the Republic of Armenia Law on the Export and Import of Cultural Values.

¹⁵ Details of the movement of cultural values across the state border of the Republic of Armenia will be elaborated later in this Report.

¹⁶ The prescription of this principle also secures the free movement of goods inside the territory of Armenia by safeguarding an environment of free competition and precluding any limitation on the movement of goods.

pose a danger to state and national security, the public order, human life and health, the flora and the fauna, the environment, moral values of the population, historical, cultural, and archeological values, and the property (including intellectual), rights, and lawful interests of persons. The aforementioned goods and vehicles shall be immediately taken out of or returned to the territory of Armenia, respectively, unless their seizure in accordance with the procedure defined by law is provided. The removal of such goods from or their return to the territory of Armenia shall be performed by the moving or transporting person at his own expense.

Thus, it can be concluded on the basis of the analysis of the right to freedom of movement of persons and goods through border-crossing points of Armenia that the right is safeguarded by both international documents¹⁷ and the domestic legal acts of the Republic of Armenia, and is affected by general problems at all the border-crossing points of the Republic of Armenia, including those between Armenia and Georgia, with particular social-political, demographic, and legal aspects.

The free movement of persons and goods through border-crossing points between Armenia and Georgia shall be based on the following principles of movement:

- *Persons and goods move through border-crossing points between Armenia and Georgia freely in line with the prohibition and limitation rules stipulated by the legislation.*
- *Persons and goods move in line with the border control and supervision procedures.*
- *The freedom of cross-border movement is based on respect for the interests of all the stakeholders, as well as national security and state economic security, the interests of persons residing in the frontier area and various transit areas when crossing the border, and the need to maintain a good-neighborly relationship with the Republic of Georgia in matters related to the state border and the border-crossing points.*
- *The legislation regulating free movement across the border should be streamlined, and its stability and consistent application ensured in order to ensure consistency between the mission of the Armenian border-guard service, customs agencies, phytosanitary, food security, veterinary, epidemiological, radiation, passport, and other border control functions at the border-crossing points.*
- *Awareness raising on the rules of administration of border-crossing points and other related principles must be upheld.*

¹⁷ The importance of free movement of goods was internationally prescribed in the CSCE Final Document of 1 August 1975, which focused specifically on humanitarian contacts between states, the streamlining of customs rules, securing meetings between families on different sides, personal and professional visits, and youth and tourist trips, which will directly create a humanitarian situation of security and free movement.

1.2. The Armenian Factor as a Basis for the Right to Freedom of Movement of Persons and Goods across the Armenia-Georgia Border

The Armenia-Georgia border is about 225 kilometers long. It was formed on 6 November 1921 by a treaty signed in Tbilisi by Alexander Myasnikyan, the Chairman of the People's Communist Council of Armenia, and Mdivani, the Chairman of the Revolutionary Committee of Georgia. For many years, including in the post-Soviet period, the existence of the border did not pose an obstacle to the citizens of the two states, and they have been able to cross the border freely without any limitations. The Armenia-Georgia borderline is now being clarified, and citizens living in settlements near the border claim that border control is becoming tighter, putting an end to free crossing without any checks. Clearly, persons must comply with all the laws of the two neighboring states on the rules of entry into their respective territories, including the border-crossing rules. The population of the regions near the Armenia-Georgia border, most of whom are Armenians,¹⁸ has abstract perceptions about the existence of the Armenia-Georgia border. For years, they have freely crossed the border at the point that was the most convenient and the least time-consuming and costly for them. Now, checkpoints have been built, which are quite far from certain villages. Persons must undergo border control at the border points. In some cases, they must also undergo an inspection that, instead of a simple border control measure, turns into a restriction of the free movement of persons, limiting also the types and quantity of goods moved across the border. The governments of both Armenia and Georgia perform control at the border-crossing points in the frameworks of law; however, as a result of such direct control, they prohibit natural persons crossing the Armenia-Georgia border from moving dairy and meat products, with the exception of baby food. Movement of large quantities of any food is generally prohibited, unless they undergo customs control, sanitary control, and other controls stipulated by law.

The residents of the villages near the border psychologically still do not perceive the existence of a state border and control measures between Armenia and Georgia. Tightening of the Armenia-Georgia border-crossing rules may create numerous problems for the villagers that reside in areas near the border. Armenian residents on the two sides of the border may protest heavily unless their free movement across the border is secured: people complain that the inspections performed upon crossing the border sometimes do not respect their rights. Unfortunately, this dissatisfaction may later affect the good-neighborly relationship between the two states. These limitations have already placed about 10,000 residents of Armenian villages near the border in a difficult situation: to cross the border, they have to travel a long and costly way.

The reason is that border signs clearly marking the Armenia-Georgia border are not yet present in all the places. Besides, in some places, the border lies between two villages (for instance, Chanakhchi and Khojorni), which it divides between the two countries. It means that some village residents needing to travel to their neighbors or relatives may have to undergo a border check, which is a rather lengthy process. At times, villagers have to cross the Armenia-Georgia border

¹⁸ Alongside the border between Armenia and Georgia, there are about 38 settlements near the border on the Armenian side alone (see the list of settlements near the border in this Report). On the Georgian side, there are about two dozen Armenian settlements and over 100 settlements densely populated by Armenians, which are within 50 kilometers of the border.

unlawfully. Due to the fact that the border has not been clearly marked yet, some persons face obstacles when trying to use their own land plots.¹⁹ In the areas near the border, there are villages of Armenians in Georgian territory. The number of Armenians in such villages is currently quite high, even though the border tightening and the related problems have caused catastrophically high numbers of Armenians to leave the Armenian villages in Georgia.²⁰ Throughout their lives, the residents of these villages were freely able to communicate and move across the border, meeting with residents of villages on the Armenian side without any fears. Today, however, a villager who one day can freely travel to his neighbor's house faces the risk of being arrested the next day on charges of violating the border. The tightening of the borders has hurt villagers: they are losing not only the right to communicate frequently with their relatives, but also their land plots. The villages of Brdadzor, Khojorni, Tsopk, Khokhmel, and Chanakhchi, for instance, are mostly populated by Armenians, but they have become isolated from the rest of the world, also because of the poor roads.

If this process continues and the villagers are unable to move freely, Armenians will be forced to leave their settlements over the course of the next few years. To prevent the mass departure of Armenians from Armenian-populated villages, privileged conditions have to be created for the Armenian population on the two sides of the border, as they are connected by kinship, and the existence of the border should not obstruct their communication.

The aforementioned "Armenian factor" (i.e. the existence of Armenian-populated settlements near the border) should be viewed as the key consideration affecting the right to freedom of movement across the Armenia-Georgia border; Armenia and Georgia should reach some agreement whereby the Armenian population of areas near the border will be able, as in the past, to cross the Armenia-Georgia border freely without cumbersome checks and tight controls. It is their right acquired over the years, and neglect of this right can later create numerous problems for the two neighboring states. The disproportionately tight border control may cause the Armenian population in Georgia, for instance, to protest on the basis of a breach of the rights of a national minority. Such protests may lead to various conflicts. There may also be rising protests in the borderline settlements in Armenia. Thus, the "Armenian factor" is a key factor that should be considered in safeguarding the persons' right to freedom of movement; it is a right that must be honored by not only Armenia, but also Georgia.

Given the existence of an Armenian national minority in Georgia (the "Armenian factor" within Georgia), the OSCE High Commissioner on National Minorities should be invited to pay attention to the issues related to the right to freedom of movement of Armenians residing in Georgia (mostly in areas near the Georgian border with Armenia, and in the Georgian region of Samtskhe-Javakheti) and, in this connection, also their right to communicate freely with their nation, with particular attention to the potential risks posed by encroachments on the rights of

¹⁹ According to a letter sent to our organization by the Ministry of Foreign Affairs of the Republic of Armenia on 22 June 2010, the negotiations between the Armenian and Georgian committees created to delimit the Armenia-Georgia state border resulted in preliminary agreement over 160 kilometers of the about 225-kilometer border line. To avoid border incidents, it is necessary to expedite the demarcation exercise and to compensate damage inflicted upon private property as a consequence of the process, as the land plots of some citizens were split by the actual border line.

²⁰ Different persons living in villages near the border think that there are other reasons why Armenians have left their villages in Georgia, such as the interethnic fights that happen from time to time, the lack of Armenian schools, and other problems. However, for purposes of this Report, the issues have been examined only in light of the freedom of movement and freedom of communication.

national minorities, which may materialize in the form of interethnic and other local conflicts that can directly undermine security between the two neighboring states.

LIST
OF SETTLEMENTS NEAR THE ARMENIA-GEORGIA BORDER

#	Region	Border	Within 1 km of the border line	Approximate population	Within 5 km of the border line	Approximate population
			Settlements	Number	Settlements	Number
1	2	3	4	5	7	8
1	Tavush	Armenia-Georgia	Haghtanak	1,165	Archis	1,068
			Ptghavan	875	Ayrum	2,800
			Bagratashen	2,811	Lchkadzor	438
			Devedavan	658	Verin Keyrplu Zorakan	1,200
			4 settlements		4 settlements	
2	Lori	Armenia-Georgia	Paghaghbyur (Sovughbullagh)	164	Dzyunashogh (Ghezelshafak)	198
			Gogavan (Demurchilar)↓		Metsavan (Shahnazar)	5,602
			Dzoramat (Evlu)	344	Sarchapet	2,101
			Norashen	1,145	Petrovka	212
			Apaven	136	Mikheyelovka	648
			Artsni (Ghzldash)	300	Dashtadem (Izmazlu)	131
			Jiliza	110	Lerhovit (Gharakilisa)	1,355
			7 settlements		Privolnoye	1,039
					Shamlugh	
					Akhtala (Verin Akhtala)	
					Chochkan	2,098
					Mets Ayrum	940
					Karkop	418
					13 settlements	
3	Shirak	Armenia-Georgia			Yeghnajur (Chivinli)	150
					Tsaghkut (Gyulija)	260
					Lorasar (Ellar)↑	
					Darik (Oksyuz)	163
					Zorakert (Balekhli)↑	
					Ardenis (Gyolli)	146
					Aghvorik (Yeni-Yol)	117
					Tavshut	435
					Bavra	538
					Saragyugh	226
					10 settlements	

Section 2. Control of Movement of Persons and Goods through Border-Crossing Points; Review of Practice

2.1 State Border between Armenia and Georgia: Some Observations on the Management of the State Border of the Republic of Armenia in Terms of the Freedom of Movement

Issues related to the state borders of the Republic of Armenia, the border regime, and the movement of persons and goods across the border are regulated by the Republic of Armenia Law on the State Border, the Customs Code, and other legal acts. They are very important for state security, as well as the protection of human and civil rights related to the border regime. The extant Law on the State Border adopted on 20 November 2001 stipulates the status of the state border of the Republic of Armenia.

The legal issues related to the Armenia-Georgia border are similar to those concerning the management of the state borders, though there are certain peculiarities of the Armenia-Georgia border segment.²¹

The notion of “state border of the Republic of Armenia” is defined on the basis of three criteria: actual, legal, and technical. First of all, the state border is the line, including the vertical surface above it, which determines the boundaries of the territory (terrestrial, water, subsoil, and air space) of Armenia.

As to the legal criterion, the border of the Republic of Armenia is fixed, determined, and changed on the basis of the international treaties and laws of the Republic of Armenia.

The technical criterion is the combination of appropriate demarcation lines, the premises of border-crossing points, and border protection measures on the border. *The state border performs two essential functions:*

- a) *Providing state security; and*
- b) *Serving as the frontline for the creation and regulation of good-friendly and mutually-beneficial relations with neighboring states.*

The protection of the state border is a key safeguard of the political and economic interests and security of the Republic of Armenia. Effective protection of the state border mostly depends on the skillful use of legal tools, including the creation and strengthening of a safe security regime, the provision of the necessary tools and resources, and the creation of special services (border guards, customs,

²¹ The Armenia-Georgia border has still not been clarified. In the 20 years that have passed since the collapse of the Soviet Union, the two newly-independent states have still not completed the demarcation exercise. By Decree 763 dated 16 November 2000, the Prime Minister of the Republic of Armenia created a “Committee for Delimitation and Demarcation of the State Border between Armenia and Georgia,” which is to date engaged in negotiations with its Georgian counterpart.

To clarify the border, it is necessary to swiftly complete the delimitation and demarcation activities. After stipulating the delimitation in an international treaty and clearly describing the border line points and positions by mapping specific sites using topographical, photo-mapping, and other methods, demarcation signs have to be built and installed in the form of special border signs to avoid border incidents.

At present, unpleasant border incidents occur in some of the villages near the border, which lead to arrests. Besides, villagers that have land ownership certificates cannot use their land plots, because it is still not clear whether a land plot is in the territory of Georgia or Armenia. During the monitoring, such issues were raised by the residents of several villages near the border.

quarantine, and others); the joint efforts of all of the aforementioned mechanisms will ensure the security and safety of the state border and the right to cross it freely.

The political protection of the state border of Armenia, in particular, aims at not allowing persons and vehicles to cross the border illegally. Economic protection aims at preventing the smuggling of goods, objects, and items. Sanitary protection is necessary for preventing the spreading of infections and disease, plants, and animals dangerous for humans across the state border of the Republic of Armenia.

The Republic of Armenia state border security protection regime²² consists of the following elements:

- 1) State border maintenance rules;
- 2) State border crossing rules;
- 3) State border clearance rules for persons, vehicles, animals, cargo, and other assets;
- 4) Rules of performance of economic activities at the state border; and
- 5) Procedure of resolving border incidents with the neighboring states.

The state border maintenance rules regulate the placement and care after border signs, their supervisory checks, the creation of and care after a transparent sanitary layer alongside the border, and joint inspections of the state border with the bordering state.

Decree 298 of the Prime Minister of the Republic of Armenia dated 22 November 1995 approved the state border maintenance rules, which provide that joint inspections with the bordering neighboring state shall be conducted once or twice a year, and that if border signs disappear or are damaged, they shall be renovated and restored by the bordering state to which they are assigned. In special cases (natural disasters and the like), it shall be permitted to move the border signs without changing the border. Such movement may be performed only with the permission of the bordering state.²³

According to the state border crossing rules, railway, automobile, air, and other communication across the state border shall be performed only in designated crossing points where border guard checkpoints shall be created, and a special customs zone shall be defined, in which only customs bodies shall exercise control.

The two states have designated land and air points for crossing the Armenia-Georgia state border.

Based on the Agreement between Armenia and Georgia (dated 19 May 1993)²⁴ on Opening Customs Checkpoints on the Border between the Two States, Republic of Armenia Government Decree 122 dated 27 February 1998 has designated customs control zones (for automobile communication) in the Tavush Region “Bagratashen,” the Shirak Region “Bavra,” and the Lori Region “Gogavan”

²² Article 20 of the Republic of Armenia Law on the State Border prescribes the “border regime” notion, as well as the legal rules according to which Armenian citizens and other persons may enter into and stay in the border layer and border zone and carry out economic activities there. Under the Law, the power to introduce legal regulation of the regime has been delegated to the Government of Armenia. However, from the adoption of the Law till now, the Government has not adopted a decree prescribing the border regime for management of the border zone and regulating the crossing of the border as required by Articles 20-23 of the Law on the State Border (Law HO-265 dated 20 November 2001); therefore, there is no procedure properly prescribing the border regime, and the existing legal acts do not clearly stipulate the legitimate interests of all the stakeholders, especially those that cross the border. Such a legal act could also regulate the issues related to setting up a simplified border-crossing point as recommended in this Report.

²³ As was mentioned, the Armenia-Georgia border delimitation and demarcation work has not ended, and it is still premature to discuss adequate maintenance of that segment of the border.

²⁴ Treaty on Designating Armenia-Georgia State Border-Crossing Points (dated 19 May 1993).

state border crossing points. A customs control zone for railway transport was designated at the **Lori Region Jiliza Village “Ayrum” state border-crossing point**. Besides, a border-crossing point was designated at the Zvartnots Airport. Thus, communication between Armenia and Georgia is permitted only through the aforementioned crossing points. The border guard troops and other state bodies created in accordance with the international treaties, laws, and other legal acts of the Republic of Armenia perform the border clearance of persons, vehicles, animals, cargo, and other assets across the state border.

At present, there is a scarcity of border-crossing points on the Armenia-Georgia border,²⁵ given that the residents of some villages near the border who frequently need to cross the border now have to travel hundreds of kilometers to reach Georgia, while their village is right next to the border, and had there been a border-crossing point nearby, they would have been able to travel a much shorter distance by crossing it.

There are about 38 settlements adjacent to the border in question, and about as many on the Georgian side. The population of these settlements is unable to cross the border freely due to a technical problem such as the absence of a border-crossing point. There has been much discussion recently of opening a border crossing-point next to the Jiliza Village (Lori Region of the Republic of Armenia). The Opreti Village is across the border on the Georgian side. These two villages and other nearby settlements publicly demanded opening a border-crossing point, as the residents were unable to visit each other. The two villages are separated by a river, which is considered the border line. Some villagers, not knowing about the existence of a border, cross the river into the neighboring village and get arrested by the border guards; some people were even convicted in Georgia for trespassing. It transpired from meetings with the local population that they think that it is not in the interests of the Georgians to allow the Armenians on the two sides of the border to communicate.

Opening a border-crossing point at this segment is very urgent: both villagers and our organization have raised this issue with the competent state bodies and have received positive answers.²⁶

In addition to the Jiliza Village, a border-crossing point should in our opinion also be opened at the Privolnoye Village, at the “Gaylaberan” segment, and other parts of the Armenia-Georgia border.

As to the provision of the Republic of Armenia Law on the State Border, according to which communication across the state border may be performed only at border-crossing checkpoints designated by the Government,²⁷ it should be noted that the Law does not prescribe the possible types of border-crossing checkpoints and does not classify them in terms of the scope of their possible functions, which is a gap in the Law that directly affects the free movement of persons and goods. To

²⁵ Due to the scarcity of border-crossing points, there is a buildup at the various border-crossing points during certain periods, for instance in the summer, when more people travel to Georgia for holidays, or when there are large-scale imports of fruit and vegetable.

When persons have to move the dead body of a relative, they not only have to travel an excessive distance, but also must wait in queues at the border-crossing point. The queue is not because they have to be checked, but rather, because the capacity of the border-crossing point is limited. When a dead body is moved, no customs clearance or other clearance is required. An examination, however, is performed in order to prevent the smuggling of prohibited goods together with the body.

²⁶ On 22 June 2010, the Ministry of Foreign Affairs of the Republic of Armenia informed that the Armenian side has completed the preparatory works for opening a border-crossing point on the border between the Jiliza and Opreti villages.

²⁷ Article 10 of the Republic of Armenia Law on the State Border.

compare, the Bavra and Bagratashen border-crossing points, for instance, are international automobile border-crossing checkpoints by their significance and practical application: they not only link Armenia and Georgia, but also serve international transit shipments and the international transit traffic of persons. The Gogavan and Ayrum-Jiliza crossing points are specifically designed for small volumes of traffic. *Hence, it is necessary to amend Article 10 of the Republic of Armenia Law on the State Border to stipulate two types of border control checkpoints: simplified and international (provided that, in some cases, they may be combined). The Law should also stipulate complete control at the international crossing points and only passport control (for migration purposes) or passport/migration control and simplified customs control at the simplified crossing points. In such crossing points, sanitary control, quarantine, and other controls shall not be performed. Therefore, commercial quantities of goods and goods subject to special inspection will not be allowed to cross the border at simplified crossing points.*²⁸

The Law should also clearly define the notion of a “control checkpoint” as “an area designated for railway, automobile, air, and water communication, through which international communication, i.e. movement takes place, and which is an area that is properly equipped and is appropriate for the performance of adequate border control, passport control, customs control, and other state controls of persons, goods, and vehicles crossing the state border.”

Free movement across the Armenia-Georgia state border-crossing points is directly related to the regime of the border-crossing points, which includes the procedure of movement of persons, vehicles, cargo, and other assets across the state border-crossing points, as well as the procedure of stay and movement of persons and vehicles in border-crossing points.²⁹

The buildings necessary for the performance of border checks and customs control at the border-crossing points shall be selected in accordance with the procedure defined by the Republic of Armenia Government. Movement in the border-crossing point shall be permitted only if authorized by the border-guard troops, provided that the appropriate documents are present.³⁰

During the performance of customs control, border control, and other types of checks, the entry of persons into vehicles at the border-crossing points shall be limited or prohibited, if necessary.³¹ The entry of vehicles into the border checkpoints of the Republic of Armenia, and the loading and offloading of

²⁸ It may be prescribed that a simplified crossing point may serve only the movement of citizens of the two states, while foreign citizens and stateless persons may be prohibited from crossing at a simplified crossing point. Such practice is found in other countries, for instance, on the border between the Russian Federation and Kazakhstan. In some cases, such border-crossing points may be used by citizens of the two neighboring states, which live nearby. Such a problem currently exists, for instance, at the Jiliza-Opreti segment of the Armenia-Georgia border, but we think it can be solved rather easily in practice. In the international practice, such border-crossing points are created by inter-state treaties between the neighboring states (such a border-crossing point was created on the basis of an inter-state treaty, for instance, on the border between Russia and Finland).

²⁹ Article 24 of the Republic of Armenia Law on the State Border.

³⁰ Article 25 of the Republic of Armenia Law on the State Border.

³¹ Interestingly, Article 27(2) of the Republic of Armenia Law on the State Border provides that, in case of a threat to the interests of the Republic of Armenia at the state border, the commander of the border-guard troops may temporarily stop the communication through the state border-crossing point. While this power is justified by the need to ensure the state security of the Republic of Armenia, it may, if exercised, completely stop any movement across the border, and the question that arises is whether the legislation has clearly defined the “interests” threat to which justifies termination of communication across the border.

passengers and freight may be performed only with the permission of the border-guard troops and the customs authorities.

Article 27 of the Republic of Armenia Law on the State Border provides that an area and a building shall be set aside at the state border-crossing point, where the border control, sanitary-quarantine control, veterinary control, phitosanitary control, and customs control shall be directly performed.

In the context of reviewing the free movement of persons and goods across the Armenia-Georgia state border, it is necessary to examine the control and supervision of both goods moved by natural persons crossing the border and commercial transportation of goods across the customs border.

Article 14 of the Republic of Armenia Law on the State Border provides that persons, vehicles, animals, cargo, and other assets crossing the state border shall be subject to border control, sanitary-quarantine control, veterinary control, phitosanitary control, and customs control. Hence, several different state bodies have functions related to the management of the border and the border-crossing points.

The aforementioned state bodies check the health condition of persons crossing the state border of the Republic of Armenia, control the animals and plants crossing the border, and carry out measures aimed at identifying pests. The sanitary-quarantine bodies may decide to impose temporary limitation on the movement of persons, goods, objects, and other items through certain border-crossing points.

As to border controls, Article 13 of the Republic of Armenia Law on the State Border provides that border control is a framework of activities that ensure the lawfulness of crossing the state border.

Border control at international communication ways shall be performed:

- a) *Using optical observation devices and special equipment with a view to introducing and carrying out surveillance at the crossing points;*
- b) *Checking documents with a view to establishing the person's identity and right to cross the state border;*
- c) *Examining aircrafts, other flying equipment, and vehicles crossing the state border; and*
- d) *Examining animals, freight, and assets moved across the state border and identifying persons that try to cross the state border illegally.*

Beyond the international communication ways, border controls shall be performed using visual and technical surveillance, checking personal identification documents, and examining vehicles at the border zone. The Republic of Armenia Law on the State Border clearly prescribes the actions aimed at border management and security control; the measures stipulated by law imply prior, current, and posterior controls for securing the border and the border-crossing points, which shall be performed in accordance with the procedure defined by the Republic of Armenia laws and other legal acts.

From the standpoint of state border management, it is important to review who and what organizations have the right to carry out economic activities at the border or in the border checkpoint zone. The Republic of Armenia Law on the State Border contains only a generic article on this issue: natural and legal persons of the Republic of Armenia and foreign states shall make sure that their activities crossing the state border or implemented immediately at the border do not inflict harm to or obstruct other activities aimed at the protection of the state border.³²

³² Article 15 of the Republic of Armenia Law on the State Border.

As was mentioned, the Republic of Armenia Government shall, with a view to securing proper procedures at the state border, define a border regime in accordance with the legislation, which shall regulate the entry of Republic of Armenia citizens and other persons into and temporary stay inside the border layer, as well as their residence, movement, and other activities there. Article 23 of the Republic of Armenia Law on the State Border provides more detailed regulation of the economic activities carried out within the border layer: *“...other activities not related to the protection of the state border shall be prohibited within the border layer, with the exception of the cases stipulated by this law.”* Economic activities may be carried out within the border layer only during the daytime. At nighttime, or when it is dark, economic activities within the border layer shall be prohibited, with the exception of cases of necessity, with the permission of the border-guard brigade chief with the consent of the border-guard troops command. *In such cases, the law allows the border-guard troops to determine certain matters related to the border management on their own; however, this autonomy implies some discretion in the performance of functions, which should be clearly regulated in order to avoid arbitrariness.*³³

The “duty-free shop” is one of the types of economic activities carried out at the state border, as well as a specific customs regime. Decree 15-MV of the Republic of Armenia Customs Department Head dated 4 February 1999 approved the Instruction on the Organization of Duty-Free Shops. Paragraph 1 of Chapter 2 of the Instruction provides that a duty-free shop is a customs regime that allows importing goods to the duty-free shop area in accordance with the procedure stipulated by the legislation of the Republic of Armenia and other countries and subsequently selling them under customs control without the tax and customs authorities collecting customs duties, the value-added tax, excise taxes, and presumptive taxes applied as replacement for such duties and taxes. Paragraph 5 of Chapter 2 of the Instruction provides that duty-free shops may be established in the territory of airports open to international passenger transport or border-crossing points of the Republic of Armenia that are for natural persons crossing the state border, provided that such territories and points have been designated by the Republic of Armenia Government as zones of customs control.

Duty-free shops still do not operate at any of the Armenia-Georgia border-crossing points. They only exist at the Zvartnots Airport. On the Georgian side, however, at the Bagratashen-Sadakhlo border-crossing point, for instance, there is a neatly-organized duty-free shop.

Some Comments on the Regime and Organization of the Border-Crossing Points

As was mentioned, the border-crossing point regime includes the procedure of movement of persons, vehicles, and cargo (goods and assets) through state border-crossing points, as well as the procedure of the stay and movement of persons and vehicles at such points. In practical terms, the border-crossing regime includes the organization of the actual crossing point activities by the competent state bodies.

The operation of the Armenia-Georgia border-crossing points was observed to determine the existing problems, including practical issues related to the movement

³³ The observation of the Armenia-Georgia border-crossing points revealed that, near the border-crossing points, certain individuals were offering various business services, and their existence inside the border control zone directly undermined the operation and security of the border-crossing points.

of persons and goods and the extent to which existing problems may obstruct the freedom of movement.

First of all, it should be noted that the border regime at the Zvartnots Airport border-crossing point is generally organized on the basis of sufficient resources, including buildings, technical resources, human resources, and the like. Under such circumstances, there are only some general issues affecting the freedom of movement, and the airport crossing point will not be specifically analyzed in the context of this Report.

In the context of the freedom of movement through Armenia-Georgia border-crossing points, it should be noted that only two of the automobile border-crossing points (Bagratashen and Bavra)³⁴ have adequate road infrastructure, while the Gogavan-Privolnoye border-crossing point can only be reached by traveling a 20-kilometer poor road from the town of Tashir (Lori Region of the Republic of Armenia) to the Gogavan border-crossing point: the poor road forces some people interested in crossing the border to choose a different crossing point, even if it is physically further away. Due to the very poor condition of this road, persons and cargo are moved mostly through the other border-crossing points, which suffer from queues due to this very reason.³⁵

The main obstacle to organizing the movement of persons through the Gogavan-Privolnoye border-crossing point is the poor infrastructure at this point: first and foremost, the road to this border-crossing point is in a bad condition, having fallen apart because of inadequate drainage. The building and premises located at the border-crossing point are not in an adequate condition, either: the staff works out of wagons or very old buildings that are in an extremely poor condition.³⁶

The customs rules, crossing point procedures, fees, and other information are not visibly posted at the border-crossing point. There is neither a place where boards containing these rules could be posted nor any other way to exhaustively notify persons of the border-crossing procedures.

The border-crossing point is located in a village with about two dozen families, in a location with an inconvenient relief; hence, renovating and reconstructing this border-crossing point would be difficult and cumbersome, especially as serious renovation is needed.

The condition of the road to this border-crossing point should be improved, too. When the road is improved, passenger traffic through the different border-

³⁴ The main problem at the Bavra border-crossing point is that it is not on the actual line of the border: it should be moved to where the border line is.

³⁵ When traveling from Tashir to the border-crossing point, the road on the right hand side leads to the Lovi Mountain Pass, where there is a possibility to cross the border; the locals think that it may be currently used for smuggling purposes. We have recommended creating a simplified crossing point there.

³⁶ At the border-crossing points, some public servants complained about not only the inadequacy of the premises, but also their inability to pay the electricity bills for heating the building, which caused them to avoid staying at the border-crossing point (for instance, the Epidemiological Surveillance Post at Gogavan). This is disgraceful for our country.

Besides, a key problem at the border-crossing points is the lack of technical equipment and infrastructure. They are technically weak and do not have inspection devices, laboratories, automated disinfection capacity, and other equipment. The few computers in existence are sometimes used by the border-crossing point staff to play games as a form of entertainment. Some of the agencies (such as the veterinary control staff) do not have uniforms. The border-crossing points lack a unified database, too.

The border-crossing points do not have some basic facilities: Article 3(7) of the International Convention on Road Traffic, for instance, provides that border-crossing points must have appropriate road signs, which are completely non-existent at the Armenia-Georgia border-crossing points.

crossing points will be more balanced, as the road passing through the Gogavan-Privolnoye point was for years a strategic highway linking Armenia with Georgia. Border-crossing passengers surveyed by us noted that *this road has strategic significance and should be renovated as such, in addition to the need to build a border-crossing point in line with the international standards*. The same problem used to exist on the Georgian side: recently, Georgia renovated its side of the Gogavan-Privolnoye border-crossing point by building a small checkpoint with one entry and exit path.³⁷

Opinion polls and monitoring were conducted to reveal the issues affecting the free movement of persons and goods through Armenia-Georgia border-crossing points, including the difficulties and problems encountered when crossing the border, the attitudes of the border officials towards persons crossing the border, and the convenience of the border-crossing points.³⁸

The opinion polls revealed certain patterns: when asked whether they encountered any difficulties when crossing the border (Figure 3), 33% of the respondents said that they did not have problems, 48% reported having some problems, and 19% said they had problems. *In our opinion, the problems are related to the improper attitudes of some border officials towards persons crossing the border. To this end, the border officials should be more careful and should directly perform their duties, because the rights of persons crossing the border are often neglected, which creates difficulties and problems in crossing the border*. Another common problem is related to the movement of vehicles: Armenian citizens purchase vehicles in Georgia, register them in Georgia, and try to operate them in Armenia without clearing Armenian customs. There are several reasons for this problem: customs clearance in Armenia is very costly, and then, when crossing the border, they have to overcome various obstacles.

When asked about the “general attitudes of border officials in the relationship with persons crossing the border” (Figure 4), 16% of the respondents said that the border officials were always nice and friendly in their relationship with persons crossing the border, 17% said that the border officials often failed to provide clear answers, 17% said that the border officials were often indifferent, 33% said that they were sometimes indifferent, and 17% preferred not to answer the question. *Based*

³⁷ It is worth noting that Georgia has carried out wide-scale improvements of its side of all three of the border-crossing points by building state-of-the-art new border-crossing points, as well as extensively improving the condition of the roads to the border-crossing points. By observing how the Georgian side has reconstructed the border-crossing points, it is possible to infer Georgia's position on the importance of the different points: due to anticipated small volumes of traffic, they have built a small border-crossing point at the Gogavan segment. In the future, it is important to make joint decisions on the importance of the border-crossing points, because if one side builds small and the other large capacity for the movement of cars, traffic will be obstructed. It is recommended to agree with Georgia upon the strategy of developing border-crossing points. Besides, as was noted, the roads to some border-crossing points have fallen apart, which is another obstacle to the freedom of movement, and it would be necessary to carry out well-coordinated reconstruction of the roads, as well. Related projects are at times implemented by public administration bodies of the Republic of Armenia in isolation, without paying sufficient attention to the integral connection between projects. For instance, the Republic of Armenia Ministry of Transport and Communication informed us in letter 01/10/13045-10 dated 8 June 2010 that the Meghri-Bavra highway would be reconstructed in the framework of the investment project for the “North-South” road corridor; however, the project does not contemplate the construction of appropriate border-crossing point buildings and/or related infrastructure at Bavra, and they are not even aware of whether it will be done. The improvement and development of border-crossing points must be taken into consideration in projects aimed at improving the international transport communications of the country.

³⁸ Figures 3, 4, and 5.

on this, it can be assumed that the customs officials are indifferent about their work and the exercise and protection of the rights of persons crossing the border.

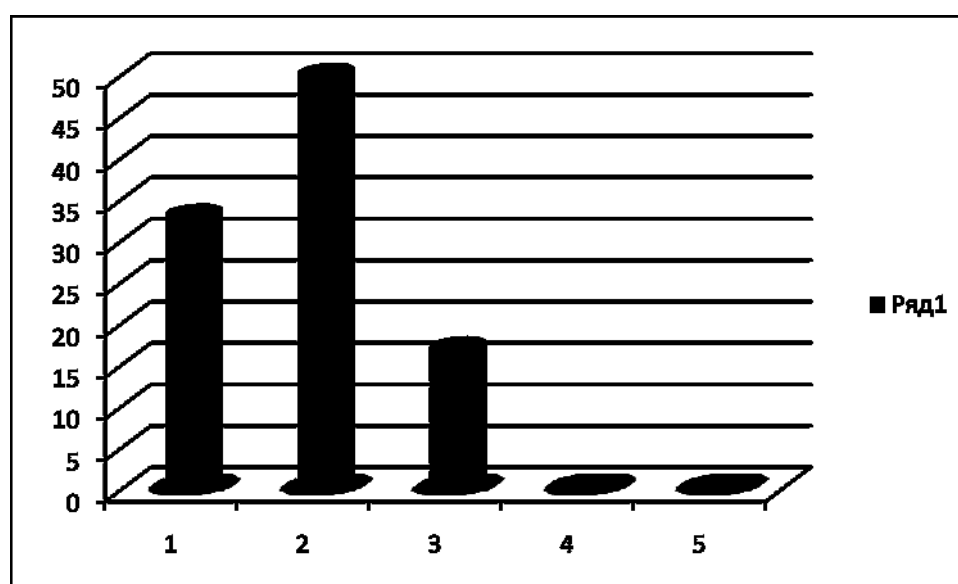
When asked how convenient the border-crossing point was for persons crossing the border (Figure 5), 16% of the respondents said it was excellent, 18% good, 19% satisfactory, and 47% poor. It can be concluded on the basis of this data that the border-crossing points are inconvenient, as discussed above in relation to the Gogavan-Privolnoye border-crossing point. The conditions in the other border-crossing points are not favorable, either: both Bagratashen and Bavra lack an integrated border-crossing point in line with the international standards. The different state control and supervision authorities perform their work in buildings that are far apart and not necessarily in line with the current technical standards.

The territory of the border-crossing points is not clearly marked off. Unknown persons sometimes carry out economic activities within the territory of a border-crossing point, which includes the regime zone, and it is not clear whether their presence there meets the requirements of the legislation of Armenia. In the Bagratashen border-crossing point control zone, for instance, which includes also the customs control zone, there were illegally-operating taxi service providers, shops, a hotel, and companies rendering various other services, *which posed a serious obstacle to the border-crossing point regime and security.*

To sum up, it should be noted that the regime and organization of the Armenia-Georgia border-crossing points are affected by technical issues and resource constraints, such as the lack of adequate buildings and technical facilities for control and supervision, which directly affect the quality and duration of control operations; most importantly, the need to have professional and courteous officials and technical staff.

Figure 3

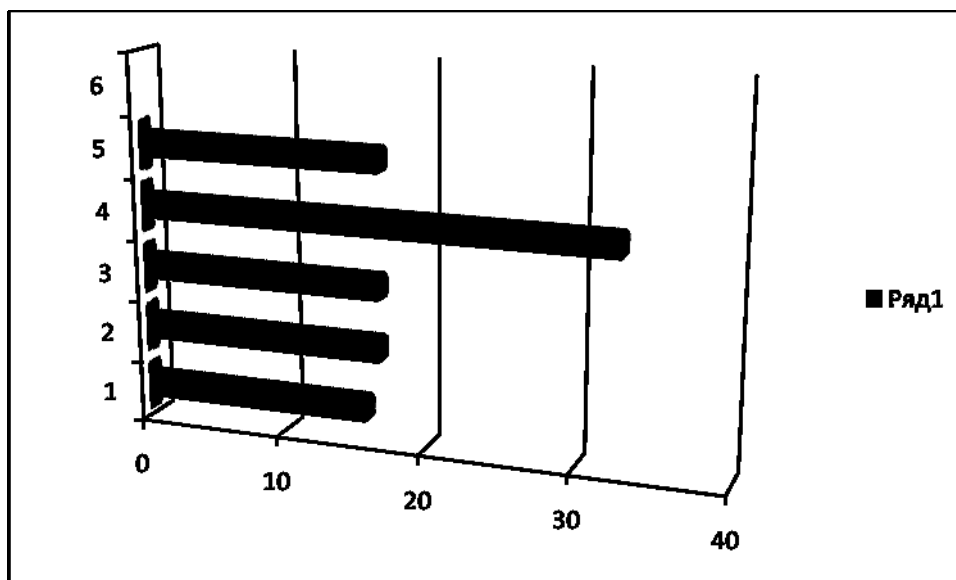
Problems and Difficulties in Crossing the Border



1. No problems
2. Some problems
3. Problems
4. Other opinions
5. No response

Figure 4

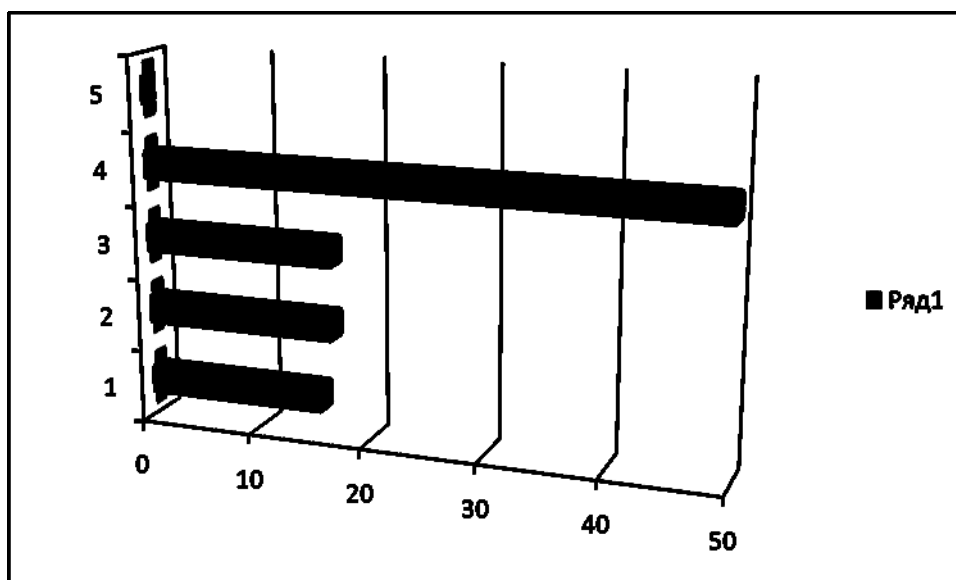
General Attitudes of Border Officials in Relation to Persons Crossing the Border



1. Always friendly
2. Often give unclear answers
3. Often indifferent
4. Sometimes indifferent
5. No response

Figure 5

Convenience of Border-Crossing Points for Persons



1. Excellent
2. Good
3. Satisfactory
4. Poor
5. Other

The observation of the organization of operations at border-crossing points also revealed problems related directly to the exercise of the right to freedom of movement, including, most importantly, corruption. About 120 persons dealing with movement across the state border were surveyed on the impact of corruption on the free movement of persons and goods through the Armenia-Georgia border-crossing points.

49% of the respondents said that corruption was a serious obstacle to the free movement of goods and vehicles across the border (see Figure 6), while the remaining 51% said that corruption was somewhat significant. Interestingly, the majority of the respondents perceived corruption to exist at border-crossing points. It transpired from the survey that corruption is a rather serious obstacle to the free movement of goods and vehicles across the border, which in turn can give rise to other problems. In our opinion, it is necessary to introduce public oversight of the work of government officials at border-crossing points.

47% of the respondents (importers and exporters) said (Figure 7) that the authorities did not demonstrate will to fight corruption at the border-crossing points, while the remaining 51% thought that it was not understandable. 72% of the individuals crossing the border thought that the will of the authorities to fight corruption at border-crossing points was something not understandable, and 28% thought that the authorities did not demonstrate will to fight corruption. Clearly, the authorities are not doing enough to prevent corruption at the border-crossing points. Under such circumstances, it is first and foremost necessary to minimize the contacts between government bodies, businesses, and persons crossing the border: it would be effective if a number of procedures related to border control were automated with a view to precluding personal contacts.

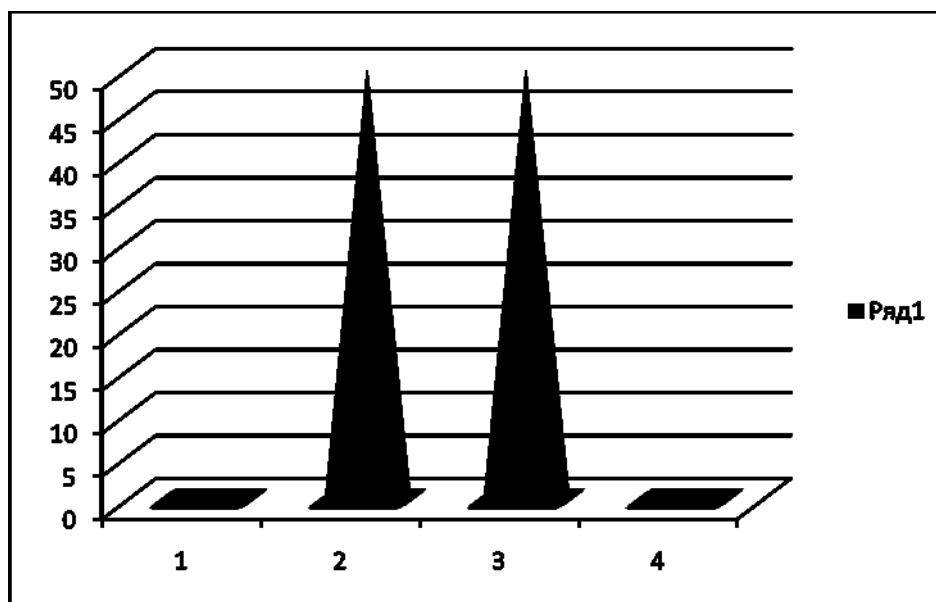
Most interestingly, respondents thought that the government exerted minimal efforts against corruption at the border-crossing points (Figure 8). 21% of the respondents said that the government's efforts against corruption at the border-crossing points were somewhat effective, while 79% considered them to be ineffective. Given the opinion of the majority of the respondents, it can be concluded that corruption is a rather serious problem for the Republic of Armenia. Hence, *it is necessary for the government to change its strategy against corruption by genuinely engaging in comprehensive anti-corruption measures.*

When inquired about public awareness (awareness of persons crossing the border) of the fight against corruption at border-crossing points (Figure 9), 26% of the respondents said that they were somewhat informed about the fight against corruption, and 74% said they were aware. As to awareness of border officials of anti-corruption measures, 26% of the respondents thought that the officials were aware, 47% considered them to be somewhat aware, and the remaining 27% thought them to be unaware. This data is not inspiring. *It would be effective if a 24/7 hotline for border-crossing points were set up, so that persons crossing the border could, in case of unawareness of the law, call and learn about their rights and responsibilities in order to be able to defend their lawful interests and to preclude corruption risks.*

It is necessary to conduct regular monitoring of the operation of border-crossing points by not only government bodies, but also different civil society organizations with a view to revealing problems affecting the free movement of persons and goods and border-crossing points in general.

Figure 6

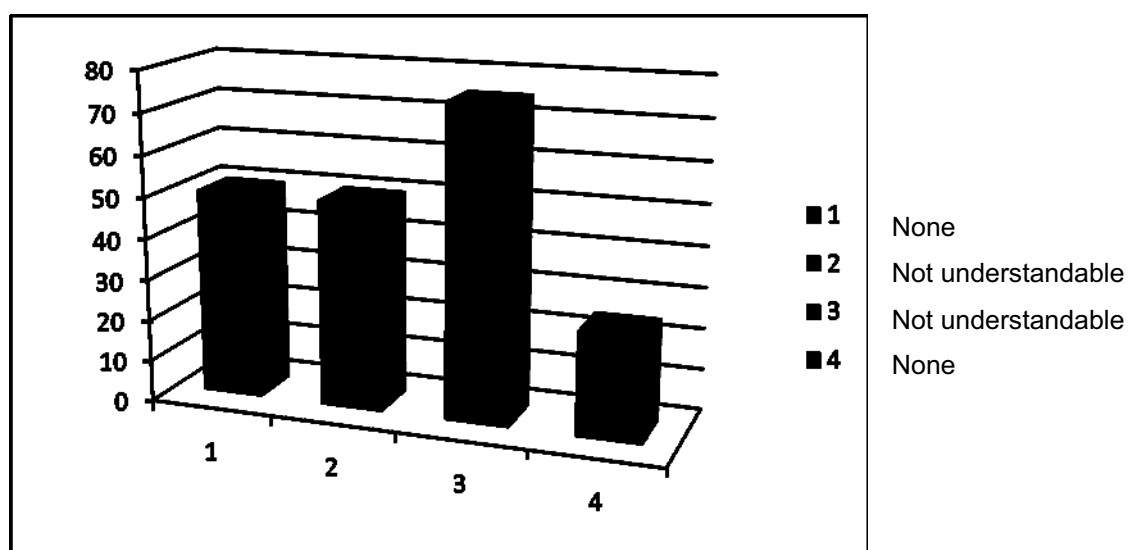
Corruption as an Obstacle to the Free Movement of Goods and Vehicles across the Border



1. Is a problem
2. Is somewhat significant
3. Is a serious obstacle
4. No response

Figure 7

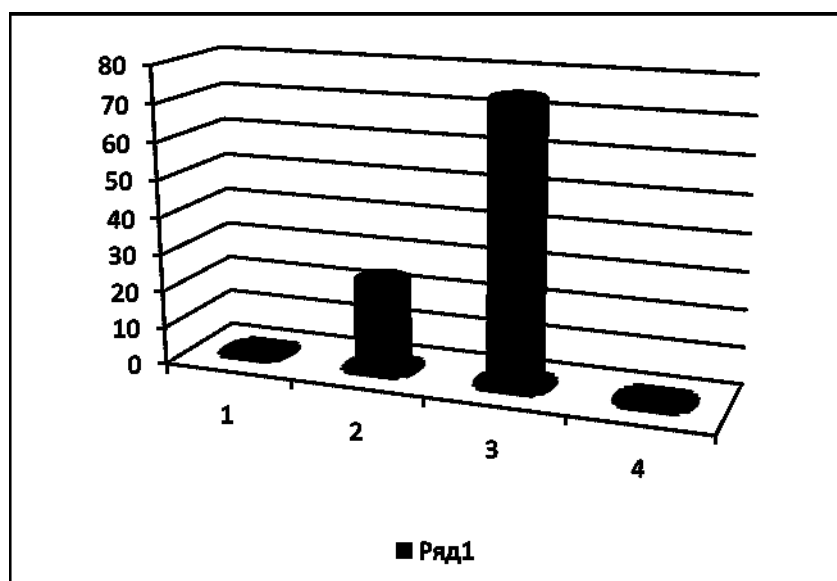
Will of Authorities to fight Corruption at Border-Crossing Points: Perception of Importers, Exporters, and Individual Citizens Crossing the Border



- 1, 2 Importers and exporters
3, 4 Individual citizens crossing the border

Figure 8

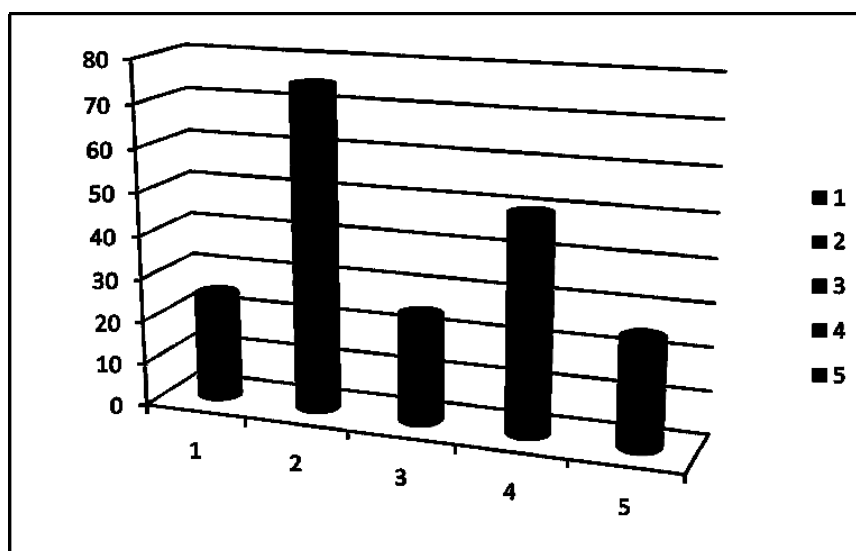
Anti-Corruption and Corruption Prevention Efforts of the Government at Border-Crossing Points



1. Rather effective
2. Somewhat effective
3. Not effective
4. No response

Figure 9

Awareness of the Public (Persons Crossing the Border) and Border Officials on Anti-Corruption Efforts at Border-Crossing Points



- 1 Persons crossing the border
- 2 Persons crossing the border
- 3 border Border officials
- 4 Border officials
- 5 Border officials

1. Somewhat aware
2. Unaware
3. Aware of measures
4. Somewhat aware
5. Unaware

To organize the operation of border-crossing points, prevent corruption, and secure the free movement of persons and goods across the border, it is also necessary to raise public awareness on the border-crossing point regime and the duties of border officials. *To raise the awareness of persons crossing the border on the regime rules, it is necessary to set up an information stand in the border-crossing point, where booklets will be placed in a visible and accessible place on the rules of border crossing and other key rules on the movement of persons and goods across the border.*³⁹

Some awareness-raising work should be implemented among the border officials, as well. To raise their awareness, it is necessary, in particular:

- a) When recruiting to deliver notice, against signature to confirm receipt, on the negative consequences of corruption, including criminal sanctions; and*
- b) To conduct training courses for border officials on topics such as ethics rules, the need to comply with them, corruption, performance improvement, and other matters.*

The mass media play an important role in terms of supporting the effective operation of border-crossing points and safeguarding the exercise of the right to freedom of movement. The radio and television should cover the work of the border-crossing points, including their flaws and cases of corruption.

The remuneration of border officials is a key issue: in Armenia, the wages of border officials are surprisingly low. Moreover, some border-crossing points lack professional staff.⁴⁰

Taking into account that border-crossing points are far from the capital city and appropriate specialists are lacking in the settlements near the border, it is necessary to stipulate higher wages for all the border officials taking into consideration the peculiarities of the settlement, the climate in the respective region, and remoteness from large cities.⁴¹

³⁹ The Customs Service under the State Revenue Committee of the Republic of Armenia has published a booklet that concisely and comprehensibly presents information on the procedures of customs clearance of goods moved by natural persons across the customs border of the Republic of Armenia, as well as limitations on the movement of goods and customs privileges. However, it should be noted that, over several months of observations at the border-crossing points, the booklets could not be accessed at all in some of the points, which can be due to a variety of reasons, such as lack of a convenient building where the awareness booklets could be placed. In some border-crossing points, the customs officials made abstract statements on the importance of the booklets ("they do exist, the boss has them and will give them if needed"). It is important that the booklets are placed abundantly in every border-crossing point.

⁴⁰ Such circumstances, including the lack of professionalism among the officials, their low wages, and lack of awareness, directly affect the border-crossing point regime and the free movement of goods across the border, leading to corruption caused by official arbitrariness and other factors.

⁴¹ Throughout the world, higher wages are paid as an incentive to engage professional specialists to areas near the border; to work in remote areas, they need to have privileges, transportation, and other benefits that would stimulate professionals to work in border-crossing points at least for some time. Freedom of movement can be safeguarded only by means of the effective operation of border-crossing points.

2.2 The Passport of Armenian Citizens; Passport Control at Border-Crossing Points

A key question that comes upon when reviewing issues related to the freedom of movement of persons through border-crossing points of Armenia is what Armenian citizens need to cross the border. In this context, it is necessary to review the passport of Armenian citizens, the procedure of issuing passports to Armenian citizens, and the passport control performed at border-crossing points.

The following personal identification documents are used in the Republic of Armenia:

1. For citizens of the Republic of Armenia: the military card, the personal identification document issued temporarily by bodies of the Ministry of Interior of the Republic of Armenia, and the birth certificate for children under age 16;
2. For refugees: the refugee certificate and the refugee travel document; and
3. For foreign citizens and stateless persons: the foreign state's passport, internationally-recognized personal identification documents, special passport of the Republic of Armenia, and residence certificate.

The documents confirming citizenship of the Republic of Armenia are the passport of a citizen of the Republic of Armenia and, for minors, the birth certificate or certificate confirming citizenship. When dealing with foreign citizens crossing the border, passport control of the Republic of Armenia in respect of such persons shall be performed in recognition of personal identification documents issued by foreign states.⁴²

The passport of a citizen of the Republic of Armenia is issued on the basis of an application by the person or his representative. A duty (in the amount of the base duty) shall be collected from citizens of Armenia for issuing the passport.⁴³ Passports shall be issued to citizens of the Republic of Armenia or replaced by Ministry of Interior bodies of the place of their permanent, temporary, or factual residence, or by the diplomatic representatives of consular institutions of the Republic of Armenia in foreign states. To receive a passport, citizens of the Republic of Armenia shall present an application in the designated form, the birth certificate or the passport of an Armenian citizen received prior to reaching age 16, two photos of size 35 by 45 mm, the consent of one parent⁴⁴ or the lawful representatives (for those receiving a passport before reaching age 16), which they (the parent or lawful representative) shall sign when turning it in. If the parent or lawful representative is unable to turn in the consent personally, then the authenticity of their signature on the consent shall be notarized, and shall be submitted with the conscription certificate or military card (for those obliged to serve in the army).⁴⁵

⁴² As to the personal identification documents of stateless persons and their recognition in the Republic of Armenia, personal identification documents of stateless persons (travel passports and the like) issued by foreign states shall be recognized in the Republic of Armenia; stateless persons shall cross the state border of Armenia subject to the border-crossing procedures that apply to citizens of the states issuing their respective documents.

⁴³ Article 14 of the Republic of Armenia Law on Stamp Duties sets the amount of the stamp duty for issuing a passport.

⁴⁴ For quite some time now, the passports of underage citizens of Armenia may be issued on the basis of an application by one parent; however, some units of the passport service demand the consent of both parents as a mandatory condition, thereby obstructing the exercise of this right by persons. This practice may be due to corruption or lack of awareness among the passport officials.

⁴⁵ Republic of Armenia Government Decree 821 dated 25 December 1998.

A citizen of Armenia may exchange his passport in case of changes in the information contained in the passport, discovering errors in the information therein, or the passport becoming unfit for use. To exchange a passport, a citizen shall submit the passport to be exchanged, an application of the required form, and two photos. In case of exchanging the passport due to changes to information in the passport or discovering errors in the information in the passport, the citizen shall also present documents confirming the changes or errors. A citizen of Armenia who loses his passport shall be obliged to inform the interior authorities or, in case of being in a foreign state, the respective diplomatic mission of Armenia, thereof within a 10-day period. A loss file shall be compiled in case of passport loss, and a new passport shall be issued instead of the lost one.

A person who resigned from or lost citizenship of Armenia shall be obliged to surrender his passport in accordance with the established procedure with the interior authorities in the Republic of Armenia or, in case of being in a foreign state, the respective diplomatic mission of Armenia in such foreign state.⁴⁶ The passports of suspects and accused persons on whom “signature not to leave the country” has been imposed as a measure of restraint in criminal proceedings, as well as the passports of persons convicted to imprisonment shall be temporarily taken away by the inquest or investigation authorities or the court, and the passports of persons conscripted to army for a term of service shall be taken away by the military conscription office, which shall limit the movement rights of such persons.

*It is prohibited to take away the passport of a citizen of the Republic of Armenia, to give it to other persons, or to transfer it to someone else.*⁴⁷

The registration of citizens at a place of residence is directly related to the issuing of Armenian citizen passports. The registration is performed through the central and local registers that process and coordinate the citizens’ individual registration data. A note on the registration data in the State Register of the Population, including on the registration address, in particular, shall be made in the passport of Armenian citizens. To become registered in the State Register of the Population, Armenian residents shall provide their permanent residence address stipulated by the Republic of Armenia Law on the State Register of the Population to the local register together with an application in the established form, as well as documents of personal identification and documents confirming the right to reside at the respective address. An application to become registered or an application to change the registration shall be filed with the register by the citizen, his proxy, or lawful representative in case of citizens under age 16.

*Persons that do not have registration shall file the application with the local register in the territory of which they factually reside. The registration of the citizen shall be performed without specifying a concrete address. The street or district shall be mentioned as the place of residence.*⁴⁸

Underage children shall be registered in the register at the registration place of one parent or guardian, regardless of the consent of the owner of the living space.⁴⁹

⁴⁶ An interesting situation arises at the border-crossing points when persons who lost Armenian citizenship visit the Republic of Armenia years after losing the Armenian citizenship with a passport of a foreign citizen: at the Armenian border, they are interrogated without any clear reason. This practice should be eliminated in order to safeguard the right to freedom of movement.

⁴⁷ It is clearly mentioned in the Armenian citizen’s passport that the passport is the property of the Republic of Armenia. It implies an absolute prohibition of taking the passport from the person or depriving the person of the passport, with the exception of cases provided by law.

⁴⁸ Persons without a definite place of residence.

⁴⁹ Republic of Armenia Law on the Military Duty.

Under Paragraph 2(a) of Article 4 of the Republic of Armenia Law on Military Duty, passports may be issued or exchanged to persons under duty to serve in the army (with the exception of reservists who are abroad), or their registration at a place of residence effected or cancelled in case the respective military commissioner has made a note in their military documents regarding military registration. The note on the validity in foreign states of passports of pre-conscription-age persons under duty to serve in the army shall be made before they reach conscription age or, in case they have reached conscription age, for the duration of the deferral of their mandatory army service.

To cross the state border of the Republic of Armenia, persons not only need to have the registration in the respective population register and a passport, but also demonstrate that their passport is valid in foreign states. Citizens of Armenia need to have a seal in the passport on validity of the passport in foreign states. In the absence of such seal, citizens of Armenia shall be prohibited from leaving the Republic of Armenia. The seal on validity of Armenian passports in foreign states is placed by the Passport and Visa Department of the Police of the Republic of Armenia within one working day of applying and paying the required stamp duty.⁵⁰

In the context of the free movement of persons and goods through Armenia-Georgia state border-crossing points, it is necessary to review the rules and procedures on the movement of persons, especially passport control at the border-crossing points.

Passport control at the border-crossing points is performed directly with the aim of implementing legally-required control of persons moving across the border at a border-crossing point and shall include a check of the person against the presented identification document, and whether the person has the right to enter into and leave the territory of the Republic of Armenia.

As to the movement of persons through Armenia-Georgia border-crossing points, visa-free travel and mutual recognition of visas are in effect between the two states in accordance with the Mutual Visa Recognition Treaty concluded between Armenia and Georgia on 19 May 1993.⁵¹ Article 1 of the Treaty provides that each party shall recognize the foreign citizens' entry, exit, and transit visas issued by the competent authorities of the parties. A person who has any of the aforementioned

⁵⁰ It should be noted that the Republic of Armenia Law on Stamp Duties requires the payment of a stamp duty for certain services related to the issuance and exchanging of Armenian passports. The passport issuance and exchanging procedures have recently been streamlined and improved; fast issuance is now possible against payment of a certain additional fee. Republic of Armenia Government Decree 1467-N dated 11 December 2008 on the Fee for Issuing and Exchanging the Passport of Armenian Citizens and the Authorization to Open an Off-Budget Account of the Police sets the amounts of the fees for issuing and exchanging passports of Armenian citizens. If the citizen of Armenia wishes to obtain or exchange his passport in a shorter period of time, he shall conclude an agreement with the respective authority: a lost passport may be replaced with a new one during one working day for a fee of 60,000 Armenian drams, during three working days for a fee of 50,000 drams, or during 5 working days for 40,000 drams. A passport may be issued or an existing passport exchanged during one working day for a fee of 20,000 Armenian drams and during three working days for 10,000 drams. The Republic of Armenia Law on Stamp Duties provides that a base duty shall be collected for issuing a passport of an Armenian citizen, and 75-fold the base duty shall be collected for issuing a new special passport instead of the special passport lost by the citizen. The aforementioned Government decree contradicts the Republic of Armenia Law on Stamp Duties, because the stamp duty is charged for certain services rendered by state bodies in accordance with the procedure stipulated by law, as well as the Republic of Armenia Constitution, because the off-budget payments are made on the basis of a decree that directly contradicts the Constitution, because under the Constitution, only laws may prescribe obligations of persons.

⁵¹ Treaty of 19 May 1993 between Armenia and Georgia on the Mutual Recognition of Visas.

visas for entry into, stay in, or exit from the territory of either party shall have the right to transit onto the territory of the other party as the final destination or to a third country. Article 1 of the Treaty of 18 April 1993 on Visa-Free Movement of Citizens of the Republic of Armenia and the Republic of Georgia in Their Respective Territories⁵² provides that citizens of the parties may travel, enter into, and move within the territory of the contracting parties without visas, provided that they possess personal identification documents.

Thus, the aforementioned treaties have streamlined the movement of persons between the two states through their border-crossing points, as well as within the territories of the contracting parties. The movement of persons is primarily based on the consideration that visa-free entry into the neighboring states shall be secured for citizens of Armenia and Georgia. Moreover, the parties undertake to mutually recognize the transit travel documents of citizens of other states and to secure the right to unhindered movement.

Republic of Armenia Government Decree 200 dated 24 March 1998 approved the Regulation on the Procedure of Performance of Functions by Competent State Bodies at State Border-Crossing Points of the Republic of Armenia,⁵³ which provides that the passports of citizens arriving at or departing from the Republic of Armenia shall be checked by the border-guard service when citizens enter into or leave the Republic of Armenia by land transport. In case of the entry of foreign citizens, the existence of an entry visa shall be checked, as well. However, a visa is required only if an international treaty does not regulate visa-free entry into the territory of the Republic of Armenia.

Thus, there are two regimes of entry of persons into the territory of the Republic of Armenia: entry with a visa and visa-free entry. It is worth noting that the Regulation approved under the Republic of Armenia Government Decree 200 dated 24 March 1998 also regulates the entry of foreign citizens into the Republic of Armenia in case of the absence of an entry visa. In such cases, foreign citizens may apply directly to the Republic of Armenia Police Passport and Visa Department unit located at the state border-crossing point for an entry visa, and shall enter into the customs control zone after obtaining such a visa.

In the management of the border-crossing points, certain procedures have to be regulated in relation to the foreign citizens' crossing into the border zone, their confinement there, and related issues. For instance, Article 37(1) of the Republic of Armenia Law on Foreigners provides that, in case a foreigner may not be returned to his country of origin or the country from which he arrived, foreigners who arrived at a border-crossing point of the Republic of Armenia without a passport or with an invalid passport, or foreigners denied an entry visa of the Republic of Armenia at a border-crossing point of the Republic of Armenia, or foreigners denied entry by a border-control body, may be held in the transit zone or elsewhere in a special shelter created for such purposes. Republic of Armenia Government Decree 127-N dated 7 February 2008 defines the procedure of operation of special shelters at border-crossing points and transit zones of the Republic of Armenia and the procedure of holding foreigners there.

Another issue revealed in the context of border control at the border-crossing points was the possibility of problems arising when the term of the seal of passport

⁵² Article 1 of the Treaty of 18 April 1993 on Visa-Free Movement of Citizens of the Republic of Armenia and the Republic of Georgia in Their Respective Territories.

⁵³ Paragraphs 7, 8, 9, and 10 of the Regulation.

validity in foreign states has expired.⁵⁴ However, this issue was observed only at the border-crossing point: in such cases, the citizen has to return his place of residence in order to prolong the validity term. For these cases, a simplified procedure should be introduced for prolonging the term of passport validity in foreign states at the border-crossing points as an additional safeguard of the exercise of the persons' right to freedom of movement.⁵⁵

Another issue is that Armenian citizens who frequently travel to the neighboring state have to exchange their passports much more frequently because stamps are placed in their passports every time when they cross the state border, quickly filling up the passport pages.⁵⁶ It should be possible to issue passports with more than 33 pages, so that persons can freely cross the border several times a day and not worry about filling up the passport pages. Passport-related red tape can obstruct the exercise of the constitutionally-safeguarded right to freedom of movement.

As was noted, the border-guard troops perform the functions of passport control at the border-crossing points.⁵⁷ Officials of the Passport and Visa Department of the Police of the Republic of Armenia only perform the issuance of Armenia entry visas at the border-crossing points. The existence of two agencies at the border is not expedient: the relevant powers of one agency may be delegated to the other in order to preclude contacts between persons crossing the border and officials of different agencies and to facilitate the freedom of movement without delays.

Thus, to cross the state border of Armenia, persons need first of all to have personal identification documents. Armenian citizens need an Armenian passport in

⁵⁴ This observation applies only to validity of the passport in foreign states. However, one may question why the "validity of the passport in foreign states" is controlled inside the territory of the Republic of Armenia: so long as the passport is valid within the Republic of Armenia, the lack of a "seal of validity in foreign states" should not deprive the person of the right to leave the Republic of Armenia. It should only imply that the person's passport will not be recognized in a foreign state. Another noteworthy issue is that persons who have the right to return to the Republic of Armenia often face obstacles at the border-crossing point if the term of validity of their passport in foreign states has expired by the time of their return, creating an obstacle to the exercise of their right to freedom of movement and the right to return to their home country.

⁵⁵ Activities are being implemented in the Republic of Armenia to improve the effectiveness of the fight against terrorism as per Resolution 1373 (2001) of the UN Security Council, strengthening domestic control of personal identification documents, and introducing biometric personal identification documents in order to include the person's photo in the passport as a biometric identifier as per the 2 December 2004 recommendation of the European Parliament to states. In our opinion, the introduction of biometric passports will further safeguard the persons' right to freedom of movement.

⁵⁶ Such complaints were voiced also by residents of some settlements near the border, because they frequently cross the border. In this Report, it is recommended to create simplified border-crossing points for the residents of settlements near the border, where passport control may be performed without marking the entry and exit in the passport.

⁵⁷ An issue observed in the context of the passport control functions of the border-guard troops was that, in many cases, the border guards ask persons traveling to European countries whether or not they have a visa to enter into such countries, a power that they do not have. A person is free to leave the country in any event. Besides, it is up to the European country to determine whether or not the person has the right to enter into the country. Therefore, the Armenian border guards should not be worried about this issue. If they were to reserve themselves the right to check whether Armenian citizens leaving Armenia have the entry visas of the destination countries, they would have to be aware of the entry visa procedures of specific countries. For instance, Montenegro, which is not a party to the Schengen Agreement, allows Schengen visa holders to enter into Montenegro for up to a week without a Montenegro visa; however, the Armenian border guards, at times unaware of this and other similar procedures, ask persons leaving Armenia why they are traveling, for what purpose, what is their final destination, and how exactly they received a visa, thereby hindering the exercise of the persons' right to freedom of movement.

order to cross the state border of Armenia. The terms and procedure of obtaining Armenian passports and endorsing their validity in foreign states have been considerably simplified during the last year; the procedure is now simple and accessible, and, with few exceptions, does not hinder the free movement of persons.

2.3 Monitoring of the Cross-Border Movement of Goods and the Related Procedures

The review of the Armenian legislation stipulating the rules and procedures of moving goods through border-crossing points revealed certain issues connected with the free movement of goods. Namely, Article 8(2) of the Republic of Armenia Law on the State Border, which provides the scope of the state border regime, states that it shall include *the rules of clearance of the state border by persons, vehicles, animals, cargo, and other assets*. Under Article 3 of the Customs Code, the powers related to such “clearance” at the border-crossing point involve the customs procedures of the Republic of Armenia, i.e. the terms and procedure of movement of goods and vehicles across the customs border of the Republic of Armenia, the collection of customs duties, customs clearance, and customs control, which in the Republic of Armenia are implemented in accordance with the procedure stipulated by the Customs Code and other legal acts.⁵⁸

Checkpoints of the border-guard troops shall be created at state border-crossing points, where the Government of Armenia shall designate a customs zone in which exclusively the customs authorities shall exercise control.

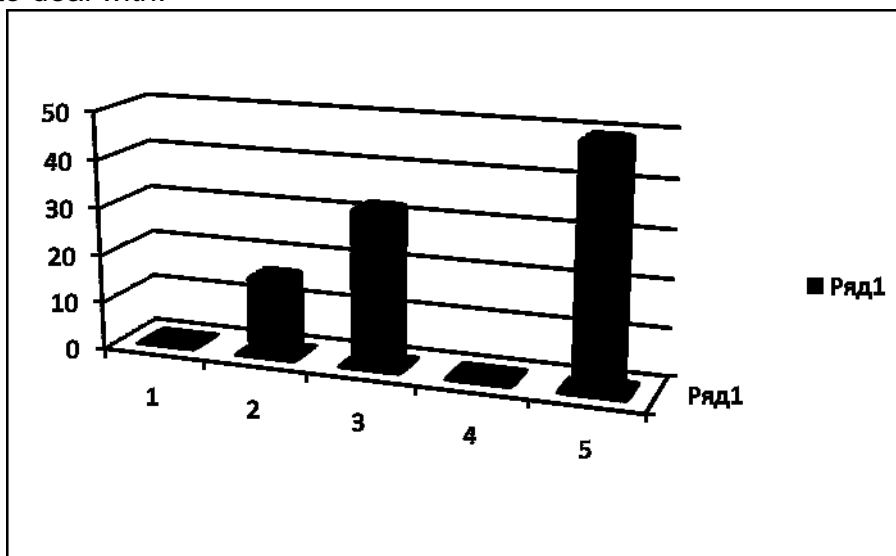
Article 14 of the Republic of Armenia Law on the State Border provides that persons, vehicles, animals, cargo, and other assets crossing the state border shall be subject to border control, sanitary-quarantine control, veterinary control, phytosanitary control, and customs control. Hence, several different state bodies have functions related to the management of the border and the border-crossing points. Article 27 of the Republic of Armenia Law on the State Border provides that an area and a building shall be set aside at the state border-crossing point, where the ... customs control shall be directly performed. The process involves a variety of activities with the participation of different state bodies,⁵⁹ which implies rather intense participation of persons, conflicts of interest, risks of violation of the rights of persons, and many other problems. However, some observations will be presented here on the powers of the customs authorities at the border-crossing points, which are directly connected with the movement of goods across the border.

⁵⁸ Article 1 of the Customs Code of the Republic of Armenia.

⁵⁹ Figure 10 of this Report: the data indicates that, in the cross-border movement of goods, the importers and exporters have to deal with different state bodies. In some cases, they cannot even know which state body to apply to. This issue is twofold: on the one hand, it is due to the lack of awareness on the part of importers and exporters, and on the other, the existence of legislation that authorizes different state bodies to perform functions at the border-crossing points. It is necessary to minimize contacts between persons and officials at the border.

Figure 10

In the process of customs clearance related to the importing or exporting of goods, you have to deal with:



1. Others
2. Customs authorities
3. Customs brokers
4. No response
5. Customs authorities and several other state bodies and customs brokers

As reflected in Figure 10, when asked who they had to deal with in the process of customs clearance when importing or exporting goods, 48% of the respondents noted that they had to deal with customs authorities and several other state bodies and customs brokers, 34% with customs brokers, 18% with customs authorities, and none gave other responses or no response. Given the majority opinion and the observations at border-crossing points, it is clear that, in the process of importing or exporting goods, persons have to deal with several different state bodies and officials. This circumstance creates problems to the free movement of goods, solutions to which will be discussed below.

The State Revenue Committee of the Republic of Armenia, of which the customs agency is a part, has extensive powers related to border management. Considering that customs control at state border-crossing points **is performed in customs houses or customs points**, the Republic of Armenia Government designated by Appendix 2 to Decree 1005-N dated 4 September 2008 the customs houses and customs points operating in Armenia, some of which are on the Armenia-Georgia border: customs points at Bagratashen, Ayrum-Jiliza, Gogavan-Privolnoye, and Bavra, and the customs house at Zvartnots.

This legal regulation is consistent with the International Convention on the Harmonization of Frontier Controls of Goods, which entered into force in relation to the Republic of Armenia on 8 March 1994.

Article 1(a) of the Convention provides that “customs” means the Government Service which is responsible for the administration of Customs law and the collection of import and export duties and taxes and which also has responsibility for the application of other laws and regulations relating, inter alia, to the importation, transit and exportation of goods.

Article 1(b) of the Convention provides that “customs control” means measures applied to ensure compliance with the laws and regulations which the Customs are responsible for enforcing.

Essentially, customs points are created in the Republic of Armenia within customs houses, which perform customs control at separate areas within the jurisdiction of the same customs house, i.e. the customs function of the Republic of Armenia (Table 4).

Table 4	Objectives of the Customs Function
1. Economic objective:	should be manifested in the form of collecting customs duties when goods move across the customs border <u>with a view to securing the movement of goods in equal conditions</u> ;
2. Regulatory objective:	is pursued by means of prescribing customs duties, prohibitions, and quotas on the import and export movement of goods across the customs border;
3. Law-enforcement objective:	is pursued in relation to protecting state security, the public order, the life and health of persons, and consumer interests, as well as prohibiting the smuggling of goods and other ways.

In general, it can be concluded that the main objective of customs in the Republic of Armenia is to ensure security of the customs border and customs territory of the Republic of Armenia. It in turn implies rather extensive powers of the customs agency in border management and security. In the context of safeguarding the free movement of goods, the primary customs objectives are the protection of state security, the public order, the life and health of persons, and consumer interests, all with a view to safeguarding the free movement of goods possessed and controlled by persons.

The free movement of goods across the border is not affected by any problems due to control and inspection procedures in the frameworks of customs control⁶⁰ unless state bodies impose restrictions or otherwise limit the free movement of goods.

The Customs Code of the Republic of Armenia provides that persons may, on an equal footing, import into and export from the Republic of Armenia goods and vehicles in accordance with the procedures stipulated by the Customs Code. The rights of persons moving goods across the border may be limited in accordance with the procedure stipulated by law. The movement of goods may be prohibited only when such goods and vehicles pose a threat to state and national security, the public order, the life and health of persons, the flora and the fauna, the environment,

⁶⁰ Under Paragraph (p) of Article 2 of the Customs Code of the Republic of Armenia, “customs control” is a set of measures carried out by the customs authorities with the aim of ensuring compliance with the provisions of the Republic of Armenia laws, other legal acts, and international treaties, which is an element of the customs function that is performed during the movement of goods through the border-crossing points. Customs control is about ensuring effective compliance with the legislation, which can secure the free movement of goods across the Armenia-Georgia border.

the moral values of the population, the cultural and archeological values of history, or the property rights and lawful interests of persons.⁶¹

Customs clearance of goods and other objects moved across the customs border of the Republic of Armenia shall be performed in accordance with the procedure stipulated by the Customs Code and the sub-legislation adopted to ensure the application of the Code. In particular, Order 70-MVr of the Customs Department dated 11 June 1998 defines the customs clearance procedure, whereby:

1) In case of exports (temporary exports) of goods, objects, items, and property (including hereditary property) of personal use:

a) If the goods, objects, items, and property are exported by enterprises, institutions, or organizations, then customs clearance shall be performed at the regional customs house of the area in which the registered organization operates;

b) The customs clearance of goods and other objects exported by Republic of Armenia citizens, foreign citizens, or stateless persons shall be performed at the regional customs house of the area in which the citizen resides or the customs point through which the goods or other objects are exported.

2) In case of imports of goods and other objects:

a) If the goods or other objects are imported by organizations, then customs clearance shall be performed at the regional customs house of the area in which the registered organization operates;

b) The customs clearance of goods and other objects imported by citizens shall be performed at the customs point through which they are imported.

The clearance of goods or other objects imported or exported by organizations may be performed in one of two ways.

Prior to selecting a channel, the organization shall present the documents necessary for customs clearance to the customs authorities. The data in such documents shall be entered into the computer and a filled-out customs declaration of cargo shall be printed, then checked and signed by the organization. After the customs declaration of cargo is printed, assessment is performed, which in turn is closely related to the selection of one of the customs clearance channels:

a) In the first channel, the automated declaration system allows customs assessment of cargo, and customs inspection shall be performed after the required documents are prepared and the payments made;

b) In the second channel, the customs declaration of cargo is not assessed by the automated system, because the organization has not met the deadlines of customs clearance or customs payments.

In practice, there are three types of customs inspections at the time of customs clearance:

1) Ordinary inspection: the customs authorities visually inspect goods or objects from the outside;

2) Partial inspection and examination: the inspection and examination are performed based on random selection; and

3) Complete inspection: the whole of the goods or objects are inspected and examined.

As opposed to the customs clearance of goods and other objects imported or exported by organizations, the customs declarations on goods or other objects moved by citizens shall be filled out only if they exceed a certain quantity or monetary threshold.

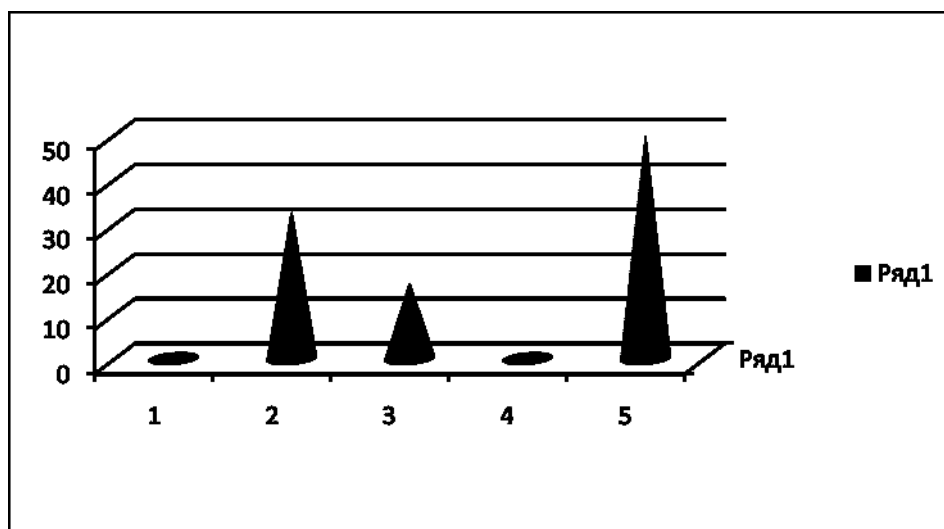
⁶¹ Articles 18 and 19 of the Customs Code of the Republic of Armenia.

In such cases, the customs inspector checks the accuracy of the filled-out declaration and examines the goods or other objects of the citizen.⁶²

In case of commercial imports or exports, a cargo certificate is prepared at the border-crossing point, and customs clearance is normally not performed at the border-crossing point. The goods undergo external examination of the protective customs marks of the vehicle and/or cargo container, and the goods are released to the relevant customs house of Armenia or, in case of exports, the relevant foreign country in a minimal time period. To determine the relevant circumstances, interviews were conducted (see Figure 11) with businessmen engaged in imports of goods across the border.

Figure 11

In the process of imports of goods by business entities, customs declarations are processed at the customs points:



1. In a short period of time without any problems
2. In a lengthy procedure
3. Sometimes with delays
4. Otherwise
5. No response

When businessmen were asked how the custom declarations were processed at customs points in the process of imports of goods, 34% of the respondents said that the procedure was lengthy, 17% said it was sometimes delayed, and 59% did not give any answer. Based on these findings, it can be assumed that the processing of customs declarations at customs crossing points is somewhat of a problem for business entities; however, in our opinion, the controls and inspections performed by a number of other state bodies prior to the filing of cargo certificates at the border-crossing points hinder the process even more.⁶³

Under such circumstances, a key factor for safeguarding the right to free movement of goods is the simplicity and duration of the customs clearance process at border-crossing points and customs houses of the Republic of Armenia. At present, the situation regarding the procedures is rather inspiring (Figure 12), given

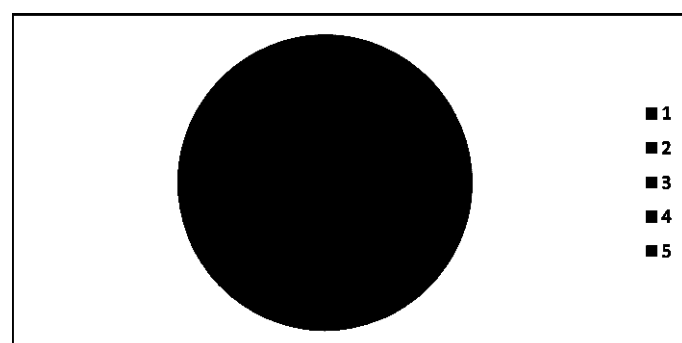
⁶² Details will be presented in the “Transportation of Goods and Objects by Citizens through the Border-Crossing Points” section of this Report.

⁶³ As discussed just above in the section regarding Figure 10.

that, in the survey, representatives of freight-forwarding organizations, importers, and exporters noted, when asked about the quality of the procedure of customs clearance at border-crossing points, 35% of the respondents considered it long and complicated, 47% considered it very short, and 18% said it was not understandable due to the indifference by the customs authorities. These findings are somewhat inspiring, but one could not claim that the customs clearance procedure is ideal, because, sometimes, it is heavily delayed or even neglected altogether by the customs authorities.⁶⁴

Figure 12

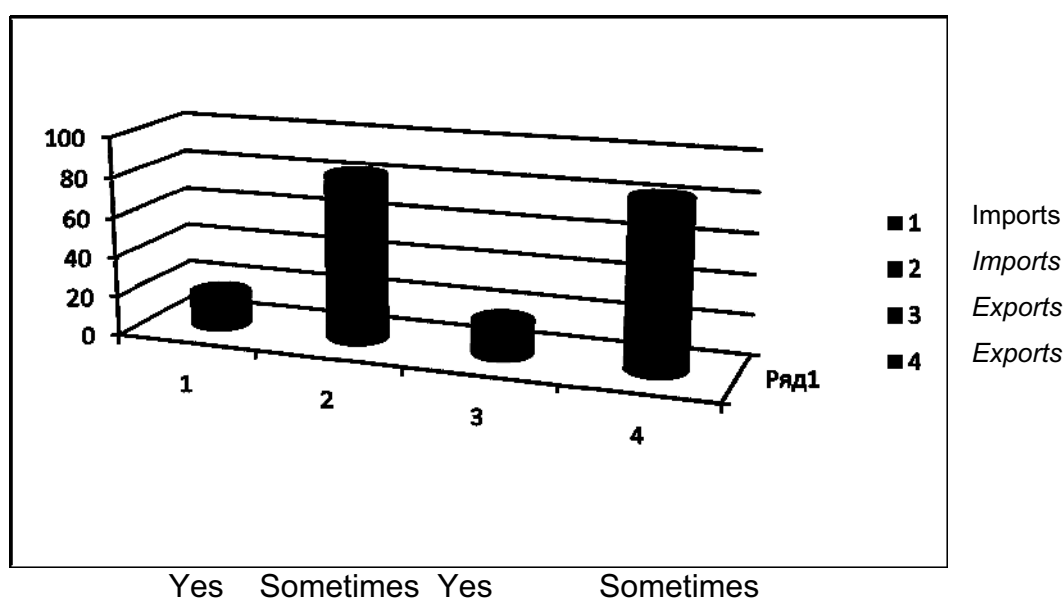
What is your opinion of the customs clearance procedure at border-crossing points?



1. The procedure is long and complicated
2. The procedure is very short
3. The procedure is not understandable due to indifference by the customs authorities
4. Other responses
5. No response

Figure 13

Are there any difficulties when importing or exporting goods across the border?



⁶⁴ An example of indifference was noticed during the monitoring of the customs points: a loaded vehicle had reached the crossing point, where it was not offered to export or to free the customs area. In another case, a person crossed the border with the goods in his hand, and none of the customs officials paid any attention to his movement; as a result, the neglected goods (two large bags) crossed the border without any examination.

There are difficulties in the transportation of goods across the border, as well: when asked whether there were any difficulties in importing or exporting goods across the border, 17% of the survey respondents said that there were difficulties, and 83% said that sometimes there were difficulties. Given the opinion of the majority of the respondents, it is obvious that the difficulties in the process of importing or exporting goods are permanent, but are not necessarily manifested in all cases. These difficulties are related to a number of factors, such as the importers' inadequate knowledge of the laws, the somewhat complicated standardized procedures of customs clearance, the excessive paperwork, and the fact that importers and exporters have to deal with not only customs brokers, but also state bodies, which poses additional obstacles. *It is necessary to raise the legal awareness of those frequently engaged in imports or exports of goods on the rules concerning the transportation of goods across the border: regular training courses and seminars should be organized, and the customs rules should be simplified in order to streamline the contacts between importers/exporters and state bodies.*

Transportation of Goods and Objects by Citizens through the Border-Crossing Points

Goods transported by natural persons (i.e. their luggage) are controlled at the border-crossing points in accordance with the general customs rules. *The natural persons' right to freedom of movement of goods through the border-crossing points of the Republic of Armenia is directly connected with the natural persons' right to freedom of movement. The objective should be to not limit the free movement of goods of personal use, as rigid customs control of such goods may obstruct the movement of such goods by the relevant persons.* The goods moved by natural persons (citizens) through the border-crossing points are objects of their personal, family, and other use, which are not related or subject to business activities.

To choose an appropriate and proportionate type of control over goods transported by natural persons across the border, it is necessary to determine certain information, such as the nature and quantity of goods moved by natural persons and the frequency of such movement, which would clearly indicate the purpose of the transportation.

The customs legislation of the Republic of Armenia prescribes more simple mechanisms of control over goods moved across the border for personal needs of citizens, as well as exemptions in the form of certain goods and amounts that may be moved in a simplified procedure without either customs declaration or collection of customs duties. The legislature has introduced, for instance, certain exemptions for goods moved by natural persons across the customs border of the Republic of Armenia. Under Article 105 of the Customs Code, natural persons may move across the customs border of Armenia goods in the form of carry-on without payment of customs duties, provided that the customs duty rate for their imports prescribed by the Customs Code is not 0 percent, their total weight does not exceed 50 kilograms, and their total customs value does not exceed 150,000 Armenian drams, or goods moved in the form of international postal or courier shipments the total weight of which does not exceed 20 kilograms and their total customs value 50,000 Armenian drams. Natural persons may move their objects of personal use carried on their person or in their luggage across the customs border of the Republic of Armenia

without paying customs duties. Such objects include goods that do not have factory packaging and labeling and are either in the carry-on or on the person at the time of crossing the customs border. Natural persons arriving in the Republic of Armenia for permanent residence may import their property of personal use without having to pay customs duties. A person may use the aforementioned exemption once during five years. "Natural persons arriving in the Republic of Armenia for permanent residence" include Armenian citizens that deregistered at their place of permanent residence within Armenia and left for another state for permanent residence in accordance with the procedure stipulated by the legislation of the Republic of Armenia, as well as Armenian citizens, foreign citizens, and stateless persons that previously did not have a place of permanent residence within the Republic of Armenia, which are registered in the Republic of Armenia after arrival in accordance with the Law on the State Register of the Population as permanent residents and present to the customs authorities a document confirming the fact of their permanent residence within the Republic of Armenia, i.e. a passport (or document substituting the passport) with mention of the place of permanent residence of the natural person. When arriving in the Republic of Armenia for permanent residence, Armenian citizens that left the Republic of Armenia territory for another state for residence in accordance with the procedure stipulated by the legislation of the Republic of Armenia shall present to the customs authorities, in accordance with the Law on the State Register of the Population and the Law on the Consular Service, also a document confirming the fact of permanent residence in a foreign state, i.e. the citizen's passport stamped by the consular service of the Republic of Armenia in the respective foreign state as "recorded by the consular mission for purposes of permanent residence," and/or a statement issued by the competent state body of the respective foreign state on the fact of permanent residence, which shall be authenticated by a document issued by the Ministry of Foreign Affairs of the Republic of Armenia. The property of personal use of natural persons arriving in the Republic of Armenia for permanent residence shall be imported into the Republic of Armenia within 180 days of the date of becoming registered in the Republic of Armenia. Diplomats serving in the diplomatic service bodies of the Republic of Armenia in foreign states and military, trade, and other attaches posted in the diplomatic missions, and citizens appointed to spiritual service by Mother See of Holy Etchmiadzin in dioceses of the Armenian Apostolic Holy Church in other countries may, after the end of their service, import the property of their personal use into the Republic of Armenia without having to pay customs duties. Natural persons of the Republic of Armenia may move their hereditary property across the customs border without having to pay customs duties, provided that they present appropriate documents on inheritance to the customs authorities. The law may prescribe other exemptions from the customs duties, as well.⁶⁵ The exemptions and restrictions prescribed for the cross-border movement of goods apply equally to foreign citizens and stateless persons.

The Government of the Republic of Armenia has introduced a simplified procedure for the movement of certain goods across the customs border by natural persons and for the movement of goods in the form of international postal deliveries.

⁶⁵ It is worth noting that, in case of commercial movements, i.e. imports and exports of commercial quantities of goods by sole entrepreneurs and natural persons across the customs border, customs control and customs clearance are performed without the exemptions applicable in relation to natural persons for personal-use quantities of such goods.

Under the Customs Code of the Republic of Armenia, natural persons may, in accordance with the procedure prescribed by the Government of the Republic of Armenia, move goods in the form of international postal deliveries across the customs border without having to pay customs duties, provided that their total weight does not exceed 20 kilograms and their total customs value 50,000 Armenian drams.

The Government of the Republic of Armenia has prescribed the amounts of cash that natural persons may carry on when crossing the border.

Problems related to the movement of goods across the Armenia-Georgia border by natural persons arise when persons move goods exceeding the values or quantities prescribed by the legislation of the Republic of Armenia.

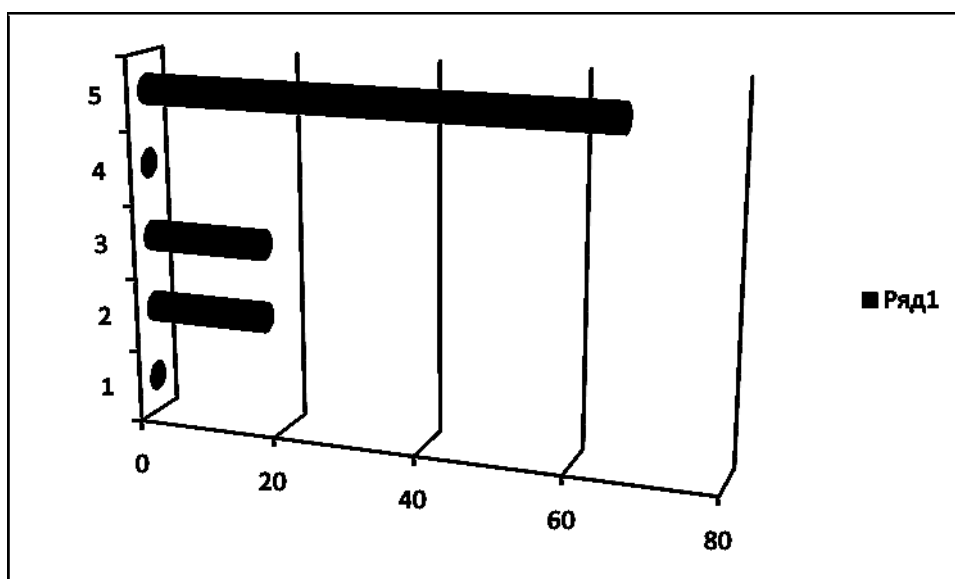
Certain problems may arise in connection with the imports and exports of goods across the customs border by natural persons. Such problems affecting the freedom of movement mostly arise during the examination of goods moved by natural persons,⁶⁶ or when the movement of goods has been restricted by law or court decision.

In the survey concerning the examination performed at the border-crossing point when natural persons move goods (**Figure 14**), when asked how the goods were examined in the context of imports or exports of goods by natural persons, 17% of the respondents said that it was performed quickly using special equipment and without obstacles, 66% said that it was performed without equipment and was a long and cumbersome procedure, 17% refused to answer, and none expressed other opinions. Considering that the majority was dissatisfied about the procedure of examination of goods of natural persons, it may be assumed that clear and elaborate mechanisms for examination of imported or exported goods do not exist, which creates numerous obstacles to the freedom of movement. *Under such circumstances, it is necessary first of all to analyze the procedure of examination of goods of natural persons, the documents required of importers and exporters, with clear mention of what state bodies must deal with it, and the equipment needed at border-crossing points for examination of the luggage of natural persons.*

⁶⁶ The Government of the Republic of Armenia has prescribed a procedure of two channels applicable in the customs control of goods carried on by natural persons departing from or arriving in the Republic of Armenia across the customs border at the international airport or in automobile transport. The procedure defines the quantities and values of goods that may be moved by natural persons. See Decree 1927-N dated 21 November 2003 and 707-N dated 3 July 2008.

Figure 14

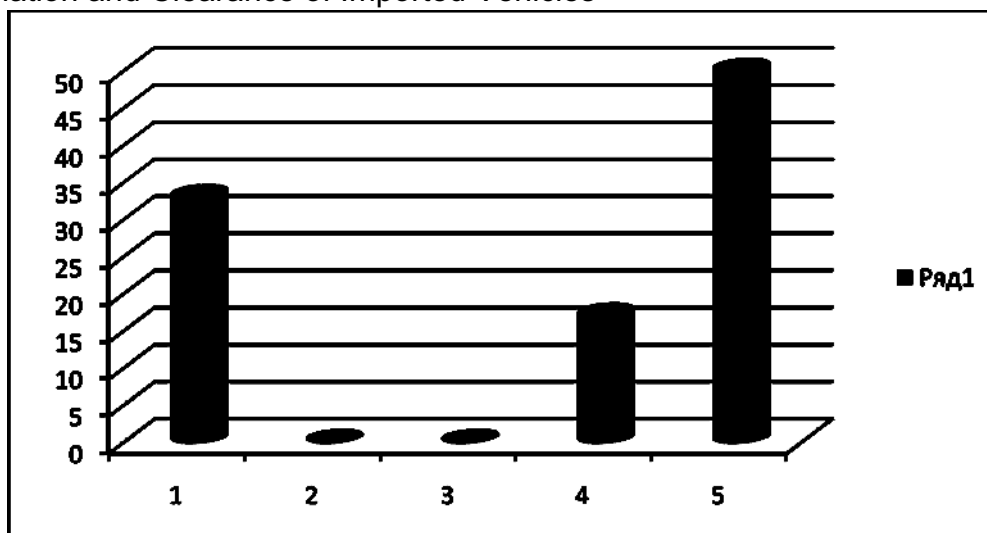
Examination of Luggage Imported or Exported by Natural Persons



1. Sometimes indifferent, with no examination of the luggage
2. Simple examination using special equipment, without any obstacles
3. No response
4. Other responses
5. Examination without equipment, long and cumbersome procedure

Figure 15

Examination and Clearance of Imported Vehicles



1. Costly and long procedure
2. Examination and clearance performed in short time
3. No clearance performed
4. No response
5. Sometimes delayed

When asked about the examination and clearance of imported vehicles, 32% of the respondents said that it was a costly and long procedure, 51% that it was sometimes delayed, and 17% did not respond. It can be inferred from the data above that problems exist in this area, as well. *In our opinion, the problems are related to fiscal objectives pursued at the border-crossing points during the examination and clearance of vehicles. The free movement of persons and goods across the Armenia-Georgia border is connected directly with the freedom of movement of vehicles, as well: when the rules on the movement of vehicles are clear, and vehicles cross the border in a short period of time, persons will not have concerns of delays at the border, and will feel more secure and free when crossing the border.*⁶⁷

Besides, in case of the movement of vehicles across the Armenia-Georgia border, vehicles must be declared in accordance with the procedure stipulated by the legislation of the Republic of Armenia. However, when a natural person crossed the border in his personal-use vehicle, then the vehicle is recorded in a log at the border-crossing point by both the customs body and the border-guard troops. In our opinion, while this practice may create conditions for the free movement of a certain category of persons, it should be prescribed in law, and the examination and control of vehicles by several state bodies should be precluded.

Movement of Cultural Values through the Border-Crossing Points

In the context of the free movement of goods and persons through Armenia-Georgia border-crossing points, it is important to review the movement of cultural values across the Armenia-Georgia border, as well.

Cultural values are objects and artworks that, regardless of the time of their creation, have archeological, ethnographic, historical, religious, artistic, or scientific significance. Cultural values may be imported to or exported from the Republic of Armenia in accordance with the procedure stipulated by the Republic of Armenia Law on the Import and Export of Cultural Values and other legal acts. In particular, the Law on the Import and Export of Cultural Values regulates matters related to the import and export of cultural values, including those related to the prevention of their illegal import and export.

It is prohibited to export certain precious cultural values from the territory of the Republic of Armenia regardless of their creation time or ownership. It is also prohibited to export from the territory of the Republic of Armenia cultural values permanently held by the state in museums, archives, and libraries, with the exception of cases of temporary export.

⁶⁷ Interestingly, the monitoring revealed that natural persons spend about 15 to 20 minutes on various border controls on the Armenian side of the Armenia-Georgia border when leaving Armenia, about 10 to 15 minutes when entering into Armenian territory without any luggage, and about 15 to 30 minutes in case of carrying luggage in excess of the set quantities or values. The movement of a vehicle across the border, including the vehicle examination and the clearance of the transport documents of the driver and/or the accompanying person, take about 20 to 30 minutes if temporary import or export is declared. If the vehicle is imported into the Republic of Armenia under the “free circulation” customs regime, then the clearance of the goods at the border-crossing point may take anywhere from 30 minutes to several hours. When crossing the border in railway transport, the examination lasts about 15 to 20 minutes, and the examination is quick; all the secret compartments in the train are sealed, and goods cannot be smuggled in hiding, so the train quickly crosses the border.

Under Article 41 of the Customs Code of the Republic of Armenia, the “temporary export” customs regime regulates the export of goods from the Republic of Armenia customs territory on condition of their future import back to Armenia. Under this customs regime, the temporary export of the aforementioned cultural values from the territory of the Republic of Armenia is possible.

Temporary export of cultural values is allowed for purposes of organizing exhibitions, restoring, carrying out scientific research, and performing theatrical, concert, and other artistic activities.

For the export or temporary export of cultural values, it is necessary to receive a certificate issued by the Republic of Armenia Ministry of Culture and Youth Affairs. To receive the certificate, it is necessary to present an application that contains the full name of the applicant, its address, a copy of its state registration certificate, the name of the cultural value, the quantity, the export purpose, the export destination country, and a declaration of ownership. The certificate is issued within two days of filing the application, with the exception of cultural values that are wanted: if an application about their export is filed, the competent state body shall immediately notify the law-enforcement bodies thereof.

An application on temporary export of state-owned cultural values shall be rejected if:

1. The cultural values the export of which is sought are considered certain precious cultural values of the cultural heritage regardless of their creation time and ownership;
2. The expert opinion states that the cultural values the export of which is sought are kept in a state in which their storage conditions may not be altered;
3. The cultural values are the subject of lien; or
4. A natural disaster has taken place in the country to which temporary export of the cultural values is sought, or there are armed conflicts or other situations obstructing the safekeeping of the cultural values there.⁶⁸

Cultural values that are exported or temporarily exported are subject to a mandatory expert assessment with the exception of works of fine arts and decorative applied arts that are less than 50 years old. The expert assessment shall be carried out by an expert committee in charge of protection of cultural values. Based on the expert assessment report, the competent body shall, in accordance with the law, decide whether to grant or reject the application on the export of the objects in question.

An application on the temporary export of non-state-owned cultural values registered in or subject to registration in the list of protected cultural values shall be submitted to the competent state body by the owner of such cultural values or the owner’s proxy. The temporary export of cultural values on the basis of an export certificate shall be permitted for the maximum term stipulated by the Customs Code of the Republic of Armenia for the temporary export of cultural values.

The import or temporary import of cultural values, too, shall be carried out in accordance with the procedure stipulated by the customs legislation of the Republic of Armenia. Article 37 of the Customs Code on the “temporary import” customs regime regulates the temporary import of cultural values.

To sum up, it should be noted that, in the context of the freedom of movement of goods considered cultural values across the border, the extant laws of the

⁶⁸ Article 14 of the Republic of Armenia Law on the Import and Export of Cultural Values.

Republic of Armenia adequately regulate the necessary terms of the limitation of their movement⁶⁹ and clearly safeguard the exercise of the right of persons to move their own cultural values, including the authorization of their import and export subject to certain conditions.

Special Sanitation and Quarantine Control at Border-Crossing Points

The monitoring of the management of border-crossing points and the movement of goods across the border looked into the control of cross-border movement of persons and goods by other state bodies, as well. In particular, Article 14 of the Republic of Armenia Law on the State Border provides that sanitation and quarantine bodies, veterinary bodies, and phytosanitary bodies carry out control functions at the state border, as well. Their control is directly related to the right of free movement of persons and goods across the border.

The aforementioned bodies carry out their control functions when persons, animals, plants, and other goods, items, and objects containing dangerous organisms subject to quarantine control are moved across the state border of the Republic of Armenia. A special area and a building shall be set aside at the state border-crossing point, where the border control, sanitary-quarantine control, veterinary control, and phytosanitary control shall be directly performed.⁷⁰ The different types of controls performed at the state-border crossing points are examined below.

1. Phytosanitary Control of Goods Moved through State Border-Crossing Points

As was mentioned, sanitary controls are performed at the border-crossing points, including phytosanitary control, which is regulated by the Republic of Armenia Law on Plant Sanitation. This law regulates the relationship between the competent body of state government in the field of plant sanitation, i.e. State Inspectorate for Plant Quarantine under the Ministry of Agriculture of the Republic of Armenia⁷¹, and natural and legal persons.⁷² Key functions of the inspectorate include the prevention of the penetration of plants, dangerous organisms, disease, and weeds into the territory of the Republic of Armenia and ensuring respect for the phytosanitary rules in the import and export of plants and other objects containing plant produce and other regulated items. To perform these functions, the inspectorate has regional bodies at the border-crossing points, which directly perform the phytosanitary control.

⁶⁹ In addition to the domestic legal acts on the movement of cultural values, the Republic of Armenia has entered into a number of inter-state treaties, such as the treaties between the customs agency of the Republic of Armenia and the State Customs House of Turkmenistan, the Customs Committee of the Tajikistan Republic, the State Customs Inspectorate of the Finance Ministry of the Republic of Kazakhstan, and the like, on cooperation and mutual assistance in the prevention of the smuggling of cultural values across the border and their return.

⁷⁰ Article 27 of the Republic of Armenia Law on the State Border.

⁷¹ The State Inspectorate for Plant Quarantine under the Ministry of Agriculture of the Republic of Armenia was created by Decree 1888-N of the Government of the Republic of Armenia dated 21 November 2002.

⁷² Article 1 of the Republic of Armenia Law on Plant Sanitation.

A significant share of the goods imported through the Armenia-Georgia border-crossing points is subject to phytosanitary and quarantine control. Under Article 118 of the Customs Code, “in cases provided by law, the customs clearance of goods and vehicles moved across the customs border of the Republic of Armenia shall be completed after the controls of other state bodies, i.e. the veterinary, phytosanitary, environmental, and other controls have been completed.” The same requirement is also enshrined in Paragraph 3.5.1(8) of Decree 70-MVr of the Customs Department of the Republic of Armenia dated 11 June 1998, which states: “If necessary, state bodies shall perform veterinary, phytosanitary, and other types of controls of the declared goods and other objects in the procedure stipulated by the legislation of the Republic of Armenia.”

In accordance with Article 2 of the Republic of Armenia Law on Plant Sanitation, phytosanitary examination, phytosanitary control, and phytosanitary checks shall be performed at the border-crossing points. Phytosanitary examination is the visual examination of plants, plant produce, and regulated objects, which is performed with the aim of determining the existence or absence of harmful organisms. Under Paragraph 1(1) of Article 16 of the Republic of Armenia Law on Plant Sanitation, the examination of imported plants, plant produce, regulated objects, and vehicles at the border-crossing point is the obligation of the inspector. *However, ordinary examination cannot reveal the harmful organisms, because plain visual examination can only reveal the ones that are visible to the eye, but not all such organisms.*

In contrast to the examination, phytosanitary controls and checks include checks, inspections, and phytosanitary expert assessment, which are aimed at limiting the economic harm to plants expected from harmful organisms and precluding the sale and utilization of protection materials that are not registered by the state, are not fit for utilization, are overdue, or prohibited. There are several control measures, *but it must be noted that controls and checks are currently formulated as rights, rather than duties of the inspector, which undermines plant quarantine and poses risks of penetration of harmful organisms into the territory of the Republic of Armenia.*

Decree 191-N of the Minister of Agriculture of the Republic of Armenia dated 23 August 2007 defines all the goods subject to phytosanitary control, which are released across the border zone. Under Article 16(1) of the Law on Plant Sanitation, vehicles crossing the border zone are subject to examination; however, they are not included in the list of goods subject to phytosanitary control approved by Decree 191-N of the Minister of Agriculture of the Republic of Armenia dated 23 August 2007.

As was already mentioned, phytosanitary controls comprise a set of quarantine measures that must be implemented during the cross-border movement of plants, plant produce, and regulated objects. The Republic of Armenia Law on Plant Sanitation provides that *customs clearance of imported goods may be performed only after phytosanitary control, which implies that, when crossing the border, goods subject to phytosanitary control must be first of all inspected and checked by an inspector of the phytosanitary inspectorate, before their customs control and customs clearance. However, the plant quarantine checkpoints at the border are actually placed after the border checkpoints, which means that there are frequent cases in which goods subject to phytosanitary control go without controls and cross the border without any examination or inspection.*

Republic of Armenia Government Decree 1093-N dated 30 August 2007 “On Granting the Import Authorization of Plants, Plant Produce, and Regulated Objects, and the Procedure and Forms of Issuing Import, Export, and Re-Export Phytosanitary Certificates” defines the procedure of granting authorization for imports of plants, plant produce, and regulated objects and issuing phytosanitary certificates for their export and re-export. Under this procedure, the import authorization for plants, plant produce, and regulated objects is granted prior to the import of plants, plant produce, or regulated objects into the Republic of Armenia. To obtain import authorization, natural persons or legal entities must apply to the State Inspectorate for Plant Quarantine. The documents to be attached to the application filed with the Inspectorate do not have to include the exporting country’s export certificate, and the authorization may be denied only if there are no alternative quarantine measures to fight against the harmful organisms. *In this case, our opinion is that the application for import authorization should include also the exporting country’s export certificate, i.e. the person seeking authorization to import goods into the Republic of Armenia should present also the country of origin export certificate, if it could facilitate the granting of import authorization and would preclude the penetration of harmful organisms into the Republic of Armenia and secure the free movement of goods across the border.*

A phytosanitary certificate issued by the competent body of the exporting state must accompany goods imported to the Republic of Armenia territory under phytosanitary control. When importing goods into the Republic of Armenia, an import certificate shall be issued on the basis of the aforementioned certificate. The Republic of Armenia Law on Plant Sanitation stipulates certain exceptions to this rule: the exporting country’s phytosanitary certificate and import phytosanitary certificate are not required when importing agricultural, forest, and decorative plants that weigh less than 50 kg or, in case of plants and plant produce imported from borderline territories for which they are typical, up to 500 kg, with the exception of seed materials and planting materials.

Particular attention should be paid to the fact that, under the law, natural persons are directly obliged to present the plants, plant produce, and regulated objects contained in their hand luggage for phytosanitary examination; however, in practice, this legal rule is not followed at the Armenia-Georgia border-crossing points, which can be due to a variety of reasons, such as:

- a) The fact that the phytosanitary inspection checkpoint is located outside the passport control and customs control checkpoint;*
- b) Natural persons often disregard the binding legal requirement due to unawareness of the law; and*
- c) The inspectorate official is not present at the phytosanitary inspection checkpoint, or other reasons.*

In any event, when importing goods subject to phytosanitary control, the inspector shall, after receiving the necessary documents, examine the load and the vehicle, and check the phytosanitary condition of the load and its compliance with the phytosanitary certificate of the exporting country. In case of an inconsistency, a sample shall be taken for analysis at the inspectorate laboratory or any other accredited laboratory.⁷³ The sample size is set depending on the type of goods, packaging, container, and quantity, especially for seed materials, plant materials,

⁷³ Procedure approved under Republic of Armenia Government Decree 514-N dated 8 April 2004.

food products, and technical products, for which the imported quantity and packaging are particularly relevant.

To determine the homogeneity of samples taken from the load, they shall be thoroughly examined, and the harmful organisms detected shall be segregated. If there are obvious differences between samples, repeat samples shall be taken. Of the samples taken, the average sample shall be segregated, after which the inspector shall prepare a sample extraction act in the presence of the load owner or his proxy and a customs official.

The sample analysis shall be performed within 24 hours.⁷⁴ However, the current practice is such that, in reality, it is impossible, because the border-crossing points lack the appropriate laboratories for sample analysis, and there is only a centralized laboratory in the City of Yerevan, which makes it very difficult to deliver samples for analysis and obtain the analysis report during the 24-hour period, thereby obstructing the free movement of goods.

Goods, produce, and regulated objects that may not be disinfected and cleaned effectively shall be, at the owner's choice, returned or destroyed.⁷⁵ The inspector shall fill out an act thereon.⁷⁶ *In this case, our opinion is that the legislature, by allowing the load owner to determine what will happen with infected plants, plant produce, and regulated objects, has left room for potentially dangerous consequences, such as the possibility of load not destroyed in a timely manner infecting other, healthy plants, plant species, and other plant produce. Therefore, it is our opinion that this provision of the law should be amended to preclude the return of the load to the owner and the owner determining its future.*

A different procedure is stipulated for the export of plants, plant produce, and regulated objects: to obtain an export phytosanitary certificate, the load owner shall file an application with the inspectorate, which shall, within three days of receiving the application, check the load and issue the export phytosanitary certificate.⁷⁷ *In this case, there is an inconsistency between Article 21 of the Republic of Armenia Law on Plant Sanitation and Paragraph 13 of Chapter 4 of Republic of Armenia Government Decree 1093-N dated 30 August 2007, because the Government Decree prescribes only examination and a deadline of one working day, while the law stipulates a three-day period and mandatory inspection of the exportable load.*

Thus, it is our opinion that, in the movement of plants through border-crossing points of the Republic of Armenia, the State Inspectorate for Plant Quarantine should not limit itself to a visual examination, but rather, check the load and present samples for analysis in order to preclude the potential penetration of harmful organisms into the Republic of Armenia. Moreover, the vehicles must be subject to examination, as well. The plant quarantine border checkpoints must be placed prior to the customs control of the imported goods. To optimize phytosanitary control and to avoid unnecessary limitation of the free movement of goods subject to phytosanitary control, it is necessary to ensure the presence of the appropriate laboratories immediately at the border-crossing points and require that plant import

⁷⁴ Article 20 of the Republic of Armenia Law on Plant Sanitation.

⁷⁵ Article 20(9) of the Republic of Armenia Law on Plant Sanitation.

⁷⁶ The destruction of dangerous plants, plant produce, and regulated objects must be carried out in accordance with the procedure stipulated by Republic of Armenia Government Decree 824-N dated 12 July 2007 "On Approving the Procedure of Disinfection and Destruction of Dangerous Food Products, Dangerous Materials, and Dangerous Food Additives Contacting with Foodstuffs."

⁷⁷ Article 21(2) of the Republic of Armenia Law on Plant Sanitation.

applications be filed together with the exporting country's export certificate to streamline and facilitate controls and to safeguard the free movement of such goods through border-crossing points.

2. Veterinary and Food Safety Controls of Goods Moved through State Border-Crossing Points

Imports and exports of agricultural animals, animal products, veterinary drugs, fodder, and fodder additives are controlled at state border-crossing points of the Republic of Armenia, as well. The terms and procedure of such controls are stipulated by the Republic of Armenia Law on Veterinary Medicine, international treaties, and other legal acts.

The state body responsible for overseeing compliance with the veterinary medicine legislation and quarantine is the Food Safety and Veterinary State Inspectorate under the Ministry of Agriculture of the Republic of Armenia.⁷⁸

To prevent the movement of infectious animals through border-crossing points of the Republic of Armenia, and for purposes of quarantine control, veterinary state supervision is performed at the state border-crossing points over animals, animal products and inputs, fodder, fodder additives, microbial species, veterinary supplies, veterinary drugs, and materials and objects causing infectious animals, which imported into or exported from the territory of the country.⁷⁹

The Food Safety and Veterinary State Inspectorate has been created in the Republic of Armenia.⁸⁰ A key objective of the Inspectorate is the protection of the territory of the Republic and control of animal transportation for preventing the penetration of animal infectious disease from foreign states.

The Inspectorate has structural units (border checkpoints) at border-crossing points, which are responsible for controlling the movement of the aforementioned goods at the border checkpoints. The Inspectorate has border checkpoints alongside the Armenia-Georgia border in Bagratashen, Bavra, Gogavan, and Ayrum.

As was mentioned in the paragraph above, customs clearance of goods and vehicles moved across the customs border includes also veterinary control, i.e. customs control is deemed complete only after the control activities over goods subject to mandatory veterinary control have been completed.⁸¹

Under Paragraph 1(4) of Article 14 of the Republic of Armenia Law on Veterinary Medicine, a veterinary state inspector must examine animals imported into and exported from the Republic of Armenia at the veterinary checkpoint on the customs border of the Republic of Armenia, check the correspondence of imported and exported animals, animal products and inputs, fodder, fodder additives, and veterinary drugs with the presented documents, and take samples in accordance with the established procedure for veterinary-sanitary analysis.

Government Decree 1228-N of 19 August 2004 on Approving the Procedure of Veterinary State Control over International and Inter-State Transportation of Veterinary Cargo defines the conditions of veterinary medical sanitary safety control

⁷⁸ Article 2 of the Republic of Armenia Law on Veterinary Medicine.

⁷⁹ Article 11 of the Republic of Armenia Law on Veterinary Medicine.

⁸⁰ Republic of Armenia Government Decree 1915 dated 21 November 2002 on the creation of the Food Safety Inspectorate.

⁸¹ Article 118 of the Customs Code of the Republic of Armenia.

of inter-state and international shipments subject to veterinary state control. According to the Decree, cargo shall be subject to movement across the border only if the veterinary documents are present. The only exception applies to hand luggage carried as food during travel. The veterinary documents must be present throughout the transportation. The accompanying documents are classified by types; a veterinary statement and a veterinary certificate are required for imports and exports.

Only originals of the aforementioned documents are presented. They characterize the veterinary sanitary state of the goods subject to control and the place where they were loaded. Government Decree 1241-N dated 4 April 2005 on Approving the Procedure of Issuing Accompanying Veterinary Documents for Goods Subject to Veterinary State Control defines the procedure of issuing the veterinary documents required for international shipments of goods subject to veterinary state control.

According to the Procedure, veterinary statements and veterinary certificates are issued by a veterinarian, signed and validated with an appropriate seal; a veterinary certificate may be issued by the veterinary inspector of the veterinary checkpoint at the border. The veterinary certificate for goods exported from the Republic of Armenia under veterinary control, with the exception of those exported to the CIS countries, shall be replaced by veterinary border checkpoints of the Veterinary State Inspectorate with a veterinary certificate. For imported goods, the veterinary certificate of the exporting country shall be replaced by veterinary border checkpoints of the Veterinary State Inspectorate with veterinary certificates of the respective form. In case of transporting animals, the veterinary certificate and veterinary statement shall be accompanied by a list of animals, which shall specify the commercial numbers and names of the animals, as well as the breed, race, and age of the bred animals.

The veterinarian on duty at the veterinary border checkpoint shall examine the transit cargo, check the integrity of the packaging, the correspondence of the sorting to the transport documents, and the existence of an original veterinary certificate of the exporting country. Veterinary inspectors and inspectors of the Veterinary State Inspectorate shall have the power to take samples of cargo imported into the Republic of Armenia for purposes of veterinary control and to process the documents needed for imports and exports of goods subject to mandatory veterinary control.⁸² *In these cases, taking the sample is a right, rather than an obligation, which is unacceptable, because the food subject to mandatory veterinary control may sometimes contain viral organisms not visible to the plain eye, which may be discovered only by means of relevant tests.*

Goods subject to veterinary control are imported on the basis of an authorization. At least 15 days prior to the processing of an import authorization, or 30 days in case of importing animals, the owner of the shipment shall apply in writing to the State Veterinary and Animal Inspectorate, providing the description of the shipments, the import objective, the country of origin, the import points, the storage and quarantine places, and other information, all in originals. The state inspector shall, within an eight-day period, examine the documents for the imported cargo and, based on the results, decide to grant or reject authorization for their importation.

Authorization may be rejected only if the exporting country has an epidemiological situation that has exacerbated, or if the imported cargo contains

⁸² Procedure approved under Government Decree 1228-N dated 19 August 2004.

chemical and biological materials prohibited in the Republic of Armenia, or the documents necessary for imports are either absent or contain inaccurate data.

The situation regarding the latter ground for rejection is unclear, i.e. it is not clear what the Government meant under "inaccurate data." In order for the competent body to verify the accuracy of the data, controls and checks must be performed, which are impossible unless the cargo has crossed the customs control zone.

Goods subject to mandatory veterinary control are exported from the Republic of Armenia on the basis of the written authorization of the state inspector, with the exception of exports of no more than two non-producing light animals. Prior to exportation, the veterinary requirements have to be obtained from the veterinary state service of the importing country and presented to the State Veterinary and Animal Inspectorate.

Based on the fulfillment of the veterinary requirements of the importing country, the cargo characteristics, the epidemiological situation of the respective administrative territory, and the possibility of performing laboratory checks, the application filed for the goods to be exported shall be reviewed within a seven-day period, and export authorization shall be granted or rejected.

Livestock may be exported from the Republic of Armenia territory only if a veterinary certificate is available and presented to the veterinarian on duty at the veterinary border checkpoint. *There is an exception here, as well, for the member states of the CIS: cargo subject to veterinary control is accompanied by appropriate veterinary certificates. However, in our opinion, it is necessary to prescribe one document and one clearance procedure for all countries without exception.*

Particular attention should be paid to activities performed in relation to smuggling or the importing of cargo not corresponding to the veterinary sanitary requirements. In particular, if smuggled imported cargo is discovered, the body that stopped the cargo must immediately inform the veterinary state control body in charge of the relevant area, and no action in relation to the stopped cargo shall be permitted until the latter performs the veterinary control. In case of discovering and stopping cargo not corresponding to the veterinary sanitary requirements, it shall be returned or subjected to veterinary sanitary analysis for determining whether it is fit for use in the future.

In our opinion, if goods subject to mandatory veterinary control have been imported into the Republic of Armenia territory by means of smuggling or without the relevant documents, then, regardless of the results of the analysis, the cargo shall be returned to the territory of the exporting country or destroyed if obvious signs of poor quality are present.

Based on the foregoing, it is possible to identify the potential problems in the cross-border movement of goods subject to mandatory veterinary control (i.e. products and animals): when releasing the cargo across the border, inspectors must perform not only examination, but also analysis. To this end, appropriate laboratories must be present at all the border-crossing points. The checkpoints of the Veterinary State Inspectorate at the border must be located before the customs control of imported goods. Consistent forms of documents and procedures should be introduced for all the countries. The cases and terms of denial of importation of goods subject to mandatory veterinary control should be clarified. All of these measures will have an impact on the free movement of goods.

3. Transportation of Wild Animals and Their Collections through Border-Crossing Points (Environmental Concerns)

In the context of the phytosanitary and veterinary controls over the trans-border movement of goods, specific issues arise in relation to the transportation of wild animals, their collections, and disappearing flora, which are directly connected with environmental protection in the Republic of Armenia.

The fauna of the Republic of Armenia is a part of the national heritage, a key element securing the integrity of nature, the ecological balance, and harmonious development. Matters related to fauna protection, reproduction, and use are regulated by the Republic of Armenia Constitution, the Republic of Armenia Law on the Fauna, and other legal acts.

The export of wild animals from the Republic of Armenia, their imports, their keeping in captivity, and the export and import of animal collections or individual samples shall be performed with authorization of the competent state body⁸³ in accordance with the procedure stipulated by the legislation of the Republic of Armenia.

Republic of Armenia Government Decree 1174-N dated 18 July 2007 on Approving the Procedure of Export from and Import into the Republic of Armenia Territory of Collections and Individual Samples of Wild Fauna and Fauna has defined the procedure of importing into and exporting from the Republic of Armenia wild animals and animal collections and individual samples (hereinafter, "wild animals"). The provisions of this Procedure do not apply to the movement of endangered species of wild fauna and flora and their parts and derivatives stipulated by the Convention on International Trade in Endangered Species of Wild Fauna and Flora.⁸⁴ Imports into and exports from the Republic of Armenia territory of wild animals may be performed on the basis of authorization issued by the Ministry of Nature Protection of the Republic of Armenia. To obtain authorization to import wild animals into or export them from the Republic of Armenia territory, natural persons and legal entities shall file an application with the Ministry of Nature Protection of the Republic of Armenia. The following shall be presented with the application: documents (copies) confirming the acquisition (collection, hunt, supply, procurement, or else) of the exported or imported animal, the certificate (copy) of authorization issued by the competent body performing veterinary quarantine in the Republic of Armenia or the respective foreign state, and consent or authorization (copy) of the importing country if the legislation of the latter stipulates a procedure of obtaining consent, or, in case of imports, the consent of the exporting country to exportation, or documents substituting them, such as the customs declaration or other documents. Within a 10-day period of receiving the application, or two-day period in case of exporting reproduced or bred fish, the Ministry of Nature Protection of the Republic of Armenia shall grant the appropriate authorization to the applicant/-s or, in case of denying authorization, shall notify in writing about the reasons for denial. An application may be rejected, if the aforementioned documents are lacking, or if

⁸³ Article 21 of the Republic of Armenia Law on the Fauna (3 April 2000).

⁸⁴ Republic of Armenia Government Decree 1281 dated 22 October 2009 on Approving the Procedure of Granting Authorization (Certificates) for Export from and Import into the Republic of Armenia Territory of the Endangered Species of Wild Fauna and Flora and Their Parts and Derivatives Stipulated by the Convention on International Trade in Endangered Species of Wild Fauna and Flora and on Approving the Authorization (Certificate) and Application Forms.

the application mentions rare or disappearing wild animals registered in the International Red Book or the red books of the exporting or importing states.⁸⁵

In certain cases, for purposes of determining the environmental feasibility of importing or exporting a particular wide animal, the Ministry of Nature Protection of the Republic of Armenia will make an inquiry with the relevant organizations and hold professional discussions with the engagement of scientists and stakeholders. Professional discussions are also held if applications for exporting or importing rare or disappearing wild animals recorded in the international or importing or exporting states' red books for purposes of scientific research or reproduction in artificial or natural conditions.

In line with the wild animal import or export authorizations, the importation or exportation process is overseen by the Ministry of Nature Protection of the Republic of Armenia in accordance with the procedure stipulated by the legislation of the Republic of Armenia, within the limits of its authority.

Proper control of the movement of this category of goods, i.e. animals across the Armenia-Georgia border will safeguard the environmental security of the Republic of Armenia. However, attention should also be paid to their potential free movement in lawful ways.

4. Sanitary-Epidemiological Safety Controls of the Movement of Persons and Goods through Border-Crossing Points

Persons and goods moving through the border-crossing points of the Republic of Armenia are also subject to sanitary-epidemiological controls⁸⁶ at the border-crossing points for purposes of ensuring the sanitary-epidemiological security of the population. Such controls are performed in accordance with the procedure stipulated by the Republic of Armenia Law on the Sanitation and Epidemiological Security of the Population of the Republic of Armenia for purposes of protecting public health and preventing disease by means of implementing targeted national and local projects for improving environmental health, providing credible and complete information on public health, hygiene, and the epidemiological situation and preventive sanitation measures being implemented in the country, ensuring the compliance of public administration bodies, enterprises, institutions, organizations, their officials, and citizens with the sanitation rules and hygiene regulations stipulated by the legislation of the Republic of Armenia, and implementing sanitation, hygiene, and anti-epidemiological measures. The sanitary legislation of the Republic of Armenia applies to foreign citizens and stateless persons in the territory of the Republic of Armenia, as well as enterprises and organization of foreign states or enterprises owned by citizens of foreign states, which operate in the territory of the Republic of Armenia. Sanitary rules and hygiene regulations prescribe criteria of safety and harmlessness of the environment for the population, as well as the requirements on the provision of conditions favorable for human activities. Sanitary rules are binding for state bodies, persons, and citizens, *including citizens crossing the border*.

⁸⁵ Republic of Armenia Government Decree 1174 dated 18 July 2007 on Approving the Procedure of Export from and Import into the Republic of Armenia Territory of Collections and Individual Samples of Wild Fauna and Fauna.

⁸⁶ An epidemic is a situation in which infectious disease of humans and animals spreads rapidly in a relatively short period of time, affects significant areas, and proceeds without interruption.

In the area of ensuring the sanitation and epidemiological safety of the population, the Government of the Republic of Armenia is implementing a comprehensive state policy to safeguard the sanitation and epidemiological safety of the population.⁸⁷ The State Hygienic and Anti-Epidemiological Service has certain functions in this area, including at the border-crossing points of the Republic of Armenia: it develops and approves sanitation rules, carries out state hygienic and anti-epidemiological controls in the territory of the country, performs organizational-methodological guidance of efforts aimed at safeguarding the sanitation and epidemiological safety of the population, and organizes measures of sanitation, hygiene, and anti-epidemiology to prevent infectious and non-infectious mass disease and poisoning.

Enterprises, institutions, and organizations operating in the territory of the Republic of Armenia must inform the State Hygienic and Anti-Epidemiological Service of the Republic of Armenia of processes that may result or have resulted in breach of sanitation rules; moreover, they must comply with the decisions and orders of the competent state bodies and officials on sanitation and epidemiological safety, including decisions on suspending the activities of enterprises, institutions, and organizations, or of their certain structural units, which breach the sanitation legislation of the Republic of Armenia. They must also organize hygienic education and training to improve the sanitary culture and awareness of their employees.⁸⁸

Other activities not related to the protection of the state border shall be prohibited within the border layer, with the exception of cases provided by law. In case of an epidemic or an epidemic outbreak, livestock breeding within the border layer may be temporarily limited or prohibited in order to prevent the spreading of infectious disease.

Persons, vehicles, animals, cargo, and other property crossing the state border shall be subject to border control, sanitary-quarantine control, veterinary control, and phytosanitary control. The control organization and performance procedure shall be defined by laws and other legal acts of the Republic of Armenia.

Economic and other activities of natural persons and legal entities of the Republic of Armenia and foreign states, which are carried out with crossing of the state border may not inflict harm upon or obstruct the protection of the state border or other actions aimed at protection, i.e. their activities may not inflict harm in case of a threat of epidemic or other similar threats.

*In case of a threat of outbreak of infectious disease in the Republic of Armenia or a foreign state, the Government of the Republic of Armenia may temporarily limit or stop the communication and impose quarantine on persons, animals, cargo, seed material, and plant and animal produce crossing the state border.*⁸⁹

Sanitary-epidemiological control at the border-crossing points is directly connected with phytosanitary and veterinary controls. These controls were analyzed earlier in this Report. In addition, epidemiological control of persons is performed at the border-crossing points by staff of the Ministry of Health of the Republic of Armenia in case of epidemics.

⁸⁷ Article 5 of the Republic of Armenia Law on the Sanitation and Epidemiological Security of the Population of the Republic of Armenia.

⁸⁸ Article 9 of the Republic of Armenia Law on the Sanitation and Epidemiological Security of the Population of the Republic of Armenia.

⁸⁹ Article 16 of the Republic of Armenia Law on the State Border.

Section 3. Issues Identified in relation to the Free Movement of Persons, Goods, and Vehicles through Border-Crossing Points; Proposals and Recommendations

3.1 Overview of Issues related to the Free Movement of Persons and Goods through Border-Crossing Points

“One-Stop Shop” Principle of Contacts between Persons and State Bodies in the Organization of the Work of Border-Crossing Points

The monitoring and analysis carried out for identifying issues affecting the free movement of persons and goods through the Armenia-Georgia border-crossing points revealed problems that could be classified into three groups: legal/legislative, organizational/administrative, and individual.

In the context of the effective management and security of border-crossing points, **legal issues** affecting the movement of persons and goods are due to the imperfections of the legislation in this area, the existence of ambiguous rules, and the lack of certain rules. There are legal rules on cross-border movement, which can be interpreted ambiguously. Besides, the legislation on cross-border movement is fragmented: there are numerous laws and sub-legislative acts regulating the same issues. Considering that all of these circumstances may lead to the formation of unlawful practices, it is necessary to coordinate all the relevant legal acts.

Administrative issues are due to the fact that various state bodies deal with the border-crossing procedures and processes, which implies rather intensive participation of different individuals, conflicts of interests, risks of violations of rights of persons, and many other issues.

The monitoring revealed that there are quite a few targets in the organization of the work of border-crossing points. This review will address several of them, which are related to possible risks of violation of human and civil rights, such as the presence of various state bodies performing controls at the border-crossing points, with all of which persons crossing the border must deal, facing a heightened probability of conflicts of interests.

The bodies performing controls and oversight of the cross-border movement of persons and goods must first of all fulfill their official duties and respect the rights of persons crossing the border, safeguarding their physical and moral security and the protection of their rights.

There are numerous administrative issues: for instance, at the border-crossing points, where searches of persons need to be carried out, not all the customs crossing points have female customs officials that could, if necessary, search female passengers crossing the border.

Or, Article 23 of the Customs Code of the Republic of Armenia provides that, regardless of the nature and quantity of goods and vehicles, the person may select or change the customs regime; however, they face numerous problems when selecting the “re-export” customs regime or temporarily importing vehicles. Although the Customs Code provides that vehicles may be temporarily imported into the Republic of Armenia for a one-year term, customs officials refuse to clear such declarations or force persons to declare temporary importation of vehicles for only one month, thereby directly neglecting the requirements of the laws.

Another example is that a very simple border-crossing procedure has been introduced for residents of the Javakhk region of Georgia and their vehicles, i.e. their vehicles with Georgian license plates are registered in some journal at the border-crossing point, while residents of other settlements have to file declarations. While such privileges are desirable and needed, they should be prescribed in laws of the Republic of Armenia to avoid negative consequences in the practical application of the legal rules.

There are other instances of violations of the rights of persons, which are due to the failure to take into account conflicts of private and public interests of border officials, the improper performance of their duties, and numerous other factors.

It is our opinion that state bodies currently do not carry out sufficient awareness-raising work at the border-crossing points in order to inform the public of the extant legislation and the border rules. More notably, the protection of human and civil rights is sometimes neglected.

On the announcement boards at the border-crossing points, the customs authorities of the Republic of Armenia have posted the telephone number of the hotline of the customs authorities, but claim that, for over a year now, they have not received any reports of violated rights through the hotline: it is apparently due to the fact that the public either is not aware or does not trust the customs authorities. There are numerous allegations of violations of rights in public discussions; surveys have proven that not all persons are aware of this possibility, and the ones that are aware do not consider it an effective remedy. Therefore, the aforementioned problem remains in the customs crossing points.

Numerous problems affect the organization of the work of border-crossing points, posing an enormous risk to state and societal interests.⁹⁰

A problem affecting the work of border-crossing points, which is worth mentioning, is the lack of a clear mechanism for immediate appeals about the actions and inaction of state bodies operating at the border and their officials.

It should be noted here that border security and the security of customs points at the border can be safeguarded by taking into account the fact that corruption, as one of the worst social evils, apparently still exists in the work of border-crossing points, and the anti-corruption measures apparently overlook the problems at border-crossing points.⁹¹

This and many other of the analyzed problems are mainly due to the fact that several state bodies are engaged in the organization of the work of the border-crossing points, which directly obstructs the exercise of the right to freedom of

⁹⁰ *The danger would manifest itself in the form of corruption risks, official arbitrariness, country image deterioration, and the like.*

⁹¹ A clear and simple international rule that could be cited here is Article 20 of the UN Convention against Corruption, entitled "Illicit enrichment," which provides that each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income. A question that arises here and must be addressed very seriously is the following: what lawful income is available to public officials working at border-crossing points for a decade or two for relatively low wages to purchase luxury cars or apartments and other assets?

Different countries, including Armenia's neighbor Georgia, are now implementing numerous measures to fight against corruption, such as a rule for border-crossing point officials whereby, at the end of work, they must not have in their possession an amount exceeding an amount of 20 euros, for instance, and breaching this rule would be viewed as corruption. Such practice could be helpful in Armenia, as well.

movement of persons and goods. In our opinion, such problems can be avoided in the future by focusing on precluding contacts between persons crossing the border and various state bodies, which is best done by introducing the “one-stop shop” principle of collaboration in the work of state bodies at the border-crossing points.

The “one-stop shop” principle is considered one of the ways of facilitating trade. Its introduction in the work of border-crossing points not only ensures the free movement of persons and precludes many unfavorable risks, but also enables importers and exporters to submit all trade-related documents to and receive them from one place or one state body, which will support the free movement of goods.

The introduction of this principle will significantly improve the economic efficiency of the public administration bodies of the country by reducing the time and costs of performing document-related functions.

The “one-stop shop” at border-crossing points should serve as an information center providing information to the relevant bodies, which they need for performing control and oversight functions, recording persons and importers/exporters crossing the border, processing the documents needed for crossing the border, and obtaining other important data.

With the current organization of the work of the border-crossing points, persons have to deal with several state bodies and visit several places for paperwork, controls, obtaining authorizations and other documents, and undergoing various procedures.⁹² A different system would allow persons to cross the border controls, procedures, and document clearance in a more simplified manner.

*It is our opinion that the introduction of the “one-stop shop” principle at border-crossing points will help to consolidate the functions of the customs agencies, food safety agencies (veterinary, phytosanitary, and quarantine), the border guards, and the passport services at the border-crossing points of the Republic of Armenia. The principle can be implemented very easily by delegating the functions of the different state bodies to one state body, which will be responsible for guiding and overseeing the performance of all the relevant functions at the border-crossing points.*⁹³

⁹² The “one-stop shop” at a border-crossing point would be an integrated unit allowing persons crossing the border, importers, and exporters to benefit from standardized information and to present documents to one state body, so that border-crossing and related import/export/transit functions and clearance can be performed in one place. If the information is electronic, then certain components of data can be submitted just once: for example, a minivan that routinely transports passengers to Georgia on the basis of a licensed taxi service presents the documents on the particular vehicle and its business activities only once, but not each time it crosses the border.

Besides, the information system would allow consolidating the information possessed by different state bodies by creating a unified online electronic database, supporting swift information access and exchanges between different state bodies, and using it to organize the work of the border-crossing points and safeguarding the right to free movement of persons and goods. An example of this approach would be allowing the border-guard service or even the National Statistical Service of the Republic of Armenia to use the database of the customs agency.

Many countries have already implemented the “one-stop shop” principle at their borders and elsewhere: Norway and Sweden, for instance, have followed this practice successfully for many years now.

⁹³ There can be two models of implementing the “one-stop shop” principle to safeguard the free movement of persons and goods through border-crossing points and precluding contacts with different bodies. The first model would be to introduce the “one-stop shop” only on the Armenian side of the border, consolidating the functions of only the Armenian state bodies. The second model would imply cross-border cooperation with the Georgian state bodies, introducing a “one-stop shop” for the border-crossing points of the two states, thereby securing “one stop” for clearing both the Armenian and the Georgian border procedures, thereby providing utmost support to the exercise of the right to freedom of movement. In the latter case, it would be necessary to conclude an agreement

The introduction of the “one-stop shop” principle at the border-crossing points will allow improving the work of the border-crossing points by streamlining the administrative mechanisms and promoting greater use of advanced Internet-based technologies.⁹⁴

Border-crossing points operating under the “one-stop shop” principle can follow simple mechanisms for collecting the fees for the various services; moreover, the places for making payments can become more accessible.⁹⁵

If the two neighboring countries of Armenia and Georgia introduce the “one-stop shop” principle on their border, the right of persons to freedom of movement will benefit. Besides, it will help the neighboring countries to cooperate in the fields of justice and the fight against transnational crime.

There are three general mechanisms of implementing the “one-stop shop” principle. Under the first mechanism, a consolidated agency is created. Under the second, a consolidated agency for information collection and dissemination is created. The third mechanism implies the creation of an automated information and operations system.⁹⁶

In our opinion, the “one-stop shop” principle should be introduced at the border-crossing points of Armenia on the basis of the first and second mechanisms. It is necessary, for example, to create a consolidated agency (a “one-stop shop”) at the border-crossing points and to delegate to it the functions of the existing bodies. It is possible to delegate the functions of the Police of the Republic of Armenia to the border-guard troops by creating an integrated body for passport control and border control, and to delegate the functions of the sanitary-quarantine, phytosanitary, and other bodies performing controls to the customs agency, creating a “one-stop shop” where persons would deal with either a border guard or a customs official, to whom they would hand in the documents and not have to deal with administrative problems anywhere else. The official at the “one-stop shop” would accept the documents and, if necessary, transfer them to other agencies or check them and provide a final answer.

To increase or preclude the importance of any public agency at the border-crossing points, the scope of their functions should be taken into account to choose the one to which the functions of all others should be delegated in order to maximize the results.

between Armenia and Georgia on the creation of a “one-stop shop” at the border-crossing points where one state would perform the controls and clearance for both states. Alternatively, a new unified border-crossing point (an integrated “one-stop shop”) could be created for the two states.

⁹⁴ Such improvement would serve as a precondition for practicing electronic (Internet-based) declaration of imports and exports of goods.

⁹⁵ A small branch of an Armenian commercial bank is present to collect customs duties and other required payments at the Armenia-Georgia state border-crossing points. However, an office of the State Treasury of the Republic of Armenia should be created for persons to make their payments. Alternatively, the law could stipulate the existence of a bank branch at a border-crossing point.

⁹⁶ In the framework of their collaboration, Sweden and Norway apply the latter two of these three principles: import and export agents have to submit the information on goods (declarations and else) only once to a consolidated customs agency, which in turn shares the information with other stakeholders in both Sweden and Norway. Under the second option, import and export agents would present the information on foreign trade transactions electronically over the Internet; the automated system would be accessible to all the stakeholders through the “one-stop shop.” The customs agencies of the two countries act as the “consolidated” information authority.

There are issues affecting the organization of the work of border-crossing points and their officials and issues concerning the free movement of persons and goods across the border.

As to the first category of issues, the working conditions for border officials are very poor: they lack communication means and transport, as well as social protection and security safeguards.⁹⁷

As to the second category of issues, persons are not aware of the rules on border crossing and movement of goods. Due to their unawareness of restrictions at the border-crossing points, they violate various rules⁹⁸ and run into other problems that need to be solved in order to safeguard the free movement of persons and goods across the Armenia-Georgia border. Some of the difficulties associated with the crossing of border by persons and the importation or exportation of goods across the border are due to the behavior of the persons crossing the border. Their unawareness, too, feeds into corruption practices and difficulties experienced at border-crossing points.

3.2 Conclusions and Recommendations

The analysis of issues affecting the free movement of persons and goods through Armenia-Georgia border-crossing points revealed numerous problems related to various aspects of movement across the border. At present, state bodies of the Republic of Armenia are implementing a number of measures to address these problems and to improve the organization of the activities of border-crossing points.

Several recommendations are presented here for solving the problems. If implemented, they will help to preclude such problems, safeguard the free movement of persons and goods through the Armenia-Georgia border-crossing points, and increase the effectiveness of the state functions performed in relation to border-crossing points.

It is recommended:

- To coordinate, streamline, and ensure stability and consistent application of the legislation regulating various aspects of the movement of persons and goods through border-crossing points;
- To amend the Republic of Armenia Law on the State Border to provide a clear definition of “control checkpoints” and supplement Article 10 of the Law to stipulate the “simplified” and “international” types of control checkpoints;
- With a view to precluding contacts between persons crossing the border and various state officials, immediately to introduce the “one-stop shop” principle

⁹⁷ Notably, the average salary of officials of various state bodies at the border-crossing points does not exceed 100,000 Armenian drams, which is a negligible amount for service at a settlement close to the border. For similar employment, many other countries offer higher salaries than in the capital city or regional large cities, thereby giving an incentive to professionals to work in outlying areas close to the border.

⁹⁸ The total number of violations of customs rules in the Armenia-Georgia cross-border movement of persons and goods was 322 in 2008 and 350 in 2009, as per letter 17320/11-5 of the State Revenue Committee of the Republic of Armenia dated 7 June 2010. In our opinion, most of these cases are due to insufficient awareness of the border-related rules.

- of interaction and collaboration with state bodies at the border-crossing points; and
- To open new border-crossing points near the villages Jiliza and Privolonoye and at other segments of the Armenia-Georgia state border;
 - To stipulate a particular border-crossing regime for citizens residing in settlements near the border, which will be different from the procedure applied in relation to other citizens, so that the former can cross the border subject to simplified controls without any obstacles;
 - To complete the delimitation and demarcation works of the Armenia-Georgia state border;
 - To introduce and start issuing biometric passports in the Republic of Armenia as a measure to safeguard the free movement of persons through border-crossing points;
 - Prior to the introduction of biometric passports, to ensure a more streamlined procedure of issuing passports in the Republic of Armenia and to allow citizens to receive passports with more pages than the current passports;
 - To introduce the possibility of sealing or marking Armenian passports for validity in foreign states on site at the Armenia-Georgia border-crossing points;
 - To conclude an inter-state treaty with the Republic of Georgia on the creation of free economic cooperation, the designation of integrated coordinated crossing points, granting mutual customs privileges, coordinating the existing treaties on the freedom of movement, stipulating a procedure of mutual assistance related to movement through border-crossing points, and other issues in order to safeguard the freedom of movement through Armenia-Georgia border-crossing points;
 - With a view to safeguarding the freedom of movement of goods through the border-crossing points, to clarify and streamline the customs rules, so that customs clearance at the border can be completed more swiftly and without any obstacles by making the customs rules and procedures easier to understand, ensuring their consistent application, and precluding any internal inconsistencies, on the whole to improve the customs legislation and making sure, in the area of foreign trade, that the application of the customs legislation on the border does not pursue a fiscal objective;
 - To amend the Customs Code clearly to define the procedures of customs clearance, processing of transport and customs declarations, examination and clearance of vehicles when importing vehicles, the actions involved in such procedures, the documents that must be presented, and the functions of customs officials in relation to these procedures;
 - To equip the customs and border-crossing points with equipment needed for the examination of the luggage of natural persons, so that their luggage is examined only by means of equipment as a ways of securing more rapid movement;
 - To amend the customs legislation clearly to stipulate the scope of contacts between importers/exporters and state bodies in the movement of goods, including the rights and responsibilities of the sides;
 - To automate a number of customs procedures in order to reduce contacts between the state bodies and the business entities by creating conditions that will preclude the acquisition of any advantage in circumvention of the official

functions, as well as to introduce a framework of electronic declarations using advanced Internet communication technologies, which will reduce the duration of customs clearance and examinations and secure proper customs control with risk-based criteria;

- To consolidate the sanitary-quarantine control activities at the border-crossing points and to create secure methods of examination and control;
- With a view to optimizing quarantine control and safeguarding the free movement of goods subject to such control, to ensure the presence of the appropriate laboratories at the border-crossing points, which will streamline and facilitate the controls and the free movement of goods;
- To move the border quarantine control points in one part of the border-crossing points within the customs control zone;
- To ensure mandatory sanitary-quarantine control of vehicles moving across the border, as well;
- To amend the list of documents supporting an application for import authorization for sanitary-quarantine control to require the exporting country's export certificate, as well as to introduce consistent forms of documents for imports from all the countries so as to expedite the control procedures and to safeguard free movement across the border;
- To clarify the list of goods subject to mandatory sanitary-quarantine control, as well as the terms and conditions of limiting their importation or exportation, which can directly influence the free movement of goods;
- To ensure regular activities to raise public awareness on the rules related to the movement of goods and persons through the Armenia-Georgia border-crossing points;
- To raise the legal awareness of the public by printing information and awareness materials for persons moving through the Armenia-Georgia border-crossing points and disseminating them at all the border-crossing points for practical use as guidelines for persons crossing the border and those moving goods across the border;
- To organize frequent awareness-raising courses and seminars for border officials and persons crossing the border; in particular, to inform officials serving at border-crossing points of the domestic and foreign rules on visits to foreign states, the visa regulations, and all the border-crossing activities that will safeguard the exercise of the right to freedom of movement;
- To create websites explaining the more cumbersome rules of the customs legislation and other legal rules on the border-crossing points, to post the 24/7 hotline telephone numbers at the border-crossing points, to set up information centers at the border-crossing points to provide the necessary advice and information to persons, and to explain the laws and rules on movement by television and the radio, especially as such measures will contribute to the prevention of corruption, as well;
- With a view to minimizing corruption risks in the process of crossing the border, to set up a public oversight and monitoring framework, and to make sure that representatives of state bodies are included in the monitoring group, as well;
- To carry out specific measures against corruption in areas such as the recruitment of public servants for work at border-crossing points, their rotation, remuneration, and regular notices given to public servants to warn

them about the negative consequences of corruption and the legal sanctions for corrupt conduct (such notices should be given at the time of recruitment, as well); moreover, training courses should be organized on ethics rules for officials, compliance, prevention of corruption risks, and the need to be courteous and kind to persons crossing the border;

- To improve the roads leading to the Armenia-Georgia border-crossing points;
- To build border-crossing points in line with the international standards for greater capacity;
- To make sure that the border-crossing points are convenient and equipped with the equipment necessary for improving the quality and reducing the duration of control procedures;
- Very importantly, to staff the border-crossing points with professional and courteous officials and support staff;
- To recruit more residents of the nearby villages as officials and support staff of border-crossing points, thereby also providing employment for some professionals living in the settlements near the border; and
- To install important public services at the border-crossing points, such as a health post, public catering facilities, leisure facilities, mother and child rooms, waiting halls, toilets, and other necessary services, and to ensure good conditions of sanitation and hygiene in the terminals.

To conclude, it should be noted that there should be no obstacles to the right to freedom of movement of persons and goods in a democratic society, because the exercise of this right is key to improving personal life, as well as the development of the national economy and its global integration. State bodies and society in Armenia should regularly pay attention to the issues related to the free movement of persons and goods through Armenia-Georgia border-crossing points in view of the numerous peculiarities of Armenia-Georgia cross-border movement and the general issues encountered at other segments of the Armenian borders, as well.