EUROPEAN UNION

The present report was published with financial support of the EU funded project “Support to the Public Defender’s Office of Georgia”.

ANNUAL REPORT
OF THE PUBLIC DEFENDER
OF GEORGIA

THE SITUATION OF HUMAN RIGHTS AND FREEDOMS IN GEORGIA

2012

THE PUBLIC
DEFENDER OF
GEORGIA

www.ombudsman.ge

OFFICE OF PUBLIC DEFENDER OF GEORGIA
6, Ramishvili str, 0179, Tbilisi, Georgia
Tel: +995 32 2913814; +995 32 2913815
Fax: +995 32 2913841
E-mail: info@ombudsman.ge

CONTENTS

Introduction

The present Report of Public Defender of Georgia compiles the range of issues related to protection of Human Rights and Freedoms in Georgia, for the year of 2012, being submitted to the Parliament of Georgia on the basis of Article 1 and Article 2 of the Organic Law on Public Defender of Georgia.

The Report covers a wide range of Human Rights and Freedoms and provides an overview of the situation with respect to protection of civil-political, economic, social and cultural rights in Georgia. The Report portrays general trends with respect to Human Rights in the country and specific facts of violation of Human Rights and Freedoms.

Year 2012 was the most important year in the recent history of Georgia. For the first time, after gaining independence, the power has been transferred in a non-violent way, through elections.

After the elections, significant improvements were achieved in many spheres, in respect of Human Rights, though, at the same time, numerous areas with significant problems were identified.

The analysis of the studied cases and applications, regular monitoring performed by Public Defender's National Prevention Mechanism of Georgia reveals that protection of the rights of individuals kept at the Penitentiary establishments still remains as one of the key problem.

Monitoring conducted in summer 2012 identified number of problems, including systematic ill-treatment, similar to those identified by Public Defender's special prevention group in it's past years' parliamentary and special reports. Unfortunately, The Georgian Government has not taken any proper and adequate measures for elimination of this problem; moreover, full negligence towards the identified systemic violations became a trend. As a result, we have got, what so frequently has been Stated in the reports of Public Defender of Georgia – the syndrome of impunity – violation of the prisoners' rights, their physical and psychological abuse became the routine and systemic phenomena.

This has been confirmed by so called "prison videos" released by media on 18th September 2012, depicting the facts of prisoners' torture, their humiliation and inhuman treatment. The world has been shocked by the facts of torture at Georgian prisons, causing indignation of Human Rights' defenders and representatives of civil society.

According to the forensic medical examination reports and information provided by the penitentiary health care system, 67 prisoners died in the penitentiary system of Georgia in 2012,, this is a quite high figure especially considering that the average age of the deceased prisoners was 44 years. Most of them died before the events known as the "prison scandal". It should be noted that in 2011, 140 people died in the penitentiary system, in 2010, the number of deceased persons was 142. No impartial investigation of these facts has been conducted so far.

As a result of implementation of severe criminal policies and so called "Zero Tolerance" practice for a number of years, in early 2012, Georgia was keeping the first place among European countries, by the highest number of prisoners per 100.000 people. The number of convicts decreased from 24.009 (March 2012), to 10.660 (March 2013). Almost all penitentiary institutions had the problem of overcrowding. Quality of medical services was beneath all criticism.

On December 28, 2012, Georgian Parliament adopted Georgian Law on Amnesty and on its basis several thousands of people left the penitentiary institutions.

We think that given the decrease of the prisoners' number, Georgian Ministry of Corrections, Probation and Legal Assistance will easily provide proper conditions for the prisoners and comply with the national and international standards. Hence, in this respect, such a wide-scale amnesty should be welcomed.

Furthermore, the need of transforming criminal legislation into more liberal one as well as the abolition of cumulative sentencing principle, should be emphasized once again. Otherwise, in few years, the number of prisoners will again achieve the critical limit. Severe criminal policy should be replaced with a well-designed and planned re-socialization and rehabilitation policy.

According to Georgian Law on Amnesty adopted on 28th December 2012 by the Parliament of Georgia, 190 people were recognized as political prisoners. Therefore further issue of their rehabilitation has aroused. Given that Georgian Parliament was not in position to overrule the court decisions, those convicted and prosecuted by a political sign have been just lifted from criminal responsibility and punishment and given an opportunity to enjoy their right of fair trial. Thus, further mechanisms should be identified/elaborated for handling the political prisoners' cases, as well as for resolving the issue of their further legal rehabilitation.

The most important issue of the Reporting Period was amending the Georgian Organic Law on Political Associations of the Citizens made on 27th December 2011 resulting in imposition of stricter limitations related to funding of the parties. The Chamber of Control of Georgia (currently State Audit Service) was assigned with the function of supervision over the parties' finances.

On the basis of the mentioned changes, the Chamber of Control has performed numerous politically motivated actions and this significantly restricted effective enjoyment of the right to elections of certain stakeholders.

In 2012, numerous facts of violation of the rights of electoral subjects have been identified. In this respect, various violations that took place against the representatives of Coalition "Georgian Dream" should be mentioned.

Public Defender of Georgia, acting within the frameworks defined under Organic Law on Public Defender, reviewed all well-known criminal cases causing high public interest. Such cases include the cases of: Tengiz Gunava, Bachana Akhalaia, Giorgi Kalandadze, David Akhalaia and others.

It should be noted that currently Public Defender of Georgia has partially evaluated the mentioned cases with respect to violation of the procedural rights, however full scale study of those cases is still underway at this stage and the public will be additionally informed about the final results.

Public Defender of Georgia has studied the events occurred in the end of August 2012 in Lopota Gorge, near village Lapankura. According to the information provided by the confidential sources and family members of individuals deceased in the course of a special operation, the signs of grave violations might be in place. Public Defender of Georgia applies to the Parliament of Georgia to establish a temporary investigation commission for the purpose of investigation of these facts.

Public Defender of Georgia is studying the events having taken place at local self-governments after parliamentary elections of 2012. Special report will be developed and dedicated to those events, however we consider it relevant to provide general description of key trends in the Parliamentary Report.

Cases studied by Public Defender's Office showed that in the Reporting Period, the most acute problem was violation of Human Rights by the law enforcement. Public Defender has received numerous applications from the citizens complaining on improper treatment on behalf of police authorities at a time of their detention. Information related to those facts was sent to the Chief Prosecutor's office and investigation is in progress.

During the Reporting Period trend of violation of presumption of innocence became evident.

The facts of pressure on the representatives of civil society were detected as well. The Society of Turkish Meskhetians of Georgia "Samshoblo" ("Vatan") [The Native Land] is actively striving for return of so called Turk Meskhetians to their homeland for many years and for this reason they have been persecuted by the State institutions. In addition, according to the Statement made by Ismail Molidze, the rights of so called Turkish Meskhetians are infringed in Georgia up to present.

In 2012, Freedom of Expression was one of the acute issues and hence, similar to the previous years, it was the priority direction of Public Defender's activities.

In addition, year 2012 was distinguished by an unprecedented number of cases of violation of rights of the Mass Media. One of the reasons for this was a tense pre-elections period. In the Reporting Period, Georgian Public Defender has studied numerous cases of interference within the professional activities of journalists.

The Report wide discusses the issues related to the right of fair trial. The analysis of the citizens' complaints and applications received by Public Defender's Office for the Reporting Period and monitoring conducted by the Office staff show that there still remain numerous problems in execution of judicial power. Criminal proceedings constitute the most problematic area. Many instances of application of procedural actions (or punishment) show quite a few facts of violation of property rights recognized and protected under the Constitution of Georgia.

After political changes, the number of citizens seeking for justice increased significantly. Over 18000 applications were lodged with the Chief Prosecutor's Office of Georgia soon aftermath the elections. Over 9000 cases relate to the property right and concern the dubious facts of "voluntary donation" by citizens of their own property to the State. The need of establishment of special commission to review the court decisions and consider similar cases is on the agenda.

In the Reporting Period number of facts of violation of Human Rights and Freedoms during exercising the right to assembly and manifestation by individuals, has been identified.

Numerous facts of violation of fundamental right of freedom and access to information by public officials and institutions are spelled out in this Report.

In 2012, cases of crimes committed on basis of religious motivation reduced significantly, though an undesirable trend of religious intolerance, use of Hate Speech and xenophobia has raised.

The Report provides recommendations developed for the purpose of promotion and protection of the rights of ethnic minorities and their civil integration.

Though no application has been submitted before Public Defender pertaining to specific facts of violation of Human Rights of sexual minorities in year 2012, we think that there are certain problems in this respect and additional study of it is necessary.

Present report provides detailed overview of wide range of socioeconomic rights: property rights, right to adequate housing, right to social security, right to employment at public institutions, etc.

In 2012, the trend of inadequate enjoyment of their rights by IDPs still persisted, the situation, with respect to rights of eco migrants has not improved as well.

2012

During year 2012, numerous changes have been implemented with respect to protection of children's rights, however systematic and result-oriented steps should be further taken into this direction and relevant State policy be elaborated.

Present report devotes particular attention to the situation of women's rights in the country, their involvement into the political processes, in addition, traditionally, it discusses the situation with respect of Domestic Violence.

The Reporting Period was marked with a number of measures implemented by the State for protection of persons with disabilities and this has to be considered as a positive trend, compared to the previous years.

Present report also provides considerations of number of aspects related to enjoyment the right to healthcare. Apparently, access to the health care service is one of the significant challenges in this system.

And finally, traditionally, the Report offers suggestions, proposals and recommendations to the legislative, executive and judicial authorities aiming restoration of infringed rights as specified herein and prevention of further breaches.

Situation at Penitentiary Establishments

Present Report covers the findings of the monitoring of penitentiary establishments, police departments and temporary detention isolators carried out by the Special Preventive Group of the Prevention and Monitoring Department of the Office of Public Defender of Georgia exercising its power within the National Preventive Mechanism mandate in 2012.

Participation of the representatives of the Georgian Young Lawyers' Association (GYLA) together with National Preventive Mechanism team in the monitoring of penitentiary establishments located in Eastern Georgia was ensured within the framework of joint project of PDO and GYLA aiming the support of National Preventive Mechanism. Monitoring of establishments and temporary detentions isolators located in Western Georgia was implemented with the financial support of the European Union.

The monitoring of the penitentiary establishments also involved experts from organizations Empathy - the Psycho – Rehabilitation Centre for Victims of Torture, Violence and Pronounced Stress Impact.

During the reporting period the Prevention and Monitoring Department of the Office of Public Defender of Georgia undertook 587 ad hoc (3852 inmates interviewed) and 68 planned visits to penitentiary establishments of Georgia and 84 planned (227 inmates interviewed) and 31 ad hoc (101 inmates interviewed) visits to isolators of temporary detention under the MIA of Georgia.

During the monitoring process, Special Preventive Group of the Prevention and Monitoring Department of the Office of Public Defender of Georgia were allowed to and moved without any impediments within the penitentiary establishments as well as within the temporary detention isolators. They were also able to select meeting points with inmates/ detained persons according to their own consideration and interview them.

In accordance with Article 19, Chapter three of the Organic Law of Georgia on Public Defender, "Meetings of Public Defender/ member of the Special Preventive Group with persons under arrest, detention or any other form of restriction of liberty and convicts, as well as the meetings with persons held in psychiatric institutions, institutions for elderly persons and child care institutions shall be confidential. Any type of interception and surveillance is prohibited". Despite the requirement of the law, the monitoring, as well as the materials published in the media revealed that secret video surveillance systems were mounted practically in every establishment in order to ensure both visual monitoring and overhearing. Accordingly, we consider that any issues that the Special Preventive Group and inmates discussed were known to the administration of the penitentiary establishments and any other persons who had access to such recordings. The above represents a substantial violation of national, as well as international standards and it questions both safety of inmates and activity of the National Preventive Mechanism.

In the process of the planned monitoring, representatives of Public Defender examined compliance of the existing situation and practice at the establishments with Georgian legislation as well as the international standards. During

the monitoring process particular attention was paid to the treatment of detained persons/ inmates in each and every establishment.

ILL-TREATMENT AT PENITENTIARY ESTABLISHMENTS

A planned monitoring is conducted by the Special Preventive Group twice annually. During the monitoring conducted in summer of 2012 a series of problematic issues were revealed, including systematic character of ill-treatment that was constantly stressed by the Special Preventive Group of Public Defender in both parliamentary and special reports in previous years. Unfortunately, for years the Georgian Government had been failing to take appropriate and adequate measures to eradicate the aforementioned problems, moreover, complete ignorance of systematic violations identified by Public Defender became a tendency. As a result we have got what was so frequently discussed in the reports of Public Defender – spread of syndrome of impunity – violation of prisoners' rights, exercising physical and psychological pressure on them. And unfortunately the practice has turned into routine and systematic one.

The above mentioned was evidenced by so-called "prison videos" aired by the media on September 18, 2012 depicting the facts of torture, inhuman and degrading treatment of prisoners.

Starting from September till the end of the year of 2012 several hundred applications and complaints were lodged with Public Defender's Office by prison inmates, alleging ill-treatment inflicted by prison administration of various penitentiary establishments. All those complaints were forwarded to Chief Prosecutor's Office of Georgia for relevant reaction. According to an answer from the Chief Prosecutor's Office an investigation has been launched in respect of every statement.

Penitentiary establishment No 1

Despite the fact that Public Defender's Office very rarely received statements regarding ill-treatment from this establishment, following September, 2012 part of convicts noted that such facts though infrequently but sometimes still occurred in establishment No 1. Public Defender has constantly stressed that placement of a defendant in the said establishment, due to conditions there, could fairly be described as amounting to inhuman and degrading treatment.

Case of Archil Gh.

On February 28th, 2012 a representative of Public Defender met and interviewed the convict Archil Gh. placed in establishment No 1. In an explanatory note that the convict presented to Public Defender representative, he talked about facts of beating and pressure exercised against him by administration personnel of the establishment. According to the inmate, prison staff asked him to shave off his beard. And as this demand was not fulfilled, on February 27th, 2012 the personnel of the N1 establishment assaulted him physically as well as verbally.

During the visit of the representative of Public Defender a bruise in the inmate's left eye area was observed. He also had headaches and pains in the chest area.

On February 29th, 2012 Public Defender applied to the Chief Prosecutor's Office to start preliminary investigation on the abovementioned fact.

On March 5th, 2012 Public Defender's representative met again and interviewed the convict who stated that his rights were not infringed and denied circumstances indicated in his previous explanatory note. Furthermore, on March 9th, 2012 statement of Archil. Gh. was received by Public Defender's Office, indicating that the explanations provided by him to Public Defender representative did not match the truth.

Case of Zurab N., Paata M. and Mirian V.

On July 1st, 2012 representatives of Public Defender met and interviewed convicts Zurab N., Paata M. and Mirian V., who on June 23rd, 2012 were transferred from establishment No 15 of the Penitentiary Department to establishment No 1. The convicts explained that their transfer to the closed type establishment was related to a collective explanatory note of convicts of establishment N15 where the convicts openly dared to describe treatments inflicted against them. According to Zurab N., Paata M. and Mirian V. they were especially active in their efforts to convince other convicts in the necessity of lodging such a complaint. That became the reason for the administration of the Ksani establishment "to get rid" of them and transfer to establishment No1. This very statement was corroborates by the fact, that susbequently all the convicts of the Ksani establishment refuted to submit a formal complaint.

Pursuant to convicts, on June 28th, 2012 they, one by one, were summoned by the director of the N1 establishment and told that if they did not stop complaining first they would be subjected to administrative punishment and afterwards – their sentence would be prolonged in accordance to the procedures of criminal law. According to convict Zurab N., he asked the director what reasoning would be used for prolongation of his sentence to which S. Kekelashvili answered that he was a director and would be the one to decide whether to plant the so-called shtiri (self made knife in prison) in his pocket or cell or accuse him of an attack on an officer.

According to the convicts, they refused to recall the complaint and for that they were subjected to 40 day-long administrative sentence each. All three of them stated that they did not commit a crime for which they had been sentenced by the court decision.

On the same day the representatives of Public Defender met and interviewed 21 convicts placed in cell N30 (the cell where Zurab N. was kept) of the N1 establishment. According to them, on June 23rd, 2012 Zurab N. was brought into their cell. The convict did not violate the regime during his presence in the cell, namely, he did not enter into a conflict with a prison staff and did not communicate with prisoners from other cells. According to the same convicts, Zurab N. always politely addressed the establishment personnel. The convicts noted that on June 29th, 2012 a prison guard warned Zurab N. that on Saturday, June 30th he was supposed to be taken to the court though as they said the prison guard did not specify a reason.

Convicts of other cells refused to give written explanations to Public Defender representatives.

On July 5th, 2012 representatives of Public Defender met and interviewed 11 convicts placed in cell N47 since it was opening of a window of this very cell and attempting to communicate with its inhabitants was what Paata M. was accused of. According to words of the convicts of cell N47, on June 28th, 2012 no inmate opened a window of their cell door. The inmates were saying that they did not know Paata M. and had no conversation had taken place between them.

On the background of all the abovementioned, on June 4th and 5th , 2012 written appeals were sent from Public Defender's Office to the Chief Prosecutor's Office of Georgia which , as it became clear later, were left without a response, since the response to the indicated letters N13/44825 was only received by Public Defender's Office on October 29th, 2012 and it noted that on October 24th, 2012 the Isani-Samgori District Prosecutors' office of the City of Tbilisi launched an investigation on the criminal case N004241012801 regarding the fact of abuse of power by the personnel of the penitentiary establishment N1 pursuant to the paragraph 1 of the Article 333 of the Georgian Criminal Code.

Penitentiary establishment No 2 in Kutaisi

Starting from summer of 2011, after management was replaced at the penitentiary establishment No 2 in Kutaisi, the situation with regards to treatment, which had been improved to a certain degree for the period from autumn 2009 till summer 2011, has noticeably deteriorated. In summer of 2011, the situation in establishment No 2 in Kutaisi in respect of excessively strict regime requirements was similar to that of establishment N8 highlighted in Public Defender's reports. In some cases, treatment of inmates in the establishment N2 in Kutaisi was even worse than at establishment

N8. e.g. for punishment purposes, inmates were kept in quarantine cells with their hands on the head and kneeled for various periods of time, also water mixed with bleach was poured on a cell floor thus to prevent inmates from even lying down on a concrete floor.

Despite the fact that Public Defender repeatedly emphasized inhuman treatment taking place in establishment N2 and noted that inmates were ill-treated, neither the Georgian Ministry of Corrections, Probation and Legal Assistance nor the Chief Prosecutor's Office have taken any effective measures for improvement of the situation.

Case of Nikoloz V.

On September 25th, 2012 representative of Public Defender met and interviewed a convict held in Kutaisi establishment No 2 Nikoloz V. According to the latter he was suffering from psychiatric problems because of which he repeatedly tried to commit a suicide.

The inmate explained that several months ago he inflicted a self-injury and because of this the establishment personnel - Roma Robakidze and Irakli Minashvili took him out of the cell and beat him up first in a hall, and later in a duty unit. Afterwards they asked a nurse to give him an injection and tied him to stairs. According to the inmate, he was left tied to the stairs till the next morning and later on was taken to so-called box (F-102 cell) where he remained for seven days and during this period slept on a concrete floor.

On September 28th, 2012 Public Defender's Office sent an explanatory note of convict Nikoloz V. to the Chief Prosecutor's Office where the convict described the above-mentioned facts. According to a response N 13/43248 from the Chief Prosecutor's Office of Georgia, that was received by Public Defender's Office, on October 15th, 2012 the District Prosecutors' Office of Western Georgia launched an investigation into a criminal case N088151012801 on the fact of inhuman treatment exercised against convict Nikoloz V., pursuant to "b" and "e" sub-paragraphs of the second paragraph of article 144^3 of Penal Code of Georgia.

On January 10th, 2013 written appeal was again sent from Public Defender's Office of Georgia to the Chief Prosecutor's Office of Georgia, where we requested detailed information on the ongoing investigation of this criminal case.

The Chief Prosecutor's Office informed us with the response N13/8859 that the case of Nikoloz V. was merged with a criminal case opened in the investigative unit of the Regional Prosecutor's Office of Western Georgia on the fact of torture and inhuman treatment of inmates by certain personnel of penitentiary establishment N2. The same response stated that the investigation on the case was pending.

Penitentiary establishment No 4 in Zugdidi

The establishment is one of those, recommended by Public Defender to be closed due to conditions existing there. We shall note that during the monitoring, inmates held at establishment N4 did not mention ill-treatment towards them. Herewith we shall mention that inmates transferred from Zugdidi establishment N4 to other establishments often noted that in establishment N4 in Zugdidi inhuman and degrading treatment was exercised against them, however they refrained from giving written explanations. The monitoring group remarked inmates tensing at the opening of a cell door - each of them immediately standing up with their hands at the back, lining at the window and unanimously answering questions of the monitoring group and stating that everything was well at the establishment and they had no problems.

Conditions and treatment in the establishment N4 in Zugdidi were also mentioned in the 2011 Parliamentary Report of Public Defender, however due to the above-mentioned reasons no specific facts were indicated.

Despite the fact that following to September 2012 inmates held in all establishments openly talked about ill-treatment

carried out against them in the past, inmates of Zugdidi N4 establishment continue to refrain from giving explanations regarding ill-treatment against them. A part of inmates noted that their treatment improved significantly, though another part says that they did not suffered any ill- treatment in the past.

Penitentiary establishment No 8

In recent years, during the conducted monitoring inmates refrained from writing explanatory notes with regards to ill-treatment towards them, often not even talking about this, while those who spoke in details about facts of torture and ill-treatment inflicted on them or towards any other inmates, very often used to name specific persons called Ango, Khonski and Beka Mzhavanadze. During the monitoring held in 2011 they spoke about some blonde, blue-eyed worker named Oleg[1]. More often during the monitoring in other establishments the Preventive Group was told about inhuman treatment exercised toward inmates in Gldani N8 establishment but even then they refrained from making the facts publicly known. A large part of problems described in reports of Public Defender was based on results of observations of the Preventive Group. Tense atmosphere and a factor of fear were always felt among inmates in N8 establishment. The above was very apparent for the Preventive Group although during interviews inmates maintained that they felt very well and they did not have any particular problem in the establishment. And this was happening at the time when they were under unjustified restrictions, namely: they were prohibited from lying down or sleeping on their beds in cells during a day, but at 10pm they were definitely supposed to be in beds and asleep; they could not smoke a cigarette in a cell and were allowed only to do so in a cell toilet where several inmates used to go together to smoke in the confinement of 1 square meter; at any kind of noise of a cell door be it opening of a small window on a cell door or that of an observation one all inmates without exception should have stand up and form a line near beds; prison guards used to compel inmates to keep duty which meant that one inmate was responsible for behaviour of other inmates in his cell and even a small slip committed by his cellmates could have led to his punishment; inmates were prohibited from approaching a cell window and looking out of it; they were prohibited from talking in a normal voice and they just whispered between each other; they were banned from hanging their laundry in a cell and had to keep their wet clothes and bed linen in cupboards; they were not allowed to laugh; they were not allowed to listen to a radio on a normal volume and only allowed to listen to it with radio device close to their ears; upon admission to the establishment prisoners were made to sign an agreement on cooperation which was later successfully used to blackmail them; always an uncommon silence for such a crowded establishment (some 4 000 prisoners) reigned in the prisoner accommodation blocks.

And in case of not taking into consideration all the aforementioned and many other restrictions and bans inmates were tortured, treated inhumanly, beaten up, left shut in shower rooms and punished in other ways, including transferring to a solitary cell or a quarantine for punishment. Also Public Defender has repeatedly focused his attention on poor conditions in this establishment when simultaneously dozens of prisoners had to stay for weeks in a quarantine cell designed to hold 8 persons and where there was no possibility to keep basic hygiene. There were not enough plates and dishes, anti sanitary was blossoming and the cell was constantly overcrowded. People were usually punished with sending to a solitary cell or a quarantine cell for such violations as "making noise" which implied speaking in a normal voice or even laughing. Sometimes a request for a doctor too considered to be a "noise" and could have become a cause for punishment.

From the outset penitentiary establishment No 8 in Gldani was known for abundance of facts of negligence and violation of inmate rights. Public Defender pointed to facts of torture, inhuman and degrading treatment in Gldani N8 prison in his numerous reports. Though, unfortunately, all these facts were mainly left without appropriate response on the part of both investigative agencies and high-rank officials of the Penitentiary Department. Many recommendations that referred to transfer of inmates to other establishments for the purpose of their protection from possible retribution, were not fulfilled by the department. All these recommendations had the same standard response on the part of the chairman of the penitentiary department stating that "safety of a prisoner is ensured and there is no need to transfer him to another establishment".

1 They mean Oleg Patsatsia

Even the 2010 Parliamentary Report of Public Defender assessed a situation in Gldani N8 Prison as inhuman and degrading treatment. The report mentioned that inmates were often sent to quarantine and this was used as a punishment measure in Gldani prison. At the same time, this method of punishment is not written in any of the legislative act and thus is illegal.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) 2010 report says that prisoners placed in establishment N8 in Gldani and medical establishment for defendants and convicts N18 do not confirm ill-treatment, as opposed to inmates in other establishments who talk about ill-treatment exercised against them. At the Gldani establishment inmates were beaten up in the "kartzer" area, the showers for knocking on cell doors, talking loudly or attempting to communicate with prisoners from other cells. They also mentioned an uncommon silence reigned in the prisoner accommodation blocks.

The European Committee for Prevention of Torture (CPT) 2010 report also mentions that "practically no allegations of ill-treatment by staff were received during the visit to Prison No. 8 in Gldani. However, a number of inmates subsequently met by the delegation at other establishments alleged that they had been physically ill-treated by staff whilst being held at the Gldani establishment in the recent past, in particular in the "kartzer" area, the showers and upon reception. The ill-treatment alleged (consisting of punches, kicks and truncheon blows) was reportedly triggered by violations such as knocking on cell doors, talking loudly or attempting to communicate with prisoners from other cells. The delegation noted for itself that an uncommon silence reigned in the prisoner accommodation blocks at Gldani".

Case of Vladimer I.

On August 1st, 2012 Public Defender was addressed with N1374-12 statement by a lawyer defending interests of convict Vladimir I. who was kept in establishment N8. The statement mentioned that the convict had Tuberculosis and, despite this, for fourteen days he was kept in a box in the basement of the penitentiary establishment No 8.

On August 2nd, 2012, representatives of Public Defender met and interviewed convict Vladimir I. According to him, around two weeks before that he had a verbal conflict with his cellmate for which a prison personnel of N8 establishment sent him to so-called box for two weeks. There the convict did not have either bed, or a mattress and a blanket and was sleeping on a floor. As the convict said on the course of this period he was not visited by a doctor.

Based on the above, on August 7th, 2012 Public Defender appealed to the Chief Prosecutor of Georgia with a recommendation to start an investigation. With regards to the above recommendation on November 2nd, 2012 Public Defender's Office received the answer N13/45642 which stated that the investigation was launched into the case of Vladimir I. on October 26th, 2012, which once again points to superficial attitude of the Chief Prosecutor's Office towards the investigation of facts of ill-treatment. According to the same response, Tbilisi Gldani-Nazaladevi District Prosecutor's Office conducts investigation into the criminal case N001261012801 pursuant to the first paragraph of the article 144^3 of the Penal Code of Georgia.

Cases of Pavle B., Davit T., Guram M. and Guram T.

On August 2nd, 2012 workers of the Special Preventive Group of the Prevention and Monitoring Department of the Office of Public Defender of Georgia met and interviewed convict Pavle B. who was kept in establishment N8. According to the convict, on July 15th, 2012, one of the officers of the establishment was on leave and substituted by Nika Tolordava. According to the inmate, at around 8.30pm together with his two cellmates he was smoking a cigarette (smoking in a cell was prohibited by the administration). According to convict because of smoking, officer Nika Tolordava verbally abused inmates, brought them out of the toilet, as a punishment he made them stand in two rows and kept them in this position for almost two and a half hours.

According to convict Pavle B. the next day, when inmates were taken from a cell to a yard to walk he was walking at a quick pace and not running (as the convict said during the exercise they were compelled to run) because of a leg pain.

As he said, because he could not run officer Nika Tolordava sent the convict together with his cellmates back to the cell and punished them again with the two-hour standing.

With regard to the above representatives of Public Defender met and interviewed inmates of D-63 cell[2] of the penitentiary establishment N8: Davit T., Guram M. and Guram T. who confirmed the aforementioned facts.

On August 7th, 2012 Public Defender applied to the Chief Prosecutor of Georgia with a request to launch an investigation. On November 9th, 2012, N13/46328 reply was received by Public Defender's Office stating that Tbilisi Gldani-Nazaladevi District Prosecutor's Office launched an investigation into the criminal case N001051112801 pursuant the first paragraph of the article 144[3] of the Georgian Criminal Code.

Furthermore, by N13/10196 reply from Georgia's Chief Prosecutor's Office we were informed that cases instituted on the basis of statements by Vladimir I. and Pavle B. were merged with N073110400 criminal case on a fact of inhuman degrading treatment inflicted by personnel of N8 establishment towards convicts pursuant to the first paragraph of article 144[3] of Penal Code of Georgia. According to the same reply, at this stage no criminal proceedings were instituted against any specific person.

Case of Lasha J.

On August 14th, 2012 representative of the Prevention and Monitoring Department met and interviewed convict Lasha J. serving sentence at N8 establishment. According to the latter, he had been in the aforementioned penitentiary institution since August 11th, 2011 and during this period he had repeatedly experienced ill-treatment. The convict noted that he refrained from making complaints and thought that inhuman and degrading treatment on the part of personnel of the establishment administration would stop, as he thought, but such actions continued towards him.

According to the convict, on August 5th, 2012 window of his N123 cell was opened by an establishment personnel who shouted at him "why are you looking at me with eyes like that?". Then the prison guard demanded the inmate to come to a door. The inmate obeyed and when he approached the door the officer punched him mercilessly in his face and threatened to all inmates in the cell that if they were to make this known "he would beat them up".

The convict also noted that the establishment officer was threatening him with sentence prolongation. According to him, various prison personnel participate in facts of ill-treatment towards him as well as towards other inmates which he discussed with investigators.

After visual examination a red scar was noted in the upper lip area of the convict which, according to him, appeared on August 5th, 2012 as a result of a punch received from of the administration personnel of N8 establishment.

On August 20th, 2012 Public Defender applied to Georgia's Chief Prosecutor with a request to start a preliminary investigation. As mentioned in the reply N13/38405 received from the Chief Prosecutor's, on September 6th, 2012 Tbilisi Gldani-Nazaladevi District Prosecutor's Office launched an investigation into the criminal case N001060912801 pursuant to sub-paragraph "b" of the second paragraph of article 144[3] of Penal Code of Georgia.

By N13/10199 reply, dated January 25th, 2012 we were informed that investigation was ongoing on this case and relevant investigative actions were being implemented. According to the same response, criminal proceedings were not instituted against specific individuals.

Case of Malkhaz A.

On June 22nd, 2012, representatives of Public Defender of Georgia met and interviewed convict Malkhaz A. who was placed in the penitentiary establishment N8. According to him, on February 5th, 2011 he was arrested by a policemen

2 Cell of Pavle B.

of the Zugdidi police Ruslan Shomakhia and another policeman whose name he did not know. The convict stated that he was forcibly pushed into car, a sack was put on his head and he was taken to an unknown direction. Then he was taken out of the car, a testimony of some Shota S. was shown to him where the latter stated that Malkhaz A., together with other persons, participated in terrorist acts that had taken place in Zugdidi and nearby territories in the period from 2008 to 2010. Malkhaz A. refused to confess in the above accusation. Subsequently he was physically and verbally assaulted. In particular, as he said, he was sworn at, spit at, threatened with a gun and beaten up with an iron truncheon. The convict said that his beating continued for around 30-40 minutes. After that he was put in a car and taken in the direction of the village of Rukhi where they were met with an investigator who searched him. During the search 1500 GEL, 2 mobile phones, 80 Russian rubles and drugs were confiscated from him. As he explained, he did not have or even seen all the above before but since he was frightened he signed the search protocol. Malkhaz A. explained that after he was transferred to the Zugdidi main police department where upon arriving he was again physically and verbally assaulted in the hall of the second floor of the division. As he stated, policemen Temur Loria alongside with those who detained him participated in his beating. Malkhaz A. lost consciousness because of severe beating in the main police department when he was forcibly given water being diluted with drugs. As the convict said, he did not experience any kind of physical pressure in a temporary detention isolator.

The convict explained that during admission into Zugdidi establishment N4 convoy told the establishment personnel that Malkhaz A. was a drug addict, car dealer and relative of Zviad A., and as the convict explained this led to his being severely beaten up. After the above, for two days he was in a cell and experienced no more assault. And two days later Megis Kardava approached him asking whether he knew wanted Zviad A. According to Malkhaz A., because of a negative answer he was placed in a solitary cell for one day. Next day he was brought out of the cell. They started beating and swearing at him constantly asking him whether he got everything what they have said or not. According to Malkhaz A., afterwards he was transferred to a cell where they burst into around 30-40 minutes later and took him down to a solitary cell while beating him on the way there. The convict noted that he stayed in the solitary cell for around two hours after which he was transferred back to his cell. Until May 19th, 2011 he was placed in establishment N4 and no facts of beating and assault inflicted against him were noted.

On May 19th, 2011 he was transferred to establishment N8 in Tbilisi. According to the convict, on May 20th he was taken up into the director's office where there was Megis Kardava with two other persons. Megis Kardava asked him to write a confession with regards to terrorist acts in Zugdidi. Malkhaz A. replied to him that he had no link to the matter after which, as the convict noted, Kardava ordered his companions to take the inmate to quarantine. Malkhaz A. said that he was being beaten on the way to the quarantine; he was brought to a door of one of the cells and was made to look into the cell where a man was sexually abusing another man. He was told to remember this fact well as the same fate would befall him if he did not give the necessary testimony. He was given a pen and a paper and told to write the testimony. As Malkhaz A. said, to save himself he wrote about terrorist acts that he had heard from the media and said that he participated in those acts. The witness testimony was taken up to Megis Kardava and after that Malkhaz A. himself was taken to the director's office. According to Malkhaz A., as soon as he entered the room Kardava told him that that this was not the testimony they wanted and he should eat the paper the testimony was written on. The convict noted that Kardava's companions made him swallow the paper. After this M. Kardava ordered his companions to take the inmate to the quarantine unit and rape him.

As the convict said he was taken to the cell and the door was shut, during which two masked persons came out of a toilet. They forced the convict to pull the trousers down. The convict noted that when he was thrown down on the floor with his trousers down photos were taken from the so-called "karmushka" on the cell door. As he explained, he was banging his head on the concrete floor when Kardava's companions entered the cell. They held the inmate, one of the masked men touched him with his genitals during which a photo was taken. After this the masked people left the cell and Karadava's companions again told him that if he did not give the testimony they wanted he would be really raped. As he said he was frightened to the extent, that he gave the testimony they have asked.

The convict said that investigator Lasha Kolbaia was present there, and his numerous requests that his lawyer attended the questioning have not been met.

The convict noted that around 4-5 times during night time he was transferred to N18 medical establishment where a meeting was arranged with inmates Mamuka A. and Shota S. According to Malkhaz A., during this meeting Shota S. was stressing that he took part in the terrorist acts. The convict noted that he met these persons in the beginning of August, 2010 and thus he could not have taken part in the terrorist acts in 2008-2009.

On June 22nd, 2011 during the meeting of the convict with representatives of Public Defender two small scars were noted in the forehead area, as well as two scars - on a right calf and two scars on his hands that, as later was revealed, was a result of self-injury.

The next day the representative of Public Defender again visited convict Malkhaz A. who stated that he no longer wanted further reaction to be followed to his explanatory notes and noted that he was afraid of requital. He also noted that after the visit of Public Defender representatives his rights have not been violated. After the above convict Malkhaz A. was visited several times by representatives of Public Defender though he did not want to make his explanations public and send them to law enforcement agencies.

On September 26th, 2012, following to the request of Malkhaz A.'s lawyer the convict was again visited by representatives of Public Defender. Malkhaz A. stated that he refused to get response to his statements of June 22nd, 2011 because on the same day he was taken to the quarantine of the establishment where he saw director of the establishment Alexander Mukhadze, head of security department Victor Kacheishvili and personnel of the same establishment Besik Meladze. They severely beat him up and warned him that if he did not refuse his statements and say that he lied they would arrest his family members and his lawyer and rape them in front of him. According to the convict, before every visit of representatives of Public Defender, the Red Cross, the lawyer, a priest and family members he was met by personnel of the establishment Oleg Patsatsia or Victor Kacheishvili and warned that if he did not obey their demands and say something he would be raped.

The convict noted that his lawyer came to him and he told him everything. After the lawyer left he was taken down to Victor Kacheishvili's office where the director of the establishment Alexander Mukhadze also came and told him that 3200 people worked in the system and he and his lawyer could not go against them. Also, as the convict said, Mukhadze told him "every week 4-5 people die in a prison, some themselves and some with our help". As the convict said, he refused to repudiate his lawyer after which Mukhadze telephoned Megis Kardava and told him that the convict was refusing to comply with their demand. After the phone call, as the convict stated, Alexander Mukhadze told him that if he consented to this demand and confessed the crime that he had not committed, a lawyer would have been brought to him and minimum sentence given, while in case of refusal they would simply kill him. The convict said that he was returned to his cell where he was visited by Victor Kacheishvili who explained that if he refused their demand they would let the entire prison think as if he was raped. Kacheishvili gave him time till morning to think it over. According to the convict, next morning he was beaten up in a shower room and he was forced to write statement towards repudiation of his lawyer.

According to Malkhaz A., several days later he was approached by investigator Lasha Kolbaia who demanded signing of the testimony from him which, as the convict said, he refused to do. After this Alexander Mukhadze entered the room, hit him with a portable transmitter in his nose and told him to obey their demands. As the convict said, he again refused to sign the testimony. He noted that Lasha Kolbaia called Alexander Mukhadze and Victor Kacheishvili whom he told the inmate did not intend to sign. After this, according to the convict, three times he was taken down to a quarantine where he was severely dealt with and was forced to obey their demands.

The convict mentioned that he was frequently transferred to N18 medical establishement where he met with Gaga Mkurnalidze, Megis Kardava and some Koba. According to him, he was cross examined with someone called Mamuka A. whom he had just seen once before. The prison personnel demanded for the convicts to confess in committing of crimes unknown to them. According to the convict, Lasha Kolbaia, Gaga Mkurnalidze, Megis Kardava and Koba severely beat him up and demanded to point to some Lasha A. and Zviad A. whom he did not even know. According to him, when he denied any kind of contact to those people Megis Kardava took a gun, put it to his forehead and threatened to kill him. As the prisoner said M. Kardava was saying to him that neither Public Defender nor his lawyer

would help him. According to the convict, Megis Kardava told investigator Kolbaia that "if he did not finish this matter on time he would kill the defendant".

As Malkhaz A. spoke, in February, 2012 he was taken to the director's office where there were Director Davit Khuchua, Deputy Director Victor Kacheishvili and Deputy Head of the Penitentiary Department Gaga Mkurnalidze. The latter told Malkhaz A. that if he did not tell an investigator that he gave false explanations to Public Defender he would be raped. And Davit Khuchua and Victor Kacheishvili were charged with this task. While if he refused the explanations he would be released as they knew that he was innocent. The convict noted that a week later he was visited by investigator Nugzar Mgebrishvili to whom he, hoping that he would be released, did not confirm the explanations given to Public Defender. According to the convict, the investigator also told him that knew about his innocence and his release was complicated due to the fact that he had given a confession regarding drugs.

In accordance with N13/11544 response from Georgia's Chief Prosecutor's Office dated June 30th, 2013 Investigative Department of Tbilisi Prosecutor's Office an investigation was launched into the criminal case N010118112 on the fact of exceeding official powers by personnel of N8 establishment towards Malkhaz A. The investigation is pending and relevant investigation actions are carried out. According to the same response, criminal proceedings against particular persons have not been instituted.

Case of Malkhaz B.

On December 29th, 2012 representatives of the Preventive and Monitoring Department of Public Defender Office met and interviewed inmate Malkhaz B. who was placed in N18 medical establishment for defendants and convicts. According to the inmate, during his stay at N8 establishment many times he was beaten up and tortured as a result of which his health has deteriorated.

According to the convict, on March 23rd, 2011 he was settled into N8 establishment of the penitentiary department. Administration personnel of the establishment Vladimir Bedukadze asked him the crime he was arrested for and whether he was beaten up by him earlier, during his stay at N8 establishment. As the convict says at this time they were approached by the head of the establishment security department Victor Kacheishvili who told Bedukadze "to push" him into so-called "fux".

As Malkhaz B. said, around one hour later he was approached by establishment personnel Oleg Patsatsia, Victor Kacheishvili and, also someone called "Kosa" (named Malkhaz) who got the inmate out of the "fux" and took him into the court quarantine where Oleg Patsatsia asked him what type of robbery he was accused of. The convict said that he did not rob anybody. Malkhaz (aka Kosa) offered cooperation with the administration. The convict refused this offer which led to Kacheishvii verbally abusing him and then once again offering cooperation. After the second negative response O. Patsatsia and V. Kacheishvili charged some "Beshkena" (Beshkenadze) and Kosa with supervision of the inmates. After this Malkhaz B. was transferred to cell N88 of the accommodation building from where 2-3 days later he was against taken to a shower room and beaten up there. According to the convict, he was beaten up by Khonski, officer at the establishment, and other two administration personnel after which he was taken to a solitary cell where he was kept for 10 days. And after the solitary cell he was transferred to cell N4 of the building A where he was kept for a month.

According to the convict, on specific day (he did not remember exact date), at around 11am Oleg Patsatsia and one of the workers entered his cell. Oleg Patsatia took the inmate to a shower room and tasked so-called Kosa and another officer with beating him up with plastic bottles for wearing shorts. After this he was again taken down to the solitary cell where he was left for 16 days. From the solitary cell the convict was moved to so-called fux and put there for 2 days. According to Malkhaz B., afterwards he was transferred to a quarantine cell where some "Basti" and several officers again beat him up, tied him to a heating unit pipe and left him in this condition for 12 hours. After this he was transferred to a quarantine cell where the convict was once again beaten up by establishment personnel. And Malkhaz B. said Bedukadze filmed all the actions. As the convict said, during the beating he was stripped down, made to lie on

a floor and cold water was poured on him. As Malkhaz B. says this time they were visited by a representative of the penitentiary department who ordered establishment officers to have other two inmates to be taken up to a cell and Malkhaz B. to be left in quarantine.

According to the convict during one week O. Patsatsia, Kacheishvili and other officers demanded from him confession on a criminal case and verbal assault for so called "thieves in law". According to the convict he was severely beaten alongside other four prisoners after which he could not get up and they managed to sit him on a chair only after some help from inmates. When he was left alone,"Basti" opened the cell door and asked whether he was still alive, and verbally assaulted him. After this he took off his shirt and started beating him first with hands and after – with a rubbish bin.

As the convict explained, soon he was transferred to a quarantine cell where there are beds, he was striped down and told to swear at so-called "thieves" which he refused to do. Because of the refusal, as he said, he was ordered to stand naked and warned not to put on his clothes. According to the convict, "Ango", "Beshkena" and some Vakho entered the cell. As he said, he was raped after which around an hour and a half later "Kosa", and "Beshkena" again came into the cell and again asked for cooperation otherwise threatened him that they would rape him with a truncheon. According to the convict, he agreed and promised that when investigator and prosecutor were to come he would confess. According to him, next day the investigator and the prosecutor came to him and he signed a plea agreement.

According to the convict, his rape and beating was implemented on the basis of tacit agreement between the investigator and the prison personnel.

On December 31st, 2012 Public Defender suggested to the Chief Prosecutor of Georgia to start an investigation. Public Defender's Office did not receive a response to the aforementioned letter though during the monitoring it became clear that the convict was questioned with regard to the above facts.

Special juvenile establishment N11

On August 8th, 2012 at night Public Defender was informed about the riot at juvenile establishment in N11 of the penitentiary department. Representatives of the Prevention and Monitoring Department of Public Defender's Office immediately visited the juvenile establishment. As a result of the visit it became apparent that by that time 60 of registered 120 convicts had been transferred to N16 establishment in Rustavi and 47 convicts to - establishment N17 in Rustavi, while 15 convicts remained at the institution.

The representatives of Public Defender interviewed juveniles, left at the establishment, the establishment administration and examined accommodation building of the institution. The examination showed that at the time the accommodation building was not suitable and was in need of immediate refurbishment.

The same night workers of the Preventive and Monitoring Department carried out visits to penitentiary establishments N16 and N17 in Rustavi during which they saw all juvenile convicts except for those several ones who at the time of the visit of the representatives of Public Defender were asleep. According to them, the protest was caused by excessive strictness, various types of retractions and in some cases, even verbal abuse and physical requital recently inflicted by the administration. As the juveniles explained, lately abuse of family members that were coming for a visit became frequent, namely, searches were carried out in an unacceptable manner, prison personnel treated their family members roughly and depreciatingly.

According to the juveniles, the administration prohibited them to swim in an establishment pool without trousers and a vest. They were not allowed to send a statement or a complaint and in case of willing so, prison personnel verbally abused them and used to tear up their correspondence in front of their eyes.

As the convicts explained, personnel of N11 establishment administration prohibited inmates to inform representatives of Public Defender's Office about the above facts and in case of disobedience they threatened them with transfer to another establishment.

According to the article 37 of the United Nations Convention on the Rights of the Child, the convention member state undertake to ensure that no child falls victim of torture, cruel, inhuman and degrading treatment or punishment. The article 19 of the convention states that Governments must do all they can to ensure that children are protected from all forms of violence, abuse, neglect and mistreatment.

Therefore these two norms of the child rights convention defines margins of state obligations with the view of children protection from violence and ill-treatment and is based on the necessity of protection of legal interests and rights of the child.

According to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, Member States shall seek, in conformity with their respective general interests, to further the well-being of the juvenile and her or his family (rule 1.1).

We believe that for normal functioning of the penitentiary system, return of convicts as fully fledged members of the society and application of a prison sentence towards a criminal to take effect, alongside other components special importance shall be attached to personnel of a penitentiary establishment, their professionalism, personal qualities and attitude toward persons deprived of liberty.

On August 14th, 2012 Public Defender appealed with a request to Georgia's Chief Prosecutor's Office and demanded a launch of a preliminary investigation into the above-mentioned facts described in statements of juveniles.

On August 31st, 2012 through N13/36601 official reply, we were informed that in the anti-corruption department of the Chief Prosecutor's Office of Georgia an investigation was launched pursuant to the paragraph 1 of the article 378 of the Penal Code of Georgia on the fact of interference and disorganization of activities of N11 juvenile special establishment. According to the same reply a possible fact of violations on behalf of representatives of the penitentiary department would have been studied within the framework of the above-mentioned criminal case; Also, on August 21st, 2012 11 juveniles were sentenced pursuant to the first paragraph of article 378 of the Penal Code of Georgia and, the sub-paragraph "g" of the article 4, the paragraph 5, the paragraph 2 of the article 187 and by the court decision of the judge of criminal panel of Tbilisi city court was given the sentence in the form of a prison sentence. 10 accused person confessed to a crime.

Penitentiary establishment No 15 in Ksani

Convicts placed in Ksani N15 establishment have applied to Public Defender numerous time, citing beatings and inhuman treatment, with even collective complaints in several cases. But no recommendation of Public Defender was followed by an adequate reaction from investigative bodies. Instead, in response to information received from the Chief Prosecutor's office, the administration of the establishment conducted "negotiations" with inmates and in exchange of various promises or threats made them retract their complaint, while particularly disobedient inmates were transferred to closed-type establishments. It shall be noted that for years the Preventive Group paid particular attention to N15 establishment. Inmates incarcerated in the closed part of the above establishment addressed numerous complaints and statements to Public Defender. As a rule, convicts' complaints referred to physical requital but also there were cases when they complained about degrading and humiliating treatment on the part of the establishment personnel.

Collective statement of convicts placed in a new building of establishment N15 in Ksani

On June 22, 2012 representatives of Public Defender met several hundreds of inmates of the Ksani establishment who talked about facts of violation of their rights. The convicts said that verbal abuse and beating with truncheons and kicking were often used towards them. The most frequent abuse and degrading treatment were exercised upon admission into the establishment and before placing in a solitary cell, illegal methods were frequently used even in case

of minor mistakes. In addition, convicts stated that telephone was often out of order at the establishment, the press was not available to inmates and they did not have a radio receiver.

Inmates named several persons who according to them were involved in acts of violations of their rights, namely chief of the establishment Shota Tolordava, his deputy, as well as Dima Chkhaidze, Levan Lezhava, Gela Iosava and someone called Ucha.

A statement sent to Public Defender was signed by 693 inmates.

It shall be noted that convicts placed at N15 Ksani establishment often applied to Public Defender even in 2010 with individual or collective complaints that described facts of physical abuse and assault inflicted by the prison personnel. The above was mentioned in the 2010 Public Defender Parliamentary Report and investigation was launched on numerous similar facts. The convicts more often named several officers of the establishment, among them, Levan Lezhava and Gela Iosava, whom distinguished particular cruelty.

On June 25th, 2012 Public Defender of Georgia, pursuant to Organic Law of Georgia "on Public Defender of Georgia" addressed the Chief Prosecutor's Office of Georgia to start an investigation into mass-exercised facts of ill-treatment of inmates in establishment N15 in Ksani.

Cases of Jemal S., Guram S., Lasha V., Paata M. and Besik G.

On June 25th, 2012 representatives of the Prevention and Monitoring Department of Public Defender Office met and interviewed convicts transferred from establishment N15 in Ksani to establishment N1 in Tbilisi. The convicts addressed explanatory notes to Public Defender, providing detailed description of their admission into establishment N15.

According to convict Jemal S., on May 11th, 2012 he was transferred from establishment N8 to establishment N15 together with other convicts (around 77 inmates). He said that upon arrival to the establishment they were informed about the list of their rights and obligations. Afterwards, as the convict described, inmates were taken to shower rooms located in the new part of N15 establishment. There were around 30-35 inmates alongside him. According to Jemal S. they stayed in the showers for several hours after which personnel started to take the convicts one by one to an opposite changing room where he was seen by personnel of the administration: Levan Lezhava, Dima Chkhaidze and other two persons. They asked the convict to write that he would cooperate with prison administration which the convict refused. According to the latter, because of the refusal he was beaten and Levan Lezhava put an eclectric shocker to his body several times. Also, as the convict stated, his head was shaved forcibly. Jemal S. explained that because of his refusal to cooperate with the administration he and four other inmates were left in the shower room for six days. As he stated they did not have beds, no items of hygiene and no toilet paper.

According to convict Guram S., at the end of July, 2012 he, together with other convicts, was transferred from N8 establishment to N15 establishment where he was informed about the list of their rights and obligations. After this, as the convict said, they were brought into shower room of the accommodation block A where they were held for 2 days. According to him, during this period they were given only bread. The convict noted that on the third day he was taken to a cell next to the shower rooms where he was met by workers of the establishment Dima Chkhaidze and Levan Lezhava, who started beating him without any explanations. The convict said that the above persons treated other convicts in similar way.

According to explanations of convict Lasha V., in March 2012, he left his cell and wanted to enter another cell when the prison personnel verbally abused him and told him to get back to his accommodation cell. As the prisoner said, he asked the prison guard why he was insulting him and for this he was taken to one of the rooms of the administration building where three guards of the establishment beat him and used an electric shocker twice.

According to Paata M., on April 20th, 2012 he was sent from establishment N8 to establishment N15. As the convict said, upon admission to the institution he was placed in a shower rooms where there was no bed, no toilet paper, soap

and towel. According to him, he remained in the shower rooms for 3-4 days after which he was taken to a room next to the showers for the purpose of shaving his head. According to convict, he was told to kneel, however he refused, justified his refusal with a meniscus problem he had, and sat on the floor. Because of this the establishment personnel (as the convict said there were 7-8 workers in the room) verbally and physically assaulted him, namely, he was kicked and beaten with water pipes. As the convict said, the very same night he again was brought to one of the cells where he met the establishment personnel Dima with two other others. He was asked to cooperate with them and to confirm this in writing. According to convict, he refused and for this reason the establishment personnel Dima wrapped a plastic pipe around his neck. As the convict explained, such treatment inflicted towards newly-incarcerated inmates by N15 establishment personnel had a regular character.

Convict Paata M. explained, that after his transfer to N15 establishment he was twice placed in a solitary confinement cell. After leaving the solitary cell he was taken at the duty room and placed near the window. This took place on February 3rd and it was cold so he asked to close the window but instead of closing the window officer Dato opened another one which was protested by the convict. According to the convict, the officer verbally assaulted him. After this he was taken to the second floor of the administration building and brought into a room where 7-8 guards entered, among them, Levan Lezhava, who was told by the guards that Paata M. was not obeying prison guards. Levan Lezhava verbally assaulted the convict and slapped him in the face and after this other guards, who were present there, also started beating him. According to the convict, as a result of the beating, he suffered a damaged ankle. Subsequently, Levan Lezhava asked the guards to bring handcuffs and the convict was tied to a so-called turnstile. The inmate explained that he was left in this state for 4-5 hours. He also explained that Levan Lezhava sent the guards for an electric shocker and pressed it on his arms and neck. After this, according to the convict, he was transferred to a solitary confinement cell for 20 days. Following to the convict's statement, he did not told anyone, since he was threatened with prolongation of sentence in case anyone obtained information about the said fact .

According to convict Besik G. he was sent to N15 establishment in June, 2011 where upon arrival administration personnel of the establishment verbally and physically abused him. In his words, after he was taken to shower room where he was asked to cooperate with the administration and shave his head. According to the convict such actions had a permanent character at establishment N15.

On June 28th, 2012 Public Defender applied to the Chief Persecutor of Georgia with a request to launch a preliminary investigation.

Through N13/32175 reply dated July 28th, 2012, the Chief Prosecutor's Office of Georgia informed us that on July 10th, 2012 the investigative unit of the Shida Karti and Mtskheta-Mtianeti District Prosecutor's Office launched an investigation into the criminal case N082100712801, on the fact of exceeding official powers by officers of Ksani N15 establishment of the penitentiary department, pursuant to the first paragraph of article 333 of the Penal Code of Georgia. The investigation on the said criminal case is still pending and the monitoring held in winter by Public Defenders Office revealed that representatives of the Prosecutor's Office were conducting questionings of inmates.

Case of Irakli M.

On March 10th, 2012 representatives of Public Defender met and interviewed convict Irakli M. placed in N15 establishment and identified injuries of various kind during the meeting. According to the convict on March 5th, 2012 he was severely beaten up by personnel of the establishment. The convict noted that he was taken into a room located in the administrative building of the establishment where Director of the establishment Shota Tolordava, his deputy Bacho Rukhaia, officers Dima Chkhaidze, someone called Lasha, head of the social department Mamuka Shalamberidze and another officer were present. According to Irakli M. as soon as he entered the room he was thrown down and everybody together started beating him. The convict noted that Dima Chkhaizde was choking him and spitting in the mouth. Simultaneously, Shota Tolordava was kicking him in the chest. After this one of them brought a basin full of water in the room and forcibly dunk his head in it. The convict also noted that Dima Chkhaidze was holding a "Borjomi" bottle and threatened to rape him.

On March 12th, 2012 after the convict's request, the representatives of Public Defender again met and interviewed him. This time Irakli M. asked for his explanatory note to be followed up at that stage and asked for confidentiality of the explanatory note to be maintained.

On September 21st, 2012 representatives of Public Defender again met and interviewed convict Irakli M. who asked for the explanatory note written by him on March 10th, 2012 to be sent to the Prosecutor's Office.

Following his consent, the acting Public Defender of Georgia applied to the Chief Prosecutor of Georgia on September 28th, 2012.

With N13/41785 reply dated October 10th, 2012 the Chief Prosecutor's Office of Georgia informed us that on October 5th, 2012 the investigative unit of the Shida Karti and Mtskheta-Mtianeti District Prosecutor's Office launched an investigation into the fact of torture of Irakli M. by personnel of N15 establishment pursuant to subparagraph "b" of the second paragraph of the article 144[1] of the Georgian Criminal Code.

On January 8th, 2013 Public Defender's Office again sent a written request where we asked for information regarding the progress of the aforementioned criminal case. The Chief Prosecutor's Office of Georgia responded with N13/10195 response that the criminal case on torture of Irakli M. was merged with criminal case N082100712801 on the fact of exceeding official powers by personnel of penitentiary establishment N 15. According to the same response letter, criminal proceedings against concrete individuals have not been instituted at this stage.

Medical establishment for accused and convicts No N18

The Parliamentary or special reports of Public Defender have frequently referred to the facts of torture and inhuman treatment at N18 medical establishment. It shall be noted that majority of convicts categorically refused to be transferred to the medical establishment or used to appeal to the administration of N18 establishment with a request to transfer them back to their place of serving sentence, because of treatment of inmates at N18 establishment.

In summer 2012 during the scheduled monitoring carried out by the Preventive Group at N18 establishment, convicts noted that their treatment has significantly improved. Despite this, the monitoring group met with several inmates who noted that they were inadequately treated though refrained from giving a written explanation.

Case of Papuna K.

On July 23rd, 2012 representatives of Public Defender met and interviewed convict placed in N18 medical establishment of the penitentiary department Papuna K. According to the convict, on April 19th, 2012 at around 5pm 4 or 5 establishment officers entered his accommodation cell, among them were Zviad, Malkhaz and Alexander Tolordava. They asked convicts to leave the cell to which Papuna K. responded that he would finish hygiene procedures and then leave the cell. According to convict, Alexander Tolordava verbally abused him and ordered inmate to bring a wheelchair in which Papuna K. was taken down to the ground floor. According to the convict in a room where he was taken, Deputy Director of the establishment Maizer Gvichiani was present joined by Alexander Tolordava after 5 minutes, who were verbally and physically assaulting him, namely, he was punched in his face. According to the convict, he entered into verbal conflict with Alexander Tolordava, resulting Tolordava to threw him from the wheelchair and starting kicking him. As Papuna K. said his beating continued for 10-15 minutes.

According to the convict, several minutes later the director of the establishment entered the room. In front of him the convict and Tolordava again had a verbal conflict for which the Director kicked Papuna K. in his head. According to convict, after this the director of the establishment wrapped a towel around his neck and told him that he could kill him any time he wanted and no one would know.

The convict explained that he remained in the room for around 4 hours. Subsequently deputy directors approached him and told him not to complain about this. According to convict after his return to the cell he asked for a doctor but when the doctor came he refused to record injuries of the convict. The same day at around 11pm the convict met the director of the establishment in his office where the latter promised that if the convict did not complain he would help him in postponement of the sentence due to his illness and fulfill all requests during his stay in establishment N18.

On July 25th, 2012 a written appeal was sent from Public Defender's Office to the Chief Prosecutor's Office of Georgia. According to the reply N13/35874 received from the Chief Prosecutor's Office, on August 15th, 2012 anticorruption investigative unit of the Tbilisi Prosecutor's Office launched investigation into the criminal case N010150812801 on the fact of exceeding official powers by personnel of N18 medical establishment for accused and convicts of the penitentiary department pursuant to the first paragraph of article 333 of the Penal Code of Georgia.

Case of Ramaz P. met

On July 20th, 2012 representatives of the Prevention and Monitoring Department met and interviewed convict Ramaz P. placed in the N17 establishment. According to the convict, on July 12th, 2012 he was transferred to N18 medical establishment for accused and convicts. According to him, on July 3rd, 2012 when he was returning from the exercise with cellmate Papuna K. deputy director of the establishment brought them to one of the rooms and asked them to recall applications sent to the European Court for Human Rights otherwise he threatened them with prolongation of their sentences. According to the convict he categorically refused and said that he did not intend to recall the complaint. According to Ramaz P. during the conversation, the Director of the establishment entered the room, who also threatened that if they did not recall their applications, their sentences would be prolonged. As Ramaz P. said the Director was trying to provoke them to start a fight but they did not fall to this provocation.

As Ramaz P. noted on July 16th, 2012 he addressed the statement to Public Defender and the Minister of Corrections, Probation and Legal Assistance. According to him, in the letter addressed to the Minister he described in details the fact of pressure and threats exercised on him and referred that in December 2009 while in N2 Kutaisi establishment, ill-treatment was inflicted against him. At that time Z. Rukhaia was the Director of the establishment and according to the convict this was the reason why he demanded the recall of an application from the European Court for Human Rights.

The convict noted that he dropped the above statements in a complaints box, though despite numerous requests he was not given registration numbers.

On July 23rd, 2012 representatives of Public Defender met with and interviewed convict Papuna K. placed in the N18 medical establishment who confirmed the narrative of Ramaz P. and noted that during the above meeting the director of the establishment several times tried to punch convict Ramaz P.

Given the above, on July 23rd, 2012 Public Defender requested institution of a preliminary investigation from the Chief Prosecutor of Georgia. Relevant response to the above letter has not been received by Public Defender's Office yet.

SPECIAL MONITORING OF THE SPECIAL PREVENTIVE GROUP IN SEPTEMBER 2012

In September 2012 various media outlets disseminated video recordings shot at the Tbilisi establishment N8 of the penitentiary system identifying the facts of torture and ill-treatment inflicted on inmates – inter alia physical and mental pressure in which were involved not only prison guards but high rank officials of the penitentiary department. Among them specific persons, who were identified and named in numerous previous reports and press releases of Public Defender as officials responsible for inflicting ill-treatment. Despite this, same persons continued to be employed at the penitentiary system and the spread of impunity syndrome aggravated the content of the crime they had committed even further.

Georgian TV channels disseminated first secret recording in the evening, on September 18th, 2012. The video was recorded at N8 establishment and it depicted the situation in the quarantine unit of the establishment, where high-rank officials of the establishment and ordinary officers beat inmates during their stay in quarantine as well as their transfer from the quarantine unit to a cell (so-called process of quarantine-breaking). It shall be noted that Director of N8 establishment Davit Khuchua and his deputy Victor Kacheishvili as well as chief of the regime department of N8 establishment Oleg Patsatsia[3] and other personnel of this establishment participated in the beating of inmates. In addition to the above-mentioned persons, members of the Special Preventive Group identified personnel of N8 establishment - certain Giorgi Avsajanishviili who worked at N18 establishment for a brief period of time and many times inmates addressed Public Defender regarding facts of ill-treatment[4] inflicted on them by Avsajanishvili. In his turn, Public Defender applied regarding various cases to the Chief Prosecutor's Office of Georgia with a request to launch an investigation and punish those responsible but every time those efforts were in vain – investigation as always, was limited to a formal inquiry with regard to the said cases and no specific result was achieved.

Apart from this, the videos clearly showed that Deputy Head of the Penitentiary Department Gaga Mkurnalidze participated in beatings of inmates. This is the very Mkurnalidze who has been named in the recommendation sent by Public Defender to the Chief Prosecutor of Georgia on March 19th, 2010 requesting the launch an investigation into facts of inhuman and degrading treatment inflicted by the personnel of the penitentiary department and lead by Mkurnalidze at the penitentiary establishment N8 in Geguti (now establishment N14. An investigation was launched on the case, however no specific result has been achieved.[5]

The same evening of September 18th, 2012 other videos were shown that depicted small size cells - so-called "boxes" in the quarantine unit of establishment N8. The numerous reports of Public Defender described these "boxes" as around 2-3 square meter cells with no beds, or a chair and having bars instead of a door. And these boxes featured in the video recordings which showed that an inmate had a broom between his thighs, a special helmet on his head which was used so that no damage showed later, an inmate was tied to a door bar while guards were insulting him, laughing at him and harassing him. Other records also show an inmate in the "box" who was tied to a bar and despite his repeated requests and demands no one paying any attention to him. The disseminated videos clearly show that chief of the regime department of the establishment Oleg Patsatsia was particularly cruel and aggressive towards inmates. He personally tortured and verbally insulted an inmate, sexually harassed him and literally spitted in the face. Also, other disseminated videos show how an inmate is disrobed in a quarantine unit by officers of the establishment and make him to stick a lighted cigarette up into his anus with his own hands and stand in a bent position until guards tell him to take the cigarette out and smoke the same cigarette and afterwards put it into the anus again. The disseminated recordings show how one of the inmates who supposedly is a juvenile is tortured and beaten. Prison guards threatened him with rape and physically assault him, imitate his rape with a condom-wrapped truncheon and force him to swear at so-called thieves-in-law. Despite repeated requests of the inmate to stop these actions the officers of the establishment did not stop this cruelty and continued their criminal actions. These prison videos caused sharp disgrace in the society and families of prisoners. Numerous protest rallies were held, inter alia in front of N8 establishment. Participants of the rally demanded immediate punishment of those responsible and protection of prisoners' rights.

The situation became even more aggravated as the Parliamentary elections of October 1, 2012 approached.

On September 18th, 2012, the Ministry of Internal Affairs disseminated the statement according to which it had launched an investigation into facts of inhuman and degrading treatment of prisoners by certain personnel of the Penitentiary Department on the basis of operative information received from the Gldani Prison No. 8.

On September 18th, 2012 he Public Defender's Office of Georgia issued the following statement: Public Defender believes that the response of the investigatory bodies is a step forward and addresses the Chief Prosecutor with a demand to take the appropriate measures to identify all persons who are guilty and hold them criminally responsible in a

3 Many prisoners informed the Prevemntive Group about cruelty of this person, but none of them expressed a wish to apply to investigative bodies. Despite this, the name of Oleg Patsatsia, alongside the names of other prison workers, is indicated in the Special Report of the National Preventive Mechanism of the first half of 2011 and the 2011 Parliamentary Report of Public Defender.

4 i.e. the case of Kakhaber Baratashvili, the case of Giorgi Okropiridze, the 2011 Parliamentary Report of Public Defender

5 The said case is included in the 2010 Parliamentary Report of Public Defender.

timely manner. At the same time, he calls the Penitentiary Department to suspend the authority of all the senior officials who worked at Establishment No. 8 at the time when the crime was committed and continue to work in the system. We believe that such actions are committed with the tacit consent of senior officials of the establishment, which must also make the senior officials themselves liable for them.

It should be noted that, in most cases, investigatory bodies only launched formal investigations into facts of alleged inhuman and/or degrading treatment that we informed them about, and, apart from a few exceptional cases, the aforementioned facts were never followed by proper response, which, to some extent, served to encourage similar crimes".

Starting from September 18th, 2012 Public Defender's Office operates a hotline for members of prisoners' families. In accordance with the calls we received, we have already checked the condition of dozens of convicts and given information to the corresponding persons.

On September 19th, 2012 the Special Preventive Group continued monitoring of Zugdidi N8, Batumi N3, Kutaisi N2 and N18 medical establishments. By that time media outlets issued information according to which the windows of prisoners' cells were closed up. In response to this and based on the results of the monitoring, Public Defender issued a statement saying that this information did not correspond with the truth and called on every citizen and concerned person to keep quiet in this extraordinary situation, so that the penal establishments would not get destabilized, which would, first of all, go against prisoners' interests. On the same day, the Preventive Group visited Rustavi N16, N17, N5 women and N6 penal establishments, namely, all buildings, solitary and quarantine cells, as well as accommodation cells of the aforementioned establishments were examined, all inmates placed there were interviewed. By that time situation at the establishment has normalized, inmates did not refer to any type of violence; they had access to telephone and ad hoc visits by their relatives. On the same day, news agencies disseminated information that three beaten prisoners had been transferred to the Gori Military Hospital. In the night hours of September 19th, representatives of Public Defender's Office went to the Gori Military Hospital to verify the information, where it was determined that the information did not correspond the truth and the hospital denied the fact of transfer of prisoners to the Military Hospital.

On September 20th, 21st, 22nd, 23rd and 24th, 2012 representatives of Public Defender's Office were conducting continuous monitoring of different penal establishments on the territory of both Eastern and Western Georgia. During these days, Public Defender's Office representatives visited establishments in Gldani (No. 8), Kutaisi (No. 2), Batumi (No. 3), Zugdidi (No. 4), Geguti (No. 14), Rustavi (No. 6, 16, and 17), Ksani (No. 15), and Tbilisi (No. 1), as well as Women Establishment No. 5 Monitoring Department of the Public Defender's Office of Georgia continued daily monitoring up to the beginning of November.

In those days special attention was paid to Gldani establishment N8 where many visits were carried out and large part of the prison population was visited. According to those prisoners, no pressure was exercised against them in the recent past. On September 22nd, the management of the penitentiary system started to distribute mattresses. A small part of prisoners in Establishment No. 8 was on a hunger strike; they protested against the facts of ill-treatment they had been subjected to in recent years and declared solidarity to prisoners who had become victims of ill-treatment.

For the same reasons, the group of 11 prisoners went on a hunger strike in penitentiary establishment No. 3 in Batumi. A group of convicts also declared a hunger strike in the Rustavi establishment No. 17, though they emphasized that this measure did not relate to the treatment towards them and was not directed against the administration and employees of the establishment, and did not have a political character. A small part of convicts in establishment No. 15 in Ksani and establishment No. 6 in Rustavi also went on hunger strike.

The prisoners in all the aforementioned establishments emphasized serious facts of ill-treatment that had taken place in the past and handed collective applications and complaints to Public Defender's representatives, demanding relevant reaction. Public Defender's Office started to study these applications immediately. It should be noted that in all the aforementioned cases the prisoners noted that treatment towards them had sharply improved during the recent days and expressed satisfaction with this fact, though they also demanded the punishment of those responsible for past ill-treatment.

It must be emphasized that in all the aforementioned penitentiary establishments, prisoners kept quiet and there were no incidents in relation to the administration or among themselves. At the time, the situation in all establishments was normal and under control, and the establishments operated as usual. It should also be mentioned that none of the penitentiary establishments introduced any kind of additional restrictions or bans at the time.

It was especially important for prisoners held at establishment No. 8 and their families that, during that period, visits of family members were allowed under a 24-hour regime. In addition, a big part of the prisoners had the opportunity to make phone calls to their families and inform them about their state of being.

By September 23rd, 2012 new mattresses were taken into the quarantine cell of the penitentiary establishment N3 in Batumi. The situation in Batumi establishment was quiet and no incidents took place there. Furthermore, during that period, penitentiary establishments N1 and N8 in Tbilisi were also provided with new mattresses.

Penitentiary establishment N8 in Gldani

On September 18th, 2012 after broadcasting of notorious video footages, representatives of the Prevention and Monitoring Department of Public Defenders' Office paid a special visit to Gldani N8 penitentiary establishment to study the situation there. By the time the situation at establishment N8 in Gldani was calm and no new incident had taken place. Most of the prisoners were asleep.

The video footages broadcasted by the media outlets on September 18th, 2012 caused the disgrace among inmates, their family members and the public. Practically, immediately after their release of those video footages, family members of prisoners blocked the central gate of the penitentiary establishment N8 and organized a demonstration. They demanded immediate access to prisoners to visit them. This time the Georgian Ministry of Corrections, Probation and Legal Assistance allowed an exception and during several days unplanned visits were allowed at all penitentiary establishments when all family members were allowed to visit a prisoner under a 24-hour regime, though assemblies, stir and demonstrations continued for several days in front of the gate of establishment N8 and fence around the establishment. This fact once again demonstrated disadvantage of placement of two institutions on one territory, namely, it was practically impossible to transfer prisoners from establishment N18 to places of their sentence-serving or to city hospitals. Movement of any type of vehicles on the territory of the establishment further aggravated the situation since information was being disseminated that beaten, and sometimes even deceased prisoners, were transported from the territory. The Special Preventive Group carried out an additional visit to penal establishment N8 to study the situation on the ground. The ground for the visit became entry of 2 ambulance cars to the territory of the establishment which further aggravated the situation and caused the concern of persons on the area adjacent to the prison. As a result of the monitoring, it was found that the ambulance vehicle had carried a defendant who was transferred from Tbilisi Republic Hospital. He had been detained by the police on September 16th, 2012, for a crime pursuant under the article 353 of the Penal Code. Public Defender's representatives met the defendant personally and got acquainted with the documents on his detention. As the defendant also confirmed, he was detained by the police on September 16th, 2012, when he sustained a gunshot wound in the leg area. After detention, the prisoner was transferred to a civilian sector hospital where he was operated, and the same night he was transferred to the prison's medical unit in an ambulance car. Accordingly, the cause of the entry of the ambulance car into the penitentiary establishment was to transfer of the aforementioned prisoner.

From September 19th, 2012 the situation at the Gldani establishment N8 aggravated even more after prisoners learned from the radio about the footage disseminated by TV channels the night before and members of prisoners' families and activists of different political forces gathered near the prison. They were trying to communicate with prisoners. Journalists also gathered near the prison. Latter requested to be allowed into the territory of the establishment and have direct contact with prisoners. Such reaction from the public instigated more noise and emotions among prisoners. At the given moment representatives of the Prevention and Monitoring Department were in the establishment. Noise and protests were heard from every cell of every accommodation blocks of the establishment. The PD representatives

called on prisoners to stay calm, listened to their demands and were trying to keep the situation under control that was successfully achieved.

The Preventive Group assessed the situation at the establishment as natural, since for years prisoners were not allowed to utter a word in this establishment and hurt and protests had been accumulating in response to the experienced violence and degrading treatment. The prisoners were expressing verbal protests against the prison staff, directly involved in their mistreatment, and against those who were still employed at the establishment. The prisoners would whistle and shout the moment they would see these officers, but they did not commit any serious violence or other incidents.

To defuse the situation and avoid dissemination of false information, the Ministry of Corrections, Probation and Legal Assistance of Georgia decided to allow the human rights NGOs and journalists to enter the establishment, let them see the situation on spot and speak with prisoners. These people entered the establishment while Public Defender representatives were in the establishment; they studied the situation and left the institution.

On the night of September 19th, two ambulance cars entered the penitentiary establishment N8 to transfer 2 convicts from medical establishment N18 to city hospitals. But it became a problem, since a security car that was supposed to escort the ambulances could not enter the prison territory because of the protesters at the gate who did not allow the cars to enter. After they have thought of the way for the ambulance cars to leave the territory, another problem appeared. Namely, the citizens outside the gates claimed that the ambulance was transporting beaten prisoners and would not allow them to leave the area. The ambulances managed to leave the prison territory only after involvement of the Special Preventive Group.

Penitentiary establishment N15 in Ksani

On September 20th, 2012 some media outlets disseminated information on the special rapid reaction unit's alleged entrance into Ksani Establishment N15. According to PDO monitoring results no special rapid reaction unit entered the establishment and the situation there was quite.

Certain media sources were disseminating false information all day long on alleged destabilization, dead and beaten prisoners being at various establishments. The Prevention and Monitoring Department of the PDO was continuously monitoring the penitentiary establishments. At the time the situation in all the establishments was quite and under control. The National Preventive Mechanism of the PDO once again encouraged citizens to avoid disinformation that could lead to disorders in establishments and, first of all, harm prisoners' interests.

On September 21st, 2012 the Special Preventive Group of Public Defender's Office undertook a special monitoring in Ksani Establishment N15 where the group members interviewed prisoners from the all the parts of the establishment.

Convicts held in the so-called "old zone" of the Ksani Establishment wrote a collective explanatory note addressed to Public Defender which was signed by 526 convicts. The explanatory note dealt with uneccaptable, inhuman, and degrading treatment of convicts inflicted in the past by the administration and employees of the Ksani Establishment N15.

The explanatory note mentioned regular tortures, physical and verbal abuse. It stated that convicts were punished for every small mistake, sometimes even without a reason. Before transferring to a solitary cell a convict was taken to an exercise room in the administrative building where he was beaten, tied to a heating system pipe. Sometimes even electric shock was used; he was threatened with a rape. Upon admission of new convicts and prior to their settlement in cells they were taken to the shower room where they were left for several days. They were forced to stand on their knees, their heads been shaven and verbally assaulted.

According to convicts from shower room one by one they were taken to the administrative building or cell and made to sign a cooperation agreement. Otherwise the one who dared to refuse cooperation, would be beaten, threatened with prolongation of the sentence and exerting pressure on his family.

The explanatory notes provided by inmates, made it clear, that living conditions of the convicts in the Ksani Establishment were unbearable. They were not even allowed to eat in a normal manner. Namely, the employees made them hurry and did not allow them to finish their meal; they punished them for talking in the dining hall. Regardless of the weather, prison officers made convicts to stand in the yard for hours during the daily check-ups and delayed to start it on purpose to make them stand in the rain or heat as long as possible. According to the convicts, the following employees were involved in beatings and different types of ill-treatments against them: Director Shota Tolordava, Deputy Director Bacho Rukhaia, George Parjanadze, Mamuka Shalamberidze, Levan Lezhava, Dima Chkhaidze, Nukri Kopaliani, a person called Ambrosi, Raji, Akaki Kirkitadze, Akaki nicknamed "Chepe", Sandro, Vitali nicknamed "Adamich", Roman, Jambul Bairamov, Ilo, Tamazi nicknamed "Chelentano", Parna, and brothers Badri and Nukri. In addition, the convicts stated that this list was not comprehensive and they don't know names of other employees, though they could recognize their faces.

As it was mentioned above, in August 2012 the convicts from the other part of the same establishment handed the explanatory note signed by over 700 convicts to the Special Preventive Group. The note described facts of physical and other types of pressure inflicted on them and named the same prison staff. Regardless of that, the Prosecutor's Office has not responded to these facts up to present. The same applies to the collective complaint of 161 convicts of the same establishment that was forwarded to the Prosecutor's Office by Public Defender in 2010. All the convicts were ready to provide detailed testimony to the investigation. The Special Preventive Group of Public Defender of Georgia submitted the aforementioned explanatory note to the Chief Prosecutor's Office. Meanwhile, the PDO addressed the Prosecutor's Office to dully and effectively investigate all the above mentioned facts of ill-treatment of convicts taking place in the Establishment N15.

Penitentiary establishment No 16 in Rustavi

On 23 September, 2012, the Special Preventive Group of Public Defender undertook a special monitoring in the Rustavi Establishment N16 and interviewed majority of prisoners held in the establishment.

The monitoring revealed that during the first half of the day the situation in the establishment was rather tense. The convicts were expressing peaceful protest against the ongoing events and were demanding the punishment of several staff members working in the Establishment N16. They were also demanding the meeting with representatives of Public Defender. The convicts handed 336 individual complaints and a collective explanatory note signed by 416 prisoners to the staff of the Prevention and Monitoring Department of Public Defender. It should be noted that the process of handing the explanatory notes and complaints proceeded quietly and in an organized manner. The convicts ensured the signing of the explanatory note themselves and then handed it to Public Defender's representatives.

According to the convicts, under the old administration of the Rustavi Establishment N16, they were constantly subjected to ill-treatment which was manifested in physical and verbal abuse and punishment without a cause.

According to the convicts, the administration department staff regularly entered the cells and threw their clothes, icons, and other items to the floor; they used to take the convicts to the solitary cells just to prevent them from exercising the right to receive long-term visitors. The convicts also claimed that the staff members destroyed their supplies of water during the checks and then turned off the running water in the cells for several days, whereas the running water was available as usual on the rest of the establishment's territory. In the case of a guest's visit to the establishment, they closed the windows, turned off the ventilation, and left them in a stuffy cell for a certain period of time.

The convicts stated that the administration would switch off the phone connection for several days, and frequently even for several weeks.

The convicts also mentioned that the conditions became especially unbearable after the appointment of the former director, Vazha Tskhvediani, who was personally beating the prisoners held in the disciplinary cell together with the deputy director, Davit Mumladze, and the head of the security service, Ilo Lutidze, while other staff members were recording the process with cell phone cameras.

In addition to the aforementioned persons, the convicts would also name the following employees: George Jgarkava, the regime officer and the officer Temur Korshia. They mentioned that this list was not comprehensive.

Penitentiary establishment No 6 in Rustavi

On September 23, 2012, the Special Preventive Group of Public Defender of Georgia carried out a special monitoring at Rustavi Establishment N6.

According to the convicts held in the cell N84 of the Establishment N6, they had been on a hunger strike since September 23rd. The convicts were demanding the investigation of the facts of physical assault that had taken place against them at different times in the past in the Ksani Establishment N15 (the former Establishment N7), the Rustavi Establishment N16, and the Kutaisi Medical Establishments N2 and N18.

In addition to the hunger strike, the aforementioned convicts also resorted to another form of protest. Specifically, on September 22nd, 2012, two convicts sewed themselves to each other with upper limbs with a sewing thread, while the remaining four convicts sewed their upper limbs to their bunks with a sewing thread.

According to the convicts, no facts of ill-treatment or other types of pressure against them on the part of the administration of the establishment had taken place during those days.

The convicts were demanding a meeting with the representatives of the Prosecutor's Office and punishment of the former employees of Penitentiary Department - Davit Chakua, Robert Arakelov, Aleko Mukhadze, Goga Butliashvili, Levan Lezhava, Giorgi Kokhreidze, Vazha Tskhvediani, Davit Mumladze, Dato Narsia, Roma Robakidze (Tura), Aladashvili, and persons called Aleksa, Khonski, and Ilo.

PENITENTIARY ESTABLISHMENTS IN THE WEST OF GEORGIA

Early morning of September 19th, 2012, the special monitoring started in the Zugdidi Establishment N4. In more details, two visits were carried out to the Zugdidi Establishment N 4 on September 19th, 2012 – one of them very early in the morning when majority of the prisoners were asleep, though those who were awake were interviewed. According to them, the administration has not undertaken any pressure against them during those days. In addition, none of the prisoners had been placed in the solitary confinement cell. The prisoners made the same statement the same day, on 19 September during the second visit of Public Defender representative.

The next visit to the Zugdidi Establishment N 4 was undertaken on 20 September 2012 and the situation inside the establishment was normal and the Establishment was operating in a normal regime. Additional visit to the above mentioned establishment was undertaken on September 22nd, 2012. During the visit, the group of inmates handed Public Defender representative a written statement listing all the Establishment staff involved in their ill-treatment in the past.

According to the prisoners, the following staff members displayed special cruelty against the prisoners: Amiran Janashia – director of the Establishment, Dimitri Jichonaia – former deputy director, other staff members – Romeo Rogava, Koba Antia, Gogita Gabisonia, Temur Gogoli, Levan Kodua, Papuna Kiria, Guram Kvaratskhelia, Onise (they didn't know his family name) and some Iosava (they didn't know his first name), as well as some Zaza who was the driver of the Director. The statement was signed by 7 convicts.

On September 23rd, 2012, the visit was undertaken to the Establishment N4 and the person who had handed over the written statement the previous day was visited. The convicts reported that they have not been subjected to any type of pressure and expressed their satisfaction with the treatment from the side of the administration that has considerably improved.

In general, the situation in the Establishment N4 was quite during the monitoring days and no incident has taken place. The prisoners were allowed to use the right of visits and phone calls on week-ends as well.

Visits to the Geguti Establishment N14 were undertaken on September 18th and 20th, 2012, where the general situation was normal. On September 18th, the convicts declared, that they were restricted of the right to use the phone and the TV from the second half of that day. These rights were fully restored on September 20th. In addition, some of the convicts requested to supply the establishment shop with newspapers and magazines, as well as to provide additional phones.

On September 19th, 21st and 24th, 2012, the representatives of Public Defender visited the Kutaisi Establishment N2 and interviewed majority of the prisoners. As a result, they have found out, that the prisoners in the Kutaisi Establishment N2 were restricted of the right to use media sources from the morning of September 19th. This restriction lasted only for a day – up to September 20th.

On September 21st, 2012, several prisoners of the Kutaisi Establishment N2 went on a hunger strike. Their basic demand was to fire about 20 staff members of the mentioned Establishment, who displayed degrading and aggressive treatment towards the prisoners in the past. Most frequently the following persons were involved in inflicting of ill treatment: Dimitri Jichonaia – former director of the Establishment and the staff members – Gaga Liparteliani and Irakli Jishkariani.

In general, situation at the establishment was calm on September 21st, 2012 and no incidents have occurred.

The prisoners also pointed out, they were facing various problems related with the receipt of parcels and the right of phone calls. Majority of convicts stopped hunger strike by the end of September 24th, 2012. Several prisoners continued hunger strike with a demand to be transferred to the partially open type establishment. They were demanding to be transferred to the establishment located in the East Georgia.

The prisoners also named the Establishment employees that were ill-treating them in the past. In response, Public Defender Office addressed the Ministry of Corrections, Probation and Legal Assistance with a request to undertake relevant measures to avoid facts of ill-treatment in the penitentiary system in the future.

The prisoners expressed their satisfaction towards the fact, that unfair and excessive strict regime requirements being practiced during the recent period and continuously outlined by Public Defender in his reports, were abolished.

In general, the situation at Kutaisi Establishment N2 and Geguti Establishment N4 was calm and no cases of incidents have been identified. According to the prisoners, the establishment staff has not undertaken any pressure against them during the abovementioned days. The establishment was operating in a normal manner and no restriction has been applied.

Medical Establishment N19 for TB Convicts

On September 27th, 2012 the Special Preventive Group of Public Defender visited the Medical Establishment N19 for TB convicts and interviewed the inmates of the Establishment. On September 25th, 2012, about 30 convicts went on a hunger strike with a major demand to receive improved medical service, to make and exercise more effective mechanisms of early conditional release, as well as sentence postponement or releasing from the sentence for healthcare reasons. Some of the convicts refused to take medicines in solidarity with those being on hunger strike.

On November 2nd, 2012, the staff of the Prevention and Monitoring Department of Public Defender's Office visited the Medical Establishment N19 for TB convicts. The situation inside the establishment was peaceful at the moment of the visit, though the convicts expressed their dissatisfaction about the poor conditions inside the establishment. Prisoners complained that they were not provided with proper healthcare, relevant medications and equipment for the protection of liver and other organs needed during the TB treatment.

The convicts declared, that Otar Trapaidze, chief doctor of the Establishment N19 was not fulfilling his duties and responsibilities – in more details, he would not take any care of the state of the patients, would not recommend the persons with critical health problems to go through forensic expertise in order to postpone the sentence, or release them from the sentence on purpose. When prisoner was undergoing the forensic expertise at his own expense, Mr. Trapaidze was persuading the court that he managed to treat the prisoner at the Establishment N19. The statement listed the names of 9 convicts who died in the penitentiary system as a result of similar negligence and it was noted that this list was not comprehensive.

In addition, convicts in the Establishment N19 were stating, that the food has become cinsiderably worse recently. Prisoners were not provided with the food containing relevant calories, diet and diabetic ingredients. This gap was filled with the products received by the patients through personal parcels, though recently they werw not in position to receive additional food products any more. These products could not have been purchased at the shop either. In addition, they were not allowed to receive warm clothes via parcels and this was clearly visible during the interviews taking place at the Establishment yard.

The convicts expressed their dissatisfaction on the poor living and hygiene conditions that had a negative impact on their health.

The convicts handed the collective letter to the representatives of Public Defender signed by 507 prisoners. The National Preventive Mechanism of Public Defender addressed the Ministry of Corrections, Probation and Legal Assistance with the request to study the facts outlined in the statement of the TB prisoners and provide due and relevant response.

Penitentiary establishment No12

On September 28th, 2012 the representative of Public Defender visited and interviewed the convict Irakli Kereselidze in the Establishment N12. The explanatory note handed to Public Defender representative by Mr. Kereselidze describes the facts of beating and pressure inflicted against him by Gocha Baghatrishvili, the director of the Establishment N 12.

The prisoner outlined, that on September 22nd, 2012 he addressed Gocha Baghatrishvili, director of the Establishment N 12 with in a written manner that made the director angry. As a result, the director assaulted him verbally and physically in his own office and threatened to "make him eat the papers and prolong his sentence" if he would dare to write another letter.

On October 2nd, 2012 we addressed the Prosecutor's Office and the Ministry of Corrections, Probation and Legal Assistance on the abovementioned fact with a letter N 3836/03-5/1864-12.

On October 12th, 2012 Public Defender's Office received a letter N13/41917 from the Prosecutor's Office notifying, that Tbilisi Isani-Samgori district Prosecutor's office has initiated an investigation on the criminal case N 004091012801 on 9 October, 2012. The investigation was launched on the case of exceeding power by the employee of the Establishment N 12 and committing of a crime envisaged under the subparagraph "b", part 3 of the Article 333 of the Penal Code of Georgia. Investigation on the case is pending.

A special visit was paid to the same Establishment on October 22nd, 2012 on the fact that the convict Sergo Merabishvili climbed to the roof of the establishment and was threatening to jump from there unless he was given the chance to meet with Public Defender, members of the Monitoring group and other NGOs. After arrival of Public Defender representatives, the convict left the roof and had a normal conversation with them.

According to the convict, he climbed the roof after being subjected to pressure and threatening by establishment director. S. Merabishvili declared that the purpose of the pressure was to force the convict Irakli Kereselidze stop complaining.

During the same conversation, S. Merabishvili declared, that former high-rank officials of the Penitentiary Department,

including Bachana Akhalaia and Gaga Mkurnalidze were forcing him to cooperate with them and commit various illegal actions including false testimonies against various persons.

The convict also claimed that he was forced to rehabilitate the infrastructure of the establishment on his own expense.

The explanatory note written during the abovementioned conversation was sent by Public Defender's Office to the Chief Prosecutor's Office on October 23rd. On November 2nd, in reply to the said letter Public Defender's Office received a letter notifying that the investigation was launched on October 31st, 2012.

Penitentiary establishment No 17 in Rustavi

On September 26th, 2012, the Special Preventive Group of Public Defender visited the Establishment N 17 and interviewed the convicts. 13 of the convicts considered themselves to be political prisoners and were planning to go on a hunger strike from September 26 till October 1.

They addressed Public Defender's Office with complaint pointing that they would start hunger strike on September 26th to October 1st to express their solidarity and protest against publicly known facts of torture and to demand fair elections.

The prisoners were also demanding to apply the "Must Carry" principle in their establishment N 17 in Rustavi including the period following the elections.

INVESTIGATION OF FACTS OF TORTURE AND INHUMAN TREATMENT

Results of monitoring conducted in closed-type regime institutions, analysis of applications and complaints received at Public Defender's Office and "prison video footage" disseminated by TV channels in September 2012 revealed that ill-treatment is one of the gravest problems at penitentiary establishments and the police. Legal reaction on the facts of torture and inhuman treatment, disclosure and punishment of those responsible is a prerogative of the Chief Prosecutor's Office of Georgia. And to eradicate torture and inhuman treatments it is necessary to investigate every such fact effectively and to overcome the impunity syndrome that constitutes a serious problem nowadays. Public Defender addressed the Chief Prosecutor on numerous similar facts but, in most cases, investigation has been delayed.

During the past years inaction and ineffectiveness of investigation bodies created the impunity syndrome among law enforcement officials. Furthermore, the majority of the victims expressed distrust towards the investigation and the latter further promoted practice of ill-treatment at closed-type regime institutions. As a rule, the Prosecutor's Office was inclined to exercise superficial approach to the question of investigation of actions involving assault or torture of detained persons and cases containing such criminal acts. And as it was mentioned, frequently such facts were qualified not as criminal acts of torture or degrading and inhuman treatment but as acts of exceeding official power or physical assault. The investigation of similar cases always was of a formal character and often ended in termination of the case or its delay for years. The most noteworthy is that investigation of such cases were always stopped on the basis of testimonies of policemen and as a rule, the victim denied explanatory notes given to Public Defender and gave testimonies in favor of law enforcers. In some cases, forensic medical examination was appointed for the time when no damages were noticeable on victims any more - several weeks, or, maybe even, several months later.

In 2010 report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on Georgia it is noted that : "the credibility of the prohibition of torture and other forms of ill-treatment is undermined each time officials responsible for such offences are not held to account for their actions. Some of the delegation's interlocutors met during the visit were of the opinion that information indicative of ill-treatment was frequently not followed by a prompt and effective response, which engendered a climate of impunity. According to them, most complaints of ill-treatment were dismissed; at best, the officers concerned were disciplined.

It was suggested that the Prosecutor's Office often failed to initiate criminal cases into complaints of ill-treatment, and that when cases were opened; this was rarely under Article 144^1 of the Criminal Code, but rather under Article 333. Furthermore, it was said that the proceedings were protracted and very rarely led to convictions, which diminished trust in the system for investigating complaints". [6]

Herewith we shall note that one of the main problems related to the investigation of the facts of ill-treatment is incorrect qualification – in some cases investigation is initiated pursuant not to articles referring to torture or body injuries but under the clause of abuse of power which represents a disciplinary crime and envisages significantly lighter sanction. A clear example of this is cases of Petre O. and Malkhaz A.

Case of Petre O.

The convict noted that in February 2012 he was raped and tortured by employees of the penitentiary establishment N15 in Ksani. On November 26th, 2012 the written demand N1091/03-4 was sent from Public Defender's Office to the Chief Prosecutor of Georgia in which we requested information regarding the following: when the investigation into the above fact has started; what investigative actions have been taken so far; and whether criminal proceedings have been instituted against specific person/persons. According to the reply N13/54152 received from the Chief Prosecutor's Office of Georgia on December 11th, 2012, on July 10th, 2012 the investigation unit of the Shida Kartli and Mtskheta-Mtianeti District Prosecutor's Office, on the basis of a joint application of convicts of the Ksani N15 establishment, initiated investigation into the criminal case on the fact of abuse of power by personnel of the penitentiary establishment N15 in Ksani pursuant to the paragraph 1 of the Article 333[7] of Penal Code of Georgia. The same response stated that testimonies were received from Petre O. and other convicts regarding the above case and forensic medical examinations were also carried out. And that at the time criminal proceedings against a specific individual had not been initiated and investigation was ongoing.

* * *

Public Defender's Office of Georgia sent written requests to the Chief Prosecutor's Office of Georgia in which we have requested information regarding the following in 2012:

1. How many preliminary investigation into criminal case pursuant to the Articles 332-333, as well as Article 144^1-144^2-144^3 of the Penal Code of Georgia (separately) were initiated;

2. Criminal proceedings against how many individuals have been initiated; How many of them were public servants (with indication of the agency);

3. How many of the above mentioned criminal cases were submitted to common law courts for essential consideration;

4. Number them procedural agreements being drawn up; furthermore how many criminal cases were terminated pursuant to the above-mentioned Article and what was the basis for termination.

According to reply received from the Chief Prosecutor's Office of Georgia, for the period from January 1 to June 30, 2012:

1. Investigation was initiated under the Article 332 of the Penal Code of Georgia on 24 facts; Investigation was initiated under Article 333 of the Penal Code of Georgia on 37 facts; Investigation was initiated under Article 144^3 of the Penal Code of Georgia on 1 fact; No investigation was initiated under Articles 144^1-144^2 of the Penal Code of Georgia.

6 Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and inhuman or degrading Treatment or Punishment (PCT). par. 17.

7 Abuse of power. "Punishable with a fine or deprivation of liberty for the period up to three years, deprivation of right to occupy a high position or activity for the period up to three years".

2. Criminal proceedings were initiated against 24 individuals pursuant to Article 332 of the Penal Code of Georgia; Criminal proceedings were initiated against 10 individuals pursuant to the Article 333 of the Georgian Criminal Code; Criminal proceeding was initiated against 2 individuals pursuant to Article 144^1 of the Penal Code of Georgia; No criminal proceeding was initiated against any individual pursuant to Article 144^2 of the Penal Code of Georgia; Criminal proceedings were initiated against 1 individual pursuant to Article 144^3 of the Penal Code of Georgia.

3. Criminal proceedings were initiated against 76 individuals under Article 332 of the Penal Code of Georgia; Criminal proceedings were initiated against 5 individuals under Article 333 of the Penal Code of Georgia; Criminal proceedings were initiated against 2 individuals under the Article 144^1 of the Penal Code of Georgia; No criminal proceedings were initiated against any individual under Article 144^2-144^3 of the Penal Code of Georgia;

4. Investigation was terminated on 15 facts under the Article 332 of the Penal Code of Georgia, 13 out of which were pursuant to the Subparagraph "a" of the Paragraph 1 of Article 105 of the Penal Code of Georgia, and the remaining 2 facts - under the Subparagraph "e" of the Paragraph 1 of Article 105 of the Penal Code of Georgia. Investigation was terminated on 22 facts pursuant to Article 333 of the Penal Code of Georgia, under Subparagraph "a" of the Paragraph 1 of Atrticle 105 of the Penal Code of Georgia. Investigation was terminated on 8 facts under Article 144^1 of the Penal Code of Georgia, under Subparagraph "a" of Paragraph 1 of Article 105 of the Penal Code of Georgia. Investigation was terminated on 4 facts pursuant to Article 144^3 of the Penal Code of Georgia, pursuant to the Subparagraph "a" of the Paragraph 1 of the Article 105 of the Penal Code of Georgia. No investigation on any fact was terminated under Article 144^2 of the Penal Code of Georgia.

According to replt received from the Chief Prosecutor's Office of Georgia for the period from July 1st to December 31st, 2012:

1. Investigation was initiated on 85 facts under Article 332 of the Penal Code of Georgia; Investigation was initiated on 134 facts under Article 333 of the Penal Code of Georgia; Investigation was initiated on 23 facts under Article 144^1 of the Penal Code of Georgia; Investigation was initiated 105 facts under Article 144^3 of the Penal Code of Georgia on; No investigation was initiated under Article 144^2 of the Penal Code of Georgia;

2. Criminal proceedings were initiated against 20 individuals pursuant to the Article 332 of the Penal Code of Georgia; Criminal proceedings were initiated against 26 individuals pursuant to Article 333 of the Penal Code of Georgia; Criminal proceedings were initiated against 15 individuals pursuant to Article 144^1 of the Penal Code of Georgia; Criminal proceedings were initiated against 21 individuals pursuant to Article 144^3 of the Penal Code of Georgia; No criminal proceedings were initiated against any individual pursuant to Article 144^2 of the Penal Code of Georgia;

3. Our question as to how many of these criminal cases were submitted to common law courts for essential consideration was left unanswered.

4. Investigation was terminated on 22 facts under Article 332 of the Penal Code of Georgia, 15 out of which - under the Subparagraph "a" of the Paragraph 1 of the Article 105 of the Penal Code of Georgia, on 2 facts - under the subparagraph "e", on 4 facts - under the Subparagraph "i" and on 1 fact – under the Subparagraph "h". Under Article 333 of the Penal Code of Georgia investigation was terminated on 22 facts, pursuant to the Subparagraph "a" of the Paragraph 1 of the Article 105 of the Penal Code of Georgia. Under Article 144^1 of the Penal Code of Georgia investigation was terminated on 1 fact, under the Subparagraph "a" of the Paragraph 1 of the Article 105 of the Penal Code of Georgia. Under Article 144^3 of the Penal Code of Georgia investigation was terminated on 1 fact, under the Subparagraph "a" of the Paragraph 1 of Article 105 of the Penal Code of Georgia. No criminal investigation was terminated under Article 144^2 of the Penal Code of Georgia.

Despite the fact that in 2011 Public Defender addressed numerous recommendations to the Chief Prosecutor's Office of Georgia requesting the launch of investigation, to our knowledge no relevant procedures have been implemented. We express hope that investigation will be more effective and it will promptly react to the facts of ill-treatment and torture. We believe that effective investigation should be conducted in a prompt and effective manner in order to punish those responsible for torture and ill treatment of detainees. Furthermore, the investigation should be independent and effective in order to combat the impunity syndrome. On this background, state authorities should take specific steps to reveal and effectively investigate facts of torture and inhuman treatment.

Recommendation for the Chief Prosecutor

- **To personally observe and take under control investigation of all facts of ill-treatment that have taken place at penitentiary establishments and temporary detention isolators in order to ensure smooth conduct of prompt and effective investigation;**
- **to ensure implementation of relevant measures aiming timely identification and institution of criminal proceedings against all those responsible;**

STEPS UNDERTAKEN AT THE PENITENTIARY SYSTEM

Following the events of September 18th, 2012, all the directors of the Penitentiary establishments were suspended and new prison governors were appointed. In addition, in a few days, almost all the officers named as abusers by the prisoners were ousted from their positions. Some of them resigned on their own will.

Simultaneously, criminal prosecution has been initiated against 20 personnel of Penitentiary department and relevant establishments.

On September 20th, 2012, George Tugushi, the former Public Defender of Georgia has been appointed as the Minister of Corrections and Legal Assistance of Georgia. It was followed with a number of positive changes that to some extent was the follow-up of the recommendations issued by Public Defender during past years.

For example, prisoners at closed type establishments (Kutaisi N2, Gldani N8 and 18, Rustavi N6) were allowed to purchase TV sets at the prison shop, some meaningless parcel restriction were partially abolished (for example: prohibition on denim), newspapers became available, bed equipment was replaced in some of the establishments where needed, prisoners of the Kutaisi N2, Gldani N8 and N18 Establishments are no longer reluctant to exercise their right to walk in the open air.

At the same period, based on the decision adopted by the Prime Minister, the Patrol Police temporarily entered the establishment to assist the prison staff and to avoid the facts of ill-treatment and destabilization in the Establishments where there was an obvious lack of staff. In addition, it should be noted, that the police officers stayed in the penitentiary establishments for about a week. Prisoners accepted this temporary change positively and were not aggressive towards the police officers. The members of the Preventive Group were also interviewing the police officers on daily bases. The police stated that prisoners were not aggressive towards them and they did not encounter any problems while working at the Establishments.

Meanwhile, it should be also noted, that majority of new prison governors made contacts with the prisoners quite quickly and effectively which helped to prevent further disorder and destabilization and supported the normal functioning of establishments. Administration of the Ksani N15 and Rustavi N16 establishments were particularly successful in this

regard. They successfully managed to study the specifics of the new activities in these Establishments in a shortest period and managed to generate trust among prisoners.[8]

The same does not apply to the new management of Rustavi N17 and N6 Establishments. As it turns out it was more difficult for them to deal with the new tasks and communicate with prisoners since they were under the influence of old staff. It was proved by the above mentioned incident that took place at the Establishment N6.

In the middle of October 2012, the MCLA disseminated the information about the approval of the list of persons who were granted the right to enter the prisons/places of restriction functioning under the Penitentiary Department without any special permission.

The National Preventive Mechanism of Public Defender of Georgia approved this decision and meanwhile believed that the transparency of the penitentiary system and increase of the public accessibility was of crucial importance for the system improvement and prevention of ill-treatment and other human rights violations. Furthermore, authorities were encouraged to define the specific competences of members of public commission in the shortest possible period, mechanisms for of obtaining information and providing relevant replies. On this background the public monitoring system has been temporarily developed as an equal alternative of the national preventive Mechanism of Public Defender.

During special monitoring, representatives of Public Defender Office paid special attention to the Parliamentary Elections process taking place on October 1st, 2012. Therefore the visits were undertaken to the Establishments with the polling stations as well as places where the voting was process took place through mobile ballot boxes, immediately on 1 October. Monitoring results proved that the voting process at penitentiary establishments went smoothly, the administration has not exercised any pressure towards prisoners with voting rights and prisoners were free to make their choice. The convicts considering themselves as political prisoners declared the same.

Notwithstanding, the shortcomings of social services at the penitentiary system, being continuously pointed out by Public Defender in his reports, were once again revealed in 2012. Considerable number of convicts was unable to vote because of the lack of IDs. The social service responsible for taking care of such problems failed to register prisoners without IDs and undertake relevant procedures needed to make the IDs. Prisoners in some establishments declared that they were not aware of their right to vote with a defendant status. Information of the prisoners on the given issues also falls under the competence of social services.

Parliamentary elections of 1 October, 2012 resulted in the complete replacement of the cabinet of ministers. On October 19th, the former Public Defender, Sozar Subar was appointed as the Minister of MCLA. Simultaneously, authorities were replaced in several other institutions. In general, the process was undertaken in a peaceful manner.

The only unfortunate exception was Rustavi Establishment N16, where the director was once again changed on October 29th. This change triggered dissatisfaction of prisoners. On October 31st, the representatives of the Preventive and Monitoring Mechanism of Public Defender's Office visited and interviewed majority of the convicts at Establishment N16. The convicts handed collective letters of complaints signed by hundreds of prisoners to Public Defender representatives. According to prisoners, a new director was appointed in the mentioned Establishment on October 29th, 2012.

The new director started to exercise the old methods from the very first day of his appointment.

Some unfair restrictions were applied – they were not allowed to: go to church, dry their clothes in the cells even though there was no special place allocated for this purpose. According to convicts, the new director was threatening prisoners with the sentence prolongation and calling forces of special destination. They admitted to be punished and transferred to the solitary confinement cells without grounds.

In addition to all the above referred, the convicts noted that the new director, Levan Aburjania has beaten and "slipped drugs in the pockets" of some of the prisoners at Establishment N16 while working as a police officer. According

8 Although after the change in the Ministry leadership the said directors left positions.

to the convicts, after appointment of the new director, the old staff distinguished with special cruelty during the governance of Vaja Tskvediani, started to appear again.

On October 31st, 2012 information about beaten prisoners was disseminated, though the convicts did not confirm such case with the representatives of Public Defender. The convicts were declaring to refuse to use the rights of visits as a form of protest. Also, they clearly stated that there has not been any disagreement among prisoners and information about the alleged confrontation between the convicts of the Establishment N16 was false. By the time of monitoring, there were 5 prisoners on hunger strike. Two of them were protesting against being placed in the solitary confinement cell and remaining 3 were protesting against their cellmates being placed in the solitary confinement cell.

National Preventive Mechanism of Public Defender recommended the Minister of Corrections, Probation and Legal Assistance to carry out the detailed study of the abovementioned facts and make relevant decisions. In addition, the statement of the prisoners was sent to the Chief Prosecutor's office for follow-up. Based on the reply of the Ministry of Corrections, Probation and Legal Assistance received on November 16th, Levan Aburjania, the director was suspended from the given position on 2 November.

In general, as a result of the events taking place in September, in some of the establishments certain convicts tried to abuse the bit lenient regime. Number of self-injuries with different demands on behalf of prisoners has increased. Majority of the demands related tomedical service that continues to be a problem in the penitentiary system.

Number of cases of insult of the medical staff by prisoners has also increased and as a result almost all the doctors in the Rustavi Establishment N6 refused to work in those conditions and resigned from their positions. The situation was critical. Also, on October 23rd, 2012 a collective statement was received at Public Defender's Office that was signed by medical personnel of the establishment N18. The statement stated that inmates were calling them executioners and murderers. The same statement said that there were numerous facts of prisoners threatening doctors with inflicting wounds. Prisoners self-harmed themselves and demanded high doses of psychotropic and sleeping drugs to be prescribed, otherwise they threatened with self harm.

APPLICATION OF DISCIPLINARY SENTENCES AND ADMINISTRATIVE SANCTIONS

During the monitoring of 2012 procedures of application of disciplinary sentences and administrative sanctions and regularity in different penitentiary institutions was examined.

According to the European Prison Rules, "Disciplinary procedures shall be mechanisms of last resort".[9] "Whenever possible, prison authorities shall use mechanisms of restoration and mediation to resolve disputes with and among prisoners".[10] "The severity of any punishment shall be proportionate to the offence".[11] "Collective punishments and corporal punishment, punishment by placing in a dark cell, and all other forms of inhuman or degrading punishment shall be prohibited.[12] "Punishment shall not include a total prohibition on family contact".[13]

According to information received from the Penitentiary Department of Ministry of Corrections, Probation and Legal Assistance of Georgia, for the period from January 1st, 2012 to December 31st, 2012 administrative sentence was applied to 13 prisoners in the penal establishments, out of which only 1 prisoner appealed against the application of the disciplinary sentence. For the period from January 1st, 2012 to June 30th, 2012, 1709 prisoners were placed in solitary confinement cells, and only 1 prisoner out of those appealed against the decision. From July 1st, 2012 to December 31st, 2012, 921 prisoners were placed in solitary confinement cells – only one appeal took place was instituted.[14]

9 Rule 56.1
10 Rule 56.2
11 Rule 60.2
12 Rule 60.3
13 Rule 60.4
14 Letters N10/8/2-8847 dated July 29, 2013; 10/8/2-12485 dated October 31, 2012 and N11076/10 dated February 12, 2013.

A question of the monitoring group why the order of the prison director on their placement in solitary confinement cells was not appealed was answered in similar manner by all prisoners - that in their opinion appeals was meaningless.

We should herewith state that the real figure of prisoners penalized in the reporting period was even higher than in several other establishments, e.g. in the Gldani establishment N8 and Kutaisi establishment N2 unofficial and illegal mechanisms of punishment of prisoners were in place (for example, placement in a quarantine unit or so-called box), that were used in cases when the administration, for various reasons, did not want to give even formal grounds for the punishment. Also, use of methods of collective punishment was registered in penitentiary establishments N15 and N16.

Neither national legislation nor international standards allow collective punishment. The European Committee for the Prevention of Torture and Inhuman and Degrading Treatment ort Punishment (CPT) stressed in its 2010 report on Georgia with regards to the Georgian authorities that "any form of collective punishment is unacceptable".

Penitentiary establishment No 15

On June 29th, 2012 representatives of Public Defender visited the new block of establishment N15 where it became known that the administration deprived prisoners placed there of TV sets, ventilators, items of hygiene and basins. According to convicts, the above retractions were caused by collective complaint written several days before in the name of Public Defender (see above "ill-treatment"), that described ill-treatment exercised against them and the grave situation at the establishment. Though majority of the convicts refrained from citing the reason for removal of things. Part of them explained that the reason for not having TV sets was that high voltage electricity rendered TV sets out of order while they could not find an answer to not having of personal hygiene items and basins.

Penitentiary establishment No 16

On June 27th representatives of Public Defender visited establishment N16 during which they found out that from June 23rd, 2012 various rights of convicts placed in blocks A and B of the establishment N16 were restricted, including right of free movement on the territory of the establishment (they were in cells and could not go out in the establishment yard), right to use a telephone and visits. TV sets had been removed from every cell and convicts could only purchase cigarettes, matches and personal hygiene items.

In conversations with convicts and the administration it became apparent that restrictions applied to all convicts placed in blocks A and B. According to the verbal statement of the administration, restrictions were caused by ongoing security measures, but the conducted monitoring revealed that the restrictions had the nature of collective punishment. Based on the above, on June 28th, 2012 Public Defender's Office addressed a letter to the chairman of the penitentiary department and demanded information on the reasons and duration of this form of punishment. Also, we have demanded acts setting the aforementioned restrictions.

On June 29, 2012 the Preventive Group carried out another visit in the Rustavi establishment N16 again, during which it was revealed that starting from the morning convicts could go to the establishment yard and use the establishment shop, though they did not have TV sets and telephones in the establishment were out of order. Also, they could not have visits. But the aforementioned restrictions also were removed several days later.

Despite the fact that the preventive Group witnessed the above-mentioned situation on the place on July 13th, 2012 Public Defender's Office received an absolutely inadequate response where it was stated that allegedly the administrative control department of the headquarters of the penitentiary department had examined facts stated in the letter and "decided" that the convicts exercised rights they were entitled under legislation in force. According to the same response, "disciplinary measures against convicts are exercised individually, in accordance with legislation in force".

PLACEMENT IN SOLITARY CONFINEMENT CELL

During the conducted monitoring the Special Preventive Group of Public Defender's Office paid special attention to the situation in solitary confinement cells of the establishments, spoke with all convicts placed there at the time of the monitoring period, examined procedures of their placement there through both interviewing them and studying documentation.

No solitary cells exist in penitentiary establishments N1, N11 and N18.

Duration of punishment for similar violations is defined differently in different penitentiary establishments. The above approach can only be assessed positively only if individual approach is exercised and characteristics of a convict as well as circumstances in which he committed these violations are taken into consideration.

As a result of the monitoring it was revealed that often disciplinary violations follow the demand for a doctor expressed by convict – a convict is compelled to make noise and bang on the cell door, otherwise, in the words of prisoners, they are not in position to see the doctor. The above is relevant to penitentiary establishments in Kutaisi N2 and in Rustavi N6.

It shall be noted that during the reporting period placement in the solitary cells were rarely used in Zugdidi N4, Batumi N3 and N12 and Rustavi N17 establishments.

According to the second paragraph of the Article 88 of the Imprisonment Code, "An accused/convict, placed in the solitary confinement cell shall be deprived of the right to visits, telephone conversations, purchase of food.". CPT recommends that the Georgian authorities take steps to ensure that the placement of prisoners in disciplinary cells does not include a total prohibition on family contacts.[29] Any restrictions on family contacts as a form of punishment should be used only where the offence relates to such contacts".[15]

We believe that the right of an inmate to have contacts with the outside world shall be considered as their right and deprivation of such contact shall not be used as a form of punishment. Also, through increase of forms of encouragement and objective use of punishment mechanism it is possible to maintain stability of a prison, while unjust and illegal treatment of inmates may lead to confrontation between the majority of them and the administration or, in case of collective punishment, among prisoners that may result in grave and unacceptable consequences.

Suggestion to the Georgian Parliament: To introduce relevant amendments in the Prison Code to ensure contact of persons placed in solitary confinement cells with the outside world.

Recommendation to the Chairman of the Penitentiary Department:

- **During the administrative control carried out by the Penitentiary Department to pay special attention to disclosure and elimination of methods of unofficial punishment and cases of collective punishment.**

REGISTRATION JOURNALS OF PERSONS PLACED IN SOLITARY CONFINEMENT CELLS

Up to May 2012 old registration journals of persons placed in a solitary confinement cell were in place in all establishments. They were later replaced by new 365-page journal which weights 8 kilos. The journal, because of its volume is completely unsuitable for practical use, for example, it is hard (on the spot in establishments – even impossible) to make a copy of a note made there. The journal has 12 columns:

15 Same, par. 115

1. Registration number
2. First name, surname and parental name of a person in custody
3. Date and number of issue of an order
4. Providing defendant /convict with order information. N4 column itself has two sub sections – 1. Signature of personnel in charge 2. Signature of an inmate.
5. Disciplinary violation. N5 column is also divided into two subsections – 1. Relevant paragraph of the Imprisonment Code and the establishment charter and 2. Content of a disciplinary violation.
6. Place of the placement (block and cell number)
7. Duration of placement in a cell
8. Date and Time of placement in a solitary confinement cell
9. Signature of personnel responsible for placement of an inmate
10. Time and date of release from a solitary cell
11. Signature of a person responsible for release from a solitary cell
12. Note

Accurate and regular keeping of solitary confinement cell journals is of utmost importance for the purpose of monitoring the tendencies of disciplinary punishment, violations and existing practice. It is important that not only the duration of punishment, dates of placement and release of an inmate but type of a specific violation be indicated in the journal.

The most common violation leading to disciplinary punishment of an inmate at penitentiary establishment are: noise, communication with inmates in other cells, fight, verbal abuse of a prison personnel or another inmate, disobedience against demand of prison personnel, being late for or non-attendance of list check-up, littering of the territory.

It shall be noted that as a result of the monitoring carried out by the Preventive Group in summer 2012 and recommendations issued, in several establishments clear and concrete notes are made in registration journals of persons placed in solitary cells from which it is clear for which violation was a person punished.

As opposed to the aforementioned, notes made in N1 journal for "registration and keeping of placement in Karzer/ solitary cells" and N8 journal for "records of convicts placed in solitary cells" of N17 establishment it becomes clear that mostly feature "violation of regime requirements" and disobedience to personnel's order". These notes are very general and do not specify information on concrete violations. Also, several notes in the journal of N2 establishment are vague, such as: "violation of regime regulations" and "disobedience to regime requirements" where it is not specified which specific actions are considered violation though in N2 establishment such violations are rare.

We shall give a positive assessment to practice established in Geguti N14 establishment, namely, notes made in the solitary cell journal make it clear that during 2012 out of 294 convicts placed in solitary cell 128 inmates were released from the solitary cell before the due time on the basis of a note from a doctor which constitutes 43.5 %.

Penitentiary establishment No 1

As it was noted above, N1 establishment does not have solitary confinement cells and forms of punishment included giving "warning", and restrictions of various rights. In 2012 warning was given to 130 convicts while 1 convict was restricted from the right to use telephone for a certain period of time.

Penitentiary establishment No 2

The "Journal for records and registration of placement in karzer" N320 and "Journal for records of convicts placed in solitary cells" N 129 were examined. Notes made in the journals reveal that in 2012 400 inmates were placed in solitary cell 248 out of which - in the first half of the year and 152 – in the second half of the year. In 2012 83 inmates were warned, short-term visits were restricted for 55 inmates, right to use telephone was limited for 283 prisoners, 157 inmates were restricted to use personal items and 1 inmate was restricted the right to write letters.

The most common type of violations are "noise in a cell", "communication with inmates in other cells", "passing something to another cell', "making so-called kabura" (digging out a wall into another cell). We shall note that apart from a few exceptions all violations are quite concretely and clearly explained in the relevant journal. Though rarely still we encounter citing as a violation of getting a tattoo and damaging one's own clothes and it is absolutely incomprehensible why this is considered a violation.

Penitentiary establishment No 3

In 2012, 26 prisoners were placed in a solitary cell, out of which 15 inmates - in the first part of the year and 11 inmates - in the second part of the year. In 2012 warning were given to 9 prisoners while 1 prisoner was prohibited from the right to send and receive a parcel for a certain period of time. The most common violations are fight and verbal abuse.

Penitentiary establishment No 4

In 2012, 22 inmates were placed in solitary cell, out of which 12 inmates in the first part of the year and 10 inmates - in the second part of the year. And the most common violation was: noise in a cell".

Penitentiary establishment No 5

In 2012, 65 prisoners were punished and placed in solitary cell, out of which 45 inmates - in the first part of the year and 20 inmates - in the second part of the year. The most common violations were "verbal abuse of another inmate", "verbal abuse of personnel", "did not comply with the regime regulations and made noise in a cell", during examination refused to enter the cell", "verbal abuse of a doctor", "did not comply with the lawful demand of the regime regulations". In addition, in 2012 warning was given to 1 inmate while 2 inmates were transferred to a cell-type place.

Penitentiary establishment No 6

In 2012, for the purpose of punishment 144 inmates were placed in solitary cells, 92 inmates during first 6 months and 52 inmates in the second part of the year. Also, in 2012, 29 prisoners received warning, 1 inmate was given strict warning, 4 inmates were restricted the right to use establishment shop as 8 prisoners were restricted the right to use telephone.

Penitentiary establishment No 7

In 2012 no prisoner was placed in a solitary cell. During the reporting period 5 inmates were given warning, 8 convicts were restricted the right to use telephone, 7 inmates were restricted the right to receive visits and 1 inmate was restricted to conduct correspondence.

Penitentiary establishment No 8

In 2012, for the purpose of punishment 703 inmates were placed in a solitary cell, 458 out of which - in the first half of the year and 245 - in the second half of the year. In 2012, 16 prisoners were given warning, 327 were restricted the right to use telephone, 133 inmates were restricted to use a short visit, 407 prisoners were restricted the use of the establishment shop.

In the journal we see a note where a prisoner noted "I was listening to a radio on a high volume, I have not taken into account my cellmate's request to reduce the sound and loud conversation occurred". The most common violation in N8 establishment was "noise in a cell" (see treatment). In the second half of 2012 5 cases of release form a solitary cell on the grounds of doctor-registered aggravation of health was recorded.

Penitentiary establishment No 9

In 2012, 11 inmates were placed in a solitary sell, out of which 62 inmates were - in the first half of the year and 49 - in the second half of the year. In 2012, 85 convicts were given warning.

Most common violations for sending prisoner in solitary confinement, include "abuse of another inmates" and "non-attendance of list check-up". At the same time, types of violations are quite concretely specified. As to punishments, punishments are small and none of them exceeded 5 24-hour spells/ days that shall be given positive assessment.

N11 Juvenile Special establishment

There are no solitary cells in the N11 establishment and are used such forms of disciplinary punishment as warning. Strict warning, restrictions of different rights for a certain period of time. In 2012, 11 persons were given such disciplinary measures. In addition, in August, 2012 after an incident that occurred at N11 establishment all convicts were transferred to Rustavi N16 an N17 establishment as well as some time later juveniles placed in N16 establishment were transferred also to N17 establishment. As to the disorder that occurred in the establishment and its consequences, criminal investigation was launched against 11 juveniles that were described above in details. The aforementioned 11 prisoners were transferred to N8 establishment.

Penitentiary establishment No 12

In 2012, 25 inmates were placed in a solitary cell out of which 20 prisoners were placed in the first half of the year and 5 - in the second half of the year. In addition, in 2012 21 prisoners were warned for violation of prison internal rules. Generally, use of solitary cells is rare in the above mentioned establishment.

Penitentiary establishment No 14

In 2012, 294 prisoners were placed in solitary cells, out of them 158 inmates were placed in the first half of the year while 136 – in the second half. In 2012 14 convicts were warned. The most common violations are "noise in a dormitory", "noise in a dormitory block" and "littering a living space".

Penitentiary establishment No 15

In 2012, for the purpose of punishment 529 prisoners were placed in a solitary cell, out of which 265 were placed in the first half of the year, and 164 - in the second half of the year. In 2012 warning were given to 164 inmates, out of

which 132 received it in the first half of the year and 32 – in the second half of the year. In addition, 2 convicts were strictly warned.

"Journal of normative records" N14 does not specify type of violations. With regards to the above, after the monitoring conducted in the first half of 2012 the prevention and monitoring department of Public Defender's Office issued recommendation to the administration of the establishment to accurately record and register persons placed in solitary cells which was rectified in the second half of 2012 when new journals were opened. There we can see reasons for imposition of disciplinary sanctions, namely, relevant column indicating the specific violation committed by the prisoner for which he was placed in a solitary cell. The most common violations are "made noise in a cell, upon attend the check-up of convicts". In additions, we see other types of violations, described in details and of various type: "did not allow personal check-examination", " during supper caused noise, negatively reacted to remarks", "making noise during the check", "was talking to a prisoner placed in a solitary cell", " did not allow to conduct check and examination of the cell", "dropped remains of the food brought from diner near the entrance door", "was smoking in the hall of living block of convicts and expressed displeasure at the personnel's remark", "littering the living territory and block", "communication from a cell to a yard", "threw a stone and broke a window glass of the duty building", " During the recommendation handing of dinner was moving against the flow of the convicts and tried to attract another convict's attention", " started noise when talking on the telephone and tried to attract attention of other inmates", "approached a fence near the duty building and tried to climb it", "Standing in a walking yard was talking loudly to inmates placed in medical part", "during stay in a solitary cell tried to communicate with other inmates", "was cutting his hair in dormitory, in the accommodation block and thus soiling beds of others", "while in the accommodation block was communicating using hand gestures to people that came there for a visit".

We emphasize that in the period from October to December, 2012 solitary confinement cells were used for the purpose of punishment far less, namely in the above-mentioned months only 2 convicts were placed in a solitary cell while the lowest figure of inmates placed in solitary cell penitentiary establishment N15 in Ksani was recorded in September and February of 2012, 34 and 44 respectively.

Penitentiary establishment No 16

In 2012 for the purpose of punishment, 324 inmates were placed in a solitary cell, 215 out of which - in the first half of the year and 109 - in the second half of the year. 1 inmate was given administrative sentence.

The most common violations include "violent and insolent behavior during check" and "disobedience to a duty officer and aggression".

According to notes made in the above-mentioned journal, in the first half of 2012, 7 cases of release from solitary confinement cell was based on aggravation of health recorded by doctor. We shall note that from October 30th, 2012 to January 1st, 2013 no inmate was placed in a solitary cell while in the month of October 3 convicts were punished with placement in a solitary cell.

Penitentiary establishment No 17

In 2012, 110 inmates were placed in a solitary cell, 84 out of which - in the first half of the year and 26 - in the second half of the year. Types of violations were: violation of regime requirements, non-attendance of list check-up, disobedience to a personnel member order.

With regards to this establishment it is noteworthy, that During October, November and December no inmates were punished with placement in a solitary cell.

Medical establishment No 18

Types of disciplinary sentence used in the establishment are mainly warning, as well as restriction on use of phone and shop and denying access to other rights stipulated in the law. In 2012 warnings were given to 23 inmates, the right to use of telephone as was restricted as a disciplinary sentence for 9 prisoners, while 2 inmates were restricted to exercise the right to receive visits. The most common violations constitute opposition to personnel, verbal abuse, shouting, communication with shouting and listening to a radio on a high volume.

N19 Tuberculosis medical and rehabilitation Centre

In 2012, for the purpose of punishment 6 inmates were placed in a solitary cell while 10 prisoners were warned.

Recommendation to the Chairman of the Penitentiary Establishment:

- **To pay attention to use of equal forms of disciplinary punishment in all penitentiary establishments;**
- **To charge the administration of penitentiary establishments with keeping of registration journals of persons placed in solitary cells with factual description of violation;**
- **To elaborate functionally established and practical form of registration journals of solitary confinement cells.**

ACCOMMODATION CONDITIONS

In accordance to the European Prison Rules, "the accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation[16].

"In all buildings where prisoners are required to live, work or congregate:

The windows shall be large enough to enable the prisoners to read or work by natural light in normal conditions and shall allow the entrance of fresh air except where there is an adequate air conditioning system;

Artificial light shall satisfy recognized technical standards; and there shall be an alarm system that enables prisoners to contact the staff without delay"[17].

According to the case law of the European Court of Human Rights, apart from inhuman or degrading treatment, prison conditions could also infringe Article 3 of the European convention.

According to one of the main principles f the European Prison Rules, "prison conditions that infringe prisoners' human rights are not justified by lack of resources".

On February 25th, 2013 N1 establishment was closed which is undeniably a step forward. At that there are establishments where, in the opinion of the Preventive Group, placement of inmates is equal to inhuman treatment:

16 18.1 rule
17 18.2 rule

The reports of Public Defender repeatedly issued recommendations requesting the shut down of Batumi N3[18], Zugdidi N4 establishments. Placement of an inmate in conditions existing in the aforementioned establishments can be equalized to inhuman and degrading treatment. Recommendations on closing are issued with regards to establishments that do not comply with any standards with the view of space allocated per prisoner, nor its lightning, ventilation or hygiene. Infrastructure is so old that it will hardly be subject to refurbishment.

Despite the fact that N12 establishment represents a semi-open type establishment and convicts can spend certain period of a day outside, conditions there are not acceptable for placement of a prisoner there. The abovementioned building shall either be subjected to major refurbishment works or to be closed.

Penitentiary establishment No 6 in Rustavi

Ventilation of cells of the new accommodation block of N6 establishment is problematic due to the lack of ventilation system. There is a lack of sufficient artificial lighting in the establishments as bulbs of not enough power - so-called energy saving eclectic bulbs are mounted in cells that do not provide appropriate lighting. Also, refurbishment is needed for water supply system of the first floor of the same block which tends to fail frequently.

Major refurbishment is needed for the first floor of the new living block where also there are inappropriate conditions and dampness. The aforementioned cells have a small-size windows, inappropriate lighting, walls are shabby and the water supply system is out of order. Based on all the above it is impossible to maintain cleanliness in the aforementioned cells.

Penitentiary establishment No 7

Conditions in the establishments are not adapted to long-term placement - cells are very small, they do not have proper-size windows and do not provide natural lighting and ventilation of the cell. During the monitoring, several cells of the establishments where prisoners were placed did not have tables and chairs.

Walking yards are very small (there are 4 walking yards in the establishment that measure as follows: 1 – 12.4 sq.m; 2 – 12.8 sq.m; 3 – 12. sq.m; 4 – 12.7 sq.m.) and their location and protective equipment further restricts walking.

Convicts are placed and spend years at N7 establishment. According to them, the above constitutes the main problem for them since conditions in the establishments are not adapted to long-term placement. All the above has a negative effect on the state of their health. Convicts express desire to be transferred to establishments where there will be better living conditions and the risk of aggravation of their health conditions will be reduced.

Penitentiary establishment No 9 in Tbilisi [19]

The open part of the establishment has barrack-type accommodation blocks. Due to non-existence of ventilation in the relatively new living block water drops are dripping from the ceiling. That led to convicts pulling cellophane under the ceiling. Conditions in the aforementioned block do not comply with national and international standards. Lighting is not enough, heating comes from electric heaters and beds are separated from each other with blankets. Also, bathroom units located in the open unit needs refurbishment because of sanitary-hygiene situation there.

18 During the reporting period, in March 2013, refurbishment works started in Batumi N3 establishment.
19 During the reporting period, in March 2013, refurbishment works started in establishment No 9.

Penitentiary establishment No 14 in Geguti

5 barrack-type accommodation blocks operate in the establishment. On average 200 to 250 convicts can be placed in each accommodation blocks. In the opinion of Public Defender barrack-type accommodation blocks in every establishment should be refurbished into cells and that in the opinion of the European Committee for the Prevention of Torture is also appropriate in respect to security purposes.[20] In winter during the monitoring it became clear that 4 accommodation blocks were free.

Penitentiary establishment No 16 in Rustavi

Infrastructure of blocks A and B of the establishment is normal. There are six-place cells while as to block C of the establishment still has several barrack-type cells of 50-52 places while other cells are for 10-14 persons which in itself does not provide normal condition of placement. Generally, majority of cells of the above block needs refurbishment. Block G of the establishment has no a stadium while a yard is covered with iron grid that gives an impression of a cage.

Penitentiary establishment No 17 in Rustavi

Sanitary-hygiene situation in cells of blocks I, II and III of the establishment do not meet relevant standards and substantial refurbishment is needed. Lighting of the above-mentioned block is artificial as the size of windows do not provide for natural lighting. Walls are shabby in several places; ventilation is natural albeit not satisfactory to meet relevant standards. Taps in several cells are out of order; some cells do not have bulbs. Cells are heated by the central heating.

It shall be noted that bathroom facilities in so-called new zone of the establishment have no ventilation due to which convicts are compelled to leave the bathroom doors open.

N19 Tuberculosis medical and rehabilitation center

On January 18th, 2013 a new four-story building of the N19 establishment was opened. It would provide significantly improved conditions for convicts suffering from Tuberculosis. In addition, during the monitoring it became clear that all cells and halls in the new block have concrete flooring due to which there is constant dust everywhere, including cells. Also, ventilation system is out of order in some cells, in some of them only cold air flow is present and in some cells – only hot air flow.

For treatment of prisoners, suffering with Tuberculosis, together with medication treatment decisive importance is attached to appropriate conditions. According to convicts, due to dust rising from the concrete floor they experience breathing problems and cannot maintain cleanliness, which puts a pressure on their health.

Inmates placed in N19 establishment handed a collective statement signed by 272 prisoners to representatives of Public Defender.

On February 4th, 2013 Public Defender's office issued recommendations to the Minister of Corrections, Probation and Legal Assistance to ensure settlement of the above matter.

On February 20th, Ministry of Corrections, Probation and Legal Assistance replied to Public Defender's Office and stated that "in a newly-opened block of the N19 Tuberculosis medical and rehabilitation Centre company Clean World conducted major cleaning works, and also using local resources cleaning is being carried out in order to maintain

20 Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and inhuman or degrading Treatment or Punishment (PCT) on February 5-15, 2010. Parag.77.

conditions stipulated in sanitary-hygiene norms". According to the same response, the problem of dust and specific smell caused by construction works has almost been eliminated in the establishment. We were also informed that a special team of Project – 21 LTD is carrying out works to regulate operation of the ventilation system, which in the near future will be fully installed.

We believe that there should not be concrete floor not just in medical and rehabilitation centre but even in ordinary establishment. Also, the Preventive Group expresses hope that in the future, before opening of a new establishment infrastructural problems would be eliminated and their settlement would not be a cause for concern for the ministry after prisoners are placed there.

Recommendation to the Ministry of Corrections, Probation and Legal Aid of Georgia:

- **To ensure proper refurbishment of all the aforementioned establishments, abolition of so-called barrack-type system and transformation into cell system;**
- **To ensure appropriate natural and artificial lighting, ventilation and heating of cells of all establishments;**
- **To ensure elimination of establishments N3, N4 and N12 or conduction of major refurbishment works.**

PERSONAL HYGIENE

According to "a.a" subparagraph of the Article 14 of the Imprisonment Code, accused/ convict has a right to be provided with items of personal hygiene. According to article 21 of the same law, "an accused/convict shall have an opportunity to satisfy his/her natural physiological needs and exercise his/her personal hygiene without abuse of honor and human dignity". "As a rule, an accused/convict shall be provided an opportunity of shower twice a week and barber service at least once a month.

Despite the legislation requirement, twice a week shower was closed in any of closed-type establishments in the first half of 2012. Inmates placed in Tbilisi N8 establishment took showers once a week and according to them, they were obliged to end taking shower in maximum 10 minutes. The said problem in semi-open establishments is regulated to a certain extent thanks to bathrooms available in blocks and yard. The only exception is N6 accommodation block in the Geguti N14 establishment where inmates have possibility of taking shower just once a week.

After arrival of new management of the penitentiary establishment, as inmates in some closed-type establishments (in closed parts of N15 and N5 establishments, N2 and N8 establishments) said were given right to take a shower twice a week.

As to barber service, inmates are either service each other or an inmate registered in service unit acts as a barber.

As it was repeatedly stated, majority of cells of Zugidi N4 and Batumi N3 establishments have semi-open toilet facilities that do not comply with any standards. Cells of N6 establishments have isolated toilets but length of their door does not provide complete isolation.

According to the third paragraph of Article 22 of the Imprisonment Code "An accused/convict shall have a bed and bed linen for personal use, which shall be delivered to him/her clean and undamaged. Administration of establishment shall ensure cleanness of the bed linen".

As a result of the monitoring conducted in summer 2012, it became apparent, that inmates were provided with bedding only on admission to the establishment. The bedding was systematically changed only in N8 establishment if an inmate wished so. Majority of inmates noted that they preferred to wash bedding that was purchased on their own money since after washing, administration did not guarantee return of the same bedding to them. It shall be noted that during the monitoring in winter, it was noted that bedding was distributed by the administration in most of the establishments.

EXERCISING THE RIGHT TO BE IN A FRESH AIR

According to the subparagraph "g" of the article 14 of the Imprisonment Code, accused/convict "shall enjoy the right to walk on the fresh air at least one hour a day".

Despite the duration being defined by the Imprisonment Code the summer monitoring revealed that walk in Zugdidi N4 establishment lasted for about half an hour, while in Gldani N8 establishment – 20-25 minutes, in N7 establishment – 25-30 minutes,[21] and in Batumi N3 establishment – 10-15 minutes.

The above problem in the establishments has been tackled following October, 2012.

Public Defender in his many parliamentary reports issued recommendation on ensuring the right of prisoners to daily walk in all closed-type regime establishments, including, Saturdays and Sundays which has not been followed yet in N3, N7, N8, N18 medical establishments. Prisoners in Zugdidi N4 establishment are allowed to walk on fresh air every day except Sunday.

The European Committee for the Prevention of Torture (CPT) recommends ensuring that both categories of prisoner are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in relevant activity of various nature while convicts placed in maximum security regime - for at least one hour every day.[22]

No exercise yards in penal and closed-type establishments are equipped suitably so that prisoners could spend a time assigned for walking standing and sometimes this was a reason that they refused to for a walk or return before the time to their cells. Prisoners placed in N18 medical establishments for defendants and convicts often complain that they cannot exercise the right to walk due to poorly equipped yards. Namely, according to several prisoners they have difficulties with standing and due to a fact that there is no bench in a yard they refrain from going out for a walk. It is a problem for prisoners to be on a fresh air on rainy or hot days since some of the yards practically had no shelter from rain and sun rays.

Despite numerous recommendations of Public Defender, the above mentioned problem in exercise yards remain unresolved.

Recommendation to the Chairman of the Penitentiary Department:

- **To ensure ability to have a bath or shower twice a week for prisoners in all penitentiary establishments;**
- **To ensure possibility for prisoners in all closed-type penitentiary establishments to take outdoor exercise for at least one hour every day, including at weekends;**
- **To provide installment of exercise equipment and benches in exercise yards and their equipment in accordance with different climate conditions.**

21 Exception is inmates that are placed alone in cells. They are given the right to one hour exercise;
22 Visit to Georgia carried out on February 5-15, 2010 (parag. 82);

CONTACTS WITH OUTSIDE WORLD

Short-term visit

Except visit rooms in closed unit of juvenile institutions and N15 establishment visits in all establishments are carried out in glass-partitioned room where an inmate is deprived of every kind of physical contact with his/her family members. In some cases the glass on each side has an iron grid which even restricts a visitor from proper view. The European Committee for the prevention of Torture (CPT) issued a recommendation to relevant bodies to overview the issue of visits so that prisoners are given possibility to see visitors in less constrained situation. All limitations set with this view, in the opinion of the committee, shall be based on individual assessment of risks in every concrete case. According to the Committee, "any restrictions on such contacts should be based exclusively on security concerns of an appreciable nature or considerations linked to available resources. Open visiting arrangements should be the rule and closed ones the exception, based on well-founded and reasoned decisions following individual assessment of the potential risk posed by a particular prisoner or visitor".[23]

In accordance with paragraph 7 of the article 17 of the Imprisonment Code, Short visits are organized for the period of one to two hours. During the monitoring held in summer, as prisoners said, practice in different establishments were different – duration of a visit in penitentiary establishments N8 and N2 was 40-45 minutes; in N4 establishment – 15-20 minutes; N3 establishment – 10-15 minutes.

During the winter monitoring it became clear, that duration of visits in all establishments constituted an hour, which can be assessed positively.

Long-term visit

A long-term visit, first of all, is the best way for resocialization and maintenance of close contact with family that can be of critical importance to all convicts placed in closed-type establishments.

A change introduced in the the Imprisonment Code shall be assessed positively according to the paragraph 9 of the article172, the long-term visits are not granted to convicts placed in the quarantine regime. [24]With the view of implementation of the right to a long-term visit, the Georgian Ministry of Corrections, Probation and Legal Assistance shall provide for necessary conditions and exercising of the right to a long-term visit in women's and closed-type penitentiary institutions no later than December 31st, 2015. [25]

Infrastructure is provided for long-term prisoners in establishment N16 though so far it can be used by convicts sentenced to life-imprisonment.

Infrastructure for long-term visits exists in N6, N11, N14, N15 and N16 establishment.

In the reporting period from January 1st, 2012 to December 31st, 2012 long-term visits were used by 5995 convicts: 110 convicts used it in N6 establishment; 30 convicts - in N11 establishment; 1662 – in N14 establishment; 469 – in N15 establishment and 1941 – in N16 establishment; 1783 convicts - in N17 establishment.

Video communication

According to the paragraph 1 of the article 17 of the Imprisonment Code, "all convicts in penitentiary establishments, except for defendants of particularly grave crimes and persons stipulated in the subparagraph "c" of Article 1 of the Artile 50 of the Imprisonment Code, are entitle to the right to use a video communication (direct verbal and visual video bridge) with any person".

23 Visit to Georgia from MArch 21 to April 2, 2007, parag. 91
24 22.05.2012 N 6257 (to take effect on the 15th day from the publication)
25 Effective since January 1, 2011;

In the reporting period, infrastructure for operation of video communication was in place in establishments N11, N15, N16 and N17. During the reporting period video communication was used by 1289 convicts, out of which 24 were from N11 establishment; 653 convicts from – N15 establishment; and 174 persons – from N17 establishment.

Access of all categories of prisoners to long-term visits as well as video communication would have been a positive change and this would had a been a great contribution into the process of resocialization of convicts, but all the more, use of video communication may be exercised by not only members of the family and friends but close associates as well. A provision of the Imprisonment Code that prohibits convicts of certain category to use video communication carries characteristics of additional punishment and is unacceptable in this sense as all prohibition and restrictions should be individual and substantiated with relevance to a concrete case.

Suggestion to the Parliament of Georgia:

- **Introduce relevant amendments and annexes into the Imprisonment Code that would ensure the right of all convicts to video communication.**

Recommendations to the Chairman of the Penitentiary Department:

- **To ensure short-term visits without glass partitions and iron grid; all exceptions to be substantiated individually, based on concrete situation and personality of a convict (visitor);**

Telephone conversations

According to the Imprisonment Code, in a semi-open penitentiary institutions for deprivation of liberty a convict has a right to have three telephone conversations at one's own expense on the course of one month, for no more than 15 minutes each, while in closed-type penitentiary establishments prisoners may have two telephone conversations at their own expense, each of them - for no more than 15 minutes.

Convicts have a right to telephone to dial and talk with three phone numbers for 15 minutes with the use of phone cards. After making several calls the convict has to purchase several telephone cards and incur additional expenses. It shall be noted that after appointment of a new management in administration convicts of all establishments have the right for telephone conversations for the duration stipulated in the law and to several phone numbers, though exception is establishment N8, where there are no telephones at the penitentiary establishment and supposedly this is a consequence of incorrect interpretation of law.

It shall be noted that convicts in Zugdidi N4 establishment do not have a right to call abroad. In their words, some of them do not have family and relatives in Georgia and they are deprived of opportunity of communicating with them.

Recommendation to the Penitentiary Department:

- **To ensure complete enforcement of the right of all prisoners to telephone communication, including, with respect to interests of those persons relatives and family of whom are not in Georgia;**
- **To ensure preparation of standard, reusable telephone cards for convicts.**

RESOCIALIZATION OF CONVICTS

Public Defender have mentioned in his numerous reports that prison conditions should ensure resocialization and reintegration of a prisoner into society and it shall not be orientated to punishment only. Based on all the aforementioned, during the period of serving sentence a convict shall get or deepen further relevant education and occupational skills, get an opportunity to participate in sport or other types of activities, competitions, have relevant conditions to follow processes that are taking place in the outside world, have contact with family and friends. All this is necessary to prepare a convict for the return into a society.

Today no great attention is attached to the above-mentioned component in the penitentiary system – during the reporting period training or rehabilitation programs operated in only handful of establishments.

Women establishment of imprisonment N5 - semi-open and closed penal establishment – is the place where the greater number of various types of projects that enable women convicts to acquire different skills and receive occupational training, can be found.

M and psychological centre Tanadgoma implements a project "Bridging the gaps: health and rights for key population".[26] The said project aims at psycho-social rehabilitation of convicts. The organization started its activities in establishments in October 31st, 2012.

"Global Initiative in Psychiatry – Tbilisi" is conducting a project "Establishment of service for rehabilitation, re-socialization, reintegration and mental heath for women convicts and women in preliminary detention centers in Georgia. The organization provides a psychological assistance to defendants/ convicts placed in the establishment and carries out a training module "We are returning to the public".

Starting from April 2012 project "Preparation for release" is being implemented. In the framework of the project civil education trainings are carried out with convicts twice a week.

Non-Governmental organization "Person, law, freedom" organizes preparatory training for persons who are supposed to be released.

"The Centre for development of civic conscience" is implementing a project through which convicts are able to study art-flora-design; enroll on English courses for beginners and for those in need of remembering.

Starting from 2008 Association Women and Business has been implementing the project "Promotion of rehabilitation and re-socialization through vocational training" with financial support of international organization Prison Reform International, The Norwegian Mission of law of law advisers to Georgia (NORLAG) and with the support of the Georgian Ministry of Corrections, Probation and Legal Assistance.

During the reporting period 250 women were engaged in the abovementioned projects.

In the first half of 2012 a project of the non-governmental organization - the centre for psycho-social and medical rehabilitation of torture victims (GCRT) was under way. In its framework 93 prisoners were receiving psycho-social rehabilitation; 13 prisoners were receiving comprehensive education. In the second half of the reporting period 9 juveniles were engaged in the stress handing-management therapy.

Organization of education of juveniles in N8 C was prerogative of the Georgian Ministry of Education and Science. In 2012, 42 juveniles were involved in the programme.

In the first half of 2012, in special juvenile establishment N11 there were the following courses such as enameling, barber, IT programs, carving, painting that were finished by 22 convicts. During the summer monitoring 6 convicts were undertaking the enameling course, while 6 convicts were studying Photoshop courses, 6 convicts – MS Office programs, 4 were enrolled on barber courses and 33 - in carving and painting courses.

26 Donor: International Dutch Organization AIDS Foundation East-West

In the first half of 2012, in establishment N15 the centre for psycho-social and medical rehabilitation of torture victims (GCRT) carried out the program "establishment of 4R in Georgia" where there were two groups of 15 convicts going twice a week. The learning program included: Information technologies, marketing, book-keeping, English language, tile-layer, handling of construction skills.

In establishment N16 N8 Non-governmental organization "Person, law and freedom" with the help of NORLAG was implementing the project "preparation for release" where 40 convicts were involved. The above training was taking place for two hours twice a week.

20 convicts were taking English language course; 16 convicts – small business course; 8 prisoners were involved in electrician skills and painting works course; furthermore the Health Ministry held a training on HIV/AIDS that was attended by 12 convicts.

Since the end of 2012 the training and rehabilitation programs no longer operate in establishments of N15 and N16.

Recommendations to the Minister of Corrections, Probation and Legal Assistance of Georgia:

- **In the near future to ensure drawing up a work plan for resocialization of convicts, taking into consideration type of the establishment N8 and categories of convicts which in the future will serve as basis for elaboration of individual plans of sentence-serving of convicts.**

EMPLOYMENT OF PRISONERS

According to the European Prison Rules, 26.1 "Prison work shall be approached as a positive element of the prison regime and shall never be used as a punishment ".[27]

"Prison authorities shall strive to provide sufficient work of a useful nature".[28]"As far as possible, the work provided shall be such as will maintain or increase prisoners' ability to earn a living after release".[29]

For the period of January 1st to March 31st, 2012, 26 convicts were engaged in paid labour activity in the penitentiary establishments; for the period from April 1st to June 30th, 2012 – 26 convicts; for the period July 1st to September 30th, 2012 – 25 convicts; for the period from October 1st to December 31st, 2012 - 25 convicts.

For years, convicts that were registered in service unit have been engaged in hard work (for example, distribution of food in accommodation blocks, which included taking containers weighting 25-30 kilos to cells of the accommodation blocks; delivery of products purchased by convicts in prison shop to these convicts; cleaning of territory of establishments, including communal toilets, etc) though they were not paid. During the monitoring, majority of those registered in the service unit noted that they no longer wanted to carry out the above-mentioned duties without a pay. The representatives of the establishment administration also spoke about this issue and noted that number of convicts registered or those wishing to enroll in the service unit was declining on a daily basis.

Recommendation to the Georgian Minister of Corrections, Probation and Legal Assistance:

- **To elaborate strategy and work plan of employment of convicts in cooperation with relevant agencies;**
- **To ensure relevant pay to convicts registered in the service unit.**

27 Rule 26.1
28 Rule 26.2
29 Rule 26.3

PLACEMENT OF PRISONERS

In pursuance of the paragraph 3 of the article 46 the Imprisonment Code, "a convict shall serve his/her sentence in a custodial establishment located in the nearest proximity to the place of residence of his/her family members or a person with whom he/she lived, except for the cases, when the aforementioned deems impossible by reason of overcrowding of the establishment concerned. In exceptional cases a convict may be transferred to other custodial establishment due to his/her health status, personal security or/and with his/her consent".

Public Defender often receives statements from convicts and their family members who ask for help in placement of convicts in establishments in the nearest proximity to the place of their residence. There are many cases when convicts that reside in Eastern Georgia are placed in an establishment located in Western Georgia and vice versa.

Recently, several appeals of Public Defender's Office were met and convicts were transferred to the establishment in close proximity to their place of residence or to a type of establishment specified for him/her in the order. It will be desirable if the Ministry of Corrections would take greater care when following the norm defined in the paragraph 3 of the article 46 of the Imprisonment Code.

Public Defender has frequently stressed negative effects of long-term placement of a person in a closed-type regime establishment. The recommendation of the European Committee for the Prevention of Torture (CPT) also states that "the placement of a prisoner in such a regime is for as short a period as possible and is reviewed at least every three months".[30]

The above problem is especially acute in establishments N7 and Rustavi N6 where for years convicts have been placed so that they were not given opportunity to be transferred to semi-open establishments. We do not even mention those sentenced to life-imprisonment who has been given their sentence term, are compelled to serve their entire sentence in the close establishment.

During monitoring it was revealed that Gldani N8 and Kutaisi N2 establishment held prisoners that according to the order of the chairman of the penitentiary department were assigned to serve their sentences in semi-open establishments.

Suggestion to Georgian Parliament:

- **To introduce relevant amendments into Georgian Imprisonment Code in order to define serving sentence in a closed-type establishment as a social measure and to be used individually, taking into account personality of a prisoner.**

Recommendation to the Minister of Corrections, Probation and Legal Aid of Georgia:

- **To ensure opening of a special, semi-open type establishment for convicts with life sentenced as well as for prisoners of special category (e.i. so-called thieves in laws and authorities).**

Recommendation to the Chairman of the penitentiary department:

- **During admission of a prisoner into an establishment to take into consideration the place of residence of his/ her or his/her relatives;**
- **To ensure placement of a prisoner in a penal establishment that is defined for him by the law.**

30 parag.132

AMNESTY

It should be noted that for years, number of prisoners in the penitentiary establishments have been increasing rapidly, causing difficulties in meeting with relevant standards.

On January 12t, 2013, Georgian Parliament adopted law of Georgia "On amnesty" serving as a legal basis for releasing several thousands of prisoners from penitentiary establishments.

According to the data from February 28th, 2013, as a result of the amnesty 8044 defendant/ convicts left altogether penal and penitentiary establishments located on the territory of Georgia. We believe that against the backdrop of the reduction of the prisoners the Ministry of Corrections, Probation and Legal Assistance will have easier task of creating suitable conditions for prisoners and complying with the national and international standards. Accordingly, with this view we welcome such large-scale amnesty.

On the other hand, prior to the adoption of the law on amnesty it was not studied in details convicts of what category were to be released and based on their social and economic situation what they should expect in the future. In the opinion of the Special Preventive Group, it would have been better prior to their release to create elementary conditions for resocializaiton and employment of former convicts that would have prevented many of them from returning to a prison.

Herewith we shall also stress necessity of more liberalization of the Criminal law and cancellation of the summarizing principle. Otherwise, in several years the number of prisoners would again reach the critical level. The strict criminal legislation polices shall be replaced by well-calculated and planned state policy of resocialization and rehabilitation.

Suggestions to the Parliament of Georgia:

- **To introduce relevant amendment into the Georgian Criminal Code in order to replace the current combining principle with absorption principle;**
- **To implement measures necessary for decriminalization of several, less dangerous for the public crimes – first of all, drug related crimes.**

Protection of Healthcare in Penitentiary System and Torture Prevention Mechanisms

MONITORING OBJECTIVE AND METHODOLOGY

The monitoring aims at examination and assessment of implementation of international standards of prevention of torture and inhuman, degrading treatment in relation to the healthcare protection in the Georgian penitentiary system within the framework of The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and issue of relevant recommendations.

Multi-profile analysis was used for the study of implementation of prisoners' healthcare rights with examining the following priority issues:

1. Organizational aspects of healthcare protection of the penitentiary system of Georgia
2. Access to a doctor
3. Equivalent and adequate medical service
4. Patient consent and confidentiality
5. Humanitarian approach (special categories)
6. Preventive work, torture and fight against it
7. Medical personal: professional independence and competence

"General questionnaire of medical monitoring" developed by the Georgian Public Defender's Office, as well as Guidelines for monitors: Medical Services in Prisons, elaborated by the center Empathy were used as tools of the investigation; medical/psychological interviews and primary consultations were held with prisoners in accordance with the Istanbul Protocol principles, medical cards of each prisoner were studied.

Statistical reports and information, including those about deceased persons, provided by the Medical Department of the Ministry of Corrections, Probation and Legal Aid of Georgia, as well as forensic conclusions of the Samkharauli Medical Forensics National Bureau, national legislative acts were used for the analysis.

The above methodology is based on international mandatory and recommendation standards and monitoring methodology, in particular:

- The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1997)
- The Optional Protocol to the Convention against Torture (OPCAT) of the above-mentioned convention (2006)
- European Convention for the prevention of torture and inhuman or degrading treatment and punishment (1987)

Non-mandatory

- The Istanbul Protocol - a set of international guidelines for the assessment of persons who allege torture and ill treatment, for investigating cases of alleged torture, and for reporting such findings to the judiciary and any other investigative body (United Nations; New York and Geneva, 2001-2004).
- Principles and Precedents of Human Rights European Court
- The 3rd general report – healthcare in prisons – of the committee of the European Committee for Prevention of Torture (CPT)
- The UN Minimum imprisonment standards
- The UN combination of principles of protection of persons detained in any form and persons in custody (1989)
- European Prison Rules (2006)
- Recommendation NR (87) 3 (1987) of the Committee of the Ministers of the Council of Europe
- Recommendation N (98) 7 of the Committee of the Ministers of the Council of Europe, their address of the Committee of the Ministers to member-countries on organizational and ethical aspects of the medical department in prisons (Strasbourg, 1998, April 20)
- Improvement of mental health in prisons, coordinated statement, European Regional Department of the World Health Organization (Hague, Netherlands, November 18th-21st, 1998)
- Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians for the Protection of Detained Persons and Prisoners against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1982 (1982)
- Declaration of Tokyo (1975), Hamburg Declaration (1977), Declaration of Geneva (1948), Declaration of Malta (1991, 2006), WMA Resolution on the Responsibility of Physicians in the Documentation and Denunciation of Acts of Torture or Cruel or Inhuman or Degrading Treatment (2003, 2007),
- International instruments and machinery to against torture – collection of legal documents and standards on torture (as of July 4th, 2007, the International Rehabilitation Council for Torture Victims (IRCT)
- Healthcare in prison, guidelines on mandatory healthcare standards in prisons subordinated to the World Health organization
- Madrid Recommendation, healthcare protection in a prison as an integral part of the public healthcare (the World Health Organization, 2010)

ORGANIZATIONAL ASPECTS (GENERAL REVIEW AND RECOMMENDATIONS) OF THE PENITENTIARY HEALTHCARE IN GEORGIA (GENERAL OVERVIEW AND RECOMMENDATIONS)

Reform in healthcare of the penitentiary system

Status: healthcare and medical service in prisons, in the Georgian penitentiary system are administrated by the healthcare department of the Ministry of Corrections, Probation and Legal Affairs of Georgia. Since November 2012 this sphere is supervised by the Deputy Minister for Healthcare issues.

In September, 2012 after the scandal in relation to the facts of torture in the Georgian penitentiary system it became clear that the Georgian penitentiary system, including medical department was in need of urgent and radical reform. After the government change in the country on the October 1st, 2012 elections leadership of the said ministry changed and a new strategy of healthcare reform of the penitentiary system and ways of its implementation were presented. The strategy encompassed all aspects of healthcare in the penitentiary system stipulated by international standards, as well as echoes positive ways of getting closer to the civil healthcare. Though we shall note that it does not take into consideration the major principle stipulated by international standards e.i. its complete transfer to healthcare system of the civil sector. Implementation of the aforementioned component in the strategy is extremely important, given the principle of independence of medical staff and taking into consideration international standards of torture prevention.

It shall be noted that at this stage intervention of the civil sector into the penitentiary system is being done within the framework of the state program for tuberculosis control that to a certain extent improved standards of timely disclosure and prevention of those suffering from Tuberculosis. But this problem remains an acute challenge for the Georgian penitentiary system.

Another example of the civilian healthcare intervention is the methadone program for drug addicts that were being implemented in the N8 establishment of the penitentiary system. It also started to operate in Kutaisi N2 establishment starting from 2012. In addition, penitentiary system medical personal were integrated into some civil-type healthcare training-components, certain rehabilitation programmes or psychiatric monitoring were also held. Though facts of torture and inhuman treatment that were revealed to the wide public in September 2012 and monitoring and crisis intervention conducted in the penitentiary system after the said crisis situation demonstrated that such small-scale measures are not enough for the process of making the penitentiary healthcare system civilian. And it creates high risks of violation of ethical standards for both local medical staff on spots and civilian medical personnel employed on services.

Accordingly, it is recommended to present more close standing version of the Georgian penitentiary healthcare reform to international standards, stressing necessity of its transfer to the civilian sector and specifying work plan and timetable in this direction.

Medical service subsidizing

It should be noted that by the end of 2012 subsidizing of the medical service increased, and this was reflected on wages of medical personnel. We should note that the medical service of Georgian penitentiary system is subsidized through assignations in the state budget allocated to the Georgian Ministry of Corrections, Probation and Legal Assistance. While civil healthcare finances types of the medical service through budget funds allocated in the framework of assignations of the Ministry of Health, Labour and Social Affairs in accordance with the article 15 of the Georgian law on "Protection of healthcare". In compliance with the first paragraph of article 45 of the Georgian law on "Patients' rights" - "access to medical service for persons placed in the penitentiary establishment is carried out by state medical programmes" which in reality is not being implemented. As a result, we have a case of violation of the equivalence principle. The above problem again relates to the necessity of re-civilization principle of healthcare in the penitentiary system in Georgia.

Medicaiton provision and operation of a pharmacy

Herewith we stress that in recent years finances allocated for medications have increased significantly though centralized distribution of medications to separate organizations creates problems for timely and adequate medical service and causes prisoners' discontent. During the monitoring it was revealed that by the end of the year medication shortage and majority of those interviewed noted that often they were provided with the necessary medications by their family members or they used to buy them in a pharmacy located on the territory of their establishment. Sphere specialists mainly handled activities, typical for pharmacies in medical units. Starting from the second half of 2010 pharmacies' names were changed into "medication provisions" while personnel – "person responsible for medication provision ". Against the background of such tendencies, even a person without special pharmaceutical education can be appointed on the above position which is already a step behind.

Based on the principle of timely and adequate provision of medical service and equivalence, it is recommended that provision with necessary medications be done on the basis of decentralization, on spot administration and management, while the medical department to implement evaluation and monitoring.

Referral programme

Referral medical programme is implemented and administered in the Georgian penitentiary system by the same medical department on the basis of an agreement with various hospitals of civil sector. Although, by the end of 2012 because of conclusion of new agreements there was a delay in timely conduction of medical examinations was hampered. It shall be noted that in the format of referral programme expensive medical examinations and in-patient department are being done though due to the centralization of the administration the question of timely promptness and proximity of medical service remains a problem.

Accordingly, as in the case of provision of medications it is recommended the referral proragamme to be implemented on the spot and evaluation and monitoring of the question to be carried out by the central managment.

Medical infrastructure

It shall be noted that the Georgian penitentiary system where in 2012 there were 23 160 prisoners, was served by just one medical establishment which in the list of penal establishments is listed as N18 establishment of the penitentiary department and is designed for male in-patient service as well as medical and rehabilitation centre for tuberculosis sufferers (N19 establishment of the penitentiary department) that was in a deplorable state in respect of its infrastructure and service resources and to which a new block was added by the end of the year. Thus, improvement of the mentioned services is to be expected by 2013. In the majority of the penitentiary establishments there are attempts to improve a primary care component (in sepearte establishments: N2, N5, N6, N8, N9, N12, N15, N17 centres of primary healthcare were opened and equipped), also ambulatory component with elements of the secondary healthcare (with mini-in-patient units) though location and infrastructure of the said units in the newly-built establishments practically represent wards or rooms designed for medical purposes and are located in prison cells that does not correspond to organizational aspects of the in-patient and ambulatory type establishments and creates risks for violation of sanitary and hygiene norms.[31] At the same time, it does not prepare psychologically patient and doctor for activities of medical character, which puts principles of protection of ethical standards under threat.

It shall be noted that infrastructure of psychiatric department of the medical establishments for defendants and convicts does not comply with requirement standards and therefore non-voluntary treatment of a patient cannot be carried out in the said establishments. Transfer of mentally ill patients to civilian psychiatric hospitals is also problematic

31 7 December 2010 Order #398/n of the Minister of Labor, Health and Social Welfare of Georgia on the "Approval of Form and Rule of Mandatory Notification for Providers of High Risk Medical Activity/Service to be Carried Out in Outpatient/Day Clinic Conditions and the Procedure for Administration of Register";

given the safety standards (security protection, conveying) which creates particular problem in case of convict women or/and juvenile convicts. Though we shall hereby mention that even the component of psychiatric reform of the civilian healthcare does not provide with means to ensure its implementation (there is no in-patient juvenile psychiatric assistance).

Questions of licensing of establishments

It shall be noted that in this direction the very issue is to be studied in a more detailed manner. The monitoring revealed that this topic remains problematic in the medical sector of the penitentiary system. The issue needs analysis and review of the legislative regulations. It is noteworthy that out of medical establishments of the penitentiary system the defendants/convicts establishments, as well as medical and rehabilitation establishments for those suffering from Tuberculosis have license for medical activities of various profiles. Medical units of other establishments do not have a license confirming any kind of activity though majority of them have in-patient component or/and high-risk out-patient medical activity of high risk factor. To a certain extent, with the view of elimination of the above problem by the end of 2012 the new administration concluded an agreement with the catastrophe centre brigades to ensure transportation of prisoner patients or/and on-spot treatment in case of necessity but this measure is not enough and the said issue needs systematic and complex regulation together with other healthcare issues. Herewith it shall be noted that despite the fact that the medical establishment for defendants and convicts has the license for in-patient psychiatric treatment the current psychiatric department does not comply with the licensing terms.[32]

Recommendations:

- **To implement the penitentiary healthcare system reform in accordance with requirements of the healthcare legislation of the country.**

Rule of documentation, record-keeping and registration of statistical information

It should be noted that according to a memorandum signed in 2011 between Georgian Ministries of Corrections, Probation and Legal Aid and Labour, Health and Social Affairs, forms of medical documentation approved by the Georgian Ministry of Labour, Health and Social Affairs should have been implemented into the healthcare of the penitentiary system of Georgia but simultaneously N158 order of November 11, 2010 issued by the Georgian Minister of Corrections, Probation and Legal Aid " on approval of form of a medical card of defendant/convict" remained in effect.

The aforementioned card still fails to comply with the approved forms of the Georgian Ministry of Labour, Health and Social Affairs. Furthermore, it should be noted that according to official statement issued by Ministry of Corrections, Probation and Legal Aid, civilian type in-patient medical cards have been in use in N18 and N19 establishments, and that since 2012 the said in-patient cards became identical to cards of civilian establishments. We shall hereby note that in some establishments we see civilian out-patient forms of cards, for example, in Batumi N3 penitentiary establishment. Though in other establishments, even in 2012 we see medical cards of "defendants/ convicts". In addition, in-patient medical card are used just in N18 and N19 establishments while such cards are not in use in so-called in-patient units of the establishment. As a result of analysis of the discussed medical cards and monitoring of patients reveal that frequently the medical cards do not reflect reality, especially, objective status in the part of anamnesis and catamnezis

32 17 December 2010 Resolution #385 of the Government of Georgia on the "Approval of Regulations on the Rules and Conditions for Issuing License for Medical Activity and the Permit of Inpatient Institutions";

is so scarce that making any kind of analysis based on the presented information is quite hard. The analysis of medical cards reveal that discussion of cases on the basis of multidiscipline approach is not carried out which in most cases creates problems of incorrect diagnosis. Various medical activities, including consultations, visits, issue of medications, injuries and others, are registered in journals of various types which represent an attempt to implement the rule of statistical registration and is welcomed although it does not correspond to the forms approved by the Georgian Ministry of Labour, Health and Social Affairs. We shall also note that every establishment keeps forms of monthly medical reports that are also provided by the Georgian Ministry of Corrections, Probation and Legal Assistance. Analysis of such fragmented and non-systematized statistical information is practically impossible and hard to use for further planning and evaluation of cost-effectiveness. It is also hard to carry out accurate evaluation and monitoring. At the same time it shall be noted that confidentiality of medical files and norms of their keeping were complied with in any of the establishment where the monitoring was held. Often they are accessible for other persons that lead to violation of confidentiality and become a pretext for conflicts between inmates. Medical personnel is not informed about the rules and relevant orders of the Georgian Ministry of Labour, Health and Social Affairs.

Recommendation:

To fully enforce documentation approved by the following orders issued by the Minister of Labour, Health and Social Affairs of Georgia in the penitentiary system:

- **Order No 01-41/N of August 15, 2011 issued by the Minister of Labour, Health and Social Affairs of Georgia on "Approval of Procedure for Administration of Outpatient Medical Documentation in Medical Institutions";**
- **Order No 108/N of March 19, 2009 issued by the Minister of Labour, Health and Social Affairs of Georgia on "Approval of Procedure for Administration of Inpatient Medical Documentation in Medical Institutions";**
- **Order No 01-27/N of May 23, 2012 issued by the Minister of Labour, Health and Social Affairs of Georgia "on the Rules of Administration and Provision of Medical Statistical Information";**
- **Order No 198/N of July 17, 2002 issued by the Minister of Labour, Health and Social Affairs of Georgia "Rules of Storage of Medical Records in the Medical Institutions";**
- **Order No 338/N of August 9, 2007 issued by the Minister of Labour, Health and Social Affairs of Georgia "on Approval of Rules for Filling in the Health Status Certificate and the Form of the Health Status Certificate"".**

ACCESS TO A DOCTOR

According to international and national legislation, it is obligatory for every prisoner to pass a medical examination. The law also recommends providing inmates with information on rights and healthcare services available to them. After analyzing reports provided by the healthcare units of the penitentiary system it is hard to imagine that the above norm is complied with unequivocally. Namely, according to monthly reports, number of inmates that entered establishments and the number of primary medical examination or/ and number of patients treated in inpatient establishments N18 and N 19 (mechanism of adding together all these numbers is not clear from the reports) are the following:

Table N1: number of inmates admitted in 2012

Establishment	Number of Inmates admitted	Primary medical examination passed (treated in inpatient establishment)
N 1	341	341
N 2	1051	712
N 3	583	583
N 4	360	360
N 5	253	253
N 6	351	351
N 7	11	8
N 8	4776	4776
N 9	311	311
N 11	89	89
N 12	1099	1099
N 14	976	976
N 15	1418	1418
N 16	790	801
N 17	725	725
N 18	1833	3129
N 19	1194	1332
Total	16161	17264

According to the same reports, indicators of intervention conducted in all establishments were added together (table N2).

Table N2: Conducted intervention

	Name of Preventive and Treatment Measures	Total
1	**Primary medical exmination**	16644
2	**Outpatient visits, treatment**	408737
3	**Inpatient treatment**	4149
3.1.	Medical establishment for convicts and inmates	3981
3.2.	Medical establishment for convicts with Tuberculosis	1834
4	**Tests and treatment in specialized in-patient hospitals of civil sector**	3558
5	**Emergency and scheduled surgical treatment**	1265
6	**Dental service**	20235
6.1.	Of therapeutic profile	11316
6.2.	Of surgical profile	8209
6.3.	Of orthopedic profile	383
7	**Psychiatric help – consultation, treatment**	7594
8	**Screening to determine Tuberculosis risk-groups**	114318
8.1	Examination of persons with suspected Tuberculosis	18594
8.2	DOTS involved in treatment	834
8.3	DOTS + involved in treatment	177
8.4	Treatment completed	532
9	**Tested for HIV infection**	6021

9.1	Included in HIV infection antiretroviral program	0
10	**Tested for hepatitis**	2432
11	**Tested or venereal diseases**	1930
12	**Included in Methadone program**	72
13	**Consulted by doctor-consultants of various profiles**	20838
14	**Included in state program of treatment and rehabilitation of patients with insulin-dependent and non-insulin dependent diabetes (hormone provision)**	224

When comparing the above two tables it becomes clear that according to the table N2 in 2012 primary examination in the penitentiary system was passed by 16 644 individuals, and according to table N1, the said examination was passed by 17 264 individuals while the number of individuals admitted was 16 161. Therefore, the above data show clear discrepancy that provides ground for doubting reliability of the reports provided by the penitentiary establishments.

According to the same table N2, it is impossible to determine number of convicts having undergone intervention and its forms. For example, according to the tables provided, outpatient visits and treatment was carried out in 408 737 cases, though the report does not clarify the exact number of individuals. At the same time the same monthly reports state that average number of inmates in 2012 in Georgia's healthcare in the penitentiary system amounted to160 individuals. According to this data, frequency of inmate visits was on average 5-6 visits per annum which given the discontent expressed by inmates towards the healthcare system of the Georgian penitentiary, is hard to imagine. Also, number of diseased inmates and diagnosis established by forensic examination that will be discussed below in relevant chapters, indicate to late and often inadequate medical treatment.

After interviewing inmates it was concluded that there was a long waiting period for a visit to a doctor and even after undergoing relevant tests it was impossible to access adequate treatment due to lack of appropriate medications.

Herewith it should be noted also that dental care, therapeutic and surgical, as well as orthopedic care is accessible in all establishments and relevant para-clinical tests and consultations are being provided. Though, monitoring revealed that inmates' access to alternative examination or/and medical tests were quite limited up until the well-known events of September 2012. And their requests were not met or/ and were fulfilled belatedly, when the inmate practically no longer had any traces of injury. Especially limited in this respect were inmates that appealed to the European Court of Human Rights alleging violation of the article 3 of the Human Rights European Convention that implies torture, inhuman treatment and, also, inadequate medical treatment.

We shall note that, there is no special guidelines or legislative provision on activity regulations for medical personnel of the penitentiary establishment and medical units on the spot, as well as there is no special brochures for inmates on right to access the doctor. Brochures published by various international organizations were found in some of the establishments though it was not enough for education of inmates on their right to healthcare.

The tendency established by the end of the year with regards to strengthening of civil healthcare intervention, as well as opening of primary medical care centres can be seen as a step forward. Though, implementation of the principle accessibility to a doctor should be considered in systemic complex of the penitentiary healthcare reform.

Based on the above, large-scale intervention of civil healthcare programs, inter alia psycho-social rehabilitation projects, into the penitentiary system and broadening of civil monitoring mechanisms is recommended that ensures, if needed, inmates' accessibility to alternative or/and medical service of other kind and increases possibility of enforcement of the right to choose doctor. The above recommendations are based on the international standards,[33] as well as Georgia's law "On rights of the patient".[34]

The facts of torture revealed in September 2012 and documented cases of inspection of medical cards, revealing that the right of those individuals to access medical care was infringed, clearly indicate to necessity of intervention of civil

33 Recommendation of the European Council #R (98)7, chapter 1. main characteristics of healthcare service in prisons, A0 access to a doctor/ doctor accessibility

34 The law of Georgia "on the rights of patients", article 7, article 8.

healthcare system. As inmates explained, medical personnel were informed and knew about facts of torture in prisons but failed to register this. And this aggravated the situation between inmates and medical personnel resulting in distrust and aggression towards them. And this remains a significant challenge to this day and needs imminent intervention of civil healthcare in the system with the view of defusing and resolving the situation.

EQUIVALENCE OF HEALTHCARE

After the disclosure of the facts of torture in the Georgian penitentiary system and the monitoring of inmate health conditions it becomes clear that it is impossible to talk about equivalence and adequacy of healthcare in Georgia's penitentiary system. Often presented medical cards do not reflect real healthcare situation, especially given the context of documentation of facts of torture, registration of results and treatment-rehabilitation. The said situation is not reflected in illness tables provided by establishments that we have statistically processed.

Table N3: illness indicators according to reports of medical units of the establishments:

	Illness	Total	F
1	Cardiovascular diseases	1111	0.03
2	Respiratory system diseases	2659	0.08
3	Digestive system diseases	1586	0.05
4	Urinary and genital system diseases	1713	0.05
5	Nervous system diseases	1331	0.04
6	Mental diseases	1352	0.04
7	Endocrine system diseases	200	0.01
8	Hematological diseases	46	0.00
9	Sense organ diseases	1844	0.06
10	Infectious diseases	397	0.01
11	tuberculosis	1114	0.03
12	AIDS/ HIV	33	0.00
13	Bone-joint system and connective/conjunctive tissue diseases	281	0.01
14	Skin and venereal diseases	318	0.01
15	Self-inflicted wounds and traumas	1533	0.05
16	Dental diseases	17371	0.52
17	Acute surgical diseases	314	0.01
18	Oncological diseases	63	0.00
	Total	33266	1

The analysis of the above table reveals that otolaryngologic and ophthalmologic system diseases are not included in the division of organs into systems and they are united under the sense organs. Also, the said table does not enable us to determine how many were diagnosed supposing that one individual may suffer various diagnosis. Large percentage of pathologies is dedicated only to dental problems while the entire section of priority healthcare pathologies are represented in low percentage indicators. For example, indicator of mental diseases is only 4%, and the drug addiction problem is completely ignored.

Medical monitoring held after the events of September 2012 showed that drug addiction problem in Georgia's penitentiary system remains one of the main challenges. The presented table does not show statistical data for epilepsy sufferers. And herewith we shall note that no adequate and equivalent diagnostic has been made in the penitentiary system.

It is noteworthy that according to epidemiological research, number of individuals with mental health problems in European prisons amount to 32% while together with the drug addiction problem this figure exceeds 62 %.[35] Against this background it is hard to imagine that in 2012 the number of individuals with mental health problems in the Georgian penitentiary system, even primary cases, was 4 %. Also the level of bone and joint system pathologies is also low which against the backdrop of the tortures revealed is impossible; Indicator of illnesses of endocrine profile is low. It should be especially noted that pathology of thyroid gland practically which is stipulated in the guidelines and protocols of psychiatry at the time of mental and nervous diseases, is not diagnosed. In addition, as a result of monitoring held on the spot it was determined that inmates suffering from pancreatic diabetes often have glucometers themselves and themselves control its level while medical units suffer shortage of test strips necessary for a glucometer.

As a result of case analyses it was determined that often we encounter hypodiagnostic of patients which goes against the standards existed in the civil sector. The said cases shall be discussed in separate chapters according to categories.[36]

The program of examination and rehabilitation in accordance with the principles of the Istanbul Protocol is not accessible for victims of inhuman treatment and torture in the penitentiary system of Georgia.

On this background we deem it necessary to exercise stricter control on the quality of medical care in the penitentiary system.

CONFIDENTIALITY AND INFORMED CONSENT

Despite repeated recommendations of the Committee for the Prevention of Torture (CPT) of the Council of Europe a right of confidential conversation with a doctor is neglected in Georgia's penitentiary system. As inmates stated, they were deprived of right to talk openly about widespread torture and inhuman treatment since they were overheard and after claiming about facts of torture they were punished and subjected to even more severe inhuman treatment. In words of medical personnel, conversations with inmates were always attended by non-medical personnel. It shall be noted that even forensic medical examination in many establishments were carried out with confidentiality violations.

We could not find forms of informed consent in outpatient cards that according to order No 01-41/N[37] of the Minister of Labour, Health and Social Affairs of Georgia should be definitely administered. According to inmates' statements they are not informed in a timely manner about results of examination and they are not aware of prescriptions they were given.

Given the above, it is necessary to take relevant measures for protection of the principle of confidentiality[38] and access to information within the framework of the healthcare of the penitentiary system of Georgia. It is necessary to arrange medical room of the admission department so that a doctor is able to have an opportunity to conduct a confidential and adequate medical examination of an inmate. Majority of prisons in Georgia lack this infrastructure.

HUMANITARIAN SUPPORT – SPECIAL CATEGORIES

Juveniles

We shall note that department of juveniles in temporary detention isolators was moved to the territory of N8 establishment thus both national and international standards of separation of juveniles was violated. The procedure

35 Mental health in prisons: The World Health Organization, European regional department – improvement of mental health in prisons; agreed statement, Hague, Netherlands, November 18 -21, 1998.

36 Chapter "Humanitarian support".

37 Order No 01-41/N of August 15, 2011 issued by the Minister of Labour, Health and Social Affairs of Georgia on "Approval of Procedure for Administration of Outpatient Medical Documentation in Medical Institutions";

38 The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 3rd General Report, 1992, parag. 33,34.

of admission of juvenile and male prisoners is carried out in the same reception and the said procedure is done by the same personnel. In 2012 the Ministry of Corrections, Probation and legal Assistance of Georgia announced about "individual program of sentence-serving" for juveniles but unfortunately, this failed completely. It resulted in a riot of juveniles in juvenile establishment (N11). In November-December 2012 we interviewed 13 juveniles in N8 prison for juveniles who explained that the riot was caused by facts of inhuman and treatment and torture.

Case: M.B. 17 years-old, as he said he was detained by Tbilisi Didube-Chugureti police department on 28/11/2011. He describes a fact of physical assault in the police station where he passed out and "received scars on his arm and leg". On December 1st, 2011 he was taken to N8 prison. And later he describes facts of physical assault in juvenile prison: "when I was brought here, on December 1st, 2011, I was not held below and when I was brought up here on duty there was Giorgi Razmadze. First he brought me to showers to search me, forced me to squat, verbally assaulted me, saying that whatever they wanted they would get, they would do, that there lions …. Wolves, he verbally abused me and started to beat me, beating and kicking me; he beat me when I was undressed; he was beating me in my head and body for 5-6 minutes and kicking me, then he took me back to a cell. Beating was systematic on the part of this Razmadze. On his duty he beat me every day, he beat others as well, but most of all he beat me; he was on duty once every three days; he forced me to live through such days that… he used to beat me twice on his duty. He did not have any reason, he used to stand at the cell, put his ear to a door saying why we were making noise when no one made any noise, immediately he would look into and come into the cell and beat us in the cell; he did not beat anyone as much as he beat me. Razmadze threatened us that he would "put us on a bottle", that when we become adults they would take care of us there, visit us there…. In the middle of March, 2012 I was taken to Avchala facility. When I got there, I was brought to a room, there were Dimitri Kereselidze, Davit khukhia, Tamaz Jachvadze, Dimitri Kharabadze and of course, Ramaz Kakushadze, in room 3 or 4 of a newly-built building; they asked me why I was arrested, where did I get a weapon from; when I told them that I had found it, that probably irritated him and Kereselidze started beating me; Tamaz Jachvadze was also beating me; he started to beat me in the head and face, then I fell and they kicked me; I was really confused why I was being beaten; They were saying that nobody finds a weapon in a street like this and were beating me for 4-5 minutes, then told me to go and say nothing more otherwise this would seem nothing compared to what would inflict. I was kept there just for 3-4 months and I was not beaten any more. At every admission everyone was beaten up; surveillance camera were mounted in classrooms in school; for every smile detected by a camera children were taken down and beaten by Ramaz, Tamaz, Dimitri, Dimitri Kharabadze, Giorgi Khukhia. Gocha assaulted them verbally. They beat so that / in a way that no marks were left on the face. There was L. who said that he did not want to go to school and he was beaten so much that he was brought up by those on duty, his clothes were torn. As to psychologists, everyone said that one should not say anything that may cause problems, as they the psychologists would go and tell them. One of the reasons for a protest was that they made a parent to squat; but first of all it was beating, also that one should have swim in a pool in trousers and vests, as they said women passed there and it was indecent. And this was happening when workers that were building some small medical facility walked around in just shorts. Every parent was made to squat, and many of them stopped coming for a visit. Certain type of food was prohibited. Every newly-admitted inmate was beaten up, they were beating everyone…".

During the focused interview M. B. presented the following complaints: "sometimes I think that maybe the situation is the same and fear engulfs me, sometimes at night I dream that my family and friends are dead; that sometimes someone is following me, that I am falling somewhere. Many times I was woken at night by a dream, my heart was racing, now this ceased, I was always tense, now somehow we breathed freely. When they open a slot in a cell door to send in food immediately I inwardly flinch thinking that I have forgotten to stand up. Sometimes I remember these things. Then I could not sleep at all, now sleep is considerably better, there is no comparison..". The above shows presence of post-traumatic disorder and the person needs to be included in the psychological rehabilitation program.

We shall note that other juveniles also contacted us with similar stories and facts of repeated physical assault and inhuman treatment.

Given the above, at this stage and in order to document facts of torture and inhuman treatment in accordance with the principles of the Istanbul Protocol, as well as implementation of the treatment-rehabilitation program we consider intervention of multidisciplinary group of experts into adult establishments and juvenile prisons to be necessary.

At the same time it is necessary that juveniles at preliminary detention isolators were located on the territory of N11 establishment.

Women prisoners

We shall note that 5 women prisoners out of 7 interviewed describe facts of beating in the police department. One of them who applied to the prosecutor's office describes a fact of beating in Zugdidi N4 establishment after which she suffered feats later and also had symptoms of post-traumatic stress disorder. With regards to healthcare mental health issues are problematic in the mentioned establishment since there are no psychiatric department for women prisoners. Apart from this, only several non-medical social programs operated in 2012 volume of which did not satisfy requirements with respect to social adaptation of inmates of the establishment.

It is necessary to establish medical and psycho-social rehabilitation component through civil programs in women establishments as well as in other establishments.

Persons in preliminary detention isolators

The above-mentioned category is held in Kutaisi N2, Batumi N3, Zugdidi N4 and Tbilisi N8 establishments. Practically all interviewed inmates noted facts of severe ill-treatment, beating and in separate cases, torture, in these prisons. We have documented a well-known case of Malkhaz A.[39] who describes in details various facts of beating and torture, including psychological torture, in the Zugdidi police department, in various places near Zugdidi, in Zugdidi prison and later, in N8 prison as a result of which both psychological and physical problems have developed, especially notable are syndrome of chronic spinal ache, headache and pains in neck area, symptoms of post-traumatic stress disorder that is characteristic of practically all individuals that suffered torture and that we have witnessed in many cases.

Herewith we shall mention a problem that is extremely important given standards of torture prevention and which was acutely present in the penitentiary system of Georgia – violation of the right of access to independent examination - and, generally, medical forensic examination standards irrelevant to international standards of torture documentation and ineffective examination mechanisms, including irregular legislation.

Given the international standards of torture documentation, it is necessary to carry out judicial and medical analysis of legislation regulations and existing practices and introduce relevant amendments within relevant pieces of legislation.

Individuals with mental disorders and drug addiction problems in Georgia's penitentiary system

Despite being declared as a priority mental health issue remains one of the main challenges in the penitentiary system. Against the backdrop of torture and inhuman treatment, self-harming and aggressive reactions, statistical data on personality disorders have reached catastrophic levels. This is aggravated by co-presence of post-traumatic stress disorder and results of frequent traumatic injury in the head and spine area.

Results of the research carried out shows that completely inadequate method of treatment that was expressed in excessive prescription-consumption of psychotropic and painkiller medicines - was chosen as a way to overcome this problem. Namely, thousands of inmates take tens of pills of Diazepam, Zolomax, Optimal, Gabagamma and other similar medicines. Their number cannot be verified through reports of healthcare department of the penitentiary system. We shall note that psychiatric and behavioural problems caused by excessive and incorrect consumption of these medicines make it impossible to lower a medicine dose and that presents a dilemma to prison doctors and compels them, under threat of aggression or self-directed aggression prescribe and issue these medicines. According to lists

39 See the case of Malkhaz A. page 10

provided by penitentiary establishments, 1337 inmates take the above-mentioned medicines, but in reality this figure must be much higher.

Thus we are dealing with a narcological problem in the penitentiary system. We believe that implementation of systematic changes and in separate cases introduction of component of non-voluntary treatment is needed to solve this problem as often we are dealing with the combined narcological-psychiatric diagnosis that in separate cases makes it impossible to find an outpatient solution to this problem. Simultaneously, implementation of individual, individual-orientated rehabilitation projects that are based on multidisciplinary approach in the penitentiary system as well as with a purpose of starting of problem-overcoming for released prisoners.

Adequate diagnostics and treatment of persons suffering from psychosis register disorder, mental retardation and dementia remains a problem in the penitentiary system and that violates equivalent healthcare principles. In this regard, conclusions issued by the Psychiatric department of the Samkharauli Forensic National Bureau in some cases are problematic and inadequate.

As a result of monitoring and individual intervention a group of experts in almost every prison witnessed persons with severe psycho iatric disorder whose presence in the penitentiary system is impermissible. In three cases conclusions issued by the Samkharauli Forensic examination were inadequate. According to alternative expert evaluation, in two cases a schizophrenic diagnosis was made while in one case dementia was diagnosed. Another case: V. N. was found in N18 medical establishment, he remains in conditions of inadequate medical care. This person is diagnosed with epilepsy together with obvious mental retardation and behavioural violation. And in N18 establishment he is called "simulator" and is diagnosed of emotionally unstable personality disorder syndrome. We have met persons with severe mental problems in Geguti N14, Batumi N3, Kutaisi N2, Tbilisi N8 and women's N5 establishments.

Despite the fact that in October 2012 Georgia practically lost the case "Nachkepia against Georgia" in the European Court of Human Rights that concerned mentally ill woman prisoner under the article 3 (friendly settlement was reached) and it recognized necessity of implementation of psychiatric reform in the penitentiary system, the said reform still remains at the stage of a statement.

Given the above, as an immediate measure, we believe it necessary to separate a group of experts from civil healthcare sector and implementation of large-scale monitoring with the purpose of disclosure of other inmates with severe psychiatric pathologies and consecutive intervention.

Simultaneously, a plan of long-term reform shall be presented which will aim at development of strategy of joint approach towards standards of listed in illnesses for release from sentence and standards of medical forensic examination and psychiatry.

Particularly dangerous are infectious diseases, their management and prevention

Despite identification of this direction as a priority in the penitentiary system and given the loss of the case in the European Court for Human Rights or, taking into account the precedent, array of potentially losable cases, there was no progress noted in this direction in 2012. Namely, it concerns strategy of disclosure of virus hepatitis, its treatment and prevention, implementation of which though connected to expenses, is still necessary and not that hard to carry out. Screening and diagnostics for the above disease is not carried out upon admission of an inmate into the penitentiary system of Georgia, thereof there is no statistical data about cases of hepatitis-suffers upon entering the penitentiary system and those contracting the disease there.

As to AIDS/HIV the program is carried out partially and only some cases are diagnosed and treated. According to Table N2 (illness) of 2012 33 patients were involved in the above program.

Despite the fact that, the Tuberculosis program is carried out by the Tuberculosis disease Control Centre and progress was noted regarding timely disclosure. Both DOTS and DOTS+programs function, the said pathology remains a leading problem in the penitentiary system from the view of spread.

Herewith we should recall, that inhuman treatment and relevant conditions in Georgia's penitentiary system benefited to spread of especially dangerous infectious disease, and this has been done through artificially made overcrowding in so-called "quarantine" of N8 establishment and N1 establishment. According to narrative of inmates of this prison, disobedient inmates were intentionally introduced into sells with those suffering from infectious diseases or vice versa, an infected individual was introduced into a cell while the latter was warned not to speak about his disease. Inmates were threatened that they would be infected with/ untreatable disease. One of the former prisoners is undergoing rehabilitation in centre Emathy.

Case: Z.F. , 38 year-old, "I was arrested n August 12th, 2009 in front of the house. At the time of the arrest I was beaten up with a hand, there were many of them and I was taken to temporary detention isolator cell where I was held for 48 hours. Afterwards I was kept in the quarantine of N8 establishment. After 'breaking the quarantine' I was severely beaten up, there were many prison personnel, and I passed out during the beating. I do not remember for how long. Afterwards a corridor of about 40 people is erected and one has to pass through these corridors while being subjected to beatings. First 10 days I was in Gldani in a cell designed for 6 persons. In 2009, I clearly remember the day, at night I was taken away from the cell, prison personnel were about 20 people. I was severely beaten up with hands and using full water bottles. I do not remember how long I was out. A doctor was called for and this revived me. After this I was taken back to the cell. First 10 months that I was in Gldani 4 months I spent in so-called Kartzer and quarantine. I was kept in a Kartzer for 45 days, after that in quarantine and quarantine –breaking was always followed by beating. I do not exactly remember how many times I was beaten up. I used to hear voices of other beatings, inmates were beaten up in front of each other, and there was such stench from the Gldani dump and such smoke that it burnt our eyes. 10 months later I was transferred to Ortachala, to so-called Krit where a cell designed for 22 persons housed 32 persons and some had to sleep in turns. There were no basic sanitary conditions. In January 2011 I was beaten up and kicked in a director's office by the director himself. When I was taken back to the cell I suffered a "blood fountain", inmates started to shout. I was transferred to the hospital where I spent one month. While in hospital, I was taken to a morgue, where I was beaten up using bludgeon by numerous, I don't remember exactly how many, people. I have lost my conscience. Then I was left tied to a corpse for 2 hours. After that I was taken back to Krit hospital. For a fortnight I had a high temperature. I was transferred back to the hospital with the high temperature. For 5 months I was alone in a cell. I was treated of Tuberculosis. I was not allowed even a radio, as they said it broke too quickly. I was telling them that it was not their money to worry about. I paid for it. Then I was transferred to Ksani where three persons were in a cell. Two days after the transfer, prison personnel carrying long sticks and their mouths covered entered the cell and beat me up, they also poured 3 buckets of water at me. I lost 9 kilos in 9 days, started having high temperatures. I was taken to so-called rezbalnitsa. For a day I was taken to Khudadov where all tests were done. I was transferred back another day.

Then, at last I was transferred to Matrosov prison. Before there was a problem, Matrosov prison did not want to accept me. During my stay there I was once beaten, a prison guard repeatedly kicked me in the legs. Until released on 28.02.2013 I was in Matrosov prison. During my stay in prison, I became contracted Tuberculoses, my sight worsened, have got pain in my knees. I also have psychological problems. I served a sentence for a crime that I did not commit. In Krit inmates with Tuberculosis were warned by the prison administration when they entered a cell not to say that they had Tuberculosis otherwise they would pay for this. A guy was brought in our cell who said that he had Tuberculosis, and though he was warned he could not not say this to us".

It should be noted that taking into consideration damage statistics and data for assistance rendered, that was also provided by the penitentiary healthcare unit, it is hard to imagine how epidemiological control on spreading contagious diseases in the system could have been exercised when no relevant interventions were carried out in such a large number of cases of self-inflicted wounds, wounds or other types of open lesions; According to inmates, they often treated each other in the cell.

Table N4: Injuries

	Injuries	N2	N3	N4	N5	N6	N7	N8	N9	N11	N12	N1	N14	N15	N16	N17	N18	N19	Total	F
1	Indentation	388	42	3	156	102	0	180	6	7	0	49	2	124	14	109	27	18	1227	0.18
2	Bruise	45	23	2	12	78	0	65	8	0	2	26	2	207	2	19	30	12	533	0.08
3	Hypermia	34	4	0	11	0	0	19	0	0	2	4	0	1	0	4	8	0	87	0.01
4	Wound	813	37	35	268	618	0	383	4	72	0	450	83	640	82	130	716	90	4421	0.66
5	Fracture	0	0	0	2	0	4	0	0	0	0	1	1	9	3	11	6	0	37	0.01
6	Bruise/ swelling	32	9	3	58	13	0	20	0	0	0	4	6	86	6	20	10	4	271	0.04
7	General bruising of body	0	2	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3	0.00
8	Burn	6	2	3	12	0	0	3	0	0	0	0	3	1	0	1	12	0	43	0.01
9	Other (to indicate) one person drank bleach	1	4	0	21	0	0	5	0	0	0	2	1	1	5	12	2	2	56	1.00
	Total	1319	123	47	540	811	4	675	18	79	4	536	98	1069	112	306	811	126	6678	1.00

Table N5: Treatment

	Treatment according to trauma journal	N2	N3	N4	N5	N6	N7	N8	N9	N11	N12	N1	N14	N15	N16	N17	N18	N19	Total	F
1	Transfer to in-patient medical establishment indicate exact location	0	0	0	14	9	0	0	0	0	0	1	0	4	4	2	0	1	35	0.02
2	Treatment on the spot (indicate what kind)	0	0	0	75	4	0	0	1	2	0	0	0	28	4	42	0	6	165	0.08
3	Recommendations (e.i.antitetanus)	0	0	1	49	6	0	0	0	0	0	1	0	3	0	6	0	1	67	0.03
4	Surgical Treatment on the spot, wound stitching	0	0	2	34	28	0	0	0	0	0	12	6	7	8	15	0	3	115	0.05
5	Surgical treatment on the spot, wound treatment	8	0	4	93	55	1	2	2	3	1	18	4	37	21	34	1	29	313	0.15
6	Bandaging	250	0	3	39	22	1	0	0	3	0	15	1	15	23	26	0	11	409	0.19
7	Not indicated	0	37	15	12	94	0	190	9	0	0	122	21	169	21	67	218	3	978	0.47
8	Treatment refused	0	0	0	7	0	0	0	0	0	0	0	0	4	3	0	1	0	15	0.01
9	Admitted with stitches/no treatment required	0	0	0	4	0	0	0	0	0	0	0	0	2	0	0	0	0	6	0.00
	Total	258	37	25	330	218	2	192	12	8	1	169	32	269	84	192	220	54	2103	1

Based on the above data only in case of 31 % of cases of damage medical treatment was given, and that at the time when 66 % of these injuries were wounds.

Prisoners who are incompatible with long-term imprisonment

Herewith we note that as of September 2012 no practice of release of prisoners with untreatable diseases has been observed. A list of these diseases and a committee was formed on the basis of decrees by two ministers. The latter was assigned to reveal and release individuals with such diseases, however it did not function. The list of severe and untreatable diseases did not correspond to modern criteria and classifications of diagnostics. Accordingly, the number of inmates deceased in the penitentiary system reflects such attitude towards severely ill inmates.

Several cases of delay were recorded but we did not possess such statistics.

At the end of 2012 with the view of defusing the crisis situation at Georgian penitentiary system and based on humanitarian principles sentences of hundreds of individuals were delayed due to their severe illness diagnosis; Though we shall note that during the monitoring we have again recorded inmates in the penitentiary system, whose state of health has severely worsened. Given the above, it is necessary to establish control on this issue and send a group of experts to carry out monitoring in this direction.

Case: O. M., 49 years-old: He has been serving sentence in Geguti N14 establishment since July 2009. Numerous self-inflicted wounds were noted on his body, namely on front shoulder and stomach area. Increased anxiety and angst noted. He has a catheter inserted and urine in released in urine-collecting bag. The medical history says virus hepatitis C. In 2003 he was in a car accident and suffered a head injury. He was beaten up by prison guards several times. The diagnosis set by establishment doctors says: "post-cystotomy condition, urine is draining though catheter, sleep rhythm disorder, chronic Cholecystitis, depressive state." It should be noted that urine bag is so old that it cannot be changed. As he says he once already been released with postponement but was brought back for a new crime and the old sentence was added since he did not know that every year he should have passed examination at his own expenses and he did not have financial means for this. He also says that he contracted hepatitis C during imprisonment.

A.G. 46 years-old at N18 establishment, he is a wheelchair user (case is confidential), was interviewed in N18 establishment on 24.09.2012. According to a person, he is a victim of physical and psychological torture and was repeatedly tortured by personnel of N18 establishment. At the same time he is a very ill.

Diagnosis:

- Focal (partial) symptomatic (post-traumatic) epilepsy. Complex partial faints with secondary generalization (G40.2);
- Post-traumatic encephalopathy (result of intracranial injury, severe trauma of skull-brain – of subdural hematoma); Condition after evacuation of hematoma (T90.5);
- Consolidated fracture of neck of femur (right) with varus deformation and healed fracture of left acetabulum and healed break, pertrochanteric;
- Contracture of both knee joints;
- Chronic osteomielite (according to history);
- Infiltrative Tuberculosis of right lung (according to a history);
- Organic personal disorder (F 07.0).

It should be noted that on December 18th, 2012 joint order N 181/N01-72/N[40] issued by the Minister of Corrections, Probation and legal Affairs of Georgia and the Minister of Labour, Health and Social Affairs on formation of joint permanent committee that would determine regulations for release from sentence of inmates suffering from severe and untreatable diseases. Which is, of course, a step forward but the second article "function of the committee" and the sixth article "decision (conclusion) of the commission, implementation rule and appeal" violates both standards of international medical ethics and national healthcare legislation since according to such standards subject that carries out medical practice is prohibited from taking part in decision on punishment. Respectively, with this in mind, we believe it is necessary for the order to separate functions and to leave the Ministry of Corrections, Probation and Legal Assistance as the only issuer of legal acts. Given the above it is necessary to introduce relevant amendments within the Imprisonment Code, in particular article 39.

We shall note that by order N01-6/N dated February 15th, 2013 issued by the Minister of Labour, Health and Social Affairs of Georgia approved a list of those diseases that may become basis for release from sentence. The above order N01-6/N[41] is undoubtedly progressive taking into account modern classification it should be noted that the list of diseases needs to be once again reviewed by medical experts. For example, the chapter Psychiatry does not include list of all those mental conditions during which presence of an individual, especially of a juvenile, in prison is impermissible. For example, various grades of mental retardation, and it should not include diagnosis of chronic delirious disorder and so on. The mentioned issues, we believe, should be solved in the light of joint discussion of issues of medical-psychiatric and social examination.

Also notable is the order adopted by the Minister of Labour, Health and Social Affairs of Georgia on medical-social examination according to which status of a disable person is determined , based on the equivalence principle of healthcare services it is necessary to define a disable person status in prisons. Such precedent have already been registered in the case that the centre Empathy won in the European Court of Human Rights, that practically ended in favour of an applicant having reached friendly settlement with the state and within framework of which the state provided medical-social examination of a convict woman who had a convict status and who was awarded a disabled person status (case Nachkebia against Georgia).[42]

Deceased inmates

According forensic examination reports and information provided by the penitentiary healthcare system, in 2012, 67 inmates died in the penitentiary system of Georgia which is quite a high indicator. Moreover, average age of those deceased was 44 . Majority of them died before well-known events known as "the prison scandal". We shall note that in 2011 140 individuals died in penitentiary system while in 2010 this figure was 142.

Table N6

Place of death	Inmate number
Penitentiary establishments	10
N18 establishment	50
City hospitals	5
N19 establishment	2
N5 establishment	0
total	67

40 Joint order of the Ministry of Corrections, Probation and Legal Assistance and the Ministry of Health, Lbour and Social Affairs 181/№01-72/n of December 18, 2012 on setting up of Permanent Joint Commission diseases from responsibility of serving of their sentence and adoption of Regulations on rules of release of such convicts.

41 Order №01-6/n of February 15 of 2013 on approval of the list of grave and incurable diseases, which serves as basis for release of a person from responsibility of serving sentence.

42 Nachkepia against Georgia http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-114141

Number of those deceased in penitentiary establishments indicates that the principle of access to doctor and equivalence healthcare is violated in the penitentiary system of Georgia.

A reason for death was studied on the basis of expert conclusions and diagnosis provided by the penitentiary healthcare system.

	First 6 months	Another 6 months
Cause of death	**Inmate number N**	**Inmate number N**
	50	17
Cardiovascular collapse	5	9
Liver failure	5	
Tumor intoxication (stage 4)	6	2
Brain edema	2	
Cardiovascular and respiratory failure due to tuberculosis	13	
Respiratory failure developed as a result of Tuberculosis against the AIDS background	1	
Cholelithic peritonitis	1	
Duodenal ulcer perforation peritonitis	1	
peritonitis that developed after intestinal resection due to suture failure	1	
Hemorrhage developed as a result of craniocerebral trauma	1	
Tuberculosis (intoxication)	1	2
Bleeding from varicose veins of the esophagus and stomach (liver cirrhosis complications)	1	
Lung-heart failure	2	
Bleeding (pulmonary tuberculosis)	1	
Respiratory failure as a result of AIDS	1	
Tuberculous meningoencephalitis	1	
Acute bleeding from a gastric ulcer	1	
Cardiomyocytes in acute ischemic injury	1	
Respiratory and cardiovascular collapse	1	
Multiple organ failure		1
Respiratory failure	1	
Neirosipilisit caused by cerebral edema	1	
Adenocarcinoma complicated with peritonitis, bronchopneumonia, purulent pyelonephritis, interstitial myocarditis (4th stage)		1
Hemorrhagic shock (Suicide)	1	
The mechanical asphyxia (Suicide)	1	2
	50	17

2012

The above table shows that inmates with incurable diseases (malign cancer stage 4, cyrosis of liver, Tuberculosis with cardiovascular and respiratory failure, meningoencephalitis) that were subject to release or/and postponement, were still in prisons.

It is also clear that in case of one prisoner who died as a result of hemorrhage developed as a result of craniocerebral trauma we cannot rule out a fact of torture.

Case: M.M. According to examination report, a cause of death was stated: "immediate cause of death is a diffusive hemorrhage in cavity of the skull and medullary substance, swelling of medullary substance, brain stem compression as a result of blunt trauma.

The examination of the body revealed the following injuries received during life: hemorrhage near ridge - temporal area in the soft tissue; dark reddish color hematoma of gelatin consistency in the temporal region of the brain in skull cavity to the left of the ridge between the skull valve and the hard casings; focal and diffuse hemorrhages in soft tissue and in the brain substance, swelling of medullary substance, brain stem swelling and compression. The said injuries were developed immediately before the death as a result of use of some blunt object; when examining people these injuries are considered to be severely hazardous to life level and have direct causal link with the – death result. The during-life injury – upper pole hemorrhage near the spleen diaphragm surface, was also identified on the body. This injury was developed immediately before the death as a result of action of a certain blunt object. When examining living people, it is ascertained to belong to injuries of low level without impediment to health and have in no causal link with the – death result …". The state of prisoner that is scarcely represented in the conclusion reveals that he was transferred from establishment N17 to surgical department of medical establishment for inmates and convicts where he passed away three days later. A small note is also included in the case: on February 5th, 10 minutes ago he fell in the bathroom.

It shall be noted that four people died as a result of a suicide. One of them E.N., 42 years-old, was transferred to establishment N18 from prison N8 and 10 days later was found in the department of infectious diseases hung on a sheet. Diagnosis stated the following: hallucination-paranoidal syndrome. Another person - T.K., 28 years-old, was found in the cell of establishment N6 hung on a sheet. We shall note that in both cases information is very scarce in examinations reports and does not contain necessary data. We shall note that in both cases the case history does not contain ambulatory medical cards of establishments N8 and N6 that as a minimum raises doubts over inadequate medical care in the mentioned establishments. Suicide was also noted in the case of O.M., 35 years-old. The examination report says only that the body was found in a cell toilet in establishment N16. Neither this case discussed ambulatory medical card on the mentioned individual which also indicates to inadequate medical care.

4th case: D., 27 years, was transferred from Kutaisi establishment N2 to establishment N18 and he died one day later. As it turns out, he was brought to establishment N18 with a cut wound in a throat area, was settled in a therapeutic department where he tore off his stitching and died of blood loss. According to a medical card of N18 establishment he was diagnosed with emotionally unstable personal disorder, was prone to autotraumas, depressive condition, cut wound of throat. The examination report states hemorrhagic shock as a cause of death.

The expert report does not identify opportunity for detailed analysis of the said case, though correctness of the presented diagnosis is doubted. As a minimum the level of depression was not assessed adequately, neither relevant explanations have been presented as to how the prisoner died nor there has been any indication as to when and what quantity of blood he lost, etc.

Notorious case: M.B., 21 years-old, who died in establishment N15 in Ksani. According to forensic report, the cause of death was cardiovascular collapse developed after microcardiac infarction, against the background of severe bronchitis (pan-bronchitis), broncho-pneumonia. The expert report also describes injuries received during life that, according to the same report, have no causal link with the death. Though the case does not feature either medical card of the above-mentioned individual or circumstances of the death are described. Only the situation around the death was presented. It only shows epicris of the death according to which the inmate was brought in unconscious condition, with no pulse and breath, no external injuries were noted. Therefore, it is unknown how and when he received injuries described in

the expert report. Also the mentioned report does not say whether diagnosis of "acute bronchitis" mentioned in the report was diagnosed in his lifetime and this as a minimum indicates to inadequate medical care.

It should be additionally mentioned, that while studying expert conclusions on bodies of 19 deceased, injuries or/and injury (17 out of them were received at prison establishments) were noted which could not have become a cause of death, though expert reports does not even mention their origin.

TORTURE, INHUMAN TREATMENT AND TORTURE PREVENTION STANDARDS

We shall note that in 2011-2012, the penitentiary system was particularly inaccessible and closed to civil intervention that promoted development of wide practice of torture and inhuman treatment in the system. Penitentiary system was governed through torture, methods of inhuman treatment and excessive use of psychotropic drugs that supported formation of drug addiction and made the majority of prison population more manageable. And with video and photo documentation of especially cruel and degrading situations representatives of the administration blackmailed tortured individuals and that was a widespread method of torturing to achieve total control over an individual, break his/her moral integrity. Among majority of people that passed through such torture, especially in closed environments, and given the dead-end of situation, development of severe stress and various behavioural disorders has been observed. The mentioned disorders compile the range of both self-aggressive actions – self-harm, suicide, para-suicide, as well as aggressive behaviour and psychosis register disorders as well. The above-mentioned nervous and mental disorders are broadly developed against the background of organic damage to a brain and other multi-traumatic injuries that result in development of disorder complex and accordingly, needs implementation of complex, lengthy and multi-profile approach to treatment and habilitation. It shall be particularly noted that in this situation especially vulnerable persons are affected the most – people with already existing mental pathologies or/and defects that even without this have difficulties with adaptation and becoming accustomed with certain conditional regimes. We shall note that such vulnerable groups were subjected to torture and insult in the penitentiary system of Georgia, as an example we can cite the case of N.V. During the first imprisonment as a juvenile the latter was diagnosed at joint forensic psychiatric examination carried out by expert group of Empathy centre with the following: averagely expressed mental retardation (imbecility) with significant behavioural disorders F 71.1 that requires attention and treatment measures; Epilepsy with frequent fainting G.40; with a tendency to develop epistatus G.41. Now he, in his own words, has been arrested for a year and two months. He was tortured in the Kutaisi prison. According to the inmate, a hot iron piece was placed on his tight thigh and upper right extremities, he was thrown down the stairs and his head was dunk in a basin allegedly for not paying for the procedural agreement. In winter months of 2012, he does not remember exact day and month, he was tortured in Kutaisi prison. He was beaten up in Terjola police as well. As the prisoner said, he felt so bad in the prison that he tried to commit suicide thrice but was rescued, he said also that he was hearing voices, sometimes he thought he was talking to someone, sometimes he was hearing someone telling him to have some tea, or to cut themselves or sew themselves (he had been sewn before in the Kutaisi prison. He could not sleep at night just managing to fall asleep in the morning, he recalled everything he underwent. As he said other inmates were also terribly tortured in Kutaisi. In his words he could not control himself, was nervous and wanted to commit suicide, wanted to take his eye out, he did not have Karbamazepam, and diazepam did not wark. He said that his doctor Ia Gelovani in Khoni used to give him Triptazin, Azalepin, Ciclodol, Finlepsyn. In his words he should be given social benefit or pension". Based on impartial data he has the following:

- Multiple scars (self-harm) on front surface of a stomach.
- Scar (self-harm) on both upper extremities
- Scar on a back, near left shoulder blade

Scars on right thigh, front surface of a right thigh and lateral surface of upper right extremity were left as a result of burn in N18 establishment was diagnosed inadequately: diagnose was made – emotionally unstable personological disorder with tendency to autotraumas.

In accordance with the Istanbul Protocol expert group interviewed and carried out primary medical examination of 113 inmates. As a result of study it as revealed that, 100 people out of 113 noted use of methods of systematic physical torture both in the penitentiary system and police. Methods used were revealed: numerous facts of beating using blunt objects, including, hands, feasts, legs, bludgeon, putting an iron hat on a head and then beating, tying to a corpse in a morgue and then beating, sexual threats, undressing and putting in a offensive pose, non-physiological position, inflicting a burn with a red hot iron, burning with a cigarette. Psychological methods named: placing in inhuman conditions, isolation-deprivation, making unreal choice between cooperation under threat, inadequate medical care in prison conditions, threats of sexual abuse.

We have studied data of injury description journals of the penitentiary establishments. The said injuries are not described in accordance with international standards of torture prevention and documentation in any of the prisons, it does not contain information on where an inmate received the injury, in what situation, from whom, why, how and what were physical and psychological consequences. It is noteworthy that as a result of interviewing both inmates and medical personnel it appears that the medical personnel of the penitentiary did not conduct primary medical examination protecting confidentiality. For example, according to one juvenile in a juvenile prison of N8 prison, "when we were beaten up a doctor was sitting nearby and has written that he has not identified any injuries".

Statistical analysis of reports presented by the penitentiary system:

	Injuries	N2	N3	N4	N5	N6	N7	N8	N9	N11	N12	N1	N14	N15	N16	N17	N18	N19	Total	F
1	Indentation	388	42	3	156	102	0	180	6	7	0	49	2	124	14	109	27	18	1227	0.18
2	Bruise	45	23	2	12	78	0	65	8	0	2	26	2	207	2	19	30	12	533	0.08
3	Hypermia	34	4	0	11	0	0	19	0	0	2	4	0	1	0	4	8	0	87	0.01
4	Wound	813	37	35	268	618	0	383	4	72	0	450	83	640	82	130	716	90	4421	0.66
5	Fracture	0	0	0	2	0	4	0	0	0	0	1	1	9	3	11	6	0	37	0.01
6	Bruise/ swelling	32	9	3	58	13	0	20	0	0	0	4	6	86	6	20	10	4	271	0.04
7	General bruising of body	0	2	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3	0.00
8	Burn	6	2	3	12	0	0	3	0	0	0	0	3	1	0	1	12	0	43	0.01
9	Other (to indicate) one person drank bleach	1	4	0	21	0	0	5	0	0	0	2	1	1	5	12	2	2	56	0.01
	Total	1319	123	47	540	811	4	675	18	79	4	536	98	1069	112	306	811	126	6678	1.00

Injury localization according to trauma journal

	Localization	N2	N3	N4	N5	N6	N7	N8	N9	N11	N12	N1	N14	N15	N16	N17	N18	N19	Total	F
1	Cranial area	36	4	6	6	11	0	13	2	0	0	4	3	36	4	15	21	1	162	0.02
2	Face area	202	23	12	31	127	0	80	15	0	1	56	20	239	10	58	78	15	967	0.14
3	Neck	62	18	8	13	44	0	57	2	0	1	44	12	54	9	16	60	9	409	0.06

4	Chest area	37	5	4	3	6	0	7	0	0	0	5	1	27	2	10	15	4	126	0.02
5	Stomach area	115	18	1	31	98	0	80	0	0	0	40	23	99	4	9	121	7	646	0.10
6	Back area	53	8	4	12	15	0	6	0	0	0	5	1	72	3	37	14	1	231	0.03
7	Upper extremities	742	43	9	370	472	4	397	1	79	0	375	35	514	69	153	473	89	3825	0.57
8	lower extremities	75	8	2	60	49	0	22	0	0	0	5	3	40	8	15	32	0	319	0.05
9	Genitals	0	0	0	4	0	0	5	0	0	0	0	0	0	1	0	22	0	32	0.00
10	Unspecified area	0	0	0	9	0	0	6	0	0	0	0	0	0	0	0	1	0	16	0.00
	Total	1322	127	46	539	822	4	673	20	79	2	534	98	1081	110	313	837	126	6733	1.00

	Treatment according to trauma journal	N2	N3	N4	N5	N6	N7	N8	N9	N11	N12	N1	N14	N15	N16	N17	N18	N19	Total	F
1	Transfer to in-patient medical establish-ment indicate exact location	0	0	0	14	9	0	0	0	0	0	1	0	4	4	2	0	1	35	0.02
2	Treatment on the spot (indicate what kind)	0	0	0	75	4	0	0	1	2	0	0	0	28	4	42	0	6	165	0.08
3	Recommendations (e.i.antitetanus)	0	0	1	49	6	0	0	0	0	0	1	0	3	0	6	0	1	67	0.03
4	Surgical Treatment on the spot, wound stitching	0	0	2	34	28	0	0	0	0	0	12	6	7	8	15	0	3	115	0.05
5	Surgical treatment on the spot, wound treatment	8	0	4	93	55	1	2	2	3	1	18	4	37	21	34	1	29	313	0.15
6	Bandaging	250	0	3	39	22	1	0	0	3	0	15	1	15	23	26	0	11	409	0.19
7	Not indicated	0	37	15	12	94	0	190	9	0	0	122	21	169	21	67	218	3	978	0.47
8	Treatment refused	0	0	0	7	0	0	0	0	0	0	0	0	4	3	0	1	0	15	0.01
9	Admitted with stitches/no treatment required	0	0	0	4	0	0	0	0	0	0	0	0	2	0	0	0	0	6	0.00
	Total	258	37	25	330	218	2	192	12	8	1	169	32	269	84	192	220	54	2103	1

	Injury character	N2	N3	N4	N5	N6	N7	N8	N9	N11	N12	N1	N14	N15	N16	N17	N18	N19	Total	F
1	Self-harm	250	26	10	100	123	1	141	3	4	0	115	17	108	38	37	185	14	1172	0.61
2	Common trauma	532	16	8	99	32	0	36	8	12	0	18	10	68	14	67	9	3	453	0.24
3	Third person in-flicted	26	7	0	0	0	0	13	0	0	1	6	5	0	0	1	1	0	60	0.03
4	Not indicated	7	3	3	8	41	0	8	2	0	0	0	2	61	4	21	21	24	205	0.11
5	Other	0	0	3	3	7	0	0	0	0	0	5	0	2	2	3	3	0	28	0.01
	Total	336	52	24	210	203	1	198	13	16	1	144	34	239	58	129	219	41	1918	1.00

2012

Analysis of the above tables and study of the situation on the spot shows that instead of torture prevention standards and documentation of facts in the penitentiary system there was encouragement to conceal of such facts and inhuman treatment.

Accordingly, for the purpose of prevention of such situations, in the light of torture prevention and documentation and based on obligations to effective and quick investigation it is recommended to review legislative regulations, Imprisonment Code and Criminal Procedure Code and orders and resolutions on forensic examination. When documenting the Istanbul Protocol principles[43] and relevant annexes, including video and audio documentation principles, should be used.

It is recommended to support development of independent forensic-medical and forensic –psychiatric examination. Namely, an amendment was introduced into the order N385 of December 17, 2010 of the Georgian Government "on approval of regulations and licencing for medical activities and in-patient institutions", according to which in order to acquire license for forensic medical examination a condition - practically impossible to meet by independent forensic centre was introduced into the relevant normative act by the Ministry of Labour, Health and Social Affairs - to have its own morgue and appropriate equipment. The amendment into the said order was introduced in the period of preparation of the report.

It is necessary to define terms for the conduct of a forensic examination, methodology and complex approach to documentation of torture in the Georgian Criminal Code

Also, victim rights shall be defined in Georgian Criminal Code. According to the current code a victim does not have a right to access investigation materials, even a conclusion on his examination report which, on the other hand, represents a violation of the law "on patient rights".

PROFESSIONAL INDEPENDENCE AND COMPETENCE

Based on international torture prevention standards, which is also reflected in healthcare legislation of Georgia: the Law of Georgia on healthcare protection, the Law of Georgia on medical activity, prohibits doctors from participating in any activities which is not aimed to care for patient's health. Accordingly, participation in any activities related to punishment procedures, as well as attending the acts of torture, providing any assistance or/and tacit consent is prohibited.

As a result of monitoring, it was identified that in some prisons when admitting an inmate into the solitary confinement cell a doctor still issues a verbal consent or/ and signs medical examination certificate. Such facts were disclosed in N17, N9, N6, N15, N16 establishments.

At the same time, by international standards, prison doctors belong to "doctors in risk zone", that need special protection so that they do not become objects of pressure and persecution-harassment. Accordingly, it is necessary to place higher burden of responsibility of medical personal through legislative regulations based on torture prevention standards. On the other hand, it is necessary to create protection mechanisms for the purpose of creating guarantees for doctors working in "risk zones". Such category includes not only prison doctors, but also experts, doctors working on rehabilitation and other risk groups.

Simultaneously, according to the Declaration of Helsinki of the World Medical Association (VMA) (2003-2007) it is necessary to widely implement the Istanbul Protocol principles of torture documentation identification of facts of torture to become mandatory, if such facts are known to doctor. A doctor to be given the right to derogate the confidentiality principle at his/her own discretion, of course, taking into consideration assessment of risks facing the patient.

43 The Istanbul Protocol - The **Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** (United Nations; New York and Geneva, 2001 - 2004).

With regard to professional competence, more or less lack of awareness regarding healthcare regulation normative acts and laws currently in force in Georgia was revealed in the majority of establishments of the penitentiary system of Georgia, except for N5 women establishment. The issue of awareness of standards of the medical ethics, playing the decisive role in raising of interpersonal conflicts between a doctor and a patient, is also very problematic. A problem arises also with attitude of medical personnel towards disclosure, documentation, diagnostics and treatment-rehabilitation of facts of torture and level of their awareness of this in the majority of establishments. It needs to be noted that even after the events when inmates openly and without concealment stated about torture and presented various healthcare-related complaints prison doctors still failed to record such information in medical cards. To our question why inmates' stories and complaints were not recorded in the medical history, we were told at one of the establishments that" such issues do not concern doctors". The level of qualification when it comes to mental health issues is very low among penitentiary system doctors, including psychiatrists. The above is confirmed by results of the monitoring of those inmates suffering from psychosis that were discovered by us in the penitentiary system and who before were diagnosed with nervous and other disorders of non-psychosis type. During the monitoring we discovered 9 such inmates.

On this background, we believe, that necessity of transfer of the penitentiary healthcare system of Georgia to civil sector is of utmost importance. Also it is very important to urgently plan and implement a set of professional trainings within the complex module program to acquaint prison doctors with torture prevention, documentation, as well as ethical and international standards of penitentiary healthcare system.

2012

Monitoring of agencies subordinated to the Georgian Interior Ministry

POLICE

During the monitoring held in police stations and departments journals of registration of detained persons and persons transferred to temporary detention isolators were examined. We shall note that in some of these cases, the above-mentioned journals were not appropriately completed. As an example we may cite certain journals that do not provide information on the fate of a detained, at what time exactly the person was detained, in some cases numeration, time of incarceration into the isolator are mixed up , etc.

As a result of the monitoring conducted in the first half of the year 2012 it became apparent that two registry books, instead of one, were kept in Tkibuli District Department of the Interior Ministry. Based on the above, on September 13th, 2012 an address and documentation depicting violations recorded by the members of the Prevention Group was sent to the Head of the General Inspections of the Ministry of Interior by Public Defender's Office. According to the reply received from the General Inspection of the Ministry of Interior on March 25th, 2013, we were informed that on September 13th, 2012, on the basis of the letter sent from Public Defender's Office, official inspections were carried out. The result was that a recommendation letter was used towards 10 workers of the Interior Ministry, 5 workers were subjected to disciplinary measure-reprimand, while 7 workers were given warning.

During the inspection conducted in the second half of 2012 violations were again recorded in some police stations and departments, on reaction to whicha letter was sent from Public Defender's Office addressed to the General Inspections of the Interior Ministry.

According to answer N533862, an internal inspection was currently under way in the General Inspection of the Interior Ministry, results of which will be additionally communicated to us.

As a result of the winter monitoring it was revealed that the large part of the citizens being arrested under Article 45 of the Georgian Code of Administrative Offences, were not found guilty in drug consumption. In December 2012 arrest of persons under Article 45 of the Georgian Code of Administrative Offences in regions surpassed all reasonableness. When studying registry journals of persons detained in the regions it seems that majority of men living in the regions were detained on the ground of the aforementioned article. We shall note that according to the second section of Article 45 of the Georgian Code of Administrative Offences, "a policeman to present a person toward whom there is a grounded doubt of illegal acquisition or keeping small amount of drugs or their use without doctor's prescription to a suitably authorized by the Georgian Interior Ministry". As the conducted monitoring revealed "grounded doubt", in most cases, is not justified and does not even exist. According to policemen's verbal explanations, the above practice represents prevention of the drug crime. Though, in our opinion, it may be also assessed as a violation of Article 5

of Convention for the Protection of Human Rights and Fundamental Freedoms (Right to liberty and security). The Special Preventive Group believes that detention of citizens on the basis of article 45 of the GCAO should be more well founded.

An interesting reality has been observed in Samtskhe-Javakheti Region, namely Akhalkalaki where, after inspection of registry journals for detained persons and persons transferred to temporary detention isolators it was determined that workers of the Akhalkalaki police were detaining everybody who moved around the town having consumed alcohol in accordance with the administrative regulations, notwithstanding whether the person committed an act prohibited by the Georgian legislation and administratively punishable acts or not. After examination of the situation it was determined that persons having consumed alcohol, were delivered to the Akhalkalaki police department where they were detained for several hours, sometimes, even till morning and then released. It shall be hereby noted that persons detained in such a manner were not put in temporary detention isolators of Akhalkalaki and so far it is not clear what status were used to detain them in the police building.

RIGHT TO A TELEPHONE NOTIFICATION

The Special Preventive Group often met with detained who stated that after the detention they were not allowed to contact their families. CPT gave a positive assessment to a fact that the legislation stipulates a right of a detained to inform relatives and family about the detention, though noting that in practice this right is not suitably implemented.

In accordance with the paragraph 10 of the article 38 of the Criminal Procedure of Georgia, "upon detention or in case of arrest an accused has a right to communicate a fact of his/her detention or arrest and his/her location, state, as well as to inform his/her creditor, other physical or legal person towards whom he/she has legal obligations". Despite the law requirements, often investigation does not allow accused to exercise their right to a phone call.

Accused Ivane P. addressed Public Defender with a statement where he noted that upon detention he demanded to inform his family members about his detention which he was denied by an investigator on the grounds that he himself would inform Ivane P.'s family about his detention.

Recommendations to the Ministry of Interior of Georgia

- **To ensure implementation of the right stipulated in the part 10 of Article 38 of the Georgian Criminal Procedural Code in case of detention or arrest.**

TREATMENT

Police has an essential role in the state with the view of ensuring of public order and security. It shall perform statutory obligations in order to avert actions violating the legislation. Additionally, while fulfilling their obligations workers of law enforcement agencies shall respect and protect human dignity and protect human rights. Effectiveness of the police activity in a democratic state depends on the level of human right protection. Every worker of the police is responsible for his/her actions or inaction. At the same time, police leadership is responsible for conformity with human right standards.

Forms, methods and means of conduct of policeman activities are defined in Georgian legislation.

According to Georgian law "On police", while implementing its tasks, it undertakes to strictly protect legal rights of a citizen when fulfilling its duty, to render relevant assistance to other agencies of the state and citizens within limits of its competence, strictly follow work ethic in relations to citizens.

Unfortunately, in number of cases policemen themselves violate human rights.

In accordance with the body of principles for the protection of all persons under any for of detention or imprisonment, [44]"all persons under any form of detention or imprisonment shall be treated n a humane manner and with respect for the inherent dignity of the human person".

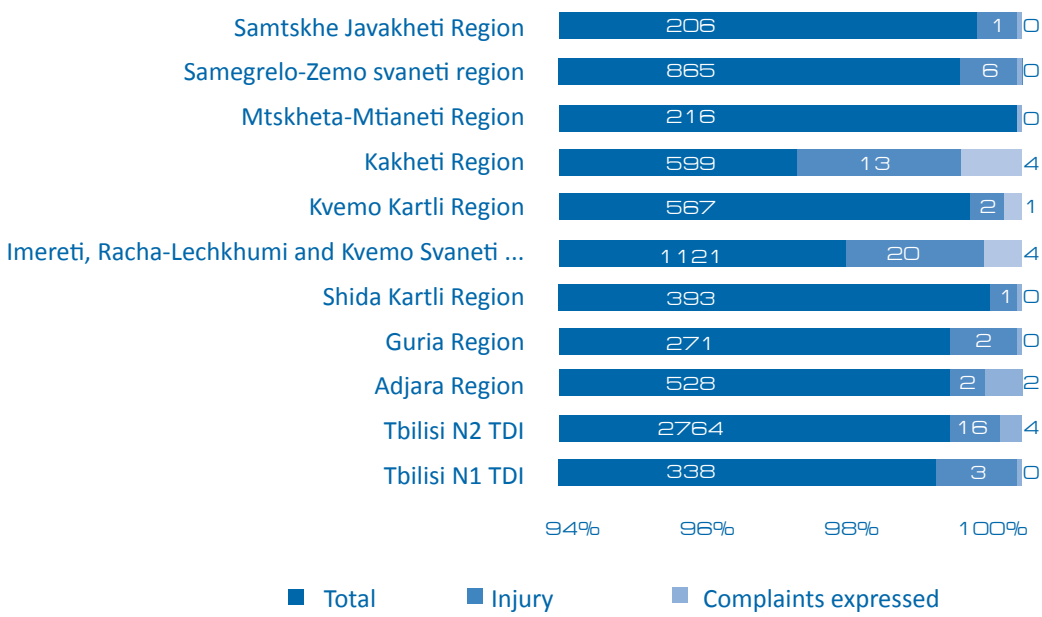
During the monitoring the Special preventive Group paid particular attention to the issue of treatment of those detained on the part of policemen both during and after the detention.

The Special Preventive Group studied reports of external injuries to those detained in every temporary detention isolators. In several cases, a person did not complain against the police though noted that injuries were received during the detention. Also, there were cases when level and gravity of described injuries prompted us to think that the person was subjected to ill-treatment. There were also cases when suspicious injuries were noted on several persons detained together. Some of them noted that injuries were received prior to the detention.

During the reporting period, Public Defender was addressed by citizens that referred to ill-treatment on the part of the police during detention. Each of these facts has been sent to the Chief Prosecutor's Office and investigation is ongoing.

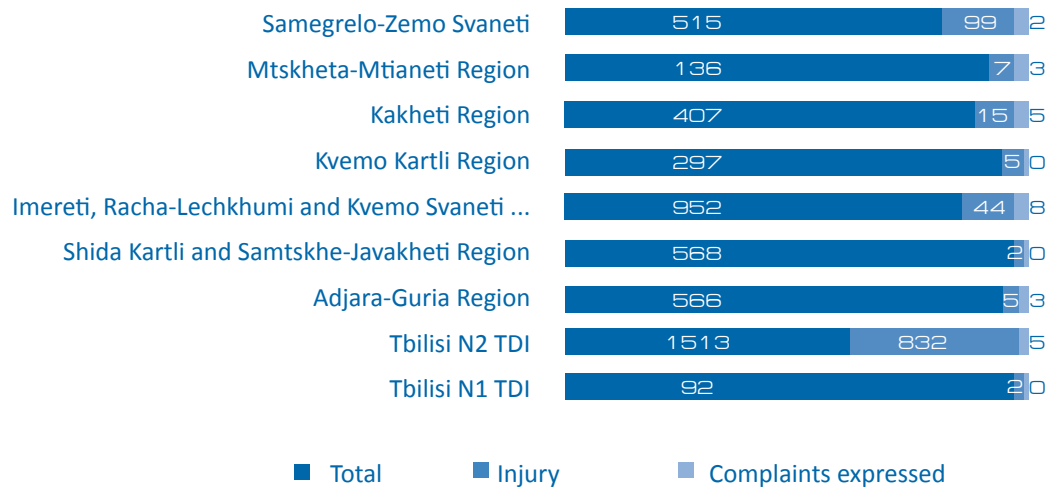
Pursuant to reply received from the Ministry of Interior of Georgia, in the first half of 2012, 7868 persons were settled in temporary detention isolators operating on the territory of Georgia. Injuries were noted in case of 54 persons and 16 out of them complained against the police. In the second half of 2012, 5106 persons were settled in temporary detention isolators out of which 1010 persons had injuries, while 26 of them lodged complaints against the police.

The first half of 2012

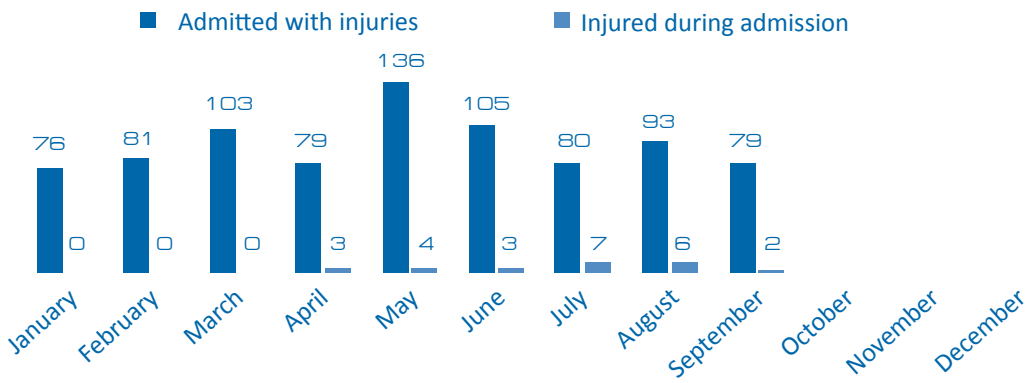


44 Adopted by 43/173 resolution of December 9, 1988 of the General Assembly

The second half of 2012



Prisoners with injuries admitted to penitentiary establishments in 2012



Case of Zurab L.

On June 8th, 2012 a citizen applied to Public Defender with a statement in which she demanded from Public Defender Office to study a fact of beating of her husband Zurab L. by policemen during detention. On June 11th, 2012 representative of Public Defender met and interviewed accused Zurab L. who was placed in establishment N4 of the penitentiary system. The inmate noted that on June 3rd, 2012 he was walking on a street in the town of Senaki when an unknown man dressed in black clothes got him by the neck, started verbally abusing and beating him while calling for other persons. In the words of the inmate, four persons approached him, knocked him down and started beating him, after which they put handcuffs on him, pushed him into a car and took him to the Senaki police. As the accused remarked the fact of his beating in the street was witnessed by members of his family and neighbors. As he explained while taking from the place of detention to the police building policemen continued to physically as well as verbally assault him.

According to Zurab L., while being in the temporary detention isolator he became unwell several times and emergency medical service was called four times. And on June 5th, 2012 the detained was transferred to Senaki district hospital.

The report of external examination of the detained in the Senaki temporary detention isolator states that on June 4th, 2012, at the moment of admission to the isolator, bruises were noted on Zurab L.'s right eye area of as well as left kidney and both knee areas, while bruising and swelling was marked on the left ankle area.

According to medical certificate N187 dated June 6th, 2012, drawn up by a chief doctor of penitentiary establishment N4, Zurab L. suffered bruises in both eye-sockets, also bruises and indentations – in the left part of the forehead, indentation – in the right shoulder blade area, abrasions - near both wrists, bruises – on upper part of buttocks.

On June 11th, 2012 during the visit of the representative of Public Defender to Zurab L. external examination of the inmate still revealed various injuries: two bumps on the head, excoriations – on temples, yellowish bruises – on the left shoulder and both eye-sockets, excoriations and bruises – on both wrists, bruises – on both knees and kidney area, bruises - in the area of both ankles, long abrasion – on the right elbow, bruise – in the left shoulder blade area.

Based on the above, on June 13th, 2012 Public Defender addressed to the Chief Prosecutor of Georgia with a demand to start a preliminary investigation. He also provided the Prosecutor with a recommendation to ensure conduction of forensic medical examination in the shortest possible period to timely determine nature, degree and age of injuries present on the inmate's body.

Based on the above, on June 13th, 2012 Public Defender applied to the Chief Prosecutor of Georgia with a demand to start a preliminary investigation. He also provided the Prosecutor with a recommendation to ensure the conduct of forensic medical examination in the shortest possible period to timely determine nature, degree and age of injuries identified on the inmate's body.

According to the answer N13/26744 received from Georgia's Chief Prosecutor's Office, investigation was commenced by Senaki district prosecutor's office on the case of N068060612801 on the fact of exceeding official powers by workers of the Senaki district department of the Georgian Interior Ministry, the crime stipulated in the first paragaph of the article 333 of the Georgian Criminal Code.

Case of Giorgi Q.

On July 4th, 2012, representative of the Pubic Defender met and interviewed citizen Giorgi Q., placed in the Zugdidi Multi-profile Clinic Respublica. According to the latter, on July 3rd, 2012 he, together with his friends, was in the village of Anaklia, in the vicinity of the summer camp territory, where they drank beer and had already decided to stay for a night there.

According to Girogi Q., in the night hours they were approached by a police car and three people came out of it. One of the policemen demanded car documents and a driving license. After submitting the papers Giorgi Q. was asked to pass an alco-test after which he and his friends were put in the police car and taken to the Anaklia police station. According to Giorgi Q. they were placed in one room. Giorgi Q. asked policemen not to impose an administrative fee on him since he already had an ongoing administrative penalty. Because of this the policemen assaulted him physically and verbally, namely, slapped him in left eyebrow area, as a result of which G. Q. felt disorientated. As Giorgi Q. recalls, policemen also psychically and verbally assaulted his friends as well.

As Giorgi Q. says after this fact he had difficulties with speech. According to notes made in a medical card, when admitted to the medical unit he was in a neurotic state, he also had abrasive wounds in the head and chest areas. He was diagnosed with a concussion.

On July 9th, 2012 Public Defender applied to the Chief Prosecutor with a proposal to start an investigation. Pursuant to reply N13/31471 received from Chief Prosecutor's Office, an investigation has been launched on the fact of beating the citizen Giorgi Q. case N004404712002.

Temporary Detention Isolator (TDI) under the subordination of Human Rights Protection and Monitoring Main Division of the Administration of the Ministry of Internal Affairs of Georgia

TREATMENT

During the monitoring, finding that has to be considered as certainly positive, is that none of the detainees in temporary detention has expressed any complaints as regards the detention facility staff, concerning any sort of inappropriate treatment. The same can be said of released prisoners from other prisons.

It is regrettable, that during 2012, some instances of inappropriate behaviour by the detention facility staff were identified and revealed. The Office of Public Defender received appeals in which detained individuals raised concerns and drew attention to inappropriate conduct, behaviour and treatment of prisoners by Temporary Detention Isolator staff. This was especially seen with regards to individuals with different political views, who had been taking part in opposition activities. The same was identified with regards to persons detained after 26 May 2011, who subsequently were put into temporary detention isolators. (Further see Public Defender Parliamentary Report, 2011).

The Cases of Manuchar A., Irakli C., and Irakli D.

In May 2012, in the Regional Temporary Detention Isolator for Imereti, Racha-Lechkhumi and Kvemo Svaneti, the representatives of Public Defender met with Manuchar A., Irakli C., and Irakli D. who had been placed in administrative detention. According to these individuals, there had been instances when the temporary detention isolator staff was treating them inappropriately.

On 27 May 2012, during Public Defender's representative visit of these individuals in the temporary detention isolator, all three were stating that they had not received food for the entire day and had not been provided with bed sheets. Also, according to these individuals, when being put in the temporary detention isolator, the staff ordered them to take off their clothes and do squats three times in a row.

In his explanation given to Public Defender's representative, Manuchar A. stated that during his administrative detention period (26-29 May) the temporary detention isolator staff verbally abused him in a constant manner, as well as constantly reminded him of his political views. Additionally, according to Manuhar A, it was often the case that temporary detention isolator staff were hitting his cell door and making noise, so that the prisoner did not have the possibility to sleep.

According to the explanatory note of Irakli D. (detention period: 26-30 May) and Irakli C. (detention period: 26-31 May), they too were subjected to verbal abuse by the temporary detention isolator staff. According to the latter, the

facility staff was ironic in their responses when the prisoners asked for necessary items and kits for their usage, as envisaged by law.

Hence, based on the above, on 11 June 2012 Public Defender called upon Georgia's Chief Prosecutor to launch a preliminary investigation. Based on reply N13/46329 from the Chief Prosecutor, the Investigation Division of the Western Georgian District Prosecution Office commenced its investigation into case SS N088291012801, i.e. a crime envisaged in the Georgian Criminal Code pursuant to Article 144^3 sections A, B, E, and Z.

The Case of Kakhaber G.

On 19-20 July 2012, Public Defender's representatives visited the Sagarejo temporary detention isolator, where they met and interviewed Kakhaber G., who was detained in connection with the Karaleti incident that had occurred on 13 July 2012. That same day the Gori District Court, according to Article 166 of the Georgian Code of Administrative Offences, sentenced Kahaber G. to fifteen days of administrative detention.

According to the detainee, the Sagarejo temporary detention isolator Director and members of staff, from day one of his detention, were physically and verbally abusing him: they were swearing against him and his family, forced him to swear at his peers from the "Georgian Dream" Party, and did not give him the possibility to sleep and adequately use the toilet facilities. According to Kakhaber G. he was permitted to use the toilet a while after he asked for it and was forced to move around with his knees bent and hands around his head. During the night, they would repeatedly open the window of the cell door, and if the prisoner did not wake up or stand up on his feet, he was forced to stand on his feet for one or two hours or sit still on the chair. According to Kakhaber G., the temporary detention isolator staff only gave him the possibility to sleep for a couple of hours. According to him, this was the reason why he commenced his hunger strike from the day he was put into the detention isolator. He stopped his strike only for two days, from 17 to 18 July, and on 19 July he resumed it and wrote to the Sagarejo Temporary Isolator Administration about his hunger strike.

Based on the above, Georgia's Public Defender called upon Georgia's Chief Prosecutor to launch a preliminary investigation of the matter. According to reply N13/45960 from the Chief Prosecutor's office, the Signagi District Prosecution Office investigation commenced on case SS N034021112801 regarding the Sagarejo Temporary Detention Isolator staff exceeding their authority, pursuant to Article 333 part 1 of the Georgian Criminal Code.

DOCUMENTING FACTS OF ILL TREATMENT

Based on the monitoring, it was revealed that when a person is placed in the temporary detention isolator with various injuries, the facility administration contacts the Office of the Prosecutor in case the person expresses his discontent towards the law enforcement bodies. Public Defender issued a number of recommendations that in case the injuries on the body of the person raise the question of inappropriate treatment, irrespective of the detainee's complaints on the matter the isolator staff would have to notify the prosecutor in charge, who will then investigate the injuries the person has suffered.

Apart from N 1 and N 2 Temporary Detention Isolators where a doctor regularly conducts check-ups and documents prisoner injuries, in the other places of temporary detention isolators the injuries are being documented by the detention facility staff.

The CPT in its report of the visit on 5-15 February has negatively assessed Georgian Government on the practice of the external monitoring of placement in temporary detention isolators. The same shortcoming was a number of times mentioned by Public Defender in his reports. To be more specific, apart from N 1 and N 2 Temporary Detention Isolators being regularly visited by doctor, in other temporary detention isolators prisoner check-ups are done by the isolator staff on duty, who also have full access to the medical data. This in turn is a violation of the right to medical confidentiality and data protection.

In addition to this, the committee states that the presence of detention facility staff will hinder the person to speak freely about the cause of his or her injuries. Thus, the CPT recommends that a prisoner's physical examination should be conducted by a qualified doctor, as well as the confidentiality of medical data protected. In case the person has suffered injuries and there is evidence of inappropriate treatment, he or she must promptly undergo a forensic medical examination by an independent doctor who will assess the claim of the person on the nature of the injuries suffered[45].

ADMINISTRATIVE DETENTION

Pursuant to the Minister of Internal Affairs Decree N1074 of 28 December 2011 concerning "Georgia's Ministry of Internal Affairs Temporary Detention Isolator Regulation, Isolator bylaw and Isolator activity regulatory additional instruction", and according to the Ministry of Internal Affairs Decree N 108 of 1 February2010, the conditions of administrative detention are spelled out: A person who is in administrative detention should not be allocated less then 3 m^2, the administrative detention facility has to have a window that fully lets in the daylight and provides for proper ventilation, the room where the prisoner is kept ought to be heated according to the seasons, the prisoner has to be provided with an adequate sleeping kit (sheets, pillows and blankets) and a bed, and he or she must receive parcels, food and clothes. For those persons who have been prescribed administrative detention for more than 7 days – or, in case of minors, more than one day – shower facilities have to be available twice a week, and the right to one hour of walks per day also has to be ensured. In facilities that do not have an outdoor walking space, prisoners can take their daily walks near the ministry of internal affairs administrative body or on its adjacent territory.

Also, detained persons aught to have full access (24/7) to toilet and shower facilities with adequate sanitary conditions. Prisoner's toilet facilities and compartments aught to be equipped with adequate sanitary equipment. If the person is in administrative detention for more than 30 days, he or she has to be allowed access to a hairdresser.

The administration of the temporary detention facility is prohibited to order a prisoner to completely shave his head. Should such a case arise, a doctor's agreement is needed or it must be due to hygienic reasons. Those persons that were proscribed 30 days of administrative detention – or, in case of minors, more than 15 days – have the right to two visits a month, and one 10 minute phone conversation per month. Person in administrative detention have to be given the possibility, at their own expenses, to receive reading material, journals and news papers, and to send complaints or letters. According to both the decree and the established rules of the Ministry of Education and Science, a person in administrative detention has the right to register as a student for national exams providing his or her request in writing. In addition to this, a person in administrative detention needs to be encouraged and all favourable conditions aught to be made so that he or she does not lag behind in the programme of the general education system.

Public Defender, in a number of parliamentary reports and statements, has stated that the infrastructure in temporary detention isolators is simply not adequate to serve the needs of persons placed there. For this reason, Public Defender has issued recommendations to the Government of Georgia to build and set up special facilities for persons in administrative detention, throughout the regions of Georgia, that would serve as a long-term housing facility as well. To this date, Public Defender's recommendation has not been adhered to and persons in administrative detention are continued to be put in temporary detention isolators.

During the preparation phase of the present report, Public Defender's representatives have identified number of violations in connection with administrative detention facilities and detention conditions. Hence, Public Defender's group has issued recommendations to the Minister of Internal Affairs of Georgia.

The Cases of Giorgi J., Giorgi N., Vakhtang S. and Kakhaber M.

On 31 August 2012, Public Defender's Prevention and Monitoring Department met and interviewed persons in administrative detention in the Tbilisi N 2 Temporary Detention Facility: Giorgi J., Giorgi N., Vakhtang S. They also

45 para. 23

met and interviewed Kakhaber M, who is in administrative detention in the Gardabani Temporary Detention Isolator. All of them stated that in the temporary detention facility their rights were severely breached.

Giorgi J. was proscribed administrative detention of 60 days and nights in the N 2 Temporary Detention Isolator. The prisoner said that he did not have the ability to enjoy the rights enshrined by legislation in force, and namely: he could not receive visits, use the telephone, walk in the fresh air, shower and have basic toiletries and hygienic kit, nor was he allowed to read newspapers and religious literature.

Giorgi N. was kept in detention in N 2 Temporary Detention Isolator for 59 days and nights from 20 August 2012 onwards. He also did not have the ability to enjoy the rights enshrined in the law for persons under administrative detention.

Vakhatang S. was in the N 2 Temporary Detention Isolator from 20 August 2012 onwards. He stated that he was not given the right to walk in the fresh air, call, shower or have meetings. He also stated that he did not have basic toiletries and a hygienic kit, and that the parcel his family had sent him was not fully handed over to him. According to him, all these restrictions were due to his political views.

According to Kakhaber M., he did not have the right to receive visits and to telephone, was not provided with basic toiletries and a hygienic kit, did not have toilet paper and could not shower.

The prisoner stated that only on 31 August 2012 was he given the right to walk in fresh air, and even then just for ten minutes. In addition to this, the prisoner said that the Gardabani Temporary Detention Isolator administration did not give him the right to appeal to Public Defender. Hence, Kakhaber M. went on hunger strike, asked for a doctor and adequate medical supervision. Nevertheless, his requests were not satisfied.

The European Committee for the Prevention of Torture and Inhuman Treatment or Punishment (CPT/Inf (92) 3) stated, that all prisoners, without exception, need to be allowed to walk in the fresh air, as well as have regular access to showering and toilet facilities. It is also very important for prisoners to maintain contact with the outside world. It is of outmost importance that the prisoner is given the ability to maintain contact with his family and close friends. The guiding principle should be formed as fostering contact with the outside world. Limitations of such a contact should be based on specific security concerns or imposed due to insufficient funds. The CPT attributes great importance to inspection, monitoring and complaint mechanisms, which according to CPT are basic guarantees against torture and inhumane treatment: "Prisoners should have avenues of complaint open to them both within and outside the context of the prison system, including the possibility to have confidential access to an appropriate authority."[46]

On this background, on 4 September 2012 Public Defender addressed the Minister of Internal Affairs with recommendation, requesting hin without further delay and promptly, ensure that those in administrative detention had full enjoyment of the rights guaranteed under national legislation. Public Defender also called upon the Minister to study all violations, as well as to take necessary measures for remedying .

Pursuant to reply N1234473 from the Ministry of Internal Affairs, Kakhaber M. did not express his wish to contact Public Defender, until 1 September 2012 he declined to enjoy his right for daily walks, was taking showers according to the law, and on 5 September 2012 he used his right to receive a visit. With further correspondence N1234502 received from the Ministry of Internal Affairs, the persons whose cases were described availed themselves of the right to visits on 13 September 2012.

LIVING CONDITIONS IN THE TEMPORARY DETENTION ISOLATORS

We think, that in the temporary isolator the living conditions should be in accordance not only with internal, but also with international standards.

46 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), The CPT Standards, para. 54

According to the European Prison Rules and Standards:

"The accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation"[47].

In some temporary detention isolators such as in Borjomi, Akhalkalaki, Zestafoni, Tetritskaro, Terjola, Lentekhi and Ambrolauri, there is no heating installed so prisoners are freezing. In most of the isolators there is no sufficient natural light and ventilation; in some of them either there is no window, for instance in the Akhaltsihkhe and Borjomi Temporary Detention Facility, or the window is very small and does not provide natural light and adequate ventilation, for instance in the Chokhatauri, Ozurgeti and Lanchkhuti temporary detention isolators – cell 1; in Samegrelo-Upper (Zemo) Svaneti Regional, Khobi, Zugdidi N1, Senaki, lower Kartli, Tetri Tskaro, Tergola temporary detention isolator cell N 2. Kutaisi, Sagarejo, Telavi, Zestafoni, Chiatura, Khashuri, Gardabani, Dusheti and Tbilisi N 2 in all temporary detention isolators. In certain temporary detention isolators windows are large enough, but the triple layer of metallic cage hinders the inflow of natural light and blocks natural ventilation (Signagi Temporary Detention Isolator).

The Zestafoni Temporary Detention Isolator administration clarified that the new Police Station was built, where the Zestafoni Temporary Detentino Isolator was supposed to be built.

According to the European Prison Rules and standards, "Prisoners shall have ready access to sanitary facilities that are hygienic and respect privacy".[48]

In Georgia's Temporary Detention Isolators toilets are not separated. The issue of isolating toilet facilities in accordance with established standards was brought up numerous times in Public Defender's recommendations to the Minister of Internal Affairs, albeit this recommendation is not yet implemented. Apart from Ambrolauri, Tbilisi N1 Temporary Detention Isolator and Batumi Temporary Detention Isolator (a couple of cells), the space allocated to prisoners does not meet the 4 m^2 standard. Public Defender in its Parliamentary Reports recommended to ensure such a standard for each inmate. The same was recommended by the European Committee for the Prevention of Torture. As for cells where persons are kept in solitary confinement, cell space should not be less than 7 m^2.[49]

Notwithstanding Public Defender's recommendation, in some temporary detention isolators such as Akhalkalaki, Tsalka, some cells in Tbilisi N2, or the Lower Kartli Regional isolators, there are no beds and inmates are forced to sleep on wooden planks.

Public Defender recalls, that for a number of times he issued the recommendation calling for daily walks for a minimum of one hour to be provided to persons detained for more than 24 hours, but in the majority of temporary isolators there is no yard with access to fresh air. Such isolators are those of Dusheti, Tetritskaro, Tsalka, Signagi, Sagarejo, Zestafoni, Terjola, Ambrolauri, Lentekhi, Borjomi, Kobuleti, Zugdidi, Poti, Khobi, Chkorotsku, as well as temporary detention isolators in Samtkskhe-Javakheti, Imereti, Racha-Lechkhumi and Lower Svaneti. It is recommended that prisoners being kept in administrative detention for more than 7 days be allowed to take a walk on the territory adjacent to the temporary detention isolator. Prior to this outdoor activity prisoners are obliged to sign a paper, which warns them about the consequences they will face in case they try to escape.

There are certain violations from the side of temporary detention isolators, for instance in Ozurgeti, where a hallway is used as walking patio. And this is simply unacceptable.

While drafting the present report, according to Decree N 108 of the Minister of Internal Affairs of 1 February 2010 on "Georgia's Ministry of Internal Affairs Temporary Detention Isolator Bylaw, Isolator Internal Regulation and Isolator Activity Regulation Additional Instruction Approval", the right to daily walks is given to prisoners who were sentenced to imprisonment for no less than 15 days.

47 Council of Europe Recommendation Rec (2006) 2 of the Committee of Ministers to Member States on the European Prison Rules, Rule 18.1.
48 Ibid., Rule 19.3.
49 Report to the Georgian Government on the visit to Georgia carried out by the European Commission for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) 2010, para.117

Maintaining a clean environment and personal hygiene is a key factor for ensuring a prisoner's dignity and health. Hence, all adequate measures have to be taken so that the prisoner has regular access to showers and maintains his/her personal hygiene. After the monitoring, it was revealed that in those temporary detention isolators where there are shower cabins, prisoners have the opportunity to shower once a week. Nevertheless the situation is problematic in those temporary detention isolators where there are no shower facilities. These isolators are in Zestafoni, Lentekhi, Dusheti and Akhalkalaki. Positively has to be assessed the fact that cells are cleaned twice a day.

In all of the temporary detention isolators prisoners are on the following food ratio plan: 300g bread, 20g sugar, 2 tea bags, 100g pasta, a small can of beef meat and one sachet of instant soup. It has to be stated that the provided meal plan is not adequate and is insufficient, as a prisoner can be in the isolator for more than 3 months and his next of kin might not have the means to provide him with parcels and additional food. In this regard, Tbilisi N 1 and N 2 Temporary Detention Isolators are the exception as prisoners are catered for by the prison cafeteria and have more nutritious and diverse meal plans.

Recommendation to the Parliament of Georgia:

90 Day Administrative detention to be reduced to 15 Days;

Recommendation to the Government of Georgia:

To construct, based on the regional principle, adequate administrative detention establishments and facilities, fully adapted to a prisoner's prolonged detention.

Recommendation to the Ministry of Internal Affairs:

To make pertinent changes to Decree N 108 of the Minister of Internal Affairs of 1 February 2010 on "Georgia's Ministry of Internal Affairs Temporary Detention Isolator Bylaw, Isolator Internal Regulation and Isolator Activity Regulation Additional Instruction Approval", so that the following is ensured:

- **persons who are detained for more than 24 hours have the right to take walk in the fresh air in a specially designated area, as well as be provided with the opportunity to regularly shower;**
- **ensure that the official space, in the in multi-occupancy cells, allocated per inmate is not less than 4 m² or, in case of single occupancy cells, 7 m² of living space.**

Recommendations to the Head of the Unit for Human Rights Protection and Monitoring:

- **that all detainees in temporary detention isolators are given individual, appropriate beds to sleep and that the wooden planks used for sleeping are removed;**
- **that in all detention isolators an adequate heating system is set up and installed, that the cells have adequate lighting and ventilation, including access to natural light;**
- **that in all temporary detention isolators toilets are isolated allowing for privacy during usage;**
- **that persons in temporary detention facilities have full, nourishing meal plan three times a day.**

Report on Conditions in Psychiatric Establishments in Georgia

The present Report covers the findings of the scheduled monitoring of Psychiatric establishments in Georgia carried out by the Special Preventive Group of the Office of Public Defender of Georgia exercising its mandate within National Preventive Mechanism on April 18-28, 2012.

The composition of the Special Preventive Group was:

Employees of Prevention and Monitoring Department of the Office of Public Defender of Georgia: Natia Imnadze (Head of the Department, lawyer), Otar Kvachadze (Deputy Head of the Department, lawyer), Amiran Nikolaishvili (chief specialist of the department, lawyer), Guram Bendianishvili (chief specialist of the department, lawyer).

Experts: Pétur Hauksson psychiatrist, ex-member of CPT, Council of Europe, vice-president; Vladimir Ortakov, ex-member of CPT, Council of Europe, vice-president, psychiatrist; Nino Makharashvili – NGO Global Initiative in Psychiatry, psychiatrist; Maia Kiknadze, psychiatrist.

Monitoring was carried out in the following facilities:

1. Ltd Rustavi Mental Health Centre;
2. Ltd M. Asatiani Psychiatry Institute;
3. Psychiatric Department of Ltd Referral Hospital;
4. Psychiatric Department of JSC Academician O. Gudushauri National Medical Centre;
5. Psychiatric Department of Ltd Hospital N5;
6. Ltd Tbilisi Mental Health Centre (two visits);
7. Ltd Bediani Psychiatric Hospital;
8. Ltd Republican Clinical Psycho-Neurologic Hospital, Khelvachauri District (two visits);
9. Ltd Kutaisi Mental Health Centre;
10. B. Naneishvili National Mental Health Centre, Qutiri (two visits);
11. Ltd Senaki Inter-district Psycho-Neurologic Dispensary;
12. Ltd A. Kajaia Surami Psychiatric Hospital.

During the monitoring the Group members examined the infrastructure of all theabovementioned establishments and held confidential interviews with patients therein. The Group members also interviewed the administration personnel, medical personnel, social workers and lawyers of the establishments. During the monitoring all documentation and record books of the establishments were also checked.

Monitoring was aimed to check compliance of conditions, treatment and nursing methods with the rules established under Georgian legislation[50] and international/European standards[51].

It is a positive feature that the Group members did not encounter obstacles in any establishment during the monitoring. The administrations and staff of the facilities demonstrated their readiness to render assistance. The Group members did not confront with any limitations to move through the territory of the facilities, to interview patients therein and to have access to the documentation.

GENERAL OVERVIEW

One of the main priorities of the monitoring was to evaluate treatment of patients. It shall be noted that practice of ill-treatment by personnel is almost eliminated in the psychiatric establishments, however in several instances the patients still indicated they were subjected to rude treatment by this or that nurse (or nurse's assistant (orderly).

Patients, as a rule, were satisfied with living conditions in the newly opened establishments. The main concern for them was "to go home" as they were not allowed to.

The physical restraint is used in absolute majority of facilities. The aim of the Monitoring Group was to check whether this procedure was resorted to in compliance with relevant laws and standards. In rare cases the restraint was allegedly used to punish the patients. In certain cases fixation record book indicating information on time and duration of fixation, as well name of person responsible for fixation, was not processed. As found out by the Monitoring Group, some facts were not registered in the record book even if the latter was processed in the establishment.

The liquidation of psychiatric establishment located on Asatiani Street, Tbilisi is one of the major positive changes in psychiatric treatment field; this establishment was substituted by several psychiatric establishments - Rustavi Mental Health Centre, M. Asatiani psychiatry Institute, psychiatric Division of Referral Hospital, Psychiatric Department of Academician O. Gudushauri National Medical Centre and Psychiatric Division of Hospital №5.

This change positively influenced the living conditions of majority of patients – newly built and refurbished establishments are equipped with standard, new furniture and equipment and all facilities are naturally lighted as rather wide windows were installed therein. The Monitoring Group positively mentions that the newly opened facilities have no window gratings; however this change has its adverse effects too – the windows cannot be opened for security/safety reasons and accordingly natural air ventilation in rooms and in the majority of corridors is not available; in addition, no ventilation systems are installed.

As the Monitoring Group members have learnt on site, these newly opened establishments were intended for short-term, so called acute patients; accordingly the equipment is designated for intensive supervision and not to create a quiet, cozy environment for patients. Every bed has fixation equipment, the bedroom door has 1/3 of glass windows and the door locks and handles can be removed from outside enabling the administration to lock it from outside, while toilets and bathrooms cannot be locked from inside. As found out by the Monitoring Group, the long-term, so called

50 Law of Georgia on Psychiatric Assistance, law of Georgia on Rights of Patients, Order #87/n of the Minister of Labour, Health and Social Aff airs on approval of Rules concerning Placement in Psychiatric Hospital.

51 Principles on Protection of Persons with Mental Illness and the Improvement of Mental Health Care adopted by the UN General Assembly Resolution N46/119 dated 17 December, 1991; Recommendation No. R(83)2 Concerning the Legal Protection of Persons Suff ering from Mental Disorder laced as Involuntary Patients adopted by the Committee of Ministers of the Council of Europe; Recommendation Rec(2004)10 of the Committee of Ministers to member states concerning the protection of the human rights and dignity of persons with mental disorder ; Recommendation 1235 (1994) on psychiatry and human rights adopted by the Parliamentary Assembly of the Council of Europe;, 8th General Report of European Committee for the Prevention of Torture and Inhumane and Degrading Treatment or Punishment (CPT).

chronic patients, who are placed in these establishments, feel rather depressed due to the aforementioned conditions.

As observed by the Monitoring Group, patients enjoy more or less respectful and normal living conditions in the newly opened establishments. Alongside the newly established facilities there are old establishments where heating, warm water and sanitary-hygienic conditions are still a problem. However in some newly established establishments with 24-hour warm water supply patients are not always allowed to use showers whenever they want, instead they have to observe the schedule established by the administration.

One of the serious problems of the new establishments is either irrespectively arranged or small courtyards which make it difficult or often even impossible for the patients to spend enough time outside the buildings on fresh air. Notwithstanding the alarming conditions of the living space as well as of the utility rooms in the old facilities, the latter ones offer better conditions in this respect as they are usually located on a vast territory with greeneries, so patients may spend more time outdoors.

Community-based services enabling persons with mental disorders to run a normal life in society are still unavailable. This is the very reason why certain number of psychiatric patients is not discharged from the establishments - they neither have a place to go, nor have income for living.

Monitoring results showed that improvements were basically achieved in terms of infrastructure while there are no changes in systematic approaches – old treatment methods and practices are still used in the majority of the establishments. Moreover, in some cases the deterioration tendency is observed – the Minister of Labour, Health and Social Affairs introduced new regulations mainly on transparency of financial records aiming at fight against corruption, which do not comply with requirements on protection of confidentiality of information about a patient. During the monitoring process, an emphasis was also made on the system of financing psychiatric facilities which is based on differentiation of acute and chronic patients; this creates obstacles to normal functioning of the facilities.

On the one hand, the establishments have to ensure that so called acute divisions always work at maximum capacity; at the same time establishments have to avoid re-hospitalization, otherwise, the quality of treatment might be challenged. On the other hand, financial support of each chronic patient is much less compared to the one of an acute patient; therefore the establishments are often forced to speed up the process of discharging chronic patients from the establishments earlier than needed, often against the interests of such patients.

Taking into account the aforementioned the administrations of the establishments have to, in a sense, manipulate with statuses of patients (acute, chronic); this fact proves inflexibility of the financing system that does not comply with real needs of the establishments.

Similar to previous years, system of treatment of somatic and dental diseases is not organized. As clarified on site this issue is not problematic for the establishments that are parts of multi-profile hospitals (Gudushauri Hospital, Referral Hospital); however the Monitoring Group observed that this issue is more relevant in terms of access to treatment. Such services (treatment of somatic and dental diseases) should be financed from the funding allocated for psychiatric treatment. The only exception is emergency services covered by the special state program.

The issue of voluntary patients is still acute – their voluntary status is only a formality. The vast majority of such patients are hospitalized involuntarily; often this status is usually granted to avoid the prescribed formalities for involuntary placement or, in some cases, due to social conditions of a patient or his/her family. Despite the ability of the majority of such patients to run independent life and take care of themselves, they are forced to stay at the establishments as they have no income or, in many cases, accommodation. This issue is directly linked to the non existence of community-based services as already highlighted in Public Defender's Reports.

The cases when the voluntary status of the patient is deceivingly preserved "in sake of his/her interests" should be especially mentioned (for instance, a patient is told that in case of involuntary treatment, he/she will not be able to leave the establishment soon).

The practice in the establishments reveals the formal nature of the voluntary status – notwithstanding his/her status, a patient is not allowed to leave the building independently. There is indeed a list of exceptions defined by doctors, however, they do not take into account either voluntary or involuntary status of the patient, but rather his/ her personal abilities and features.

The patients are not duly informed on the methods and duration of treatment in the majority of the establishments. As a rule, such information, if existent as such, is available for the family members or relatives. The patients, in most cases, are not informed on details and methods of their treatment.

Similar to previous years, the treatment process basically includes drug treatment; rehabilitation and adaptation programs are rarely and insufficiently incorporated in to the treatment course. This problem is mainly directly linked to the lack in financing – funds allocated for a patient do not suffice to cover rehabilitation measures. It goes without saying that entertainment, cultural and other events are not available – libraries and entertainment or leisure rooms do not exist in the majority of the facilities.

It is a positive development that in the majority of the establishments there are social workers and psychologists who are responsible for identifying non-medical needs of the patients as well as for solving different types of their problems. Nevertheless, it shall be noted that in most cases the work of such employees is more of a spontaneous nature and often based on their individual abilities. There are neither government regulations concerning standards of work of social workers and psychologist at the psychiatric establishments, nor any kind of support to their activities or directions of their work.

During the monitoring process, the qualification of staff and their work conditions were also examined. Similar to previous years, due reimbursement of lower-level medical personnel (nurses and assistants to nurses) is still an issue. Due to very low wages it is difficult to hire and sustain qualified personnel. As stated by all directors of the establishments, assistants to nurse have undertaken the special trainings on treating patients, including methods of behavior with and fixation of aggressive patients. We consider that these trainings positively influenced the reduction of ill-treatment; however it is necessary to ensure relevant conditions of work and leisure for those lower level medical personnel directly and intensively dealing with patients on a daily basis, as social problems of such employees might influence their relations with patients.

Besides, due to the lack of relevant number of lower-level personnel at the establishments, the process of the supervision of patients is not implemented properly. As observed by the Monitoring Group, this very issue creates the necessity of introduction of stricter living conditions (locked windows and doors, rare outdoor walks, etc.). On the other hand, the allocated finances do not suffice to hire medical personnel in line with the needs of the establishments/ patients.

Contact with the outside world is vital for patient's rehabilitation process. As found out during the monitoring, patients are enjoined the right to use a telephone in some facilities. The visits are not limited (the special time-frame is determined for visits) however in the majority of establishments there are no special rooms for visits, so a patient meets the visitor in the ward, courtyard or any other place. None of the establishments employs the specific limitations regarding acceptance of parcels, apart from the prohibition of subjects that are sharp and prickly.

ILL-TREATMENT

The main priority of National Preventive Mechanism is monitoring of treatment quality at all places of the deprivation of liberty including psychiatric establishments aiming at revelation and prevention of facts of ill treatment.

The Monitoring Group notes with satisfaction that no cases of ill-treatment were identified during interviews with the patients at the majority of establishments. Even though some patients mentioned few such cases (described below) these are rather isolated, rare cases of a non-systematic nature. Nevertheless, it is indeed necessary to immediately reveal every such case and to react accordingly. This issue is still pending for every establishment as the

complaint system is not duly organized. The situation is complicated by the fact that patients are not informed of their rights, procedures concerning lodging complaints, existence of complaints box and its usage.

According to the staff members of the establishments, past practice showed that the ill- treatment by orderlies (now nurse assistant) was a common practice as a result of lack of qualification and skills in managing the critical situations. Currently most of orderlies have undertaken special trainings. As doctor on duty at the Psychiatric Department of Gudushauri Hospital mentioned, this positive development is based on different approaches towards patients as well as on modern trends being incorporated into the field of psychiatry. The doctor also emphasizes, that the very fact of being a member of a multidisciplinary team, which discusses thoroughly conditions and needs of the patients, is very important for the orderlies / nurse assistants and indeed changes their attitude towards patients. Despite the aforementioned, the patients of several facilities stated that they were subjected to rude treatment by orderlies. In the majority of cases the patients did not inform anybody about such facts.

Tbilisi Mental Health Centre. As several male patients placed in the so called social unit of the Centre stated, some staff members treated them rudely and carelessly. One of the patients mentioned that two years ago one orderly was dismissed for beating a patient twice. He also stated that personnel is "noisy and they shout", though "recently situation has improved and relations are warmer". After being asked what exactly he did not like therein, the patient answered that despite the improvements the situation is still bad. "Sometimes I feel aversion and apathy from their side".

One of the patients of the female unit mentioned: "Staff members sometimes talk roughly and shout though there has been no cases of beating". Another patient of the same unit stated that "those who misbehave are subjected to shouts and fixation to bed".

The records examined at the establishment showed that 11 employees were reprimanded for ill-treatment of patients in 2011; the same data for 2010 was 12 staff members.

Psychiatric Department of Hospital N5. The interviews with patients placed in the Psychiatric Department showed several very important issues regarding treatment of patients: One patient claimed that her attending doctor Natulie treats her roughly and insults her. "She considers me to be a prostitute. This Natulie insults me permanently and often speaks of men in my presence; she has no right to interfere into my private life". "Once when I asked for some medicines, she forced into the ward and rejected my requests. She said that I was doing it to show up in front of men." "Other doctors and orderlies love me".

Another patient of the same facility confirmed the rude and insulting behaviour of the same doctor towards patients.

The same patient stated that security officer Ucha hit him once with hand. "Those who are sick are beaten", "one male patient was beaten and hitted several times. I approached and saw how he was beaten and then he cried"; "I think he refused to take medicine, pushed with hand. The security officers have beaten that man. I love him and cannot tell his name"; "I do not know whether doctors are aware of this fact, they are always in their rooms". "If you misbehave you are locked. One patient was locked though he deserved as he misbehaved".

As other patients said, "Teona beats everybody" (The patient could not specify whether she was nurse or assistant to nurse).

As doctor on duty at **Psychiatric Department of Hospital N5**, mentioned last year 3 orderlies were dismissed as their behavior did not meet the modern standards – they were rude with patients and had conflicts on subordination basis.[52] Presumably issue of treatment is still a serious one this facility and the administration have to adopt all necessary measures to eradicate this problem. In addition the doctors have to express more attention towards patients not only in terms of medical treatment.

52 Presumably the Establishment, mentioned here is the old establishment on Asatiani Street, as by the time indicated the psychiatric unit did not exist at the establishment N5.

Qutiri Psychiatric Establishment. During the monitoring of this establishment none of the patients complained on ill treatment. However, it should be mentioned, that during the reporting last year period several patients submitted complaints to Public Defender concerning alleged ill-treatment from staff, basically from security officers. Investigation was launched concerning one case based on the recommendation of Public Defender.

The written submissions from the establishment, mentioned reprimands for 14 employees, however no ill-treatment facts were identified.[53]

Bediani Facility Patients claim that some orderlies treat them roughly and scornfully. As a rule, patients do not discuss this issue with "bosses" (they mean director and doctors) as they feel awkward. "The orderlies shout on patients. Once I asked the orderly the reason for shouting and he answered: to have fear of me." Patients did not confirm facts of beating. Some of them cannot confirm facts of rude treatment either. One of the patients declared that "beating is excluded". Another patient mentioned a conflict between an orderly and a patient – the orderly tried to wake up the patient rudely and the latter reacted aggressively. "Generally [orderlies] are not rude", the same patient added.

While answering questions on reasons for dismissal of employees, the patients said that drinking or escape of patient might serve as such reason. Shouting might serve as a basis for reprimand. The director clarified that due to the geographical location of the establishment the decisions on dismissal of personnel should be cautious as there are little hopes to hire a better employee. In addition, he said "they are not afraid of loss of 300 GEL". Therefore he prefers to use strict reprimands and control behavior of orderlies rather than fire them.

The director of the establishment mentioned one case when he saw the orderlies making the patients to unload the tracks (food products). He decided to use disciplinary measures against them.

Khelvachauri Psycho-Neurologic Hospital. Some patients claimed rude treatment from orderlies and other patients. One patient claimed that two weeks before, upon arrival at the hospital he was beaten by staff members and placed in the isolation room (he was a voluntary patient).

In some establishments **(Khelvachauri Psycho-Neurologic Hospital, Psychiatric Department of Hospital N5, Surami Psychiatric Hospital, Qutiri)** the patients also claimed that some other patients are quite violent, even showing signs of physical aggression. The personnel either do not notice such facts or do not react adequately upon them. The reason for this gap is insufficient number of personnel and their improper training. At any case this issue should be properly addressed by the administrations of psychiatric establishments.

The National Preventive Mechanism of Public Defender considers that prevention of conflicts and all forms of violence among patients, as well as appropriate response to such cases should be main concern for the assisting staff. The mere existence of such conflicts clearly indicates to insufficient attention of personnel towards patients or lack of professionalism. One of the reasons of this problem can also be inadequate number of staff members.

The 8th Report of European Committee for the Prevention of Torture (CPT) states: "It is also essential that appropriate procedures be in place in order to protect certain psychiatric patients from other patients who might cause them harm. This requires inter alia an adequate staff presence at all times, including at night and weekends. Further, specific arrangements should be made for particularly vulnerable patients; for example, mentally handicapped and/or mentally disturb edadolescents should not be accommodated together with adult patients" (para. 30).

For the prevention and record of ill-treatment it is recommended that trauma record book is run in every establishment indicating trauma of a patient, date, trauma origin (according to patient's explanation) and assistance rendered. It is also recommended to run the record book for external visual examination upon admission to the hospital that should register physical injuries of a patient upon admission and their origins.

At the present moment such information is recorded in nurse's journal or patient's medical history paper. Accordingly, the Monitoring Group did not have an access to systematized information. There are neither indications nor

53 Our question tried to find out the cases of disciplinary measures for improper treatment towards patients; apparently, the 14 cases of administrative misdemeanours were not related to treatment with patients.

statements by the personnel whether it became necessary in particular cases, based on patients injures or his/her comments, to apply to the law enforcement bodies for further investigation.

THE REFORM OF MENTAL HEALTH SYSTEM

One of the important documents on which the ongoing reform in mental health system is based is Healthcare Strategy of 2011-2015. Para. 4.6 of the Strategy deals with "Mental Health Support" highlighting the necessity of introduction of principles of balanced, integrated and continuous care. To reach this strategic goal, the "state will support" and take active part in improving the quality of rendered services by upgrading the infrastructure, opening new types of mental health centers and increasing skills of medical teams." The Strategy also deals with introduction of new forms of social services as well as measures aimed at reduction of discrimination.

The strategy specifies the modern vision of mental health system – the need of shifting from institutional approach to balanced care model, continuity of service, introduction of new services, the need for qualified personnel who are aware of modern approach in mental health treatment and able to use this knowledge, etc.

This document is indeed a step forward, though it cannot replace mental health policy paper that should thoroughly define and identify the reforms and changes necessary in different sectors.

At this stage it is necessary that the government takes further logical steps and adopts mental health reform action plan identifying priority measures, time-frames, reform success indicators, responsible agencies, etc. Unless the action plan is adopted, the implemented measures shall not develop logically and be fragmental, also, due to their unplanned character they might cause ambiguity and discontent among the main stakeholders, etc.

Creation of children unit at N5 Psychiatric Department Clinic Hospital should be underlined. It is indeed a serious step forward as for decades children have been treated in adults departments. It is also worth mentioning that the unit is the integral part of a multi-profile hospital, which is a positive feature. However, non-existence of a specially arranged courtyard should be assessed negatively as children are basically "locked" in the unit.

Unfortunately this 10-bed unit is designed only for children under 15 years; therefore 16-18 years juveniles remain in rather vulnerable position as this age is at high risk in terms of development of different mental health problems. Needs of children and juvenile mental healthcare are rather high, at the same time, are not adequately addressed, so there is a necessity to develop hospital-based, ambulatory-based and community-based services.

The major shortcoming is that new methods are either introduced in a very limited format or not introduced at all in the newly reformed establishments. Such methods imply to *inter alia*: introduction of multi-disciplinary groups and case management, promotion of treatment quality safeguards guidelines or integration of psychological treatment methods into the treatment schemes. Unfortunately only medication-therapy approach is employed in almost every acute (short-term) division, which applies to majority long-term divisions as well (f.e. division located on Kavtaradze str.). In addition introduction of internal regulations and schemes such as, for instance, suicide prevention algorithms were only a formality.

REFORM WORKING GROUP

One of the main prerequisites of success of the reform is full transparency of the process to ensure exchange and correlation of opinions and experience. In December 2010 the Ministry of Labour, Health and Social Affairs created a working group that was responsible for supervising the reform implementation. Unfortunately so-called ex-users were not involved in the process as required by international practice; furthermore, the working group did not define decision-making mechanism and correspondingly long debates did not often result in joint decisions. In addition, the adopted decisions were often changed without consultations with working group.

In order to enhance efficiency of the working group it is important to make a revision of its composition, define the working procedures and increase role of the group in the reform process.

STATE PROGRAM AND NEW SYSTEM OF FINANCING

In 2011 the title of state program was changed. The "Psychiatric Assistance Program" was replaced with "Mental Health Protection Program", the budget was increased by 800 thousand GEL and services diversified.

It shall be noted that financing of hospital component remains very high (approx. 70%), while ambulatory assistance is only about 30% and rehabilitation component – 1%. In order to ensure more balanced financing, the allocation of funds should be redistributed.

New system of financing of reformed hospital services has been developed. It divides hospital services into two types:

short-term hospital service covering medical treatment of acute psychosis symptomatic conditions (2-8 weeks stay);

Long-term hospital service that covers situations when short-term medical is being prolonged, or medical treatment for those patients who cannot be treated outside the hospital due to grave psycho-social dysfunction.

The Ministry defined that the cost of so-called "acute" hospital services shall be reimbursed upon actual expenses up to 840 GEL; as for the long-term hospital services it shall be reimbursed based on monthly voucher with the value of 450 GEL.

The establishments distribute the funds allocated for short-term hospitalization in the following way: 30-40% out of the total sum distributed for 18 or 21 days (depending the duration of patient's placement) is allocated for salaries for the whole personnel (taking into note their position). Accordingly these "allocated finances" shall be used for reimbursing salaries despite the duration of hospitalization of a patient. However if expenditure for the medical treatment of patients exceeds the prescribed amount (about 65 GEL), personnel's salary budget is re-distributed and decreased to cover treatment expenses. Accordingly, members of staff are interested in discharging a patient within the period of 21-25 days. Moreover, the salary of personnel depends on turnover of patients as the bigger the number of patients - the higher staff salaries are.

The managers of long-term hospital services note that the allocated funds are not enough for medical treatment of patients as it includes additional expensive treatment (somatic disorders) and caring means (diapers etc); accordingly difference of 400 GEL between short-term and long-term treatments is not fair.

Efficiency of this financing system should be subjected to additional review and modifications.

GAPS IN FINANCING SYSTEM

Based on the aforementioned the Group members raised the question whether this financing system might trigger artificial increase of turnover of patients. Some directors of establishments consider that case-based financing is the reason why long-term patients are often given short-term/acute patient status. Bearing in mind that the terms acute and chronic patients are not differentiated in psychiatry it becomes easier to practice such an approach.

On the one hand artificial turnover of patients is hindered by re-hospitalization control carried out by the State Regulation Agency for Medical Activities of the Ministry of Labour, Health and Social Affairs. In case a patient is re-hospitalized within 7 days after being discharged from the hospital, it is being considered that the quality of medical treatment was not adequate or the patient was discharged earlier than needed; consequently the medical establishment is obliged to return funding received for this specific case.

On the other hand, having finished short-term treatment course the patient may be moved in a long-term unit or other establishment without considering such re-placement as re-hospitalization. As stated by several directors, the establishments are manipulating with these artificial practices so to avoid sanctions of State Regulation Agency.

As identified during the monitoring process, the funds allocated for one patient are not enough to cover expenses for somatic diseases management and purchase of means of hygiene. This is a rather serious issue especially in relation to patients whose family members or relatives cannot provide them with such treatment or items (the majority of chronic patients who actually live in the hospital face this problem). The problem is aggravated by the shortage of finances especially compared to short-term treatment.

As a result of financing problems the establishments cannot afford hiring duly qualified personnel that affects the quality of patient treatment and care.

In addition to that, the directors state that financing allocated for long-term medical treatment does not correspond with the needs of such patients. One director even told the Monitoring Group that he did not intend to participate in the next tender for placing disabled persons, as allocated government funds were not adequate to comply with the requirements of the Ministry of Labour, Health and Social Affairs.

As noted by one of the directors, psychiatric program provides for patient/case-based financing. The Program precisely defines the items to be subjected to financing; it depends entirely upon good will of the financing authority to decide whether expenses were reasonable or not. For instance, the Program does not provide for financing neither for treatment of somatic diseases nor for the means of hygiene and clothes.

Directors mention that despite the real needs of patients they cannot spend more funds than allocated, since, if they do so, the expenses won't be reimbursed by the state notwithstanding reasonability of such expenditure.

As stated by one of the directors, they refrain from openly discussing gaps and insufficiency of financing, as in such case they are considered to be bad managers unable to use funds appropriately and therefore they avoid raising this issue.

There is one additional element not covered by voucher-linked (case-based) financing – refurbishment and rehabilitation works. This is a concern basically for old establishments; however the representatives of new ones also noted that even reimbursing expenses for basic refurbishment works is a problematic issue.

Such an approach, first of all, adversely affects the patients' interests, as only placement, food and psychotropic expenses are covered by the Psychiatric Assistance Program. The Program does not address other necessary expenses, especially for long-term patients.

Furthermore, the majority of directors stated that the operation of psychiatric establishments has been burdened by the applicability of Law of Georgia on State Procurement since April 2010.

As stated by administrations, the quality of medicaments is no longer a priority. While observing state procurement rules the establishment have to purchase cheap (Indian) medicaments which, as the majority of doctors note, are not efficient due to the lack of active substances in the medicines.[54] Accordingly such medicines are prescribed in bigger dosage and have adverse effects on patients' health.

As stated by the administration member of Rustavi establishment, despite their view on necessity of specific medicaments they are not entitled to purchase any medicament not included in the special prescribed list. While asked who makes such lists, the director was not able to answer the question.

Directors informed the Monitoring Group that the Ministry of Labour, Health and Social Affairs plans to introduce obligatory rehabilitation services in every hospital, although financing of such services is not incorporated into financial plans. Nobody understands how this requirement might be implemented.

54 As a director clarified usage of low-quality medicament is directly linked with the decision of 2007 requiring Medicines Agency to use conclusions of drug-store net laboratories instead of independent laboratories for licensing medicines.

Directors noted that all their needs should be included in the tender list. If they fail to include every single necessary item in the tender list, they will be forced to arrange another tender that requires additional expenses. At the same time, it is absolutely impossible to identify all needs of the establishment one year earlier. As one of the directors mentioned, the tender system is not adequate in certain cases, for instance, in case of serious damages of heating system, as the tender procedures necessary for renovating the system shall take at least two weeks and meanwhile the patients shall have to stay in the establishment without heating.

As stated by another director, the procurement system prevents them from purchasing products from local farmers. This practice damages interests of local economy as well as of patients'. For instance, tender procedures actually allow the establishments to buy frozen meat and fish only, while it is clear that the quality of such products is much lower than of those available at local markets.

STATE CONTROL

Control over the utilization of financing is an innovation requiring submission of medical information (form IV-100/a) of every patient to the Social Service Agency.

Doctors clarified that within 24 hours of patient's admission to the establishment the information on the patient – first name, last name, personal number, case number, and code of preliminary diagnose, shall be communicated electronically to the Agency.

They also stated that in case of very minor inaccuracy the doctor is subjected to fine. Together with electronic documentation, Form IV-100/a is be submitted to the Social Service Agency on a monthly basis; together with other information, this form includes precise diagnosis of a patient.

Doctors in the establishments do not know who has access to this confidential information.

Such system of control clearly infringes confidentiality of information on patients' health as recognized by Georgian legislation and international standards. The Council of Europe Recommendation of 2004 stipulates: "All personal data relating to a person with mental disorder should be considered to be confidential. Such data may only be collected, processed and communicated according to the rules relating to professional confidentiality and personal data protection."[55] The same article specifies that the conditions governing access to that information should be clearly specified by law.[56]

State Regulation Agency for Medical Service of the Ministry of Labour, Health and Social Affairs carries out government control over the patient-based financing system. The latter triggers doctors to violate laws and not to allow voluntary patients to leave the facilities. The doctors are well aware that, on the one hand, the voluntary patient may leave the facility freely upon request and on the other hand, they might be hospitalized voluntarily or non-voluntarily within several days that shall be considered as re-placement; the latter constitutes a violation and the facility has to return finances to the state.

- The mentioned problem once again highlights inadequacy of control system, even more so the aim of such mechanism is to control finances and not to check the quality of treatment.
- National Preventive Mechanism considers that existing case-linked financing system is not adequate and does not reflect the needs of persons with mental disorders as well as of relevant establishments.
- It follows from the afore-mentioned that the State is unable to establish adequate system of financing and quality control being in line with the rights of patients, confidentiality principle and does not trigger medical personnel to violate the law.

55 Rec(2004)10 art. 13, para. 1.
56 Ibid, para. 2.

- The State should take into account the peculiarity of psychiatric establishments and introduce procurement system in compliance with their needs.

PROCEDURES OF PHYSICAL RESTRAINTS

Physical restraints of patients – isolation or fixation are subject to regulations by Georgian legislation, as well as international and European standards. These regulations are aimed at avoiding improper or inadequate use of physical restraints that might cause physical or any other injury to a patient.

Article 16 of the Law of Georgia "On Psychiatric Assistance" deals with this issue. Application of physical restraints is also regulated by the Order #92/n of the Minister of Labour, Health and Social Affairs dated March 20, 2007 on Approval of Regulations on Rules and Procedures of Physical Restraints Methods of Patients with Mental Disorders.

Article 27 of the Committee of Ministers of The Council of Europe Recommendation Rec (2004) 10 precisely defines this procedure. The same issue is regulated by paragraphs 47-50 of the 8th General Report of CPT.

The aforementioned provisions provide that physical restraints shall be used only if the patient poses threat to himself/herself or other parties. Both the Georgian legislation and European standards requires that physical restraints shall be used only in strict compliance with prescribed, defined in advance detailed procedures. Physical restrain could be imposed: at the specially designated places, using special equipment[57], in only exceptional cases and only in case it is impossible to control a patient's behavior using other, less restrictive measures, for the least possible period of time and only in accordance with an express order and approval of a doctor. Physically restrained patient should be under the uninterrupted supervision of the doctor. Every case of fixation shall be registered in the relevant record book. The patient should have a right to appeal the doctors' decision on physical restraint. These measures shall never be applied as punishment.

CPT standards also provide that physical restraints of patients should be applied in accordance with detailed procedures, which clearly state the following: agitated and violent patients should be, to the maximum possible extent, controlled via non-physical methods (for instance, verbal instruction) while in cases, where physical restraints are absolutely necessary, it should be limited to manual control.[58] The Committee considers that relevant training of personnel is necessary for managing situations the way that neither patients nor staff members are injured.[59]

As for the record of physical restraint cases, the Order of the Minister of Labor, Health and Social Affairs on procedures of physical restraints specifies that medical doctor or doctor on duty shall "register the reason, nature, specific times at which the measure began and ended in the medical file of the patient".[60] As soon as the reasons for restraints are eradicated, psychiatrist makes the decision on termination of measures as well as makes an appropriate record on the case.[61]

It is recommended to specify the document where the records on restrain procedure is made. As provided in the CPT 8th General Report,[62] every detail of the physical restraints should be recorded in a specific register created for this very purpose, as well as in the patient's personal medical record. The record should indicate time of the beginning and the end of the procedure, name of the doctor who ordered or approved the measure, also any injury inflicted to a patient or staff.

During the monitoring it was observed that the practice on physical restraints journal is not consistent in different establishments – some hospitals do not have such records at all **(Khelvachauri Psycho-Neurologic Hospital**

57 Order #92/N dated March 20, 2007 is the only legal document regulating this issue. It provides: "Special instruments for physical restraint shall be resorted for physical limitation."
58 CPT 8th General Report, para. 47;
59 Ibid.
60 Order #92/N of the Minister of Labour, Health and Social Affairs dated March 20, 2007 on Approval of Regulations on Rules and Procedures of Physical Restraints Methods of Patients with Mental Disorders, para. 6.
61 Ibid, para. 14.
62 Para. 50.

LTD Kutaisi Mental Health Centre, Qutiri Mental Health National Centre, Senaki Psycho-Neurologic Dispensary), thus they definitely contravene national and international legislation. At other establishments existence of such journal is only a formality, as there are no entries on fixation in the record book whatsoever. **(Gldani establishment, Referral Hospital)**.

Kutaisi Mental Health Centre. There is no fixation record book in this establishment. The administration members claimed that they do not run the record book as such procedures are not applied therein. Nevertheless there is an isolation room at the establishment.

Qutiri. There is no fixation record book in this establishment; therefore cases of fixation are not being registered here. Qutiri hospital represents that exceptional case where even isolation procedures are being used rather intensively, although neither in this case there is a record book for registration of such practices.

Senaki Psycho-Neurologic Dispensary. The fixation journal is neither run in Senaki establishment. The personnel clarified that the relevant entry is made in the nurse's journal and oral notification is given to the substitute nurse. Isolation measures are also periodically applied in this establishment, however without running a special record book.

Khelvachauri Psycho-Neurologic Hospital The administration stated that fixation is not used therein, therefore there is no special record book with registered cases. Sometimes isolation procedure is applied – there are two isolation rooms in male as well as in female units. In these rooms the Monitoring Group found special soft belts for fixation and straitjackets. No record book on isolation cases is run in this establishment.

In certain establishments – **Gudushauri, Psychiatric Department of Hospital N5**, **Referral Hospital**, **Surami Psychiatric Hospital** - there is no special room for physical restraints and therefore the fixation of patients is practiced in wards in front of other patients. This indeed is unacceptable practice. As the personnel of the Asatiani Institute clarified fixation takes place upon need, sometimes even in the ward. Similarly, in the Senaki Dispensary, despite the existence of a special room fixation is usually applied in the wards, in front of other patients and sometimes with their help too.

The reasons of fixation differ upon establishments. For instance, the Director General of Asatiani Psychiatry Institute stated that main reason for fixation can be refusal to take medication, however medical doctors clarified that fixation is normally not applied in such cases.

In the majority of establishments fixation is applied only in cases when the patient poses threats to himself or other persons **(Asatiani, Referral**). Nevertheless, several rather unusual entries were found in the record book of Referral Hospital. Those are as follows: "Falls down from the bed" (20min); "felt sleepy, but refused to go to bed, was reeling and falling down" (15 min); "felt sleepy, refused to go to bed, made noise, woke up others"(30 min).

Hospital N5. One of the patients claimed that he was fixed after he had released another fixed inmate.

Tbilisi Mental Health Centre. Female patient of Social Department said that fixation is prohibited therein though she mentioned one patient, L.G., who was sometimes tied for 5 minutes as she liked to enter rooms and take others' belongings. A male patient of the same department mentioned that fixation was not applied therein; however the practice was used downstairs" (in long-term department).

Based on the aforementioned it might be concluded that physical restraints of patients are used as punishment in these establishments that is strictly prohibited.

During the interview one patient of the Referral Hospital stated that when a patient is aggressive, personnel twist his arms and fix him. This patient interviewed stated that he was tied himself upon admission to the hospital as he acted aggressively. He was fixed for 10-15 minutes. Another patient mentioned that two days before an interview, new, aggressive inmate was brought and "was tied for half of a day and later released".

Bediani Psychiatric Hospital. The Monitoring Group was informed in this hospital that fixation was not applied as the personnel is able to calm the patient down in any circumstances by just talking to him/her.

Kutaisi Mental Health Centre. The administration noted that they do not use physical restraint procedures, although they do have a special room if needed. They also mentioned that they plan to receive acute patients and presumably might need fixation.

In some establishments the fixation record book is run with defects or there are no entries on restraint duration or other important components.

Tbilisi Mental Health Centre. The interviewers mentioned one patient who was systematically subjected to fixation; however there were no relevant entries in the record book.

Surami Facility. Only few entries concerning restraints of patients were found in the record book. In addition, such important elements as duration of fixation or signature of doctors were missing.

Gudushauri Psychiatric Department . There is no information concerning duration of fixation in the record book for the first half of 2011. The information concerning a decision-making doctor was also missing.

In several establishments there are no special instruments of restraint and the patients are fixed with bed-sheets or other handmade materials (**Referral Hospital, Tbilisi Mentl Health Centre, Surami, Senaki).**

In the majority of establishments fixed patient is under supervision of a nurse or nurse assistant, who claim to report to either medical doctor or doctor on duty on every case. There are no indications concerning injections in any record book. As the Monitoring Group was informed, this data is being registered in patient's personal medical file, which, after double-checking by the Group, proved to be true. Nevertheless, it is recommended to register all medicaments used during the fixation period both in record book and medical file.

Maximum duration of fixation differs. According to the record book of Referral Hospital (total 11 cases during 2011), duration of fixation is 15-40 minutes, while average duration, according to personnel, is 20 minutes. Afterwards the patient gets injection.

LIVING CONDITIONS AND PHYSICAL ENVIRONMENT

The physical environment, and accordingly, the living conditions of patients are not similar in different psychiatric establishments. As already mentioned above, the National Preventive Mechanism welcomes opening of new establishments with refurnished infrastructure and improved conditions for patients. Such facilities are: **Rustavi Mental Health Centre, M. Asatiani Psychiatry Institute, Psychiatric Department of Referral Hospital, Psychiatric Department of Gudushauri National Medical Centre, Psychiatric Department of Hospital N5, one division of Republican Clinical Psycho-Neurologic Hospital, Kutaisi Mental Health Centre.** In these establishment the living conditions are much comfortable than in the old ones; bed-rooms are usually designed for two patients and equipped with adequate furniture, bedside tables and wardrobes, thus patients are able to keep personal belongings and to have so called personal space.

At the same time several old hospitals still exist and living conditions of patients are not satisfactory there. Furthermore, these establishments are designed for several hundred patients; dormitories are large and uncomfortable. Such conditions are not recommended for therapy of patients.

Living conditions of patients are essential not only for safeguarding respect to and protection of rights of patients, but also for the efficiency of treatment; the CPT stated that adequate living conditions constitute "positive therapeutic environment".[63] Moreover, placement of a patient in inadequate living conditions might be considered

63 8th General Report on the CPT's activities covering the period 1 January to 31 December 1997, para. 32.

as inhuman and degrading treatment. Good living conditions are important not only for patients, but for personnel too.[64]

Aforementioned is the very reason why living conditions of patients fall within particular interest of the Monitoring Group. It should be mentioned that the tendency of replacing large-capacity psychiatric establishments with the small capacity ones is indeed a positive trend, as provided by the CPT standards. The Committee considers that large psychiatric establishments pose a significant risk of institutionalization for both patients and staff, the more so if they are geographically isolated. This can have a detrimental effect on patient treatment.[65]

Living environment

The 8th General Report of CPT provides detailed provisions on living conditions of persons with mental disorders. As the Committee considers, „creating a positive therapeutic environment involves, first of all, providing sufficient living space per patient as well as adequate lighting, heating and ventilation, maintaining the establishment in a satisfactory state of repair and meeting hospital hygiene requirements."[66]

The recommendation of the Council of Europe provides that facilities designed for the placement of persons with mental disorder should be as close as possible to normal, family conditions.[67]

The infrastructure of old establishments does not comply with the aforementioned requirements (Surami, Bediani, Qutiri, and Khelvachauri). These establishments have quite good natural light and ventilation; nevertheless due to conditions of infrastructure, age of the facilities themselves, poor state of repair, it is impossible to ensure adequate sanitary-hygienic conditions. Due to the large size, these establishments are not heated properly and the hot water is provided with limitations. Furthermore, in case of large-capacity dormitories, it is impossible to create comfortable environment for patients, neither can they have their personal space (bed-side table, wardrobe, etc). The CPT states:

„The importance of providing patients with lockable space in which they can keep their belongings should also be underlined; the failure to provide such a facility can impinge upon a patient's sense of security and autonomy."[68]

The Committee also notes: "The CPT also wishes to make clear its support for the trend observed in several countries towards the closure of large-capacity dormitories in psychiatric establishments; such facilities are scarcely compatible with the norms of modern psychiatry. Provision of accommodation structures based on small groups is a crucial factor in preserving/restoring patients' dignity, and also a key element of any policy for the psychological and social rehabilitation of patients."[69]

Based on the same reason it is impossible to create "visual stimulation"[70] recommended by the Committee - adequate decoration of dormitory, living space and recreational areas.

The newly created small-capacity establishments with only double-occupancy wards promote creation of positive environment for patients. On the other hand, the doors of wards in these establishments are partially glassed that prevents creation of comfortable environment in the room as everybody can look inside from the halls. According to female patients, this circumstance is of particular discomfort for them, as newly opened establishments are for both, women and men patients. Sanitary-hygienic conditions of the new establishments are generally satisfactory. Except for natural ventilation problems, these establishments have comfortable environment for patients (**Gudushauri**, **Asatiani, Hospital N5, Rustavi, Kutaisi, mixed unit of Khelvachauri establishment, Referral Hospital).** Lack of fresh air causes serious discomfort for the patients, especially in the absence of ventilation.

64 Ibid.
65 Ibid, para. 58.
66 Ibid, para. 34.
67 Rec(2004)10(2004)10, art. 9;
68 8th General Report on the CPT's activities covering the period 1 January to 31 December 1997, para. 34..
69 Ibid, . para. 36.
70 Ibid, .para. 34.

Psychiatric Department of Referral Hospital. Video control cameras are installed in the halls, wards and observation room, where a patient spends some time upon admission to the hospital. According to patients, they were not informed about cameras installed in their wards. There is no special written or oral notice informing patients on the video control in the establishment. Video control cameras are also installed in the halls of **Qutiri facility**, however, not in the wards.

Window gratings are not installed in the newly opened establishments; patients usually cannot open the windows in such facilities as handles are removed and kept by the staff (**Referral Hospital**) or window can be slightly opened (**Gudushauri, Referral Hospital**). There is no central ventilation system in these establishments.

Hospital N5. Windows cannot be opened at all (they are nailed) and windows in the hall are being opened from time to time, so there is rather bad air and unpleasant smell in the building. As one patient stated: "if we behave well we are allowed to come close to window"; "that is why I say that when I leave this place I shall at least be able to breathe fresh air".

In the newly opened establishments the wards windows are not curtained, thus causing discomfort to patients. Patient of **N5 Hospital** stated: "when I felt ill, injection was made in my ward. Everybody gathered near the door glass. I protested though was disregarded and mocked."

A patient of the **Referral Hospital** noted: "They do not open windows at all, only whe guests come". Other patients confirmed this statement.

In certain establishments the door handle is also removed and so the door can be closed only from outside. However during the interviews, both staff members and patients confirmed that doors were never locked save the exceptional cases when isolation of patient was necessary (**Rustavi, Referral Hospital, Gudushauri, Hospital N5, Asatiani**).

In the old part of women unit of Tbilisi Mental Health Centre window gratings are installed inside the window; therefore patients cannot open windows independently.

The doors of toilets and showers of the newly opened establishments cannot be locked from inside which creates rather uncomfortable conditions for patients, especially taking into consideration the fact that these establishments are for both - man and women patients.

The directors of establishments justify these limitations by the lack of staff. They claim that if the patients are allowed to lock and open windows and doors without close supervision of staff the probability of accidents will increase twofold.

As for the old establishments, as a rule, the living conditions are bad, utility rooms and showers are not refurbished, the sanitary standards are not observed, patients are placed in large wards where they do not have personal space. Lighting and heating systems are not operating. (**Surami, Bediani, Qutiri, Khelvachauri**)

During the monitoring there was urine smell in the halls and wards and bed were not tide in **Referral Hospital**. The Staff stated that they lack hygiene means as the latter is provided by the central administration of Referral Hospital in small and insufficient amounts.

Nutrition

The CPT standards provide that "Patients' nutrition is another aspect of their living conditions which is of particular concern to the CPT. Nutrition must be adequate not only from the standpoints of quantity and quality, but also must be provided to patients under satisfactory conditions. The necessary equipment where food can be stored in adequate conditions should exist. Further, organization of meals should be decent; in this regard it should

be stressed that enabling patients to accomplish daily rituals - such as eating in proper conditions - represents an integral part of programs for psychosocial rehabilitation of patients. Table setting during nutrition process is a factor which should not be ignored either."[71]

Private companies in accordance with executive contracts provide nutrition for newly opened facilities. As to the old establishments (**Qutiri, Surami, Khelvachauri, Gldani, and Bediani**) food is being cooked on site. During the monitoring process, the Group did not receive any particular complaints on food quality at the establishments. In some of them, for instance, in Bediani, exists a rather positive practice when menu for the upcoming week is agreed with the patients and, subsequently, posted publicly. In some establishments menu is not available to patients at all (**Referral**).

In addition, it shall be noted that the Monitoring Group observed cases related to nutrition service which were not in compliance with CPT recommendations.

Firstly, it should be mentioned that during nutrition process patients of the establishments are using spoons only. As found out, they have no knives or forks and so the nutrition process cannot be called normal. In addition to that, there is no enough dining room space for all patients (Referral Hospital) so they have to wait for their turn to eat. Therefore, in the new establishments where food is delivered already cooked, some patients are not able to eat it in hot condition.

Walk

None of the establishments allow patients to have independent outside walks notwithstanding of voluntary or non-voluntary status of patients. The doors of every establishment/division are locked and guarded by a security officer or orderly. Any movement of patient outside the building should be approved by a doctor or a nurse. In **Asatiani Establishment, Psychiatric Department of Gudushauri Hospital, Tbilisi mental Health Centre** the Group was informed that doctors make the list of those patients who are allowed to walk outside independently.

In Bediani establishment patients enjoy relatively greater extent of freedom – the door of the hospital is open an patients can move around the courtyard freely (they are not allowed to leave the courtyard). In the courtyard there is always an orderly supervising the patients. Often in such cases it is difficult to differentiate orderly from patients, and such practice might, in a sense, be perceived as a stimulus for establishment of informal relationship between personnel and patients. The patients placed in the **Psychiatric Department of Referral Hospital, Psychiatric Department of Hospital N5 and Senaki Dispensary** do not have possibility to go for walk. Non-existence of recreation area aggravates the situation. Even food is served in wards where the patients spend the most of their time.

As one employee of **Gudushauri Psychiatric Department** said, previously patients were allowed to go for a walk in the common courtyard of the Hospital which was better arranged and larger compared to department's courtyard. Nowadays patients can walk only in the department's courtyard – it was decided so by the new administration of the hospital who stated that patients with mental disordered created discomfort to others by their odd behavior. The same employee also noted that doctors make the list of patients who are allowed to freely move outside the territory of the Hospital. The question of the Monitoring Group whether there was at least one incident justifying prohibition of walks in the common courtyard was answered negatively.

The aforementioned fact deserves special attention as it comprises elements of discrimination of persons with mental disorders. As UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care provide "There shall be no discrimination on the grounds of mental illness".[72]

The patients of **Gudushauri facility** state that they are allowed to one-hour outdoor walks twice a day in the internal courtyard.

71 8th General Report, para. 35.
72 Principle 1, para. 4;

Duration of outdoor activities also differ in the establishments. With this respect the old ones offer better conditions to patients as these establishments are usually located on a larger areas surrounded by parks; accordingly the outdoor conditions for patients are much better here (**Bediani, Surami, Qutiri, Batumi**). Nevertheless, patients of **Qutiri Facility** complained on the insufficiency of duration of outdoor activities.

There is no walking area in Psychiatric Department of **M. Asatiani Psychiatry Institute, Hospital N5 and Referral Hospital.** In the latter establishment there is a practice of taking smokers (patients) to specially designated smoking areas (special room in the hall) in groups. One patient explained that though he is not a smoker he usually joins the group to leave the department even if he still stays in the building.

Contact with the Outside World

The CPT standards provide that "[t]he maintenance of contact with the outside world is essential, not only for the prevention of ill-treatment but also from a therapeutic standpoint. Patients should be able to send and receive correspondence, to have access to the telephone, and to receive visits from their family and friends. Confidential access to a lawyer should also be guaranteed."[73]

Contact with the outside world for the patients of Georgian psychiatric establishments is quite limited. They are allowed to use telephone, however telephone is usually located in the administrative part of the building or procedures room and a patient can access the telephone only with special permission of personnel. Usually it is difficult to get such permission.

Patients of **Hospital N5** said that it is problematic to make a phone call. One of them told us that once when he requested the use of a phone he was threatened to be placed in an establishment with stricter regime.

The patients of **Bediani Hospital** may use Magtifix telephone that is installed in procedures room (as confirmed by patients).

In Surami Hospital it is problematic to have access to telephone and a patient may use it only with assistance of staff member.

As patients of **Qutiri Mental Health National Centre** note, they are allowed to use telephone very rarely. In a forensic psychiatry unit access to telephone is better guaranteed – the telephones are installed in the halls and patients have better opportunities to freely exercise their right to use them. During the monitoring, there were no complaints regarding impediment of telephone communication.

We have been informed in **Khelvachauri Psycho-Neurologic Hospital** that the telephone call is sometimes made by social worker and not the patient. Patients may access telephone on a regular basis however with the permission and supervision of a social worker.

Visits of friends and family members are allowed everywhere. However in the majority of establishments there is no special room for visits. Patients often have to meet with their relatives and family members in the courtyard or wards.

THE CONDITIONS AGAINST DE-INSTITUTIONALIZATION OF PATIENTS – NON-EXISTENCE OF EXTERNAL SERVICES

As observed by the Monitoring Group and confirmed by the doctors and patients, the majority of patients – so called chronic, long-term patients do not necessitate hospitalization. For them, the psychiatric institution performs the function of social habitation rather than of medical treatment institution and the majority of patients stopped receiving medical treatment years ago. The only reason why the patients continue to live in the psychiatric institutions

73 CPT 8th General Report, para. 54.

is the non-existence of the accommodation or income for living in the outside world. In Georgia there are no services to assist the persons with mental disorders to adjust with the outside world.

The director of Bediani Facility noted that the majority of patients of this institution may freely live in society, however they have no place to go. The institutionalization of some of the patients is initiated by their own family members.

One patient of the Bediani institution stated that he had been undergoing the treatment at psychiatric institution on Asatiani street since 90s. When the territory of Asatiani psychiatric institution was sold, those patients who had no accommodation were taken to other institutions.

The majority of patients of **Qutiri and Surami** institutions have been living there for many years mainly because they do not have other places to live. **Senaki Dispensary** administration noted that the number of patients at the institution increases during winter season because of the social hardship of patients.

During the monitoring it was also observed that another reason for institutionalization of patients is the fact that during dispensary treatment the cost of drugs is not reimbursed and patients cannot afford buying them; thus, they are forced to remain at the hospital as in that case the cost of medicine is financed by the government program.

SOMATIC AND DENTAL DISEASES MANAGEMENT

Article 5.1.i of the Law of Georgia on Psychiatric Assistance provides that a patient has the right to "receive relevant medical care in a non-psychiatric medical institution". This provision is of a declaratory character, as it does not specify the relevant methods of implementation. In practice, the issue of managing the non-psychiatric diseases of mental disorder patients is still not decided up to today.

During the Monitoring serious shortcoming in psychiatric treatment was observed – regular blood analysis to check existence of leucocytes in blood is not conducted for those patients who undergo Leponex treatment; the international guidelines provide that such patients should be checked on a regular basis as the Leponex treatment might cause decrease of leucocytes in blood that poses danger to life. Presumably this gap is also related to the lack of financing.

The directors of institution clarified that one-time allocated finances do not suffice for diagnostics and treatment of somatic and dental diseases; this issue is especially important for the patients who regularly take strong psychotropic medicaments. As directors and doctors noted, they may provide such treatment only based on their personal contacts. The patients are treated in the same establishments if the psychiatric institution operates on the basis of multi-profile hospital. However none of the directors could identify the source and program for financing such treatment and diagnostics. Presumably, in such hospitals the availability of doctors with different specialization is improved while financing is still problematic.

As the director of **Rustavi Mental Health Centre** noted they have to clarify the details of placement of patient with the Ministry of Labour, Health and Social Affairs in every specific instance. They have to contact Tbilisi Catastrophe Service that would send car to take a patient to Tbilisi.[74] As recorded, in 2011 only one emergency displacement of patient took place; as for diagnostics and different manipulations, the same letter states that the institution concluded the contract with Rustavi Central Hospital. During 2011 32 patients received consultation services (therapeutic, surgeon, proctologist, ophthalmologist and laryngologist), while 11 patients used laboratory examinations. (including ex-rays, echoscope, electrocardiogram).

In M. Asatiani Psychiatry Institute therapist and neurologist provide services to patients. The administration noted that they do not have finances for additional diagnostics and examination. Accordingly they cannot manage

74 It is not clear why Tbilisi medical services provide services to this facility as it is located on the territory of Rustavi Clinical Hospital.

somatic diseases. The administration also informed the Monitoring group that during 2011 there were 3 instances of emergency services for patients in different hospitals.

The administration of **Psychiatric Department of Referral Hospital** noted that they contact hospital call-centre in instances of somatic problems to arrange the visit of doctor. However there are no records of such instances.

The administration of **Psychiatric Department of Hospital N5** use the services of the hospital therapist for somatic diseases who defines "necessary measures". However the records are never made. Dental diseases are not treated. Emergency treatment was provided to three patients during 2011.

The director of **Bediani Hospital** mentioned that consultants – surgeon, therapist, pulmonologists, neuropathologist are invited from Tbilisi. The reimbursement for one or two visits is 200 GEL. Currently he is negotiating with Clinics "Geo-Hospital" to purchase dental treatment services. The patients confirmed that the administration takes all available measures to manage somatic diseases. As one patient mentioned, his leg was badly injured so he was taken to another hospital for relevant treatment and operation.

In Tbilisi Mental health Centre there is a therapist and a neurologist; surgeon consultant is invited if necessary who consults the patients and conducts small surgery manipulations. Allocation of finances for other diseases or long-term treatment is very problematic. This issue is especially vital for this institution as the majority of patients actually live therein because they do not have another accommodation or income. In 2011 17 patients used emergency treatment in other medical institutions; 29 patients were examined (ex-rays, electrocardiogram, ultrasonographic examination, liver checks, prothrombine index, brain examination, laboratory examination).

At Psychiatric Department of Gudushauri Hospital the services are provided by the doctors of Gudushauri Hospital; however we could not check this information as records concerning the medical treatment and consultancy are not made. As for the emergency services, 8 patients were moved to relevant hospitals.

Surami Establishment has a contract with therapist and neurologist who visit the establishment if necessary. Administration noted that they usually face difficulties if there is a need to place their patient in another hospital for treatment of somatic diseases. They also receive services by Tbilisi Catastrophes Centre who transport patients to Tbilisi. Dental treatment services practically do not exist. According to the official written information, 15 patients were transported for emergency surgical services.

Kutaisi Mental Health Centre administration noted that they have contracts with several specialists who visit the facility on a regular basis and may be called upon in case of emergency. However in reality, according to the written information provided by the Center, in 2011 no facts of emergency or examination transfer have occurred.

Qutiri Mental Health National Centre has contracts with medical consultants who regularly visit the facility. The written information submitted by the centre provides that 8 patients were transported for emergency services during 2011 (in 2010 - 6 patients). In 2011 medical treatment was provided to 9 patients in different hospitals.[75]

It shall be noted that tubercular patients are also placed in this institution; DOTS program is operational. 14 patients are placed in the unit for tubercular patients (7 of them are on a voluntary treatment while 7 – on involuntary treatment as defined by the court). In addition, in units IX and XI there were two more TB patients in isolated wards.

Senaki Inter-District Psycho-Neurologic Dispensary has a contract with two specialists –therapist and neurologist. The administration provides that they visit the facility on a regular basis and patients are transported for out-patient treatment immediately. Records made in the medical file of some patients confirmed the existence of transportation services.

Khelvachauri Psycho-Neurologic Hospital has contracts with several specialists who regularly visit institution. They may be summoned in emergence instances. Administration considers that out-patient services might be

75 Several out of these cases are emergency assistance, f.e. fracture of heels, shanks bones, foreign body - metal wire. A patient was hospitalized with the diagnosis of bronchial tubes and lung malignant tumour. Pleura cavity rinsing procedures and drainage removal was conducted in another case.

provided easily. They also noted that the government programs do not finance routine health problems, but only emergency cases. The written submission of the hospital stated that emergency aid was provided to one patient; while 28 patients were transported for examination during two years (2010-2011).

VOLUNTARY AND INVOLUNTARY PLACEMENT

A patient may be placed in psychiatric hospital voluntarily or involuntarily. Recommendation of the Council of Europe dated 1983 defines involuntary medical treatment as the admission and placement for treatment of a person suffering from mental disorder in a hospital, other medical establishment or appropriate place without prior request of the patient.[76]

Such patients should be under special care as any improper approach/treatment or misdemeanor on behalf of medical staff may violate their rights and freedoms.

Article 18 of the Law of Georgia on "Psychiatric Assistance" provides that a patient may only be placed in the psychiatric institution against his/her will if s/he has no ability to make conscious decisions and it is impossible to treat him without in-patient placement and he poses threat to himself/herself or third persons or may cause serious material damage.

This procedure is laid down in details in article 4 of Order #87/n of the order of the Minister of Labour, Health and Social Affairs.

Due to the fact that the procedures for placing involuntary patients are very labor-consuming, including receiving court order to that effect, also systematic review of the court decision, hospitals endeavor to decrease to minimum the number of involuntary patients which is possible through the means provided in chapter below (see chapter "Right to information of patients ")

During the reporting period involuntary patients were not placed in the following institutions: **Rustavi Mental Health Centre, Surami Psychiatric Hospital, Kutaisi Mental Health Centre.**

In addition according to the CPT standards,[77] while deciding upon involuntary placement a court shall also consider opinion of an independent external psychiatrist who does not represent the establishment where the patient is placed. The Georgian legislation has not incorporated this provision that shall be considered as the gap of the full protection of patient's rights.

As for the voluntary medical treatment - the law of Georgia on "Psychiatric Assistance" provides that treatment shall be considered as voluntary if a patient is hospitalized based on his/her request and/or gives his/her informed consent; juvenile or legally incapable person shall be hospitalized only after request or informed consent of his/her legal representative.[78] The law also provides that such a patient shall be discharged from the hospital at any stage of treatment if the patient so requests.[79] If a person does not want to continue treatment but he/she may pose a threat to himself/herself or third persons, the hospital shall resort to involuntary treatment procedures.[80] All other cases of rejecting the request on discharge of the patient shall be considered as violation of law.

At the present moment the vast majority of hospitalized patients of psychiatric institutions are under voluntary treatment. The voluntary treatment procedure requires that upon admission to the hospital patients sign special documents confirming the consent for treatment. The law requires that this document be kept in the medical file of the patient.[81]

76 Rec (83)2, art. 1;
77 http://www.cpt.coe.int/documents/fin/2009-05-inf-eng.pdf, para 138, 139.
78 Article 1, paragraph 1 of the Law of Georgia on Psychiatric Assistance.
79 Ibid, para. 3;
80 Ibid, para. 4;
81 Ibid, para. 2;

During monitoring the majority of voluntary patients in all institutions stated their will to be discharged, however they claimed that the decision on discharge is made solely by their doctors and they are not entitled to decide when to leave the establishment. Some patients mentioned that they cannot leave the hospital without permission as they already signed the consent on placement.

In Kutaisi Mental Health Centre consent documents in the patient's medical files were not signed. Nevertheless administration claimed that patients were on voluntary treatment.

The interviews with patients at Senaki Psycho-Neurologic Dispensary revealed that some patients were forced to sign the document of consent. Some of them did not understand the meaning and essence of such consent.

Khelvachauri Hospital mixed units. In one instance the consent document was not signed while other documents were signed by family members notwithstanding the legal incapability of patient to do it himself. During the interview, the patients claimed that they were forced to sign the consent form or did not understand the meaning of the document. Some patient even said that signature was not his/hers.

M. Asatiani Psychiatry Institute. The nurse assistant noted that the doctor provides her the list of patients who could go for walk independently notwithstanding to their status of voluntary or involuntary treatment. The same is true for other establishments, for instance Gudushauri psychiatric establishment.

The majority of interviewed patients claimed that they were forced to sign the consent document while they were under the influence of medicine and could not contemplate their behavior. In some instances the policemen who accompanied the patient also attended the procedure.

In many establishments it is a practice to tell a patient that if he/she does not sign the consent document he/she will have to stay at the hospital for approximately 6 months, but if they sign the consent document they will remain in establishment for several weeks. (for instance, Qutiri, Referral Hospital).

In Hospital N5 the consent of patient was expressed by marking crosses instead of the signature of patient; the consent document was filled in by the doctor (G. P. diagnosis senile dementia). This demonstrates a formal and inadequate approach towards the conscious consent. In medical file of another patient (T.T. diagnosis: grave mental deficiency with pathology of behavior) the consent was also expressed by crosses.

In the same facility, in the consent document the words "I am informed" were written by the doctor and patients had only signed the document.

* * *

The Special Preventive Group members interviewed the involuntary patients concerning court proceedings. A patient of Hospital # 5 said that he was not allowed to invite his lawyer. The lawyer appointed by State Legal Aid intervened during the proceedings only with one sentence. Other patients also agreed that participation of legal aid advocate was just a formality. They also claimed that the judges usually agree with the opinion of doctor and disregard the patients.

During the interviews it was revealed thatdoctors on a contrary, consider the aforementioned as progress. They consider that doctor has better knowledge and understanding of patient's needs and a judge, who usually has no medical background, should not take decisions against doctors position. They also claimed that recently there were very rare instances when the court disregarded the decision of commission on placement.

A patient of **N5 Hospital** also noted that he hardly understood the meaning of the court proceedings as he was intoxicated by drugs.

In the same hospital the patient's medical record included the court decision that prolonged in-patient placement until certain criteria were met and no legal reasoning or justification was provided thereto. Evidently the mentioned decision further confirms the patients' claim concerning the formality of court decisions.

INVOLUNTARY TREATMENT

Involuntary placement does not include involuntary treatment. The CPT standards provide that „Patients should, as a matter of principle, be placed in a position to give their free and informed consent to treatment. The admission of a person to a psychiatric establishment on an involuntary basis should not be construed as authorizing treatment without his consent. It follows that every competent patient, whether voluntary or involuntary, should be given the opportunity to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances."[82]

Special Preventive Group observed that in every psychiatric establishment of Georgia treatment of patient generally depends entirely upon the doctor who makes unilateral decision. Accordingly **forced treatment** is often used for both voluntary and involuntary patients. Patients of all establishments declared that it would have been better to receive medicines voluntarily. Some of them even stated that they were threatened by injection if refused to receive medicine.

As mentioned above, the refusal to take medicine might also serve as a basis for fixation of patient.

All aforementioned violations are tolerated by state control mechanisms. Though the Georgian legislation provides sanctions for violations of involuntary treatment procedures, there are no provisions sanctioning coercive hospitalization of patients on voluntary treatment; therefore, this fact promotes existence of such violations.

As indicated in the letter of Asatiani Centre, during 2011 4 employees (a nurse and 3 nurse assistants) were punished for escape of patient. However the letter did not specify the status of patient's (voluntary or involuntary) placement.

Recommendations:

- **To review the status of every voluntary patient in every establishment in order to ensure that the status was attributed in line with his/her will and relevant law;**
- **To establish strict control by relevant units of the Ministry of Labour, Health and Social Affairs over protection of rights of voluntary patients and to ensure relevant legal safeguards for involuntary patients.**

RIGHT TO INFORMATION OF PATIENTS

Recommendation of the Committee of Ministers of the Council of Europe dated 2004 provides that persons subject to involuntary placement or involuntary treatment should be promptly informed verbally and in writing of their rights and of the remedies open to them. They should be also informed of the reasons of the decision and the criteria of its possible extension and termination.[83]

Patients should be informed in the form and language understandable to him/her of any information mentioned in the previous paragraph, as well as of the rules in the establishment and any issue of his/her interest.

CPT standard provides: "Regular reviews of a patient's state of health and of any medication prescribed is another basic requirement. This will inter alia enable informed decisions to be taken as regards a possible de-hospitalization or transfer to a less restrictive environment.

A personal and confidential medical file should be opened for each patient. The file should contain diagnostic information (including the results of any special examinations undergone by the patient) as well as an ongoing

82 CPT 8th General Report, para. 4.
83 Rec(2004)10, art. 22;

record of the patient's mental and somatic state of health and of his treatment. The patient should be able to consult his file, unless this is considered to be irrelevant from a therapeutic standpoint. And the patient as well as his family member or lawyer may request the information of the medical file."

In accordance with the UN standards: „A patient in a mental health establishment shall be informed as soon as possible after admission, of all his or her rights in accordance with these Principles and under domestic law in a form and a language understandable by the patient."[84]

Accordingly, it is desirable that an introductory brochure setting out the establishment's internal regulations and patients' rights be issued to each patient on admission in a language he/she understands. In the majority of establishments patients had a little information concerning their disease, treatment and expected outcomes. They also were not aware of diagnosis and said that the doctor better knows what is good for them. The question, posed by Monitoring Group, whether patients received explanation regarding the duration and volume of treatment, was answered negatively by patients. The only regrettable exception is that in order to seek consent of the patient the doctors usually explain to the patient that in case they do not sign the consent document they will have to stay in the facility for at least 6 months, and if they sign the document, they will be "set free/ discharged" in the nearest future.

Furthermore every patient signs the informed consent document in Georgian regardless the fact whether the patient speaks Georgian or not. Doctors clarified that Georgian document is approved officially and if there is a form in other language in medical file, it will be considered as violation.

National Preventive Mechanism considers that in order to ensure that patients are adequately informed an establishment has to ensure translator for non-Georgian speaking patients.

As already mentioned, the majority of patients were sure that they were unable to revise their decision on voluntary treatment after signing the relevant consent form. The majority even did not know what did they sign. They noted that when signing they were anxious or under psychotropic medications and accordingly could not realize what they were signing. Some of them even stated that they had not signed any document, though later they could vaguely recall signing the documents only after the Group showed them the signed form.

National Preventive Mechanism strongly believes that the patient shall be offered to sign document on information only when he/she is able to understand his/her own state/condition.

COMPLAINTS MECHANISMS

CPT considers that in any place of deprivation of liberty, an effective complaints procedure is a basic safeguard against ill-treatment in psychiatric establishments. Specific arrangements should exist enabling patients to lodge formal complaints with a clearly- designated body, and to communicate on a confidential basis with an appropriate authority outside the establishment."[85]

Appe against involuntary placement decision

The possibility of a patient to appeal against court's decision on involuntary placement has a paramount importance in terms of protection of patient's rights. Accordingly, all legal instruments concerning persons with mental disorders focus on this issue.

Article 25 of Recommendation Rec(2004)10 of the Committee of Ministers of Council of Europe specified the requirements for states that are necessary for ensuring the right of appeal for patient.

84 Principles for the protection of persons with mental illness and the improvement of mental health care, adopted by General Assembly resolution 46/119 of 17 December 1991, Principle 12.

85 8th General Repot, Para. 53

The CPT 8th General Report provides that „In any event, a person who is involuntarily placed in a psychiatric establishment by a non-judicial authority must have the right to bring proceedings by which the lawfulness of his detention shall be decided speedily by a court."[86]

Article 18.14 of the Law of Georgia on Psychiatric Assistance provides that a patient, his legal representative or relative may lodge an appeal in accordance with Administrative Procedure Code against decision on involuntary placement, denial or prolongation of such placement.[87]

In practice, patients and their legal representatives do not exercise the legal right to appeal against court decision on involuntary placement. The exception is Qutiri establishment case, that allocates accused and sentenced persons who were confined to involuntary treatment and are traditionally more active to appeal against court decisions.[88]

During 2011, 36 cases out of 100 were appealed in Qutiri establishment.

Another set of cases of appeal, were observed in **M. Asatiani Psychiatry Institute** where 5 cases out of 62 were appealed.

Neither in case of Qutiri nor in case of Asatiani establishments did the court render even a single decision in favor of appeal made by patient.

In all other cases lodging an appeal was complicated due to delayed receipt of court decisions by patients. Patients and doctors stated that usually the court decision is served within 2 weeks or more. During the oral proceedings in court, only the findings of the court is announced and not the motivation part. It is almost impossible in practice to appeal against this decision, even if there is accompanying wish by the patient

The doctors of several establishments went as far as to state that in some instances patient's deinstitutionalization takes place before the receipt of court decision on involuntary treatment.

Internal Appeal Procedure – Complaints Box

The practice proved that complaints box does not constitute an effective mechanism of receiving feedback as patients do not widely use such boxes even if available.

Generally a social worker is a responsible person to open a complaints box (Gldani, Asatiani, and Bediani); however in the case of Qutiri establishment the administration is tasked with opening the complaints box. In **Khelvachauri establishment** a complaints box is opened once a month. There is no rapid complaints mechanism in the facility.

Complaints box is not available in the following establishments: **Psychiatric Department of Referral Hospital, Psychiatric Department of Hospital N5, Surami, Kutaisi and Senaki establishments.**

PSYCHO-SOCIAL REHABILITATION

The CPT standards provide that „Psychiatric treatment should be based on an individualized approach, which implies the drawing up of a treatment plan for each patient. It should involve a wide range of rehabilitative and therapeutic activities, including access to occupational therapy, group therapy, individual psychotherapy, art, drama, music and sports activities."[89]

86 Para. 52

87 Article 2120 of Administrative Procedure Code „Lodging an appeal against the Order (Decision) of a judge concerning hospitalization of a person to provide involuntary psychiatric assistance."

88 Qutiri establishment is an exception in terms of prolongation of involuntary treatment – during 2011 there were 477 (!) cases of prolongation. Monitoring Group considers that the aforementioned is related to the specific population of establishment.

89 CPT 8th General Report, para. 37

The Order of the Minister of Labour, Health and Social Affairs #112/n on approval of Standards of Psycho-Social Rehabilitation provides rules regulating psycho-social rehabilitation in Georgia. According to Article 1.1. of this order, every institution notwithstanding its ownership and organization form shall observe the abovementioned standards on psycho-social rehabilitation.

Despite the decisive importance of psycho-social rehabilitation component in the treatment process and their binding nature as confirmed by the Order of the Minister of Labour, Health and Social Affairs; as of today in absolute majority of the psychiatric establishments the rehabilitation programs either do not exist or function in limited manner and do not apply to every patient. Psychologist or psychotherapeutic is not employed in some facilities (e.g. **Senaki**).

The individual treatment plans for every patient is not developed in the majority of the institutions. The treatment process usually is limited only with medical treatment, i.e. provision of particular medicines.

Non-availability of psycho-social rehabilitation programs especially affects so called chronic long-term patients as they do not continue medicament-based treatment and so the rehabilitation measures are the only available method to help them to integrate into the society.

As the representatives of some institutions explained, the Ministry of Labour, Social and Health Care plans to introduce binding psychosocial rehabilitation without allocating additional finances. Further research should be conducted concerning this issue.

The only entertainment activities available for the patients are watching the TV or some table games. Books, newspapers or magazines are less available.

The government has to ensure that psycho-social rehabilitation as an integral part of treatment of persons with mental disorders. Nowadays the treatment basically implies provision of medicine that is not sufficient and adequate.

Generally, the psychiatric sphere has lack of psycho-social rehabilitation programs. The personnel of **Rustavi psychiatric health** establishment noted, that they develop individual treatment plans for patients – multidisciplinary group (psychiatrist, psychologist, nurse and social worker) identifies the needs of patient and records the progress. For this very purpose, the psychiatrist, nurse and patient fill in the special evaluation questionnaires for each patient once in every 2-3 months or 6 months; based on these questionnaires the multi-disciplinary group evaluates the result of treatment and identifies the needs.

According to statement of social worker s/he has to fill in "Evaluation form of adults mental health" provided by the Social Workers' Association. The representative of this organization was present during the monitoring process. The social worker noted that the representative of Social Worker's Association assists the social worker of the establishment to better understand his/her functions.

The psychologists of the Rustavi Establishment noted that efforts were made to improve social skills of patients. The patients are given simple tasks, according to their abilities. For example, some of them help the cook, clean their room, and do laundry twice a week. These works are monitored by the nurse. The patients are also taught management of their pension.

Psycho-social rehabilitation programs and individual treatment plans do not exist in **Senaki psychiatric establishment, Referral Hospital, M. Asatiani Psychiatry Institute, Psychiatric Department of Hospital N5, Psychiatric Department of Gudushauri Hospital, Senaki psychiatric establishment, Kutaisi Mental Health Centre.**

In Surami Psychiatric Hospital the occupational instructor is employed; however rehabilitation activities are extremely limited in this establishment.

In Bediani establishment art-therapy courses operate since 2009. The art-therapy and work-therapy instructors are employed. The trainings take place in specially allocated building where patients paint, sculpture and knit (12-15

patients a day). The work therapy courses include planting and growing of greenery and vegetables. The director of the facility mentioned that he and employees of the institution do not have possibility to undergo the trainings in psycho-rehabilitation that would have positively influence implementation of different psycho-social rehabilitation programs. He also noted that he introduced the art and work therapy courses based on the experience of his colleagues and it would have been better if he had special knowledge on this subject.

Tbilisi Mental Health Centre provides for the art-therapy, cognitive therapy, ergo-therapy and individual psychotherapy. According to the documents, 116 patients were recorded to attend the therapy courses, however according to the information obtained on spot currently much less number of patients are able to undergo the mentioned therapy courses due to the lack of facilities and financing. There are specially designated rooms to teach patients painting, to sculpture, to knit, etc. In the same rooms the works of patients are exhibited. Teacher noted that the patients are very talented and some of them are even quite famous. However due to the lack of financing it is impossible to ensure participation of every patient in the art-therapy programs. The psychotherapist of the institution works with patients individually and in groups.

In Kutaisi Mental Health Centre are psycho-social rehabilitation courses; however only 5-6 patients participate in the courses and there are no individual plans for them.

In Qutiri Mental Health National Centre some rehabilitation activities are implemented however they lack the structure and regulation and, accordingly, they hardly meet the real needs of patients. In addition there are no individual treatment plans for patients.

The Qutiri Establishment provides art-therapy courses – paint-therapy, music-therapy, dance-therapy, drama-therapy, phototherapy, ergo-therapy. Only 45 patients attend the courses (according to the administration). It is a positive development that the drama circle of the institution stages performances with patients as actors. For this reason the establishment has special performance stage in the building. The administration also noted that patients might play football and basketball in the courtyard of the facility.

It shall be noted that the involuntary forensic psychiatric patients are not involved in the psycho-rehabilitation programs that constitutes a serious gap in their treatment.

In Khelvachauri Psycho-Neurologic Hospital there is a multi-disciplinary group in charge of implementation of relevant standards of psycho-social rehabilitation. Patients of every unit participate in occupational therapy. During the monitoring 12 patients were working in the special therapy room. They painted, knitted, sewed, etc. Nevertheless the rehabilitation activities are not structured – the schedule of activities is not publicly posted, the records are not made concerning the individual success of patients. 10 patients are daily involved in different rehabilitation activities however it is a small amount taking into account the capacity (140 patients) of the establishment. The individual plans for patients are not used in the hospital.

The psychiatrist and psychologist conduct the courses of cognitive therapy for 8 patients. Some discharged patients regularly visit cognitive or occupational therapy courses.

CARE FOR NON-MEDICAL NEEDS OF PATIENTS

Social workers are responsible to assist patients in acquiring /restoring their personal documents. Basically it means assistance to acquire ID or pension book. Social workers clarified that there are no interconnected electronic data-base shared and used by Civil registry Agency and psychiatric institutions; therefore in every specific instance they have to take patients to the House of Justice or other relevant institution.

None of social workers could explain to the representatives of the National Preventive Mechanism what happens if a patient cannot move independently. They mentioned that there were no such cases and could not recall to the

procedures necessary to be observed (or whether there are such procedures at all) for patients who are unable to move.

All patients usually have an ID card. In the personal files the copies of ID cards are stored, or there is an abstract from Civil Registry Agency with indication of personal number. Only very few medical files did not include data certifying the identity of a patient.

Social workers clarified that unless there is personal data on the patient the institution cannot get financing for the specific patient. If it is impossible to identify a person, personnel of an establishment does not know which agency shall be responsible to assist. In one instance the administration of an establishment called patrol police and criminal police who stated that the identification of a person did not fall within the scope of their competences. Therefore the administration drafted the minutes act/certificate signed by the representative of criminal police. Still, the Social Service agency did not finance this case.

Social workers also mentioned that they are quite active to facilitate/restore good relations between patient and his/her family members (Gudushauri, Gldani, and Rustavi).

The responsibility of a social worker also includes supervision of guardians - whether a guardian visits a patient regularly and whether the pension (collected by the guardian) is spent pursuant to patient's needs. If problems are revealed social worker shall apply to the Social Service Agency that is responsible to provide guardianship and custody services.

Procedures of changing a guardian are unclear; everybody avoids changing a guardian because it is difficult to find one. Without a guardian legally incapable person cannot receive pension and carry out any legal action.

One of the social workers noted that - expertise for defining incapability of a person is often based on the readymade conclusion without the presence of patient. A person may lodge an appeal against the decision that requires expenses for court proceedings and extra 250 GEL for additional expertise. The aforementioned constitutes a serious obstacle for patients declared legally incapable.

Any proceedings concerning a patient without his/her presence, especially when the cases concern definition of the legal capacity of a person, shall not be permitted and violates the UN General Assembly Resolution on the Protection of Persons with Mental Illness and the Improvement of Mental Health Care[90] and principles of fair trial. This is also true for cases related to defining legal capability of a person.

Social workers mention that they do not have access to information on pensions of patients. Accordingly they are unable to provide timely assistance to patients in renewing documents and clarifying different issues.

Generally, it is a serious obstacle for social workers that they do not have access to information on patients' pensions and their guardians. The aforementioned complicates their work to resolve any issues related to granting pensions and later spending the money, as well as other property issues (registration of property, obtaining title over property).

One of the social workers also mentioned that notaries no longer verify the power of attorney issued by persons with mental disorders; accordingly patients' family members and guardians are unable to receive medicines by warrant. The Monitoring Group is not aware of all the dimensions of this problem as the latter should be thoroughly studied further – it should be identified the reasonability of notaries' decision should be identified and it should be ensure that there is no discrimination of persons with mental disorders.

Patients are having difficulties in dealing with some administrative and other issues as social workers are not employed in every establishment (**Referral Hospital, Hospital N5**). The same social worker provides services to **Gudushauri Psychiatric Department and Tbilisi mental Health Centre (Gldani).** At the moment of monitoring there was

90 Principle 18, Procedural safeguards, para. 5: "The patient and the patient's personal representative and counsel shall be entitled to attend, participate and be heard personally in any hearing."

no social worker in Bediani establishment; the administration clarified that one social worker died while another was passing entrance exams at the High School.

- **The monitoring results revealed that State does not provide sufficient care for different needs of patients with mental disorders. There is no organized and unified system to respond their non-medical needs. The activities of social workers are spontaneous and depend upon their personal enthusiasm and abilities.**

- **The procedures for recognition of a person as legally incapable violates rights of persons with mental disorders in certain cases; State has to ensure that persons with mental disorders are always represented in the court or any other instance to simplify the procedures for lodging an appeal against any decision and to abolish court fees for the mentioned persons.**

PERSONNEL

During last several years, the government implemented measures for promoting activities aimed at improving knowledge and competencies of the personnel engaged in psychiatric health services. More precisely, the Ministry of Labour, Health and Social Affairs of Georgia concluded Memorandum of Cooperation with GIP-Tbilisi Foundation, thus agreeing coordination of qualification trainings for the personnel employed in Tbilisi mental health institutions in the first stage of reforms.

Foreign and Georgian experts jointly developed 10 professional modules such as requalification of nurses, management of multidisciplinary group and the relevant medical cases, clinical psychiatry (2 modules), management of aggression and agitation and other modules. Trainings began in May 2011 and are still ongoing[91]. Approximately 1000 persons (psychiatrists, nurses, nurse assistants, psychologists and others) participated in the free of charge qualification trainings.

Notwithstanding the aforementioned another important problem has emerged – applying the acquired knowledge in practice which means that relevant skills of using modern approaches in practice are not incorporated in a daily working routine. The trained psychiatric health specialists rarely request supervision and consultancy for implementation of new methods. It is obviously necessary to require the managers to translate theoretical knowledge in practice, for instance, case based management, suicide prevention and management rules and etc. In general only very few hospitals follow the new approaches in this very field (for instance introduction of multi-disciplinary group). The upcoming trainings should include training of managers based on modern service management technologies.

M. Asatiani Psychiatry Institute nurse stated that he underwent several trainings on treatment of patient, the last one-week training was conducted approximately 3 months ago while the previous one – 5 years before. The nurse was taught how to treat the patient and fixate him/her.

Rustavi – one of the nurse assistants noted that there were no incidents since they had moved to the new building. The Monitoring Group was informed that the personnel underwent reform-related trainings on Multidisciplinary group and medical case management in psychiatry and on management of aggression.

Written information from **Psychiatric Department of Hospital N5** administration states that "every employee attended all trainings recommended by the Ministry of Labour, Health and Social Affairs". According to the onsite information, employees attended trainings on physical limitation procedures, however these trainings dealt only with legal provisions thereon. The trainings did not provide practical casework.

Written information from **Gudushauri Psychiatry Department** administration states that doctors were trained in management of patient's agitation and interviewing of patient. Nurses attended the training on Modern Ap-

91 In June 2012 seminars on Children and Juvenile Psychiatry is ongoing.

proaches in Psychiatry. All personnel attended the training on Principles of Work of Multidisciplinary Group and Management of Aggression.

Written information from **Qutiri Mental Health National Centre** provides that 79 employees (11 doctors, 31 nurses, 3 social workers, 25 guards and 9 administration members) attended training on Medical and Social Aspects of Violence, Main Principles of Involuntary Psychiatric Treatment and Methodology of Risk Control, Management of Aggression and relationship with patients, Concept of Management in the Clinics of Involuntary Treatment, Developing Principles and Regulatory Documents for Protected Accommodations.

In accordance with written information submitted by **Khelvachauri** Psycho-Neurologic Hospital: in 2011 2 doctors and 3 nurse assistants attended trainings. Director and deputy director attended the seminar in medical issues.[92]

Recommendations

Proposal to the Parliament of Georgia

- **To amend Article 18 of the Law of Georgia on Psychiatric Assistance in order to introduce an obligation to seek and consider opinion of an independent psychiatrist in the process of defining involuntary placement of a person with mental disorders.**

Recommendations to the Minister of Labour, Health and Social Affairs:

- **In the framework of reform of psychiatric health system to develop an action plan specifying all activities, time-frames, implementing agency and performance indicators;.**
- **To draw more attention to active involvement of civil society and professionals in the reform process;**
- **To develop financing system responding to needs of psychiatric patients and personnel/ establishments through dialogue and consultations with stakeholders, establishments and healthcare and management professionals;**
- **To review existing state control system and establish a new system safeguarding effective control without prejudice to right of patients to confidentiality of personal and medical information;**
- **To develop effective mechanisms of internal and external control to eradicate and prevent ill-treatment of patients, and to establish a system safeguarding adequate redress to any violation;**
- **To ensure establishment and effective functioning of community-based services;**
- **To plan phased abolition of old and deprecated large hospitals after introduction of community-based services.**
- **To provide financing of expenses for diagnosis and treatment of somatic diseases of patients with mental disorders in the relevant state programs;**
- **For the purposes of psycho-social rehabilitation of patients with mental disorders:**
  - **To safeguard introduction and promotion of psycho-social rehabilitation programs in every establishment, including providing relevant financing;**

92 The subject matter of seminars and trainings were not specified

- To oblige every establishment to develop and dully implement individual treatment plans after relevant trainings and preparation;

- To provide state-sponsored regular trainings and other activities for improving qualifications on treatment of patients, physical restraint procedures, the rights of patients for the psychiatric hospitals personnel, and especially for the low and middle level medical personnel;

- To identify the minimum number of medical personnel for the certain number of patients;

- To introduce state control system over adequate remuneration and other social guarantees of personnel;

- To develop an action plan for assisting psychiatric establishments in implementation of recommendations elaborated by Public Defender.

Recommendations to directors of Psychiatric hospitals:

- To introduce active control over personnel's treatment to patients; every case of ill-treatment shall be responded immediately and effectively, including informing relevant agencies;

- To apply to physical restraint procedures as a means of last resort in very exceptional and emergency situations. In addition the following shall be taken into account when resorting to physical restraint procedures:

  - To observe national legislation and international standards;

  - Special room and special equipment;

  - Relevant registry indicating decision-maker, justification of application of physical restraint, time of fixation, and every manipulation and medical check-up underwent by the patient subjected to restraint, also information on the beginning and the end of the procedure;

  - To eradicate resort to physical restraint procedures as punishment.

- To provide appropriate living conditions for patients in every establishment, including:

  - Sufficient ventilation, including natural;

  - Creation of living conditions as close as possible to family conditions

  - Creation of privacy in bedrooms, as well as in toilets and bathrooms;

  - Development and implementation of entertainment measures and activities;

  - Ensure that patients spend enough time outside/on fresh air;

  - Library;

- To implement measures to ensure different forms of contact with outside world:

  - Allocation and equipment of a special meeting room on the territory of a facility;

  - Access to telephone for patients;

  - Ensure receipt and sending correspondence;

- Access to printed media and TV.

- Voluntary and involuntary placement and treatment:
  - To review the status of every voluntary patient taking into account his/her will and requirements of law;
  - To safeguard protection of patients rights guaranteed by the legislation, including the right to be discharged from the hospital voluntarily;
  - To provide translation services to patients who do not speak Georgian.
- To safeguard legal remedies for involuntary patients and systematic review of status with participation of the patient and/or his/her representative.
- To ensure that patients are duly informed on mechanisms and procedures of appeal on every stage of involuntary placement;
- To introduce safeguards for involuntary treatment eradication and prevention, inter alia, education of personnel in relation to this issue;
- To implement measures for improving awareness of patients:
  - To provide information to patients in the language and form understandable to him/her upon admission, as well as before any manipulation or treatment;
  - To discuss a prescription with a patient in a form he/she understands;
  - To ensure access to his/her medical file or any record related to the patient
- To ensure continuous education of and to introduce relevant social guarantees (including adequate remuneration) for personnel in order to improve professionalism and motivation.
- To increase the number of personnel, inter alia, by employing nurses, nurse assistants and personnel in charge of psycho-social rehabilitation (psychologists, social workers, occupational therapists, etc).

2012

Report on the State of Human Rights in Institutions for Persons with Disabilities

The present report covers the results of monitoring carried out in residential institutions for persons with disabilities on June 12-29, 2012, by the Special Preventive Group of Public Defender of Georgia within the mandate of the National Preventive Mechanism.

The monitoring was carried out in all the residential institutions where persons and children with disabilities live (or may live):

1. The Tbilisi Infant House;
2. The Makhinjauri Infant House;
3. The Senaki Institution for Children with Disabilities;
4. The Kojori Institution for Children with Disabilities;
5. The Dusheti Boarding House for Persons with Disabilities;
6. The Martkopi Boarding House for Persons with Disabilities;
7. The Dzevri Boarding House for Persons with Disabilities;
8. The Chiatura Public School No. 12 (Specialized Boarding School for Children with Disabilities);
9. The Akhaltsikhe Public School No. 7 (Specialized Boarding School for Children with Disabilities);
10. The Kutaisi Public School No. 45 (Specialized Boarding School for Children with Hearing Loss and Impairment);
11. The Tbilisi Public School No. 200 (Specialized Boarding School for Children with Disabilities);
12. The Tbilisi Public School No. 202 (Specialized Boarding School for Children with Vision Loss and Impairment);
13. The Tbilisi Public School No. 203 (Specialized Boarding School for Children with Hearing Loss and Impairment).

The Special Preventive Group was composed of the following experts:

- Daniel Mgeliashvili – The Office of Public Defender of Georgia;
- Ana Arganashvili – The Office of Public Defender of Georgia;
- Ana Abashidze– The Office of Public Defender of Georgia;
- Kakha Mikadze – expert of the National Preventive Mechanism, psychologist;
- Irma Manjavidze – expert of the National Preventive Mechanism, physician;
- Maia Kiknadze – expert of the National Preventive Mechanism, psychiatrist;
- Koba Nadiradze – NGO The Youth Center for Independent Living;
- Eric Mathews – international organization Disability Rights International;
- Larry Kaplan – international organization Disability Rights International.

During the monitoring, members of the group inspected the infrastructure and interviewed the directors, medical staff, physicians, and social workers of all the afore-mentioned institutions. They also interviewed beneficiaries in a confidential environment. In the process of the monitoring, the group members checked the documents and logs kept in the institutions.

It should be assessed positively that in the process of the monitoring the members of the Special Preventive Group did not encounter any obstacles created by the administrations of the institutions. The monitoring was carried out in partnership with international organization Disability Rights International and with the financial support of Open Society – Georgia.

THE MAJOR FINDINGS OF THE MONITORING

In the process of the monitoring, the Special Preventive Group revealed violations in all the institutions for persons with disabilities. Violations were of systemic as well as of individual character.

- The Special Preventive Group documented ill-treatment in the institutions for both children and adults with disabilities.
- Facts of physical restraint of persons with disabilities, contradicting with the norms established by Georgian legislation was observed.
- Particularly serious violations were documented in terms of restriction of medical service for children with disabilities. Among these violations, particular attention should be paid to refusal to carry out medical intervention and to provide palliative care for children diagnosed with hydrocephaly.
- The service of psycho-social rehabilitation was restricted in absolutely all the institutions. In fact, none of the persons with disabilities is given the opportunity to develop his/her functional abilities and skills of independent living.
- Disabled persons' rights to legal assistance and private and family life are restricted. They cannot maintain contact with their children and other members of their families.
- The global restriction of access to the outside world prevents them from living a full life even in the environment of an institution for persons with disabilities.
- The sharp storage of staff, the lack of relevant professional methods of approach and qualification creates a danger of violence among beneficiaries which can be followed by severe damage of health and other lethal consequences for disabled persons.

THE MAIN PRINCIPLES AND METHODOLOGY OF THE MONITORING

The monitoring was conducted in the framework of the National Preventive Mechanism envisaged by the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment whose functions Public Defender of Georgia is obliged to fulfill on the basis of the July 16, 2009 amendment to the Organic Law of Georgia on Public Defender of Georgia. Proceeding from the aforementioned functions, first in 2010 and now in 2012, monitoring was carried out in state residential institutions for persons with disabilities. Another important document used in the process of the monitoring was the UN Convention on the Rights of Persons with Disabilities of 2006.

The main principles for conducting the monitoring were as follows[93]: do no harm, respect the mandate, know the standards, exercise good judgment, seek consultation, respect the authorities, credibility, confidentiality, security, understand the country, professionalism, accuracy and precision, impartiality, objectivity, sensitivity, integrity, and visibility.

Taking into account the main principles of the UN Convention on the Rights of Persons with Disabilities of 2006[94], in the process of the monitoring, the group of experts included a member of Disabled Persons' Organization (DPO)[95].

In order to ensure communication with persons with sensory restriction (hearing impairment), the monitoring process involved a sign-language interpreter who interpreted the group members' conversations with beneficiaries in the sign language in full compliance with the principles of confidentiality.

Inquiry into possible cases of ill treatment and violence towards persons with disabilities was carried out with special care and sensitiveness; the process involved the ex- pert-psychologist and the expert-psychiatrist, as well as the lawyer. Interviews were conducted in separate rooms, in an environment that was known and acceptable for the beneficiaries. The beneficiaries could disrupt the interview at any stage. The experts used the method of semi-structured interview. In case of the beneficiary's consent, the conversation was recorded on an audio recorder.

The group attached considerable importance to ensure that inquiries into facts of ill-treatment and abuse of persons with intellectual impairment and mental health problems were conducted with a sensitive approach. The methodology of the working process, which was based on the basic principles of human rights, included both the work to be done before the monitoring and the development of a specific form reporting in the process of monitoring: validation (verification) of information about ill-treatment and abuse received by experts in the process of monitoring through different sources, analysis of information, interviews with professionals, obtaining of photo and audio materials. Results obtained by the group were summarized and processed with respect to both individual violations of rights and possible systemic problems.

STANDARDS ESTABLISHED BY INTERNATIONAL TREATIES

Despite the fact that Georgia has yet to ratify the 2006 UN Convention on the Rights of Persons with Disabilities, it has ratified the international and regional standards whose enforcement is obligatory to strengthen the guarantees of protection of the entire population of Georgia, including persons with disabilities. These international documents are as follows:

- The European Convention for the Protection of Human Rights and Fundamental Freedoms;
- The International Covenant on Civil and Political Rights;

93 The Office of the UN High Commissioner for Human Rights (2001).Training Manual for Human Rights Monitoring, Professional Training Series No. 7, Chapter V, Basic Principles of Monitoring, p. 87.Geneva, ISBN 92-1-154137-9

94 The Office of the UN High Commissioner for Human Rights (2010), Monitoring the UN Convention on the Rights of Persons with Disabilities, Training Manual for Human Rights Monitoring, Professional Training Series No. 17, Geneva, Chapter III, Monitoring the Rights of Persons with Disabilities, p. 33

95 Disabled Persons' Organization(DPO), an organization protecting the rights of persons with disabilities

- The International Covenant on Economic, Cultural and Social Rights;
- The UN Convention on Elimination of All Forms of Discrimination against Women;
- The UN Convention on the Rights of the Child;
- The UN Convention against Torture, etc.

Public Defender of Georgia, relying on the twin-track approach[96] introduced by the UN High Commissioner for Human Rights in the process of protection of the rights of disabled persons, calls on state agencies to ensure that the rights of disabled persons are protected in the framework of implementation of all existing conventions, since any social group of the general population can have disabilities; in addition, Public Defender supports the ratification of the 2006 UN Convention on the Rights of Persons with Disabilities as the most complete standard among the international treaties on human rights created for this purpose.

STANDARDS GUARANTEED BY NATIONAL LEGISLATION

The state policy of Georgia in relation to persons with disabilities living in residential institutions, is determined by the Constitution of Georgia, international treaties, national legislative acts, and documents of the state policy.

In accordance with Article 14 of the Constitution of Georgia, "Everyone is free by birth and is equal before the law regardless of race, color, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, place of residence."

Article 27 of the Law of Georgia on Social Protection of Persons with Disabilities says the following about the rights of persons with disabilities living in boarding houses and other inpatient facilities of social assistance:

1. "The state shall provide persons with disabilities with accommodation in accordance with an individual program of rehabilitation, taking into account their wishes. The conditions created in boarding houses and other inpatient facilities for persons with disabilities must ensure the exercise of their rights and lawful interests.

2. If, as a result of rehabilitation measures, it is no longer necessary for persons with disabilities to be in a boarding house or other inpatient facility, the bodies of local self- government and government shall provide them, including orphans or children devoid of parental care of this category, with accommodation, in accordance with the applicable legislation."

The Civil Code of Georgia determines the grounds for depriving persons, who, in most cases, are also disabled, of legal capacity; Article 1276 of the Code indicates that guardianship shall be imposed on a person who has been recognized as legally incapable due to a mental illness or mental retardation.

The aforementioned normative documents, together with other legislative acts ensuring social assistance, are implemented though the Concept of Social Integration of Persons with Disabilities adopted by the Parliament of Georgia on December 2, 2008, and the Action Plan on Social Integration of Persons with Disabilities for 2010-2012 approved by the government of Georgia on December 15, 2009.

Despite the fact that the process of deinstitutionalization of large children's homes has been implemented successfully since 2005 and more than 4,000 children[97] have already left children's homes, no children with disabilities in institutional care have been deinstitutionalized through placing them in small family-type children's homes; by the time of the

96 The twin-track approach ensures that the issues of persons with disabilities are taken into consideration and implemented (mainstreaming) in all initiatives and projects.

97 The Ministry of Labor, Health and Social Affairs of Georgia, the Main Directions of the Reform of the System of Child Care, Action Plan for 2011-2012, http://www.moh.gov.ge/files/2010/socialuri/kanonmdebloba/bavshvze_zrunva/samoqmedo_gegma/ ChildCare_GEO.pdf

monitoring, no residential institution for children with disabilities had been closed; adults with disabilities have also been unaffected by deinstitutionalization. As it is noted in the aforementioned strategic document of the Ministry of Labor, Health and Social Affairs, *"In terms of deinstitutionalization of children under state care, the children with disabilities are the most problematic category. The existing practice makes it clear that children of this category mainly find themselves in child care institutions from their birth, and the probability of their return to their biological families, adoption, or transfer to foster care is quite small. Due to this, at this stage, institutions for children with disabilities remain the only option for exercising care on children of this category, for which it is necessary to maintain the existing service and further perfect its form and quality."* The passage given above, as well as the fact that children with disabilities are yet to be deinstitutionalized, indicates to discrimination towards these persons, since, in accordance with t2006 Convention on the Rights of Persons with Disabilities, discrimination on the basis of disability means "any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation."

Public Defender of Georgia addresses the Minister of Labor, Health and Social Affairs of Georgia with a recommendation to:

- **ensure the exercise of the rights of persons with disabilities while planning and implementing the process of deinstitutionalization.**

ILL-TREATMENT

International Standards on Ill-treatment towards Persons with Disabilities

Crimes committed against persons with disabilities go unnoticed by the society, particularly when these crimes are directed against people held in places restriction of liberty or those living in institutions[98].

In the opinion of Janet E. Lord, a legal scholar of Harvard University, violations envisaged by the UN Convention against Torture are especially grave towards persons with disabilities held in institutions, since it is the living conditions in these institutions that were considered as a violation of human rights by the European Court of Human Rights in the case of **Price v. United Kingdom**[99]. The Court found that to detain a severely disabled person in conditions where there was dangerously cold, patient risked developing sores because her bed was too hard or unreachable, and was unable to go to the toilet, etc. constituted inhuman and degrading treatment. Particular vulnerability of persons with disabilities to torture and ill-treatment was identified by the Office of the UN High Commissioner for Human Rights, the UN Committee against Torture, and the UN Special Rapporteur on Torture at an expert meeting convened on December 11, 2007, on the basis of which a special document[100] was adopted on the protection of persons with disabilities from torture and ill-treatment.

The aforementioned document discusses why it is particularly difficult to inquire into facts of torture and ill treatment in relation to persons with disabilities. As one of the members of the experts' panel [101] stated, the binding states are seldom held responsible for carrying out torture and ill-treatment towards persons with disabilities, because it is considered that representatives of the state always acted with "a good intent". The staff of institutions for disabled persons always has the argument that they wanted to treat the patient with the established practice (which constitutes ill-treatment). And the aforementioned indicates that the use of the so-called "intent criterion" in assessing the facts of torture and ill-treatment against persons with disabilities is ineffective. The same expert indicated that, in connec-

98 Janet E. Lord, Shared Understanding or Consensus-Masked Disagreement? The anti-torture Framework in the Convention on the Rights of Persons with Disabilities, Loyola of Los Angeles International and Comparative Law Review, 2010, No. 27

99 Price v. United Kingdom, the European Court of Human Rights, No. 33394/96, 10.07.2007

100 The Office of the UN High Commissioner for Human Rights, Expert Seminar on Freedom from Torture and Ill-treatment and Persons with Disabilities, Report, Geneva, 11 December 2007

101 Eric Rosenthal, Executive Director of the international organization protecting disability rights – Disability Rights International

tion with the aforementioned, it is important to revise the doctrine of "medical necessity" established by the European Court of Human Rights, which the court discussed in the case of Herczegfalvy v. Austria[102]. Accordingly, regardless of what type of "intent" (that of help, treatment, etc.) medical staff uses as an argument, it is important to appropriately document all circumstances when assessing ill treatment towards persons with disabilities and accurately describe the harm sustained by the person. The staff of residential institutions for persons with disabilities also has a habit of saying that persons with mental health problems do not feel pain [in the case of ill-treatment] due to mental disorder. This is a classic stereotypical opinion which must be immediately eradicated by human rights organizations.

The Working Group on Violence against and Ill-treatment as well as Abuse of People with Disabilities[103] of the Council of Europe has actively deliberated on the difficulty of identifying violence inflicted on people of the aforementioned group; to prevent the aforementioned, a publication issued by the Working Group of the Council of Europe included concrete forms and definitions of violence and ill-treatment towards people with disabilities[104]:

- physical violence, including corporal punishment, incarceration – including being locked in one's home or not allowed out, over-or misuse of medication, medical experimentation or involvement in invasive research without consent;
- sexual abuse and exploitation, including rape, sexual aggression, indecent assault, indecent exposure, forced involvement in pornography and prostitution;
- psychological threats and harm, usually consisting of verbal abuse, harassment, humiliation or threats of punishment or abandonment, emotional blackmail, arbitrariness, denial of adult status and infantilizing disabled persons (treating them as children);
- interventions which violate the integrity of the person, including certain educational, therapeutic and behavioral programs;
- financial abuse, including fraud and theft of personal belongings, money or property;
- neglect, abandonment and deprivation, neglect of health care needs or other daily necessities, etc.

The aforementioned publication of the Council of Europe distinguishes between active and passive forms of violence, or between carrying out violence, on the one hand, and restriction of protection from violence, on the other hand.

The publication pays particular attention to facts of abuse and neglect of persons with disabilities in the field of healthcare, including:

- discriminatory access to routine and preventative health care;
- rationing of interventions on account of disability rather than clinical need;
- a perceived readiness to accept euthanasia or non-intervention in cases of life threatening illness because of an individual's impairment;
- over, or inappropriate, use of sterilization and other intrusive or irreversible methods of contraception;
- neglect of personal hygiene to the extent that it presents real health hazards;

102 Herczegfalvy v Austria. With the aforementioned decision of the European Court of Human Rights No. 10533/83 of September 24, 1992, the Court upheld the use of long-term physical restraints where such practice is determined to constitute "medical necessity".

103 The Working Group was set up by the Committee of Rehabilitation and Integration of People with Disabilities of the Council of Europe in 1998, which was caused by an increase in the number of cases of abuse and ill-treatment of persons with disabilities in the member states of the Council of Europe. The group worked in the years 1999-2001, and the results of the group's work were reflected in the Resolution No. 2005 (1) on Safeguarding Adults and Children with Disabilities against Abuse of February 2, 2005, https://wcd.coe. int/ViewDoc.jsp?id=817413&Site=CM

104 Hilary Brown (2003), Safeguarding Adults and Children with Disabilities from Abuse, Council of Europe Publishing, ISBN 92-871-4918-6

- over use of medication to control mood or suppress difficult behavior;
- failure to respond to everyday illnesses and acute pain such as tooth-ache, period pains, ear-ache and stomach upsets[105].

Studies indicate that, as a rule, in the case of persons with disabilities, emphasis is put on their disabilities, while the general problems of their health are ignored. For example, in the case of people with mental retardation, the diagnosis of malignant tumor is usually set extremely late, because care-givers ignore the symptoms.

The publication of the Council of Europe also indicates to the wicked trend of involving adults and children with disabilities in health care systems informally (on the basis of a close relationship or good will), despite the fact that, according to the 2008 standard of the European Committee for the Prevention of Torture[106], access to health care for per- sons held in places of restriction of liberty should be assessed by the extent to which the following formal criteria are met:

- access to an independent and appropriately qualified doctor;
- equivalence of care;
- respect for the patient's consent and confidentiality;
- access to preventive healthcare;
- professional independence of a doctor.

Accordingly, medical service that is provided informally and fails to meet the aforementioned criteria cannot be considered as adequite.

CASES OF ABUSE, ILL-TREATMENT, AND LABOR EXPLOITATION IN INSTITUTIONS

In the period of the monitoring, the Special Preventive Group met and interviewed more than 130 beneficiaries. Many of them talked about violent atmosphere in the institutions that manifested itself in the systematic exercise of physical, verbal, and emotional abuse.

The Chiatura Public School No. 12 [107]

In this institution, the experts of the Special Preventive Group revealed a number of facts of physical and psychological violence inflicted on the beneficiaries by the staff and, especially, the director, as well as cases of inter-beneficiary violence.

A 13-year-old child declared: "These teachers beat me; that woman is called N. Teacher L. also beats children. The director beats children with his hands, this way", and s/he showed us an open palm. "Children are afraid of the director. If you do something wrong, they may not give you food or they may lock you up in a room. L. and N. lock [children] up."

According to a 12-year-old child, "three days ago we beat each other so hard that they could not stop us." The child blamed staff members T. and N. for inflicting violence on beneficiaries: "T. beats the boys; when they make them angry, T. and N. also beat the girls". The same child blamed the director of the institution for violence: "If director gets angry, he becomes very dangerous; he slaps [boys] when they make him angry; he also hits the girls."

105 Noted by organization Autism – Europe
106 Document (98) 12 of the European Committee for the Prevention of Torture
107 specialized boarding school for children with disabilities aged from 5 to 18, 27 pupils are enrolled.

"He drinks vodka and wine. They bring it from the outside; his friends also drink, and when they get drunk, they beat one another," said one of the beneficiaries.

Beneficiaries' labor is also exploited ("I cut firewood for a local inhabitant"). They wash director's car, and director takes them to his father's house in the village of Banikuri. "Once we cut firewood in the forest and brought it down to the director's house. Director also takes girls to his house to work," said another beneficiary.

As a ten-year-old child declared, "Teacher Sh. Hits me in my face, because I sneak out. Director beats boys and shouts at us. The director takes us to his home and makes us bring firewood. We help teacher N. in picking cherries; I climb the tree."

A 17-year-old confirmed this: "Teachers beat children when they make them angry. The director beats [them] when they make him angry… I help the neighbors – I carry water for them, and they send me to the town to bring cigarettes, coffee, and cooking oil. Teachers from here also send me to the town. They give me 20 kopeks and I buy sunflower or a chewing gum."

According to a 14-year-old, "the boys cut trees and the girls tidy up teachers' houses." The child denied that some teachers and the director had put pressure on the beneficiaries, though s/he let it out that s/he had been instructed by teachers to say that teachers took very good care of them. When asked which teacher had instructed him/her, s/he replied: "If I tell you, you will dismiss him/her."

A 16-year-old pupil said that the director had beaten him "hard" several times, mainly with open palms. "As I didn't listen to him, he was compelled to beat me." He characterized the director as "very aggressive" and explained that he "often drinks here" [in the institution]. After he had beaten him, he told him: "I was drunk and I went too far." The child also confirmed that the boys went to bring firewood.

At the time of the monitoring, the monitoring group noticed a (presumably) half- emptied bottle with an alcoholic drink in the director's room that he put in the corner of the table as soon as he had entered the room (the aforementioned has been photographed).

The Tbilisi Public School No. 202 (boarding school for children with vision loss and impairment) [108]

According to the pupils of the school, at present, facts of physical abuse do not take place in the institution. According to an 18-year-old, "previously, I found it hard to be here, one of the teachers pulled my hair and another one pinched me. Now they no longer work here." However, the pupils name excessive consumption of alcohol by members of the administration in the working hours and on the area of the institution as a serious problem. According to them, the aforementioned has also caused verbal abuse of male pupils.

According to a 15-year-old, "teachers and pupils drink together." The janitor of the institution is also often drunk.

The members of the preventive group also talked with several staff members and parents of beneficiaries who confirmed the facts of alcohol consumption in the institution.

The Tbilisi Public School No. 200 [109]

The experts of the preventive group received information about ill-treatment of beneficiaries in the institution. Specifically, according to the beneficiaries, some employees of the institution exert physical and psychological pressure on them. A nine-year-old child says that "employees of the institution, I. and N., beat children when they make them angry; sometimes, I. calls N. and asks him/her to come and help him/her calm the children down." The children

108 specialized boarding school for children with vision loss and impairment aged from 5 to 18, 22 pupils are enrolled.
109 specialized boarding school for children with disabilities aged from 5 to 18 pupils are enrolled.

describe the means for punishment in detail: "I. beats [children] with a ruler, the ruler is bitter on the skin, made of plastic and transparent." The aforementioned members of the staff beat children in the head, face, and hands, mainly with their hands, and also with a ruler; they also pull their hair. According to the same beneficiaries, "when children make teachers angry, they make them stand outside, in the corridor, for a long time." According to the children, "if you leave the classroom without permission, they will make you stand in the corner from one meal time to another" (the interval between different meals is 2.5-3 hours). According to the beneficiaries, employees of the institution often beat a ten-year-old child who "refuses to go to bed; when they beat X., we go to bed."

The ten-year-old X. confirmed the violence inflicted against him/her: "Teacher L. pulls my ears; s/he tore my ear away when I made him/her angry – I was not doing the tests and was scribbling" (the scar on his right ear was photographed). The beneficiary also mentioned violence by a person called I. who beats him and two other boys: "I. comes into the hospital room (he calls the bedroom a hospital room) and beats us." The same beneficiary also named a teacher called N. who beats beneficiaries.

During an interview, when asked about possible ill-treatment of beneficiaries by the staff, an 11-year-old child became very nervous, which was manifested in the trembling and twisting of hands, a change in the tone of his/her voice, and blushing; s/he denied all kinds of pressure on beneficiaries, though s/he said that teachers had asked the beneficiaries who had left the interview room what the experts of the preventive group had talked to them about.

One of the beneficiaries (who was unable to name his/her age) declared during an interview: "The teachers do not get angry at us; they don't beat us." Then, without waiting for our question, s/he told us: "Now ask me what happens in the school." When asked how s/he knew what we were going to ask him/her, s/he said that teachers had "instructed" him/her.

A nine-year-old child was nervous during an interview; s/he sat with his/her head hung and moving and touching his legs and clothes. At first, s/he didn't want to talk about ill treatment, then s/he agreed and declared that "teacher I. quarrels with children and tells them not to stand up; s/he hits the boys with a ruler when they make him/her angry". She also said that a person called M. "makes them stand in the corner."

According to a ten-year-old child, teachers pull the hair and ears of one of the beneficiaries, X., who is distinguished with aggressive behavior and "often fights with children," and make him stand in the corner. However, he said that he didn't know the names of these teachers.

According to him, children often fought with one another; he also named two elder beneficiaries who bullied children; he was also beaten, but it happened "a long time ago" (he was not able to specify exact time).

According to an 11-year-old child, teachers slap children, while nurses pull their hair.

The Tbilisi Public School No. 203 (former Boarding School for Children with Hearing Loss and Impairment) [110]

Soon after the interview with beneficiaries started, when the staff of the institution learned that the group of experts included a sign-language interpreter hired by Public Defender, it became noticeable that the staff were agitated, nervous, and overly interested in the process under way in the interview room; the employees interrupted the interviews several times by entering the room, with the pretext that the beneficiary "was tired and it was necessary to end the interview."

As a result of the interviews with the beneficiaries, the group received the following information:

A 13-year-old child declares that beneficiaries often have conflicts with one another; there are also "bullies" who have a tense relationship with teachers. The teachers occasionally pull children's hair and ears and slap them.

110 specialized boarding school for children with hearing loss and impairment aged from 5 to 18, 205 pupils are enrolled. The interviews with the beneficiaries were conducted with the help of a sign-language interpreter invited by Public Defender who ensured communication between the experts and pupils with the sign language, with full observance of confidentiality.

As a result of an interview with a nine-year-old child, it was found out that "two of the three nurses are aggressive; they beat children and pull their hair"; one of the nurses whose name the child was not able to name beats children with a big stick when they refuse to go to bed, and this stick is white, long, and made of plastic. To check the above-mentioned information, the members of the group of experts inspected the presumable place of the stick – the boys' bedroom section where they found the aforementioned "stick" lying in one of the rooms; it was a long plastic water pipe (it was photographed). Later, the same child recognized the "stick" s/he had mentioned.

According to a nine-year-old child, when children make their beds untidy, teachers make them stand at the wall and hit them in the hands, making their hands become red by beating. A nurse called M. sometimes hits them in the legs with an iron stick.

A conversation with another nine-year-old revealed that a teacher called N. quarrels with him and shouts at him/her, because s/he does not obey her. The nurses make him stand in the corner, "one of the nurses is especially aggressive and slaps him/her in the head." This nurse (whose name s/he did not say) has a habit of hitting children the face and pulling their ears and hair. The child said that this nurse (whose name s/he did not say) had hit another child with a stick; then s/he changed his/her words and blamed it on an elder boy. S/he described the stick as brown and made of iron.

The Akhaltsikhe Public School No. 7 [111]

In the Akhaltsikhe school, beneficiaries told the group about facts of ill-treatment by the staff.

According to a 17-year-old, nurses T. and N. shout at her; she dislikes the night nurse E., who is "aggressive", the most.

According to the juvenile, the children tidy up rooms and toilets in the institution. She herself helps the neighbors in the kitchen garden and in tidying the house. Teacher D. took her together with the boys to cut firewood. "The boys cut it and we collected it. [Children] go to the teachers' homes. Teacher L.'s daughter-in-law was pregnant, and I cleaned their floors. D. gets the children to cut firewood."

According to an eight-year-old child, nurse E. hits him in the head with her hand; "Nurse M. also hits me."

He is also beaten by elder children: "Merab made my nose bleed; I had called him names."

According to a 13-year-old child, s/he dislikes E.: "She is constantly shouting; she does not let us watch TV and makes us go to bed immediately; she pulls my hair; she beats disobedient children –Alika and the Adjarians. [Another nurse] tells her not to beat children; she says that she must not do it, or else the director will dismiss her."

According to a 14-year-old beneficiary, "M. beats children, s/he drinks alcohol; in May s/he drank at a funeral dinner for teacher E.'s mother, and when s/he came to the school, s/he quarreled with the teachers. The nurse made him/her drink a sleeping pill by force and they made him/her lie on the bed." The director lets the boys drink a little; the wine is kept here, in the basement."

According to a six-year-old, teachers M. and M. shout at him/her, while K. hits him/her in the head and pulls his/her ear.

The Dzevri Boarding House for Persons with Disabilities

From interviews with beneficiaries of the institution, the experts of the preventive group received information about physical and psychological abuse and labor exploitation used against the beneficiaries by some of the employees of the institution. From the beginning, the experts noticed behavioral manifestations of strong fear and distrust on the part

111 Specialized boarding scholl for children with disabilities aged from 5 to18, 31 pupils enrolled

of the beneficiaries. Specifically, on seeing staff members and other beneficiaries, they started to praise employees of the institution loudly, though, in confidential conversations, they provided the experts with contrary information about ill- treatment of beneficiaries by the same employees.

According to one of the beneficiaries, in the morning, while it is still dark, employees of the institution force him to get up from bed and quarrel with him. Because of this, employee O. hit him in the stomach; A. also quarrels with him and hits him. N.A. beats beneficiaries "when they defecate in their underwear." The orderlies make him work by force and threaten him: "Do it quickly or I will beat you up." The aforementioned beneficiary goes with N.A. to work in his house (N.A. also takes other beneficiaries in addition to him) and sweeps and cleans the floor, in return for which N.A. gives him some food.

Ill-treatment by the same employees, was also confirmed by a 27-year-old beneficiary. According to him/her, when beneficiaries break something, employees A., O., and N.A. shout at them and beat them. The aforementioned beneficiary also confirmed that N.A. and R.P. took beneficiaries to work in their houses.

When asked whether employees of the institution had carried out violence against him, one of the beneficiaries replied: "If I tell you, they will beat me after you leave; they beat us." However, later he agreed to talk and said the following about the employee whom other beneficiaries had also mentioned: "O. has beaten me and I no longer speak to him; Temur [the director] got angry with him when I told him he had beaten me." "The orderlies do not deserve being helped; they quarrel, shout, and hit."

Another beneficiary named M.Ch. who had tied him with a chain and beaten him, as well as another employee of the institution, N.P., who had also abused him physically.

According to yet another beneficiary, "the orderlies beat us when we do not get up, they [beneficiaries] tear things up, orderlies make invalids clean the toilet and make them change the dirty underwear [of other beneficiaries], then they take it to wash." (He didn't give the names of the orderlies for fear: "I'm afraid of the orderlies, promise me that you won't tell them anything.") N.A. drinks together with orderlies every day, gets drunk, and goes to bed at night."

The experts also received information about the Dzevri institution while they were visiting the Martkopi Boarding House for Persons with Disabilities. The beneficiaries who had been transferred from the Dzevri institution to Martkopi in March 2012 told us about the practice of ill-treatment in the Dzevri institution.

According to 56- and 42-year-old beneficiaries, they saw "orderly N.A. (the initials of the aforementioned staff member blamed for abuse) pulling the hair of M.S. (beneficiary), slapping him, and hitting him with a broom this big several times, swearing at him at the same time." According to the 42-year-old beneficiary, he "saw N.A. removing a light bulb; I asked him why he was removing it; N.A. got off the chair and slapped me so hard that my head began to shake."

Two beneficiaries also named a cleaning person D.B. who stole their personal items and acted violently towards other beneficiaries, pulling their hair and assaulting them verbally.

"We were freezing in winter; the door did not close entirely; they only turned on the heating for two hours; they took away the solar oiling fuel cans," said one of the beneficiaries.

The Senaki Institution for Children with Disabilities [112]

From interviews with beneficiaries, the experts learned about ill-treatment towards beneficiaries by some of the employees of the institution.

The experts revealed facts of abuse and neglect towards an 11-year-old beneficiary. The beneficiary presumably has an acute mental retardation with behavioral disorder. It turned out to be impossible to interview the aforementioned beneficiary, due to his/her restricted function of speech.

112 youth aged from 6 to 18, 22 are enrolled.

According to a 14-year-old beneficiary, "nurses, M., A., and N, beat an 11-year-old child who sometimes goes crazy. They pull the hair of other children when they make the nurses angry."

According to an 18-year-old beneficiary, the nurses shout at him/her, pull his/her hair, and make him/her stand in the corner, while they beat aforementioned 11-year-old beneficiary. "A.M. (nurse) refused to let me go to have a meal twice" (S/he was not able to specify the dates).

A15-year-old child declared: "They make us stand in the corner, telling us that it is the punishment we deserved; they pull his/her hair, all the three nurses beat the 11-year-old child, sometimes they don't let him/her go for a meal as punishment. All the three nurses do so" (again the aforementioned nurses – M., A., and N.).

In connection with the visit of the preventive group, all the beneficiaries declared: "We knew you were coming; they told us to tell you good things."

A 15-year-old juvenile declared that s/he didn't have any guarantees that the administration would not learn about the results of the interview and, for this reason, refused to be interviewed by the members of the groups from the beginning.

In addition, a 13-year-old beneficiary declared: "the nurses shout at me, pull my hair, and make me stand in the corner."

According to 13-year-old beneficiary, some beneficiaries who do not obey nurses are abused by other beneficiaries, which the nurses do not prevent; two girls pull other girls' hair, slap them, and make them stand in the corner.

The Makhinjauri Infant House [113]

Representatives of the institution expressed protest against the information about ill-treatment towards beneficiaries carried out by their co-workers that was published in the previous report[114].

However, we again received information about abuse on the part of the staff during the current monitoring. According to a five-year-old beneficiary, "N., M., and M. beat children; N. has also beaten me." According to a seven-year-old beneficiary, "N. shouts at the children" (information about ill-treatment of children by N.G. was also included in the aforementioned special report).

A five-year-old child declared upon entering the room that "s/he loves everyone," though no one had asked him/her about it. Also, another five-year-old said during the interview that "the care-givers told me to tell you that no one beats me."

In the opinion of the experts of the preventive group, the children were warned by care-givers before the interviews.

Public Defender of Georgia addresses the Minister of Labor, Health and Social Affairs of Georgia and the Minister of Education and Science of Georgia with recommendations to:

- **inquire all possible cases of abuse and neglect of persons with disabilities and take measures envisaged by the Georgian legislation against the abusers; ensure the rehabilitation of victims of abuse;**
- **introduce an effective system of prevention, identification, and response to abuse and neglect of persons with disabilities which will ensure that such facts are revealed and responded to in a timely manner.**

113 children up to 5 years, including children with disabilities are enrolled

114 Public Defender of Georgia, the National Preventive Mechanism, Special Report on the Monitoring of Residential Childcare Institutions (large children's homes and small, family-type homes) for 2011

USE OF PHYSICAL RESTRAINT

According to the European Committee for the Prevention of Torture (CPT), every patient has the right to be free from all kinds of physical restraint unless it (physical restraint) is caused by urgent need. However, even in the latter case, means of restrains may only be used as the last measure and with accurate observance of all terms and procedures. The use of restraint may only be aimed at preventing and controlling violence in emergencies. Physical restraint cannot be considered as a part of a patient's treatment, since it constitutes a safety measure. Physical restraint must never be used with the aim of punishing a patient or changing/modifying his/her behavior[115].

According to one of the beneficiaries of the Dzevri Boarding House for Persons with Disabilities, an orderly of the institution "R.B. hits everybody and makes them get up from bed at night; They are sleepy and don't want to get up." He also provided the group with information about a beneficiary living in his room, who gets undressed in the morning. For this reason, R.B. ties him to his bed and hits him in the face with an open palm.

The presumable victim of abuse confirmed the aforementioned information – "R.B. ties me." During the interview, he reacted with strong fear and started crying. He bore skin injuries on the lateral surface of his right forearm, near the wrist; Also, on the left edge of his bed sheet, where his hand had been presumably fixated, small dark red spots of (presumably) blood were detected. The first beneficiary demonstrated how R.B. tied the second beneficiary's hand[116].

The special log of the institution did not contain any information about the physical restraint of the aforementioned beneficiary. There was no entry saying whether the physical restraint, that took place, had been caused by medical necessity, whether the norms envisaged by the Georgian legislation were complied with,[117] when the beneficiary was restrained physically, and whether the restraint had a punitive character.

The monitoring experts also received information about physical restraint of an underage disabled person during their visit to the Senaki children's home. During the monitoring, the experts noticed that in one of the classes a teacher (or a nurse) had fixated 14-year-old B.S's hands with her own hands. According to staff members, the child's hands had been held (by his/her wrists) uninterruptedly for 8-10 hours, because otherwise the child would carry out a self-damaging action. When the experts asked the staff members whether they had any other method of managing children's self-damaging behavior, the monitoring group received a negative answer; The staff members said that uninterrupted manual restraint of a child's both hands by a teacher or a nurse was the only method used for this purpose. However, a few hours later, when the experts returned to the same class, they saw that B.S's hands were already being restrained by another beneficiary who was the same age. A few more hours later, the monitoring group obtained photos that show that the child's hands had been restrained (presumably) with a cloth or rope all day long. Other beneficiaries of the institution, independently from one another, confirmed that 14-year-old B.S. had been restrained physically all day long in the period before the monitoring.

The March 3, 2005 document of the European Committee for the Prevention of Torture (CPT) – Standards of the CPT on the Use of Restraints – indicates that the use of physical restraint of children remains a focus of the Committee in medical and social welfare institutions, since it is connected with a very high risk of abuse and ill-treatment, which is an area of particular concern to the Committee.[118]

A 2007 report of the same Committee says that restraint of patients in front of other patients (beneficiaries) is impermissible and must be prevented without delay.[119]

115 The European Committee for the Prevention of Torture, Means of Restraint in a Psychiatric Hospital (2006) 22

116 The injuries in the areas of wrists and forearms of both hands, as well as the spot on the bed sheet, have been photographed

117 The Law of Georgia on Psychiatric Assistance; Order 92/N of the Minister of Labor, Health and Social Affairs of Georgia of March 20, 2007, on Approval of the Instruction on the Rules and Procedures of Application of Methods of Physical Restraint of Patients with Mental Disturbance.

118 standards of the CPT on the use of restraints, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), march 3, 2005 http://www.cpt.coe.int/en/working-documents/cpt-2005-24-eng.pdf

119 Report for 2007 of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) http://www.cpt.coe.int/documents/srb/2009-01-inf-eng.pdf

Public Defender of Georgia addresses the Head of the State Care Agency with recommendations to:

- **Prevent the use of physical restraint of beneficiaries which is carried out in violation of international and local norms;**
- **Ensure the adjustment of regulations and enhancement of qualifications of staff, so that they use physical restraint in emergencies in compliance with the respective standard.**

EQUALITY BEFORE THE LAW

In accordance with the Article 42 of the Constitution of Georgia, "Everyone has the right to apply to a court for the protection of his/her rights and freedoms."

Pursuant to the Article 13 of the European Convention on Human Rights and Fundamental Freedoms, everyone "shall have an effective remedy," while according to the Article 14 of the same Convention, "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination."

According to the Article 12 of the UN Convention on the Rights of Persons with Disabilities, "States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. States parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity."

During the monitoring, as a result of interviews with beneficiaries and staff of the institutions, Public Defender's preventive group revealed serious facts of restriction of legal protection and support of beneficiaries. As a result of interviews with the heads of the institutions, it turned out that, in most cases, the State Care Agency and the Social Service Agency failed to provide beneficiaries with legal service, since, according to the agencies, they are not obliged to provide this service.

When discussing the aforementioned topic, it is important to clarify the issue of guardianship/custodial care of beneficiaries. Guardianship/custodial care of beneficiaries admitted to branches of the State Care Agency constitutes the obligation of the Social Service Agency; Accordingly, they, as legal representatives, are obliged to ensure the legal protection of children. As for the legal protection of persons and elderly persons with disabilities, both the Social Service Agency and the State Care Agency disclaim their obligations towards them, except for the cases when a beneficiary has been recognized as legally incapable by a court.

The only source of income for beneficiaries living in state residential institutions is the state pension which they receive as disabled persons. Accordingly, they cannot afford hiring a lawyer to protect their rights.

As a result of examination of the legal documents of internal regulation of the agencies, it was has been established that they do not contain an obligation to provide legal assistance for beneficiaries, due to which the State Care Agency does not provide beneficiaries with legal service. However, it should be noted that, in accordance with Article 27 of the Law of Georgia "on Social Protection of Persons with Disabilities", "The conditions created in boarding houses or other inpatient facilities of social assistance for persons with disabilities shall ensure the exercise of their rights and lawful interests."

The Case of L.B.

In June 2012, in the framework of the monitoring of institutions for persons with disabilities, during the visits to Dusheti and Martkopi, the group learned that beneficiary L.B. required legal assistance. Specifically, s/he had a problem with enforcement of a court decision related to a loan agreement. S/he could not afford hiring a lawyer, while the administration did not provide him/her with legal protection.

The Office of Public Defender of Georgia immediately started studying the case on its initiative[120] and addressed the State Care Agency[121] and the Social Service Agency with a request to provide the beneficiary with legal assistance.[122] The reply letter sent by the State Care Agency on August 16, 2012,[123] says that the Legal Entity of Public Law (LEPL), State Care Agency, provides beneficiaries with assistance in the exercise of their rights when necessary and within its competence, though, in connection with the case of L.B., "…it is not within the Agency's competence to provide legal assistance for beneficiaries; the Agency has informed beneficiaries about organizations that provide free legal consultation about similar issues." In the definition of types of legal assistance, Paragraph 5 of Article 12 of the UN Convention on the Rights of Persons with Disabilities indicates that "Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit…" It is logical to conclude that disclaiming responsibility for protecting the aforementioned right by the State Care Agency constitutes a violation of the right to legal protection of persons with disabilities living in institutions. Furthermore, informing them about organizations that provide free legal consultation is not an effective measure, because the aforementioned persons' ability both to move around in the society (because the environment is not adapted) and to communicate on the telephone is often limited.

The Case of N.Ts.

In June 2012, in the framework of the monitoring of institutions for persons with disabilities, the monitoring group visited one of the institutions where the group learned that a beneficiary of the institution, N.Ts., required legal assistance. Specifically, she wants to divorce her husband, but is unable to do so without corresponding legal consultation and assistance.

The Office of Public Defender of Georgia immediately started studying the case on its initiative[124] and addressed the State Care Agency[125] and the Social Service Agency[126] with a request to provide the beneficiary with legal assistance. The reply letter sent by the State Care Agency on August 16, 2012[127], says that N.Ts. wants to divorce her husband and receive her share of the three-room apartment under her husband's owner ship. The beneficiary also hired a lawyer for the aforementioned case, though she no longer has a lawyer due to financial problems. In the letter, the State Care Agency again indicated that it was not within its competence to provide the beneficiary with legal assistance on the issues raised. And the reply letter[128] of LEPL Social Service Agency says that, in accordance with Part 2 of Article 1275 of the Civil Code of Georgia, guardianship/custodial care shall be imposed to protect the personal and property rights and interests of those adults who, due to their health condition, cannot exercise their rights and fulfill their obligations independently. Referral to the aforementioned article by the Social Service Agency makes it clear that it is only possible to provide the beneficiary with legal assistance in the case of assigning a guardian, with the condition of recognizing her as legally incapable.

The Case of S.K. and A.B.

As part of the same monitoring, the monitoring group visited the Martkopi institution, where the group received information that beneficiaries of the institution, S.K. and A.B., have an underage child who lives in another state residential institution. The Social Service Agency was planning to restrict the beneficiaries' parenthood rights and involve the child in the program of foster care. The parents objected to the aforementioned. According to the head of the

120 Case No. 1364-12, July 31,2012
121 Letter No. 3131/08-1/1364-12, August 3, 2012
122 Letter No. 3127/08-1/1364-12, August 3, 2012
123 Letter No.08/854, August 16, 2012
124 Case No. 1365-12, July 31, 2012
125 Letter No. 3130/08-1/1365-12, August 3, 2012
126 Letter No. 3128/08-1/1365-12, August 3, 2012
127 Letter No. 08/854, August 16, 2012
128 Letter No. 04/49728, August 16, 2012

Martkopi institution, the beneficiaries addressed the State Care Agency with a request to provide them with legal aid. Despite the aforementioned request, the State Care Agency failed to provide the beneficiaries with a lawyer's service (the Agency did not explain the reason).

In all the aforementioned cases, the State Care Agency and the Social Service Agency directly refused to provide legal protection of persons with disabilities, which practically restricted their access to justice.

Public Defender of Georgia addresses the State Care Agency and the Social Service Agency with a recommendation to:

- **Ensure the protection of the rights and freedoms of beneficiaries living in state residential institutions at all levels, including in courts, by providing them with full legal consultation and legal assistance.**

RESPECT FOR PRIVATE AND FAMILY LIFE

The unity of the family is protected by a norm of international law – a universal agreement that the family, as a fundamental unit of the society, must be protected. Protection of the family by the state implies ensuring "the unity or reunification of families, particularly when their members are separated for political, economic or similar reasons."[129]

In accordance with the UN Convention on the Rights of Persons with Disabilities of 2006[130], "No person with disabilities, regardless of place of residence or living conditions, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, or correspondence or other types of communication."

In Public Defender's special report of 2010 which dealt with monitoring of institutions for persons with disabilities, a separate chapter was devoted to the issue of protection of and respect for private and family life of beneficiaries. This report contained concrete cases in which these rights of persons with disabilities were restricted.

Unfortunately, it should be noted that, according to the results of the monitoring of 2012, the situation in the institutions in this respect has deteriorated.

The majority of beneficiaries do not have a space where their right to private life is protected. Often, rooms in which they live have no locks. In connection with respect for the right to private life, the situation of beneficiaries of Public School No. 202 (with a boarding house service) calls for particularly attention. The pupils of the aforementioned school and the beneficiaries living in its boarding house belong to the category of children with vision loss or impairment. The school has an educational building in which the beneficiaries have classes. The institution also has an accommodation building in which the beneficiaries spend a considerable part of their life and which, in fact, constitutes their residence. At the time of the monitoring, a member of the preventive group saw a mandaturi (supervision officer) of the school in the beneficiaries' accommodation building where their bedrooms are located. As a result of an interview with the mandaturi, it turned out that the mandaturi is authorized to keep public order not only in the school, but also in the accommodation building for the children. In connection with this issue, the headmaster of the school explained that the mandaturi's authorities and obligations also extend to the accommodation building of the boarding house and they include supervision on the living environment. However, this explanation contradicts the authorities of the mandaturi of an educational institution determined by Article 48^3 of the Law of Georgia "on General Education"; Specifically, in accordance with Paragraph 1 of this article, "A mandaturi shall be authorized to control the internal and external perimeters of an educational institution," which, naturally, does not mean control of private space designated for living.

129 The Office of the UN High Commisisoner for Human Rights, General Comment 19 on Article 23 of the International Covenant on Civil and Political Rights

130 The UN Convention on the Rights of Persons with Disabilities, Article 22 and 23

According to one of the male beneficiaries of the Senaki institution for Persons with Disabilities, he constantly feels embarrassed in the institution, especially when he has to ask the staff for help in observing personal hygiene. The embarrassment is caused by the fact that a female care-giver helps him in washing. As the beneficiary explained, he wanted to be helped by a male caregiver, though he knew that this was not possible, because no male care-givers were employed in the institution. For this reason, he constantly had to bear the aforementioned feeling of embarrassment.

As a beneficiary of the Tbilisi Public School No. 200 (with a boarding house service) explained, she had an attraction to one of the boys in the institution and wanted to have a relationship with him, but she was afraid to say this openly, because the school administration and staff had told them they were supposed to treat each other like a brother and sister and could not have a romantic relationship with each other.

According to a beneficiary of the Martkopi Boarding House, he "cut his hands" while he was in the Dzevri Boarding House, due to interference with his private life: "The cleaning person, D.B., asked me whether I had had good sex with I. whom I met secretly back then and who was not yet my wife."

The Case of N.B.

The Dusheti Boarding House for Persons with Disabilities houses Mrs. N.B. together with her husband. As Mrs. N. explained, her underage child lives in St. Barbare Residential Institution in Zestaponi. The mother wants her child to live with her or, alternatively, to have him/her transferred to the Tbilisi Infant House, because, due to the long distance from Dusheti to Zestaponi, she cannot visit her child frequently. As representatives of the agencies declared in conversations with us, they had encountered serious problems with the head of St. Barbare Residential Institution, a clergyman, who had refused to transfer the child to representatives of the state agencies. In response to the mother's lawful demand about the child's transfer, he declared that the mother "has done nothing for the child till now" and, accordingly, he was not going to transfer the child.

On July 19, 2012, the Office of Public Defender of Georgia, on his own initiative, sent a letter[131] to the Social Service Agency, requesting information about the underage child and the exercise of the disabled woman's right to private and family life. According to the reply letter of the Agency[132], work has got under way for the transfer of N.B's underage child to a state childcare institution, though, at this stage, the Agency has not been able to cooperate with St. Barbare Boarding House of Zestaponi.

Despite the fact that the aforementioned problem has already existed for many months, representatives of the state agency have been unable to protect the disabled person's right to private and family life.

The Case of M.A.

The Martkopi Boarding House for Persons with Disabilities houses Ms. M.A. who has an infant child. Several days after the child's birth, s/he was transferred to St. Barbare Residential Institution for Orphans and Children Devoid of Care in Zestaponi. While M.A. was living in the Kutaisi Boarding House for Elderly Persons, she visited her child once a month, as soon as she got the financial means (in the form of a pension) to do so. After she moved to the Martkopi Boarding House for Persons with Disabilities, her contact with her child almost ceased. She only manages to visit her child once in several months with the help of the head of the institution. At the time of the monitoring, M.A. pointed out that it had already been almost half a year since she last saw her child. Accordingly, in this case, too, the beneficiary's family life is, in fact, restricted.

131 Letter No. 2883/08-2/1247-12, July 19, 2012
132 Letter No. 04/46107, August 1, 2012

The Case of P.

The Martkopi Boarding House for Persons with Disabilities houses a marital couple who have underage children aged five and seven. The children live in St. Barbare Residential Institution for Orphans and Children Devoid of Care in Zestaponi. The parents manage to visit their children once in every several months with the help of the head of the institution. At the time of the monitoring, they said that they had not seen their children for several months.

The aforementioned cases make it clear that the right to respect and protection of private and family life of beneficiaries living in state residential institutions is often restricted.

Despite the standard established by the Constitution of Georgia and international law according to which everyone, including persons with disabilities, has an equal right to have contact with his/her children and live with his/her family, the aforementioned institutions, in most cases, fail to ensure the exercise of this right. The institutions also fail to ensure the protection of beneficiaries' honor and dignity, their private life, and integrity.

Public Defender of Georgia addresses the State Care Agency and the Social Service Agency with recommendations to:

- **Ensure the protection of and respect for private life of beneficiaries, so that no unlawful interference with their rights takes place;**
- **Ensure that caregivers in institutions for persons with disabilities are selected in view of beneficiaries' gender, so that beneficiaries' rights are protected during the exercise of all kinds of care;**
- **Ensure beneficiaries' freedom of private life and contribute to their maximum involvement in the process of their children's upbringing;**
- **Proceeding from the children's genuine interest, create appropriate conditions to enable parents and children to live together;**
- **Respect personal feelings of adults/children with disabilities living in institutions.**

REHABILITATION AND HABILITATION

In accordance with Article 26 of the UN Convention on the Rights of Persons with Disabilities, "States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability… To that end, State Parties shall organize, strengthen and extend comprehensive habilitation and rehabilitation services and programs, particularly in the areas of health, employment, education and social services, in such a way that these services and programs begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths."

Despite the fact that the Georgian legislation envisages the provision of persons with disabilities with full and quality rehabilitation services, the current monitoring has revealed that the aforementioned safeguards are violated to a considerable extent in the residential institutions.

Specifically, in accordance with Article 13 of the Law of Georgia "On Social Protection of Persons with Disabilities", "The state shall organize and contribute to the formation and development of a medical, professional, and rehabilitation system for persons with disabilities, which constitutes a complex of measures aimed at recovery and compensation of impaired or lost functions of the body and of the ability to provide self-service and carry out various professional activities; It shall also enable persons with disabilities to lead full lives and to ensure the exercise of their rights and potential abilities." And Article 27 of the same law further specifies the state's role in relation to persons with disabilities living

in state residential institutions: "The state shall provide persons with disabilities with accommodation in accordance with an individual rehabilitation program."

During the monitoring, it became evident that employees of the institutions were often unfamiliar not only with the concrete method/process of rehabilitation/habilitation, but also with the main essence and aim of rehabilitation.

A publication of the World Bank and World Health Organization, 2011, "World Report on Disability"[133], gives the following explanation in connection with the concept of rehabilitation of persons with disabilities: "Rehabilitation outcomes are the benefits and changes in the functioning of an individual over time that are attributable to a single measure or set of measures. Traditionally, rehabilitation outcome measures have focused on the individual's impairment level. More recently, outcomes measurement has been extended to include individual activity and participation outcomes [in social activities]. Measurements of activity and participation outcomes assess the individual's performance across a range of areas – including communication, mobility, self-care, education, work and employment, and quality of life."

Creating the possibility of achieving rehabilitation outcomes, according to the aforementioned publication of the World Bank, requires the provision of minimum conditions and opportunities of rehabilitation:

- Rehabilitation medicine which, according to need, includes doctors with specific expertise in medical rehabilitation – Psychiatrists, pediatricians, geriatricians, dieticians, orthopedic surgeons, etc.
- Therapeutic service of rehabilitation: A psychologist, occupational therapy, physical therapy, speech therapy, art therapy, social therapy, ergo therapy, etc.
- Assistive technologies: Prostheses, orthoses, hearing aids, communication boards, white canes, Braille printers, software for screen magnification, etc.
- Multidisciplinary teams of rehabilitation: Coordinated assessment by rehabilitation and medical workers of different fields; Making a plan for (individual and/ or group) intervention; Reflecting theoretic outcomes in the immediate living/ working/educational environment of a beneficiary; Improved monitoring of the quality of a beneficiary's life.

The decisive role in the correct organization of the entire process of rehabilitation is played by the informed consent of the person him/herself and management of the entire process by him/her, which is only possible through an equal and partnership-based relationship with medical professionals. And adequately filled out rehabilitation documents and the degree of satisfaction expressed by the beneficiary constitute the main means for measuring the effectiveness of rehabilitation.

Unfortunately, none of the aforementioned criteria were actually met in the institutions visited at the time of the monitoring. Most of the institutions did not employ any of the aforementioned staff, while documents they kept were of such a low quality that it was impossible to monitor the real outcomes.

There is a serious lack of psychologists and other rehabilitation workers in the specialized public schools. This is confirmed by the scarcity of entries in children's individual plans and the imperfection of rehabilitation programs.

A psychologist employed in Public School No. 200 showed us very scarce information about rehabilitation works done.

The institution does not carry out psychotherapeutic intervention with beneficiaries, despite the fact that the psychologist, in his/her own words, is informed about the psychological traumas sustained by children – mainly about domestic violence and other ill-treatment that takes place when beneficiaries are taken to their families.

According to the information provided by the psychologist, beneficiary "T.M. returned from home to the institution on April 17, 2012, with a bruise on her face; her mother had beaten her because she had applied manicure"; "On December 5, 2011, S.M. came beaten from home – with bruises on his/her face and legs; M.K. is forced to work at

133 http://whqlibdoc.who.int/publications/2011/9789240685215_eng.pdf

home – they take him/her to the forest and make him/her collect things; P.F. is beaten by his/her father at home." The psychologist had also failed to report about these facts, despite his/her well-founded doubts about abuse and neglect of children."

As for abuse and ill-treatment of beneficiaries in the institution, the psychologist has no information about this. Accordingly, s/he does not take measures to reveal possible ill-treatment or, proceeding from this, to prevent abuse and neglect.

According to the psychologist of Public School No. 202, there are problems with ex- change of information within the institution; S/he is not informed of the children's psychiatric diagnoses (in cases when they exist); The multidisciplinary approach has not been introduced; Moreover, there is a lack of coordination among the employees: The teachers neglect the work done by the psychologist. In the psychologist's opinion, the multidisciplinary team of the Ministry of Education and Science often assesses children incorrectly; For example, the medical report of the pupil V.Ch. says that the child speaks well, while, in reality, the child cannot speak at all; Some children's medical reports describe them as "totally blind", though they have a certain percentage of vision.

During the visit to the Akhaltsikhe Public School No. 7, the group documented that the institution does not have a material-technical base necessary for carrying out rehabilitation work; It does not have enough psychometric tests and the beneficiaries have not been given a psychiatric diagnosis; the psychologist assesses the beneficiaries based on his/her judgment; several children with serious forms of behavioral disorder are not given medicine-based treatment at all; According to the psychologist, s/he restrains some of the beneficiaries physically at the time of psychomotor agitation, which is not included in his/her functions.

During the visit to the Kutaisi Public School No. 45, the group noticed that one of the main problems in the institution is that the employees find it difficult to communicate with beneficiaries, because they have not been taught the sign language. The psychologist only assesses a concrete psychical function on the basis of a teacher's referral to a problem, though she was not able to name the methodology she used; She was also unable to present documented materials. The Chiatura Public School No. 12 does not employ a psychologist.

WORK OF THE IDISCIPLINARY TEAMS

During the monitoring of the specialized schools, the monitoring group received information about shortcomings of the work of the multidisciplinary teams of the Ministry of Education and Science.

According to the letter sent by the Ministry of Education and Science[134], the Ministry of Education and Science of Georgia, together with the Ministry of Education and Research of Norway, has been implementing the "Development of inclusive education in the public schools of 10 municipalities of Georgia" project, since 2009. It was in the framework of the aforementioned project that the multidisciplinary teams were created; The teams assess pupils and help parents choose an educational space appropriate for the child.

According to the information provided by the Ministry of Education and Science, the activity of the multidisciplinary teams is regulated in the framework of the "Sub-program of Funding of the Multidisciplinary Team" of the "Program for Supporting Inclusive Education" approved by the Minister of Education and Science of Georgia.

It should be noted that the abovementioned regulating document does not contain concrete details of the activity of the multidisciplinary teams; However, this activity is described in general terms in the aforementioned letter of the Ministry of Education and Science, which is not a legal document. Accordingly, we can assume that the legal regulation of the activity of the aforementioned teams is not formulated in any legal document.

The letter sent by the Ministry describes the procedure of enrolling children with special educational needs (who are mostly persons with disabilities) in specialized schools on the basis of the assessment of a multidisciplinary team; This

134 Letter No. 990 of the Ministry of Education and Science of Georgia of August 10, 2012

description is very general and allows ample room for subjective interpretation. For example, the document includes such a passage:

"In order to be enrolled in a specialized school, a child must be characterized with retardation of development of all the aforementioned skills (sensory deficit, speech and mental operations, ability to communicate, functional skills) and the level of development of these skills must correspond with the criteria of moderate and severe mental retardation described in DSM IV."

The analysis of the aforementioned provision reveals a lot of shortcomings whose practical exercise may violate a disabled child's right to live in and integrate with the society to a significant extent. Specifically, the provision does not specify what degree of "retardation of development" it refers to, by what objective criteria it is to be measured, and which of the dozens of diagnoses described in DSM IV it refers to and by what criteria.

In addition, it is also significant that DSM IV is the American Classificatory which is not used in Georgian Psychiatry (Only in scientific research). The classificatory system of the World Health Organization – ICD-10 is used instead.

The experts of the monitoring group also documented shortcomings of the activity of the multidisciplinary teams in practice. For example, in Public School No. 200, when a member of a multidisciplinary team was asked what objective criteria s/he relied on when enrolled a child in the specialized school (institution), s/he declared that there were no clearly formulated criteria and s/he decided this issue based on his/her own judgment. According to the administration of Public School No. 203, decisions on enrolling of the pupils in this school (for children with hearing loss and impairment) are also made by the multidisciplinary team, but they do not know the criteria the team uses. In addition, according to the administration, the multidisciplinary team does not include a specialist who knows the specifics of children with hearing impairment.

According to the administration of the Chiatura School No. 12, they often disagree with the decisions of the multidisciplinary team on enrollment/dismissal of children, though expressing a different opinion about this issue causes conflict situations and they are threatened with closing down the school.

The letter of the Ministry of Education and Science also confirms that, during 2012, the National Center for Examinations is in the process of standardizing three international instruments (tests); Accordingly, at the moment of the monitoring (June 2012), members of the multidisciplinary team were not using objective tests of assessment for enrolling/institutionalizing children in specialized schools.

The monitoring group documented several cases in which children's enrollment in specialized schools was not based on their educational needs.

The Case of L.Kh. and N.I.

Both pupils have been attending the Kutaisi Public School No. 45 (former Specialized Boarding School for Children with Hearing Loss and Impairment) since 2007. In his/ her explanatory note, the headmaster indicates that these children were enrolled in the school for children with hearing loss and impairment in 2007 because no other corresponding service was available in Kutaisi.

According to the assessment of the multidisciplinary team, **N.I. has no hearing impairment**. On the basis of an audiogram and according to the recommendation of the multidisciplinary team, s/he may not be attending Public School No. 45, though, as his/ her mother refuses categorically to transfer him/her to another school, the issue remains unresolved.

According to the assessment of the multidisciplinary team, L.Kh. has no need of attending School No. 45, but, due to his/her mother's objection to his/her transfer to another school, the pupil is given a recommendation to continue studying in School No. 45.

Unfortunately, neither the multidisciplinary teams nor the Social Service Agency have launched inquiries into possible cases of neglect of the best interest and educational needs of children by parents of childrens with disabilities. In contrast, the monitoring group noticed that, in most cases, the staff places the full responsibility for violating children's interest on parents. For example, according to the staff of the Public School No. 203, a parent of beneficiary T.Kh. prohibits him/her from using the sign language at home, as well as from communicating with other hearing impaired children in the school who use the sign language. Despite the fact that, according to professionals' assessment, this constitutes a violation of the child's genuine interest, the school staff has not taken any effective measures in this respect. According to the staff of the Public School No. 203, none of the university entrants with hearing impairment has passed the national entrance exams for the past five years, an important cause of which is a delay in learning the sign language and academic backwardness developed on this basis.

The aforementioned information and the cases discussed above indicate to important shortcomings of the programs of rehabilitation/habilitation that exist in the specialized schools, as well as to problems in the work of the multidisciplinary teams which can cause unfounded institutionalization of children with disabilities.

For the psychologist of the Kojori Institution for Children with Disabilities, this institution is his/her first employer after graduating from university. Accordingly, working with children with special needs without supervision is a particularly difficult challenge for him/her. There is no multidisciplinary team in the institution; For this reason, the work of specialists of different fields is not coordinated, the children's individual development plans are incomplete, and entries made by the psychologist are very scarce.

Due to the lack of resources in the institution, it is common practice for NGOs to offer certain services free of charge. However, as the monitoring group has documented, this practice may pose a danger of administering a low quality service and, consequently, of violating the beneficiaries' rights.

The Case of D.I.

During the monitoring of the Kojori Institution for Children with Disabilities, the group observed a massage procedure on nine-year-old D.I. which was conducted by a physical therapist assigned by one of the NGOs. (The child has severe mental retardation, ventriculoperitoneal shunting, pediatric cerebral palsy, right-sided hemiparesis, and epilepsy syndrome.)The physical therapist was not able to answer the monitors' question about the child's diagnosis. S/he was also unaware of such important details for the process of physical therapy as paresis side, condition of muscle tonus, the child's functional status, etc. The specialist was also unable to say what method of physical rehabilitation s/he was using. The preventive group verified D.I's full medical documents on-site; as it turned out, all necessary information about his/her medical condition was included in the medical file. The aforementioned case gave rise to a well-founded doubt that the specialist had not got acquainted with D.I's condition before starting the therapeutic intervention, which could have caused possible damage to the child's health.

In the Martkopi Boarding House for Persons with Disabilities, the psychologist mainly conducts the following activities: learning poetry, knitting and embroidery, table games, painting, ball games, etc. Despite the fact that the aforementioned activities may be generally useful for planning the free time of beneficiaries, they are not the only manifestation of a psychologist's typical work in institutions of this type. According to the psychologist, a large number of the beneficiaries have such severe behavioral disorders that s/he is not able to work with them at all. For the aforementioned psychologist, too, the Martkopi Boarding House for Persons with Disabilities was the first professional experience of this type.

During the monitoring, it was established that the psychologist of the Tbilisi Infant House had only worked in this institution for less than a month. According to him/her, programs of child habilitation are not implemented in the institution; there is no multidisciplinary team, and the work of the institution employees is not coordinated. The psychologist was not able to present documents describing his/her work.

Public Defender of Georgia addresses the Minister of Education and Science of Georgia and the State Care Agency with recommendations to:

- **Ensure that the program of medical and psychosocial diagnostics and reha bilitation, the multidisciplinary team approach are introduced and supported in all institutions, together with allotment of corresponding financial and human resources;**
- **Correct the shortcomings of regulation of psychosocial rehabilitation and of the work of the multidisciplinary teams;**
- **Ensure that rehabilitation specialists of the institutions are retrained through corresponding training courses;**
- **Task all the institutions with the development and due fulfillment of individual plans for rehabilitation/habilitation of beneficiaries.**

PROTECTION OF THE RIGHTS OF THE STAFF

In all the reports of the National Preventive Mechanism that deal with social houses, Public Defender of Georgia has paid particular attention to the protection of labor rights of the staff who are responsible for exercising care in institutions. As early as in 2010, the monitoring in the institutions for persons with disabilities revealed a lot of problems that prevented the staff from fulfilling their obligations effectively. These problems included inappropriate working conditions, low salaries, and the need to enhance qualifications.

Problems related to the protection of the rights of the staff are still important, according to the results of the monitoring of 2012. The inadequately small number of the staff is the main shortcoming that may pose a danger not only to the exercise of care towards beneficiaries, but also to their safety.

THE ISSUE OF SAFETY IN THE MARTKOPI BOARDING HOUSE

The Martkopi Boarding House for Persons with Disabilities, which houses 65 beneficiaries with mental health problems (moderate, profound, and severe mental retardation), employs only 13 care-givers and four assistants. However, only three female care-givers stay in a single shift to take care of 65 beneficiaries (one male care-giver controls the yard area, so that beneficiaries do not go out without supervision). During night hours, only one care-giver stays on a single floor in the four-store building of the boarding house. When beneficiaries have episodes of psychic agitation, one female care-giver is often unable to cope with their provocative behavior, and beneficiaries carry out physical violence towards other beneficiaries and the staff, which lasts until a psychiatrist's intervention.

An explanatory note given to a representative of Public Defender on June 23, 2012, which was signed by six members of the staff of the Martkopi Boarding House, reads:

"In April, M.S. was hit hard in the head by M.L.; in May s/he bit him/her twice and hit him/her in the head… S/he was kicked hard by S.G. and M.G…." This year, L.P. (care-giver) sustained a concussion during one of such incidents, due to which it became necessary to carry out a clinical intervention. "N.T. kicked D.Ch. several times, tearing her dress away entirely… The beneficiaries living in the boarding house are aggressive towards one an- other. N.T. throws everything and everyone that gets into his/her hands. L.M. tries to subdue beneficiaries who are weaker than him/her, and has tried to choke another person (beneficiary K.M.). R.A. is aggressive; s/he tries to jump out of the window and hits the bed with his/her head. N.T. breaks the doors and hits other beneficiaries (throws a chair at them)…" According to the staff, when beneficiaries start to act aggressively towards one another on a floor for which a concrete care-giver is responsible, the care-giver cries loudly for help (because there is no other means of communication that ensures security,

for example, an alarm button) and the remaining two care-givers leave their floors and go to help the third care-giver. At this moment, beneficiaries who remain on the floors left without supervision become victims of violence. The care-givers create a so-called "safety corridor" to hand food to beneficiaries who cannot come out of their rooms independently and to protect them from beneficiaries with behavioral disorders who try to grab their food and inflict physical damage on them. Despite the fact that the institution employs a psychiatrist, the situation described above makes it clear that s/he is unable to ensure the physical integrity and safety of beneficiaries. According to the staff, several days ago "at night, M. had a fit; the doctor gave him/her an injection of a sedative, but it didn't help and s/he hit us all. [The ambulance] does not transfer him/her until s/he gets too agitated…"

According to the psychologist (for whom this position is the first job and who has never had contact with persons with disabilities or taken an internship in any type of boarding house or mental institution), she cannot work with "aggressive beneficiaries" at all. Consequently, there remain three care-givers, who point out in their explanatory note that if the existing situation remains unchanged, the care-givers and/or beneficiaries may sustain serious bodily injuries and be exposed to the danger of loss of life.

Upon receiving this information, on June 27, 2012, the Office of Public Defender of Georgia started studying the case[135] on its initiative. In response to Public Defender's letter[136] which dealt with the proportion between the number of beneficiaries and the staff, as well as with issues of safety, we received the following information with a letter[137] of the State Care Agency:

"…We would like to inform you that the issue raised in your letter is not regulated by the legislation… As of today, one care-giver is assigned per nine beneficiaries. It should also be taken into account that in the institutions for persons with disabilities under LEPL State Care Agency, disabled beneficiaries are served by a physician-psychiatrist, a physician-therapist, an instructor of labor therapy, a psychologist, and a senior nurse in addition to care-givers."

A simple logical analysis shows that the letter of the Agency contains an inaccuracy: during night hours, when, according to the staff, the risk of damage to beneficiaries' health and violation of safety rules is the highest, none of the aforementioned members of the staff is in the institution (expect three care-givers and one nurse). Accordingly, the number of beneficiaries per one care-giver is 21, not nine. It should be noted that the same care-givers wash and iron the beneficiaries' clothes, feed them by hand, dress them, and tidy their wardrobes.

The aforementioned facts clearly refer to risks for the health and life of care-givers and beneficiaries in the Martkopi Boarding House; they also make it evident that the staff is under the risk of professional burnout and they cannot be expected to provide quality care, especially under conditions when their salary amounts to GEL 400 (net) and they have to work a night shift on every third day.

LACK OF MEDICAL INSURANCE BY THE STAFF

According to the staff, unlike beneficiaries, they do not have job-based medical insurance to get treatment for traumas they sustain.

The problem of lack of medical insurance by the staff also exists in institutions where staff often sustain physical traumas due to the imperfect system of care for beneficiaries. The majority of the care-givers of the Dusheti Boarding House note that they find it most difficult to take care for heavy-weight beneficiaries (weighing more than 100 kilograms) and to ensure their mobility. According to them, three female care-givers often have totake (transfer) a beneficiary from a bed to a wheelchair or from a wheelchair to a bath, at which time the majority of them sustain traumas of the spine. They note: "In fact, all we do from shift to shift is to get treatment for the spine." The issue becomes even more serious if we take into account that in many countries of Europe, it is prohibited to lift and transfer beneficiaries manually in such institutions due to the increased risk of violation of the safety of beneficiaries themselves, since

135 Case No. 1249-12, June 16, 2012
136 Letter No. 2941/08-2/1249-12, June 24, 2012
137 Letter No. 08/812, August 3, 2012

staff who have spinal problems themselves are highly likely to fail to transfer a beneficiary safely, which may result in a fatal outcome.

Public Defender of Georgia addresses the State Care Agency with recommendations to:

- **Ensure the protection of the rights of the staff working in the institutions, including insuring adequate number of staff in the Martkopi Boarding House for Persons with Disabilities, so that issues of safety that stem from the aforementioned problem are resolved;**
- **Ensure the prevention of professional burnout of the staff and introduce the regulation of health-care, which will also increase the quality of healthcare and custodial care for beneficiaries.**

DOMESTIC VIOLENCE TOWARDS CHILDREN DEVOID OF PARENTAL CARE

In accordance with Article 37 of the UN Convention on the Rights of the Child, the State Parties shall ensure that "no child is subjected to torture or other cruel, inhuman or degrading treatment or punishment." Furthermore, Article 19 of the Convention provides that the states are obliged to protect children from "all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation." Thus, these two norms of the Convention on the Rights of the Child, which stem from the necessity to protect the lawful interests and rights of children, determine the parameters of states' obligations in terms of protection of children from violence and ill-treatment.

In relation to children under state care, it is relevant to protect the rights guaranteed both by Article 19 (protection of children from violence) and Article 37 (protection of children from torture and ill-treatment) of the Convention on the Rights of the Child, since in this case it is the state that takes the responsibility for carrying out care for a child instead of a parent.

In accordance with the referral procedures for child protection[138], schools and specialized institutions for children are authorized to study and analyze cases in the framework of these procedures if there is doubt that a child was subjected to violence, to notify the police or the Social Service Agency of these cases, and to supervise the condition of the child who became a victim of violence in cooperation with the Agency.

The staff of almost all childcare institutions noted that children living in residential institutions were subjected to violence by their family members. For example, according to the psychologist of Public School No. 200, teachers tell him/her that some parents beat their children. The psychologist has also witnessed a fact of physical violence against a child by his/her parent at the time when the latter was visiting the boarding school. When asked what the school had done to protect the child from domestic violence, s/he answered that the school was not informed about a referral.

According to the information provided by the staff working in the institutions, the children do not talk about violence, but they say that they do not want to go home. "N.K.'s grandmother probably wasn't able to subdue the child and beat him/her; s/he is a disobedient child. The children put their hands on their head when teachers approach them, probably because they are beaten at home. The child who was beaten by his/her grandmother in the school yard has vision impairment," said the psychologist.

According to the doctor of the Kutaisi Public School No. 45, "There have been cases when a parent brought a child with a small injury, but s/he told us that the child had sustained these injuries while playing. Accordingly, we didn't check anything. We believe that this was the case. If a child sustains a considerable injury, we will notify someone…" The aforementioned issue is very problematic in the public schools (with a boarding house service) under the Ministry of Education and Science. The monitoring group received a large amount of information about alleged facts of domestic violence against children, who are in these institutions.

138 The Joint Order of the Minister of Labor, Health and Social Affairs of Georgia, the Minister of Internal Affairs of Georgia and the Minister of Education and Science of Georgia No. 152/N – N496 – N45/N of May 31, 2010, Tbilisi; M. 4(4);

The practice that we have studied makes it clear that the school staff were, indeed, unaware of their obligation to report in the framework of the referral mechanism for child protection; specifically, in accordance with Paragraph 2 of Article 6 of the Joint Order No.152/N-496-45/N of the Minister of Labor, Health and Social Affairs of Georgia, the Minister of Internal Affairs of Georgia, and the Minister of Education and Science of Georgia on the Approval of Referral Procedures for Child Protection: "If there arises a doubt that a child was subjected to violence, the administrations of schools, medical establishments, and specialized institutions for children, as well as village physicians, shall be obliged to identify the urgent condition related to violence against the child and a well-founded doubt about violence against the child and manage the case within the competence determined by the referral procedures for child protection." In accordance with Paragraph 3 of Article 6 of the same Order, the source of doubt about violence against a child may be the following:

a) Presence of signs of physical injuries on a child's body (bruises, fresh wounds, fresh scratches, fresh sores, difficulty in walking, swellings on the body, fractures);

b) Suspicious behavior of a child (if a child is agitated or depressed, has fears, does not want to go to school, does not attend school regularly, does not do lessons, is uncared for, does not want to return home, is sexually developed beyond his/her age, has knowledge about sex that does not correspond with his/her age, has undergone a radical change in character, or cannot explain the causes of a trauma)."

Analysis of the information obtained during the monitoring and its comparison with the obligations imposed on the staff of child care institutions by the referral mechanism for child protection from violence makes it clear that in all the aforementioned cases the employees of the institutions were not only able, but also obliged by law to respond adequately to the safety needs of the children, which they failed to do.

Public Defender addresses the Minister of Education and Science of Georgia with recommendations to:

- **Ensure the retraining of staff of public schools (with a boarding house service), so that they are able to fulfill the obligations envisaged by law to protect children who are victims of domestic violence;**
- **Ensure the activation of the referral system of child protection, so that, in every case when there is a well-founded doubt that a child was subjected to violence or neglect, the responsible state bodies are notified and all measures envisaged by law are taken to prevent violence.**

THE RIGHT TO HEALTH CARE

Health Care in Infant Houses

The monitoring group has assessed the availability of medical services for beneficiaries of infant houses, provision of quality medicines, and other measures of health care.

The outcomes of the monitoring have shown us that the medical services in infant homes are limited to the services of primary healthcare.

The December 9, 2009 Resolution No. 218 of the Government of Georgia, which determines the measures to be taken with the aim of insuring the health of the population in the framework of state programs and the terms of the insurance voucher, says that beneficiaries of the State Care Agency shall be provided with insurance vouchers. Furthermore, Article 3 of the same Resolution determines the medical services covered by the voucher[139].

139 „a) Reimbursement of expenses of outpatient services:
a.a) Outpatient service (service provided by a family doctor or a district physician); outpatient service provided by specialists, urgent outpatient service; service provided by a family doctor, district physician, or a doctor's assistant at the patient's home, if necessary);

Medical service is provided by private insurance companies according to territorial principle, within the limits of insurance policies. The packages of different insurance companies are almost identical; They fail to take into account the age-related aspects of diseases, possible special needs of children with such common diagnoses as hydrocephaly, pediatric cerebral palsy, management and rehabilitation of its secondary condition, and different inborn defects and abnormalities.

At the time of the monitoring, several beneficiaries of the Tbilisi Infant House, including a brother and a sister diagnosed with diabetes mellitus and Down's syndrome, did not have an insurance policy, despite several requests. For almost a month and a half, it was impossible to provide them with insurance policies, despite the fact that notifications were made upon their admission to the Infant House (4/05/2012).

Insurance packages often fail to meet the health needs of beneficiaries of infant houses. There were cases when children diagnosed with pneumonia were transferred from the Tbilisi Infant House to a hospital to provide them with inpatient treatment. The Forms #100[140] indicated that the children required a consultation of a neurosurgeon and an otolaryngologist, which was possible to provide in the same pediatric clinic (in which the children were hospitalized to receive treatment for pneumonia), though the children were returned from the clinic without providing them with the consultation, because the code of the illness (primary illness) did not envisage the aforementioned types of consultation.

There are also cases when as soon as the sum covered by the code of the concrete disease is spent, children are returned to the Tbilisi Infant House, which has no resources to invite narrow specialists and provide consultations. The pediatrician of the Tbilisi Infant House has to address the insurance company again to substantiate the need of an examination or a consultation. Due to this, the process of setting a diagnosis and providing corresponding medical assistance gets protracted.

Children with Hydrocephaly [141] *– Lifespan Determined by Infant House*

In his speech given on June 11, 2010, Regional Representative of the UN High Commissioner for Human Rights, Jan Jařab, noted: "Children born with spina bifida [spinal hernia] or hydrocephaly are human beings and they have human rights. If properly treated, a human being born with spina bifida should not develop hydrocephaly at all. We should never see images of small children with enormous heads who have become blind and intellectually impaired; children who suffer terrible pain before they die a slow, excruciating death, because they do not receive adequate treatment." [142]

It is still very important location, where such a child is born. In some countries, doctors advise parents to leave their child in a children's home immediately, because such a child has no future – due to non-performance of surgical intervention at

a.b) Electrocardiographic, echoscopic, and X ray examinations, and laboratory and instrumental examinations connected with planned surgery hospitalization based on a doctor's prescription;
a.c) Clinical-laboratory outpatient examinations with a doctor's prescription: general blood test, general urine test and creatinine, peripheral blood glucose, pregnancy test, hemoglobin, analysis of faeces for concealed bleeding;
a.d) Examinations required for the social assessment of persons with disabilities, specifically, examinations required for the assignment of the disability status, expect for highly technological examinations (computer tomography and nuclear magnetic resonance examinations);
a.e) Issuance of all types of medical certificates and prescriptions at the outpatient level (except for Form NIV-100/A connected with starting a job, a driver's license in LEPL Service Agency of the MIA, and certificates required for receiving the right to keep/bear arms);
b) Reimbursement of expenses of inpatient services:
b.a) Urgent inpatient services, including hospitalization connected with complicated pregnancy, childbirth, and post-natal period;
b.b) Planned surgeries (including daytime inpatient unit) – annual insurance limit – GEL 15,000;
b.c) Expenses of chemotherapy and radiation therapy – annual insurance limit – GEL 12,000;
c) Expenses connected with childbirth – GEL 400;
d) Expenses of medical products – according to the list of medical products. The insurer shall reimburse these expenses within the annual insurance limit of the policy, GEL 50, with a 50% co-payment, while from September 1, 2012, for women aged 60 and above and men aged 65 and above (population of pension age) as determined by Paragraphs a and a1 of the terms of the voucher, the annual insurance limit shall be set at GEL 200, with a 50% co-payment.

140 A health certificate
141 Hydrocephaly –a medical condition in which there is an abnormal accumulation of cerebrospinal fluid in the cavity of the brain
142 http://www.europe.ohchr.org/Documents/Speeches/RightsForPersonsWithSpinaBifida.pdf

an early stage, the child develops a severe condition of hydrocephaly with inborn injuries and inevitable death follows at an early age.

The same is the case in several countries of the Eastern Europe and, obviously, in many other countries of the world. Poverty and violation of the rights of persons with disabilities often combine to pass a death sentence. In these countries, the healthcare system does not ensure the placement of a ventriculoperitonealshunt for these children, while poor parents cannot pay for this procedure; often, parents are not even told that such a procedure exists and they can save the life of a child with such a diagnosis.

In developing countries, the statistical figures of children diagnosed with hydrocephaly range from 0.2 to 0.8 per 1,000 newborns. The causes of congenital hydrocephaly are divided into primary (idiopathic) and secondary (acquired) causes, of which idiopathic causes are considerably dominant. Natural development of the disease without a surgical intervention causes progressive cognitive deterioration and an early death – as a rule, before the person reaches the third decade[143][144][145]. However, the perfection of neurosurgical and diagnostic methods has enabled these people to live much longer and improved lives.

There are about 750,000 people diagnosed with hydrocephaly in the world, and, each year, 160,000 ventriculoperitonealshunts are implanted in them.

Before the 1940s, when the method of ventriculoperitonealshunting was introduced, only 20% of children diagnosed with hydrocephaly reached adulthood (without the surgery), while 50% of those who survived developed permanent brain damage. These statistical figures improved significantly after the introduction of the shunt systems by Nulsen and Spitz in 1952 and by Holter and Pudenz in 1960.

As of today, the majority of children diagnosed with hydrocephaly reach adulthood. The 20-year-long scientific research has shown that more than half of the children who received shunting in the 1970s have graduated from high school[146].

In 2005, researchers of the Department of Neurosurgery, Neurology and Pediatrics of the University of California published a study[147] according to which the mortality rate of children diagnosed with hydrocephaly decreased by 60% from 1979 to 1998 in the United States. The decrease was distributed almost proportionally across all the three groups of people with hydrocephaly: the mortality rate of people with congenital hydrocephaly decreased from 8.9% to 3.1% (in 100,000 cases); the mortality rate of people diagnosed with hydrocephaly together with spina bifida decreased from 4.9% to 0.6% (in 100,000 cases); and in the case of persons with acquired hydrocephaly, the death rate decreased from 2.3% to 0.5% (in 100,000 cases). The study was conducted on the entire population of the US; the data were taken from the National Center for Health Statistics.

SITUATION IN GEORGIA

The National Preventive Mechanism has paid particular attention to the rights of children diagnosed with hydrocephaly.

The experts found quite a large group of children with hydrocephaly in the Tbilisi Infant House, though practically no children with this diagnosis were housed in other children's homes (with one exception) or in the institutions where beneficiaries of infant houses are transferred after they reach the age of six (the institutions for children with disabilities in Senaki and Kojori). According to the data of the Social Service Agency, children with this diagnosis are seldom taken into foster care or adopted. This gives rise to well-founded doubts about the fate of these children, since, as the aforementioned international practice indicates, the lifespan of these children is not limited to six years.

143 51 Laurence KM (1958). The Natural History of Hydrocephalus. Lancet 2: 1152-1154;
144 Laurence KM (1960). The Natural History of Hydrocephalus. Postgraduate Med.J 36:662-667
145 Laurence KM (1960). The Natural History of Hydrocephalus. Postgraduate Med.J 36:662-667
146 http://emedicine.medscape.com/article/937979-overview
147 John H. Chi, M.D., M.P.H., Heather J. Fullerton, M.D., M.A.S., and Nalin Gupta, M.D., Ph.D. (2005), Time Trends and Demographics of Deaths from Congenital Hydrocephalus in Children in the United States: National Center for Health Statistics data, 1979 to 1998, Journal of Neurosurgery (Pediatrics 2); 103:113-118.

In January 2012, Public Defender of Georgia, on his initiative, started to study the state of the rights of the children with hydrocephaly in the Tbilisi Infant House[148]. He also addressed the Social Service Agency with a recommendation to conduct an inquiry into the case[149]. The reply letter of the Agency[150] gives the following dynamics of the children with hydrocephaly: in the period of January-June 2012, 15 children diagnosed with hydrocephaly lived in the infant house; as of June 2012, five of them had died.

During the monitoring, the experts monitored six children diagnosed with hydrocephaly on-site. In the cases of all the six children, the clinical manifestations of hydrocephaly were quite complicated (particularly large amounts of cerebrospinal fluid in the brain ventricles and subarachnoid space, significant increase in head sizes, etc.) and the intracranial pressure had increased. The clinical evidence was manifested in the following: each child had a very strained, pulsating anterior fontanel, ophthalmoplegia, with classic manifestation of sunset syndrome, with considerably increased strain in the muscles of both the torso and the limbs, with typical manifestations of suppression of the nervous system – the children were in a lethargic state (in a weakened, powerless state), with visual and auditory disorders, with symptoms of gastroesophagal reflux[151].

According to the assessment of the monitoring group, the aforementioned state of the children was caused by inadequate medical service. The aforementioned was, first of all, connected with ineffective performance of essential and necessary neurosurgical intervention or with a neurosurgeon's decision not to perform a surgical intervention on purpose. The lack of essential neurosurgical intervention also implied restriction of palliative intervention whose major function was to decrease the clinical symptoms caused by the disease and to place a ventricular shunt. According to the staff, the failure to perform the aforementioned intervention was caused by neurosurgeons' decisions. The medical professionals of the infant house noted that the neurosurgeons based their decision on one factor only: how "prospective" the child was, to what extent the child would have a chance of developing and having a positive dynamics if a shunt was placed.

The failure to perform the aforementioned intervention turns these children's lives into a waiting for death, regardless of how many days, months, or years they have left to live. The period of waiting is made even more grave by pain and discomfort caused by an increase in intracranial pressure; and medical specialists fail to perform intervention (including neurosurgical) to alleviate this discomfort of beneficiaries of the infant house, because, according to the common opinion, "these children don't feel the pain" even when their skull and face become entirely deformed and slowly lose their original form due to accumulation of fluid. Dozens of medical specialists watch this condition of children passively, not even considering it necessary at least to alleviate their pain and enormous discomfort in the framework of palliative care. In the opinion of the foreign members of the monitoring group, the aforementioned practice contradicts entirely with international clinical practice in this direction. According to them, the absolute majority of children with hydrocephaly or with the risk of developing hydrocephaly receive shunting within several days or months of birth, which, in most cases, gives the children a positive chance to develop and grow up. Even in those few cases when a child is expected to die due to a complicated medical diagnoses, the child receives shunting in the framework of palliative care to decrease the pain and discomfort connected with accumulation of fluid during the progress of the disease, so that the quality of the child's life until his/her death (however short this time may be) is normal and the last period of his/her life does not turn into a source of suffering.

The National Preventive Mechanism assessed the practice in the Tbilisi Infant House as a serious act of ill-treatment which may even be equivalent to torture and inhuman treatment in its severity.

CONTINUITY OF MEDICAL SERVICE FOR INFANTS

Article 3 of the Law of Georgia on Health Care indicates that continuity of medical service implies uninterrupted exercise of preventive, diagnostic, treatment, rehabilitative, and palliative measures.

148 Case No. 1587-11
149 Letter No. 83/08-1, January 9, 2012
150 Letter No. 04/3112, January 23, 2012
151 A condition when food or fluid gets pushed back from the stomach

In accordance with Article 4 of the Law of Georgia on Health Care, the principles of the state policy in the field of health care are as follows:

"a) Universal and equal access to medical care for the population in the framework of the obligations taken by the state through state medical programs;

b) Protection of human rights and freedoms in the field of healthcare; acknowledgement of the honor, dignity, and autonomy of the patient;

c) Responsibility of the state for the amount and quality of the medical service envisaged by the program of mandatory medical insurance;

d) Priority of primary healthcare, including urgent medical aid; participation of state and private sectors in it; development of family medicine and the institution of family doctor, and ensuring access to medical care on its basis."

As a result of the monitoring, it has been found out that the medical care in infant houses is mainly limited to provision of primary medical assistance and anti-symptom medicines.

The multidisciplinary teams of doctors do not conduct examinations, apart from individual exceptions.

Beneficiaries of infant houses belong to the vulnerable category of children who often become ill and, accordingly, require repeated hospitalization. Despite the fact that the insurance package covers hospitalization, it is often difficult to achieve. During the monitoring of the Tbilisi Infant House, the monitoring group learned about a case of restriction of urgent medical care for beneficiary S.B. In connection with this, Public Defender, on his initiative, launched an additional inquiry (Case No. 1271-12) and sent the information for response to both the State Regulation Agency for Medical Activities (No. 2940/08-2/1271-12) and the Social Service Agency (2939/08-2/1271-12) – the body of guardianship and custodial care determined by the national legislation.

The case of S.K. – Refusal to provide urgent Medical Service

On January 2, 2012, by 8:00 P.M., S.K., who was then a year and two months old, had severe adynamia[152], breathing rhythm disorder, and immediate apnea[153]. The child's limbs were pale-colored and cold; s/he responded passively to irritation; the heart sounds were deafened, and the pulse on the periphery felt weak; the child was not crying; temperature – 35^0; pulse – 100; breath frequency – 24. Due to the generally complicated diagnosis (microcephaly, spastic tetraparesis, post-pneumonia period, slight cramps), the duty doctor N.G. considered it necessary to call an ambulance crew after providing first aid. A doctor of the ambulance crew gave the child an injection and oxygen; according to the duty doctor of the infant house, the child required transfer to hospital ("In fact, a dead child was lying in front of me."), through s/he was not hospitalized. According to an entry made in medical card no. 614 of ambulance crew no. 809, "The patient requires inpatient treatment. I contacted the hospital manager. All pediatric clinics refused to admit the aforementioned patient."

By 10:00 P.M., S.K.'s condition was still severe: the child gave almost no response to irritation; the breathing was superficial; the heart sounds were deafened; hypothermia; despite putting hot water bags, the temperature remained at 35^0; the look was bleary, with periodic eye deviation (uncoordinated movement of eyes). The duty doctor called the hotline of the Ministry of Labor, Health and Social Affairs and the Alfa insurance company. In several hours, the same ambulance crew was called again, and, already on January 3, at 01:00 A.M., the child was transferred to the intensive care unit of the academic clinic.

The medical report drawn up jointly by the Social Service Agency and doctors and administration of the Infant House indicates that it took five hours to transfer the child from the Infant House to the inpatient unit.

152 Adynamia – (Greek: a –negative prefix, dynamis - strength) – loss of strength, intense weakness

153 Apnea (Greek: a - negative prefix; pnoē – to breathe) – a temporary suspension of breathing; develops as a result of blood depletion from carbonic acid (for example, at the time of intensified artificial or natural breathing).

According to the administration and medical staff of the Tbilisi Infant House, due to the health condition of beneficiaries, it often becomes necessary to transfer children to pediatric clinics, which has been a serious problem in the recent period. In concrete cases, there is a risk of a lethal outcome. In connection with the aforementioned, on January 11, 2012, the Director of the Tbilisi Infant House addressed the Head of the State Care Agency in writing. However, the aforementioned problem is yet to be resolved by the Ministry of Labor, Health and Social Affairs.

In the cases when, with the intervention of the Head of the Agency, beneficiaries of the Infant House are transferred to an inpatient unit, they are usually provided with medical care with a delay, which can no longer be considered as timely access to medical care. This pertains to newborns and children before the age of three when pathological processes develop very fast and there is even a probability of a lethal outcome (death).

The above discussed violates Article 24 of the Convention on the Rights of the Child according to which, "States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services."

Article 133 of the Law of Georgia on Health Care indicates "Management of the medical aspects of decreasing of child mortality and illness rate and provision of children with the highest attainable standard of medical care, first of all with primary medical assistance, shall be a priority task for the healthcare system.[154]Analysis of the case of S.K. in accordance with international and local legislative standards makes it clear that S.K.'s right to receive complete healthcare services was violated.

Maintenance of Medical Records in Infant Houses

The obligation to maintain complete medical records is envisaged by Article 56 of the Law of Georgia on Medical Activity, which indicates -"An independent provider of medical activity shall be obliged to maintain medical records for each patient with the procedure established by the Georgian legislation… The medical records shall be complete. An independent provider of medical activity shall fill out each part of the medical records file (personal, social, medical and other data of the patient) completely; The information in the medical records shall be entered in a timely manner and within established terms; The medical records shall equitably reflect all details related to the medical service provided for the patient."[155]

However, it should be noted that Forms #100 contained in the children's medical development cards, that the Infant House sent us, indicate to the contrary. The forms were filled out superficially and do not contain essential information about examinations conducted. The forms often contain entries like this: "General blood tests taken and roentgenography of the chest conducted"; they say nothing of the results of examinations, which would be very valuable for the pediatricians of the infant house and help them in the monitoring of further medical assistance.

Provision of Infant Houses with Medicines

As a result of the monitoring, it has been established that the institutions under the State Care Agency are provided with medicines in a centralized manner, though there are individual cases when it becomes necessary to order additional medicines that were not included in the annual list and the advance estimates. In such cases, the institutions address the Ministry of Health and the latter provides assistance, which may sometimes come too late. In such a case, the heads of the institutions have to purchase the medicines with their own funds.

A beneficiary of the infant house, five-year-old A.B., who, according to Form #100 included in the child's medical card, was diagnosed with "residual motor disturbances caused by pediatric cerebral palsy, deep tetraparesis, and

154 The Law of Georgia on Health Care, Article 133, Paragraph 1
155 The Law of Georgia on Medical Activity, Article 56

symptomatic generalized epilepsy," often has serial cramps (convulsions); The cramps are only removed by giving the child the prescribed dose of a combination of Carbamazepine and Difinin. Difinin is not included in the list of the State Care Agency.

It is also necessary to pay particular attention to medicines received as a humanitarian gift. A physician-pediatrician of the Makhinjauri Infant House, D.J., gave the institution 200 mg. of Carbamazepine (250 tablets), whose price was estimated as GEL 0 and 40 tetri in the acceptance-delivery act, and Perscindol ointment estimated at GEL 15. In both cases, the production and expiry dates were missing, which gives rise to doubts in terms of children's health.

In conclusion, we would emphasize that it is necessary to conduct monitoring on the health of newly borns, infants, and children at an early age and to ensure that the multidisciplinary teams conduct assessment and develop individual development plans, or introduce programs of further rehabilitation/habilitation. Particular attention should be paid to early diagnosis of diseases (hydrocephaly) and timely and purposeful surgical intervention with newly born children.

Public Defender of Georgia addresses the Ministry of Labor, Health and Social Affairs of Georgia with recommendations to:

- **Ensure the assessment of newly born children in the case of hydrocephaly and other serious inborn diseases and disorders in the framework of the State Program of Prevention of Diseases with the aim of carrying out timely and complete intervention;**
- **Develop and introduce unified electronic systems, taking into consideration the health and psychosocial condition of children with disability status, with the aim of improving their further rehabilitation and social integration from their birth to adulthood;**
- **Exercise effective control and supervision on the health condition of beneficiaries of infant houses and on the quality of medical care provided for them;**
- **Ensure the assessment of all beneficiaries in infant houses by a multidisciplinary team and implementation of programs of rehabilitation/habilitation in the framework of an individual development program;**
- **Ensure fast and timely provision of medical service by simplifying the procedures of communication with insurance companies;**
- **Ensure that beneficiaries of infant houses are provided with a different insurance package of medical services that are tailored to their needs with the aim of increasing access to medical care;**
- **Ensure that infant houses are provided with all necessary medicines included in the insurance packages, taking into consideration the age-related specifics of diseases and the disability status.**

HEALTH CARE IN SPECIALIZED BOARDING SCHOOLS

The Internal Rules of the Akhaltsikhe Boarding School indicates that "The nurse shall ensure that all treatment, preventive, and recovery measures are taken, maintain order and cleanliness in the medical isolation ward, and provide primary medical care for children." In spite of this, the members of the monitoring group were practically unable to obtain information about the health condition of the beneficiaries and medical assistance provided to them (the nurse was absent at the time of the monitoring).

School No. 202, which serves children with visual impairment, does not employ an ophthalmologist. Consequently, in this case, the children who require an ophthalmologist's consultation most often are provided with this service with considerable delay.

Interviews with the medical staff made it clear that they had not taken any training on issues of provision of medical service to children with special needs. They think that participation in such educational activities and familiarization with new approaches to medical service and habilitation/rehabilitation of children would help them a great deal in their daily activities.

The medical rooms in the boarding schools are very small; the institutions (the Akhaltsikhe Boarding School, the Chiatura Boarding School, Boarding School No. 202) do not have a medical isolation ward for temporary placement of beneficiaries in the case of a contagious disease. Medical units adjacent to the medical rooms are non-functional (the Akhaltsikhe Boarding School), and the medical rooms are not equipped with weighing scales and a height measure, which makes it impossible to conduct monitoring on physical development (the Akhaltsikhe Boarding School).

The monitors found expired medicines (ampules of Dimedrol and Analgin) in the medical rooms (the Akhaltsikhe Boarding School, Boarding School No. 202). The logs on the use of medicines were not maintained (the Kutaisi Boarding School No. 45, the Akhaltsikhe Boarding School No. 7) or were maintained in a non-standard manner.

MAINTENANCE OF MEDICAL DOCUMENTS

The boarding schools do not keep logs of cases of hospitalization, unfortunate accidents, injuries, and other issues. They maintain logs of daily medical services differently from one another (without observing a common standard); The documents do not contain necessary basic information (the Akhaltsikhe Boarding School, the Tbilisi Boarding School No. 202). The staff of the institution soften do not have a list of beneficiaries that includes their diagnoses and disability status.

The Akhaltsikhe Boarding School No. 7 does not have a single complete medical case file. None of the case files includes assessment of retardation of mental development (with the exception of one child). There are no logs on injuries, treatment, or supervision.

In Boarding School No. 202, there are no logs on acceptance and transfer of medicines; there are also no logs on hospitalization, contagious diseases, and vaccination.

Several boarding schools do not maintain logs on medicines subjected to special control, and these medicines are issued together with other medications (the Tbilisi Boarding School No. 202, the Chiatura Boarding School No. 12). Boarding School No. 200 also fails to maintain a log on injuries and self-injuries.

In the boarding schools, medical cards are maintained incorrectly; in some of them, entries are only made once a year, and even these entries are incomplete and the information does not reflect the dynamics corresponding with the diagnoses (boarding schools of Akhaltsikhe No. 7, Kutaisi No. 45, and Tbilisi No. 202 and No. 203).

In the case of chronic diseases, the progress of the diseases is not supervised adequately (boarding schools of Akhaltsikhe No. 7, Kutaisi No. 45, and Tbilisi No. 202 and No. 203).

The medical history of a beneficiary of Boarding School No. 202, 16-year-old A.Ch., diagnosed with diabetes mellitus type A and diabetes insipidus, does not include entries about insulin treatment. The same is the case with a beneficiary of the same boarding school, S.M., diagnosed with diabetes mellitus type A, decompensated form, severe form (Wolfram Syndrome). In both cases, the monitors saw the diagnoses in Forms #100 issued by Givi Zhvania Pediatric Clinic. The medical cards issued by the boarding school did not contain this information.

Thus, lack of information by the medical staff, on the one hand, and their failure to fulfill their obligation as doctors to make entries, on the other hand, cause ineffective maintenance of medical documents.

MEDICAL SERVICE IN THE FRAMEWORK OF INSURANCE POLICIES

Different insurance companies in the framework of the state medical insurance program provide medical service. Different institutions use the services of different insurance companies that are distributed by territorial principle. Despite the fact that insurance policies are issued based on an ID card number, two beneficiaries of the Akhaltsikhe Boarding School, who do not have ID cards, have insurance policies.

In the Kutaisi Boarding School, six beneficiaries had expired policies of Aldagi BCI. There are cases when the insurance policy cannot cover health care costs: ten pupils of Public School No. 200 diagnosed with epilepsy needed to undergo an electroencephalogram, but the insurance company did not cover its costs.

The children with chronic diseases who attend the boarding schools occasionally need to be placed in an inpatient unit for further examinations and treatment. However, when they return to their institution (or are transferred to another similar institution), they do not have Forms #100 with them, or the Forms #100 are incomplete and do not say what type of treatment they received in the hospital. This indicates to the poor quality of the service provided by the medical institutions, on the one hand, and to the impossibility of providing the children with complete medical service by the residential institutions, which they are obliged to do according to legislative acts and by-laws, on the other hand.

In several institutions (the Akhaltsikhe Public School No. 7, the Tbilisi Public School No. 202), preventive examinations have never been conducted on-site.

Thus, the medical service provided for disabled children who live in the boarding schools is incomplete, and the medical records are made so incompetently and incompletely that they do not make it possible to make an on-site assessment of the effectiveness of the medical service.

Public Defender of Georgia addresses the Minister of Labor, Health and Social Affairs of Georgia and the Minister of Education and Science of Georgia with recommendations to:

- **Ensure coordinated work with the aim of improving the monitoring on the medical service provided for children with different types of disabilities;**
- **Introduce a procedure for the functioning of medical rooms in boarding schools; determine the rights and obligations of medical staff;**
- **Ensure the development of common systems of maintenance of medical documents and introduce them in boarding schools for children with disabilities, taking into consideration children's illness rate and needs;**
- **Ensure the retraining of medical staff in boarding schools, taking into consideration the children's special needs;**
- **Ensure the expansion of the insurance package according to the medical condition and needs of children with disabilities;**
- **Extend Order No. 6/61 of LEPL State Care Agency of the Ministry of Labor, Health and Social Affairs of Georgia, issued in 2011, on the Approval of Forms of Medical Documents to boarding schools for children with disabilities.**

HEALTH CARE IN INSTITUTIONS FOR CHILDREN WITH DISABILITIES

In the institutions for children with disabilities, beneficiaries with chronic diseases often require inpatient care.

Patients are often discharged from inpatient units inappropriately early, which is caused by the expiration of the insurance limit.

A beneficiary of the Kojori Institution for Children with Disabilities, G.T., born on 05/07/2004, was admitted to the Kojori Institution for Children with Disabilities on November 29, 2010, with the diagnosis of pediatric cerebral palsy, profound mental retardation, and acute bronchitis (bronchospasm). At the time of admission, the child's condition was grave, with respiratory insufficiency; S/he was transferred to an inpatient unit in an ambulance car. On December 2, s/he was discharged from the inpatient unit, though, at the end of the same day, s/he was transferred back to the unit in an ambulance car. On December 6, s/he was discharged again, and on December 7, s/he was returned again to the unit. Due to frequent complication of the disease, s/he requires inpatient treatment. By the time of the monitoring, the beneficiary was in hospital.

The 2010 Report on the Monitoring of the Rights of Persons with Disabilities by the National Preventive Mechanism devoted considerable attention to the inadequacy of medical service provided for children with disabilities. As a result of response to materials sent to the structures of state control, several medical workers had their licenses of professional activity suspended/revoked.

Unfortunately, at the time of the monitoring of 2012, the issue of inadequate medical service was still relevant in the aforementioned institutions. In this respect, the situation in the Senaki children's house was particularly difficult.

The Case of Sh.K. – Late and Inadequate Medical Service

On May 15, 2012, a representative of Public Defender received a phone call about deterioration of the health condition of beneficiary Sh.K., which, according to the author of the phone call, had been caused by inadequate medical assistance. As soon as Public Defender initiated the case on his initiative[156], he requested information from LEPL State Care Agency. According to the letter[157] sent from the State Care Agency, six-year-old Sh.K. had died on April 26, 2012, in the Kutaisi Regional Medical Diagnostic Center for Mothers and Children.

However, the real circumstances of the case were as follows:

On April 26, 2012, six-year-old Sh.K. (diagnosed with pediatric cerebral palsy, spastic paraplegia, and severe psychomotor retardation) was in the Senaki Institution for Children with Disabilities.

The child had been admitted to the Senaki children's house on April 2, 2012[158]. According to the entry made by a pediatrician, at the time of admission, the child's condition was of average severity; In addition to low functional status (s/he was unable to sit and walk, constantly lay in bed, was unable to speak and come into contact), his/her health problem was thin, spotted rash (nettle-rash) on his/her neck, body, and limbs which his/ her parent could not relate to intake of food. Other data, according the pediatrician's entry, were as follows: temperature –36.8^0, pale-colored skin, coronary sounds clear when hearing on the lungs, vesicular breathing.

Two months after the child was admitted to the institution, his/her health condition changed sharply. According to Form #100 issued by the Kutaisi Regional Medical Diagnostic Center for Mothers and Children:

"Six-year-old Sh.K. has been hospitalized in the inpatient unit with:

156 Case N.0853-12, May 17, 2012
157 Letter N.08/584, June 6, 2012
158 The aforementioned is confirmed by documents provided by LEPL State Care Agency on June 11, 2012 – a sheet on the examination of the patient, a pediatrician's consultation sheet.

- Acute respiratory insufficiency;
- Acute bronchitis, bronchospasm;
- Acute swelling of lungs;
- Pediatric cerebral palsy."

The child's condition was assessed as extremely severe. The child died on May 26, at 2:15 A.M.

The preventive group conducted an inquiry into the condition of Sh.K. in the framework of the current monitoring and, in order to find out what had caused the sharp deterioration of the child's health two months after s/he was admitted to the institution and whether medical assistance had been provided in a timely manner, the monitors interviewed the local medical staff and other involved persons.

When asked about the development of pneumonia and swelling of the lungs, the director of the institution answered: "S/he had phlegm, the phlegm was accumulated, and it's impossible to take out phlegm here."

According to the local pediatrician, the medical staff of the institution prescribed Sk. K. anti-convulsion treatment (against epileptic cramps) (Finlepsin, Diazetex) only on the basis of the words of the child's mother who had said that the child had epileptic cramps. The medical staff of the institution had not seen the episode of cramps; the child had been admitted without a neurologist's consultation sheet or documents confirming diagnosing or examination for EPI syndrome.

The medical staff also prescribed Sh.K. Normokid (to remove vomiting), though the child had not had a single episode of vomiting during his/her stay in the institution. No examination had been conducted on the child to establish the cause of vomiting (if such had taken place) before the aforementioned medicine was prescribed.

According to the pediatrician, on May 6, 2012, the child's temperature rose to 39^0, and s/he was transported first to the Senaki inpatient unit and then, on the same day, to the Kutaisi hospital. According to the pediatrician, despite the fact, that the immediate cause of the child's death was connected with acute bronchospasm and swelling of the lungs, Sh.K. had not had any types of respiratory (connected with breathing) problems during his/her entire stay in the children's house.

It should be noted that he child's medical history also includes a sheet of paper with the results of the general blood test of Sh.K., on which the data were entered by hand; it is an ordinary sheet of paper without a stamp or official requisites of any establishment. A person called L. Kharbedia on April 27, 2012 did the test.

It is these data that exposed the hidden details of the case. A person from the institution who had been present when Sh.K's condition deteriorated told a different version of the story to the monitoring group. According to him/her, Sh.K. did not have a medical insurance policy, and, for this reason, s/he was not hospitalized for 20 days, despite the fact that s/he needed to be transferred to hospital. When the child's condition became extremely severe, the administration took the child to a hospital in the car of the Senaki children's house, though, as s/he had no insurance policy, the blood test was taken in the institution's car, under non-medical conditions (see the aforementioned document with the results of the blood test on a piece of paper without the requisites of the medical establishment which was obtained by the monitoring group). According to the person, the process of taking the blood test in the car was attended by N.L. – the music teacher, S.K. – the nurse, N.Ts. – the caregiver, Z.K. – the driver, and him/her himself/herself.

A member of the preventive group talked independently to the nurse who had ac- companied Sh.K. when the blood test was taken; She confirmed that, due to the lack of insurance policy, they, indeed, had to take the blood test in the car and, with this aim, L. Kharbedia had actually violated a regulation established by law and taken the child's blood covertly, without registration. The laboratory examination of the blood was also conducted unofficially.

After the monitoring group had notified the aforementioned details to the administration, the director of the institution declared that, due to the lack of insurance, Sh.K.'s blood had really been taken in a car. S/he also acknowledged that the agency staff had not been able to find the child's data in the insurance database before the hospitalization, and the policy arrived late. A week before the hospitalization, the child was already in a grave state and received food in an unstable manner. "I only lacked insurance policy for this child; all the other children had insurance, and I told it to the administration of the agency when the head of the administration of the agency, Bela Gogua, arrived in Senaki a week before." The director of the institution showed us an email confirming the notification about the lack of insurance policy.

The conversation with the director revealed one more important detail: Despite the fact that Sh.K. had an extremely severe syndrome with respiratory insufficiency, on May 6, 2012, s/he was first transported to the Senaki Children's Hospital where they already knew it would be impossible to solve the child's problem, because the Senaki hospital does not have the medical equipment necessary for the management of respiratory complications. As the director explained, the child was transferred to the Senaki hospital because the ambulance crew is only allowed to transfer patients to the Senaki hospital. Afterwards several hours later, the Senaki hospital called an ambulance from Kutaisi and the child was transferred to the Kutaisi hospital where it is possible to manage respiratory problems. When asked "What intervention was performed on the child in the Senaki hospital if they were unable to resolve the respiratory problem?" the director of the Senaki children's house answered: "As they were unable to intervene and said they didn't have any equipment, they called an ambulance from Kutaisi …"

The inquiry into the aforementioned details of the case has made it clear to the Special Preventive Group that Sh.K. was provided with medical assistance late and in an inadequate manner. Accordingly, investigatory bodies must inquire whether the delay (with at least one week) of provision of qualified medical assistance to the child with respiratory problems was connected with his/her death; whether it was possible to avoid the lethal outcome if the State Care Agency had taken an action as soon as it received the notification (a week before the child was transferred to the inpatient unit); How seriously the medical staff of the children's house violated the law by neglecting the child's medical needs; and whether the information was hidden deliberately.

Public Defender of Georgia addresses the Office of the Chief Prosecutor of Georgia with a recommendation to:

- **Investigate the fact of death of Sh.K. and take adequate measures if the guilt of the aforementioned persons is confirmed.**

HEALTHCARE IN BOARDING HOUSES FOR PERSONS WITH DISABILITIES

The monitoring conducted in the houses for people with disabilities in Dusheti and Martkopi, has shown that here, as in the other institutions for disabled persons, the beneficiaries' right to health is not protected. The violations of the stated right are complex and are connected both with shortcomings of the work of inpatient facilities in relation to disabled persons and ineffective communication among different state agencies.

The Case of D.S. – A shortcoming connected with the process of admission to a Boarding House

On June 20, 2012, during the monitoring of the Dusheti Boarding House for Persons with Disabilities, one of the beneficiaries developed diabetic coma. As an explanatory note of a doctor of the Dusheti Boarding House makes it clear, beneficiary D.S. was admitted to the boarding house on June 19, 2012, at about 2 P.M., with a diagnosis of diabetes mellitus type 2, angiopathy, diebetic foot, and collapse of both retinas. The patient had received treatment by taking 30 units of Insulinretard and 20 units of Actrapid once a day. Since the Social Service Agency did not pay proper attention to the beneficiary's health condition (to the contents of medical document Form #100) when s/he was being admitted

and the regime of insulin therapy was not taken into account during his/her transportation, s/he twice developed diabetic coma accompanied by loss of consciousness for a considerable period, first, during the transportation in a vehicle and, for a second time, several hours after the admission to the boarding house. The aforementioned fact posed quite a serious threat to his/her life and health and was a strong stressogenic factor. For further management of the patient's condition, the director of the boarding house contacted the Dusheti medical center of Geo-Hospitals LLC, though representatives of the clinic told him/her that the endocrinologist was not available in the hospital. Accordingly, the patient came under the risk of not being able to receive necessary medical consultation for at least three days (the endocrinologist would be available for consultation after three days). In spite of this, based on the director's personal contacts, after negotiations over the phone, the patient was sent to the Mtskheta Center for Primary Health Care on the same day. S/he was provided with an endocrinologist's consultation and, as a result, his doze of insulin therapy was changed.

The aforementioned case highlights the responsibility of the Social Service Agency for making an adequate assessment when beneficiaries are admitted to care institutions. Since the assessment did not indicate properly to the potentially dangerous condition (diabetes, the risk of development of coma), this factor was not taken into account when the beneficiary's transportation was organized; the receiving care institution was not informed of the attendant medical risk. The Form #100 that accompanied the patient had not been filled out completely.

In the Martkopi institution for disabled people, the preventive group learned that there were serious problems related to the quality of medical service for beneficiaries; according to the administration, the Martkopi Boarding House for Persons with Disabilities is served by the Ambulance Service of the Gardabani District. Due to the small number of crews, the ambulance service only manages to arrive at the boarding house an hour after a call is made. One more formality makes this situation worse: Both in the cases of somatic and psychic diseases, patients are first hospitalized in the Geo-Hospital of the Gardabani District and then transferred to Tbilisi by the Disaster Service. This scheme of hospitalization prolongs the route (from Martkopi to Gardabani – 50 km, from Gardabani to Tbilisi – 25 km), increases fuel expenses, and hinders timely provision of medical service.

The Caseof L.M. – Late Hospitalization

A beneficiary of the Martkopi institution for disabled persons, M.G., diagnosed with hypothyreosis and Prader-Willi Syndrome with respiratory insufficiency, who was strongly agitated, was transferred to the Geo-Hospital of the Gardabani District, though, due to his/her severe mental health condition, s/he was brought back from the clinic to the boarding house, as the aforementioned clinic did not have the resources to manage the condition of patients with mental health problems. The patient's condition became so severe that s/he was transferred in the same evening first to the psychiatric unit and then to the intensive care unit of the Tbilisi Referral Clinic. Other beneficiaries also had to travel a long way: L.M. – diagnosed with epilepsy and mild mental retardation; and S. Sh., with exacerbated psychiatric symptoms, who had to travel for four hours before s/he was provided with adequate medical assistance.

The situation described above violates right of the patient to accessible and quality medical service envisaged by the Law of Georgia on the Rights of Patients and contradicts the concept of social integration of persons with disabilities in issues related to accessible medical treatment.

The Case of Z.D. – Refusal to Provide Medical Service

A beneficiary of the Martkopi institution for disabled people, Z.D., who has a diagnosis of post-epilepsy mental retardation and bronchial asthma, has been recognized as legally incapable. The condition of the beneficiary often becomes acute and s/he develops asthma attacks.

Z.D. developed another asthma attack on 21/06/2012; Despite the assistance provided onsite (Inhalation with Salbutamol and a Dexametazon injection), his/her condition remained severe. In agreement with the Irao insurance company, the Disaster Service transferred beneficiary Z.D. to the intensive care unit of Samgori Medi. On 22/06/2012, when

the director of the Martkopi institution was in the inpatient unit, the patient's condition, according to the physician-reanimatologist, was still severe, while, on 23/06/2012, by 1 A.M., the doctor of the intensive care unit, Jumber Bolkvadze, notified the doctor of the boarding house, T. Bedianashvili, that "the patient has recovered and has been discharged from the clinic". He also told him/her that the Irao insurance company refused to transport the patient from the clinic.

In the presence of the members of the monitoring group, the director of the Martkopi institution made another phone call to the duty doctor who said, "The patient requires continued treatment in the therapeutic unit which the insurance company refuses to fund."

The members of the monitoring group visited the patient on-site and, after their intervention, it became possible to leave the patient in the inpatient unit for two additional days.

The refusal to continue funding of the patient's treatment was caused by the small number of beds in the intensive care unit, on the one hand, and the patient's psychic condition, on the other hand. The staff of the clinic said that the clinic did not have properly qualified caregivers with experience in communicating with and providing care for patients with mental health problems, which prevented them from carrying out adequate medical intervention.

Public Defender of Georgia addresses the Ministry of Labor, Health and Social Affairs of Georgia with recommendations to:

- **Ensure the retraining of hospital nurses and care-givers with the aim of improving the medical assistance and care for persons with mental health problems;**
- **Ensure that medical establishments have adequately qualified staff and resources to manage somatic diseases of persons with disabilities;**
- **Ensure control on the provision of quality medical service and maintenance of medical documents;**
- **Exercise control and permanent monitoring on the conditions of admission of persons with disabilities to corresponding institutions; Pay particular attention to the health condition and concrete needs of beneficiaries at the time of admission;**
- **Ensure the expansion of insurance packages to increase the funding limits for consultations of narrow specialists in different fields and medical products for beneficiaries of institutions for persons with disabilities;**
- **Ensure the simplification of the process of hospitalization with the aim of increasing the accessibility of medical service for beneficiaries of institutions for persons with disabilities;**
- **Conduct an inquiry into every individual case of failure to provide adequate medical service for children and adults with disabilities and take measures envisaged by the Georgian legislation to respond to and prevent such cases in the future.**

ORGANIZATION OF NUTRITION

Nutrition of Infants and Diversity of Food Products

In order to ensure children's full growth and development, it is necessary that the principles of full and safe nutrition be taken into account. As indicated in the standard #10 of the State Standards of Child Care, "The service provider shall

provide the consumer with safe food which meets the consumer's physiological requirements for food and energy and, at the same time, take into account the consumer's individual requirements."[159]

When assessing the food menus of infant houses, we noticed the lack of fruits; In June, children were given 150-200 grams of apple – for five days only, and in the Tbilisi Infant House – for three days only.

The doctor, accountant, administrator, and director of the institutions draw up the menus jointly. The distribution of food rations is supervised, though it is not documented whether a child really received the norm of albumens, fats, and carbohydrates established according to his/her age. The latter makes it practically impossible to monitor whether infants receive a sufficient amount of food.

The Alimentary Units of Infant Houses

The repeated monitoring in the infant houses has made it clear that these institutions only fulfilled those recommendations on the sanitary rules and norms of the organization of nutrition that were relatively easy to implement.[160] The boards and knives were marked in the institutions, and garbage was collected in a foot-pedal garbage bin. However, the institutions still failed to keep a log on checking the hygienic condition of the staff employed in the kitchens. At the time of the monitoring, the institutions did not keep a log on the assessment and control of cooked food (the Tbilisi Infant House), because, as the administration explained, "there is no such demand from the Agency."

The physical environment and equipment in the kitchens of the infant houses have not changed. In the Tbilisi Infant House, as at the time of the previous monitoring, the staff is still preparing to renovate the food preparation sections of the kitchen, because the infrastructure is in need of repairs. The alimentary unit of the Makhinjauri Infant House is also in need of repairs.

Public Defender of Georgia addresses the Ministry of Labor, Health and Social Affairs of Georgia with recommendations to:

- **Ensure the organization of child nutrition with adequate quality;**
- **Ensure the provision of food with adequate nutritional value according to the norms determined by children's age needs for the beneficiaries of infant houses.**

ORGANIZATION OF NUTRITION IN BOARDING SCHOOLS

The menus of the Akhaltsikhe Boarding School were not diverse, with surplus nutrition with carbohydrates; The beneficiaries consumed vermicelli or macaroni soup with 600 grams of bread on a daily basis. The menu in the Chiatura Boarding School is incomplete and does not contain fruits; One beneficiary consumes 500 grams of bread on a daily basis. The same trend is observed in Kutaisi.

Food is not checked organoleptically (with outward signs) in any of the boarding schools, or only dinner is checked (Kutaisi).

159 The Standards of Child Care.

160 The recommendations contained in the 2010 report of the National Preventive Mechanism were developed in accordance with the norms established by the November 12, 2003 Order No. 280/Nof the Minister of Labor, Health and Social Affairs of Georgia on Approval of the Sanitary Rules and Norms of Organization of Nutrition in Children's Pre-school Institutions.

HYGIENIC CONDITION OF THE ALIMENTARY UNITS

In the Akhaltsikhe Boarding School, the kitchen is an average-sized room, which requires repairs; The room has no ventilation system; The floor is covered with tiles, but the tiles have partly come off and the concrete surface is visible. A plastic sheet is attached to the ceiling. There are a lot of insects in the kitchen and canteen. The canteen is also in need of repairs; it has a cobblestone floor, with stones off in some places. The menu for the children is written on a small board in the room.

At the time of the monitoring, repairs had been completed recently in the kitchens and storerooms of some of the boarding schools, though they did not meet the necessary requirements for safe preparation of food products. Specifically, the alimentary unit in the Kutaisi Boarding School is divided into food preparation and washing sections, though there are no separate tables for processing vegetables, raw meat, and fish in the food preparation section.

There are no anti-insect netson the windows (the Chiatura Boarding School, the Kutaisi Boarding School, School No. 202), and there are no foot-pedal garbage bins for food waste in the kitchens (the Chiatura Boarding School, the Tbilisi Boarding School No. 200).

CLEAN WATER

It should be noted that the boarding schools in Georgia's provinces are often supplied with water with schedule (the Akhaltsikhe Boarding School, the Kutaisi Boarding School), or they use water collected and provided in water tanks. However, at the time of the monitoring, none of the boarding schools were able to show us a certificate confirming assessment of usefulness of drinking water.

CONDITIONS OF STORAGE OF FOOD PRODUCTS

The boarding schools purchase food products on the basis of agreements concluded by the school directors with sole entrepreneurs. However, there are cases when the rules of acquisition and storage are violated.

In Akhatsikhe, the storeroom is damp, old, and in need of repairs. The procedure of marking and storage of food products was not observed. The refrigerator in the storeroom contained 10 semi-smoked "Kolkhiduri" sausages; 3 boiled "Sagazapkhulo sausages" (6 kg) produced by Tao-Food LLC, without production and expiry dates; 8 kg of frankfurter sausages – the so-called "Tkatsuna" (according to the letter of the school director) – without an inscription; and 2 packages (5 kg) of Turkish macaroni "Guild", without an indication of the expiry date. The freezer contained frozen fish and chicken that were kept together.

The storeroom of the Chiatura Boarding School contained dry food products, vegetables, and old furniture – all kept together. The monitoring group saw unmarked products – macaroni produced by Goliatebi LLC in 5-kg packages, without a production date, with a storage period of 12 months; and Lux premium quality vermicelli, in 5-kg packages, without production and expiry dates.

The newly renovated storeroom in the Kutaisi institution does not have a ventilation system or a small window for natural ventilation; for this reason, vegetables are kept in a refrigerator to keep them from spoiling.

In addition, the acceptance-delivery acts do not contain information about the validity of food.

Public Defender of Georgia addresses the Ministry of Education and Science of Georgia with a recommendation to:

- **Ensure the introduction of the principles of full, diverse, and safe nutrition in the boarding schools for children with disabilities.**

NUTRITION IN INSTITUTIONS FOR CHILDREN WITH DISABILITIES

During the monitoring in the Senaki Institution for Children with Disabilities, the experts constantly expressed their concern about the inappropriate nutritional status[161] of children. Weight of the several children was extremely small, which, in its turn, was also manifested in the deterioration of the children's functional status.

The Case of B.I.

At the time of the monitoring, eight-year-old B.I. weighed 12 kilograms, though, according to the experts' visual assessment, s/he suffered from considerable insufficiency of protein-enriched food.

According to the administration, the child's weight was quite good when s/he was admitted to the institution. As they later learned from the child's mother, she squeezed her hands on the child's nose when she gave him/her food, forcing him/her to take enough food in this way. As the director explained, the staff of the institution, naturally, could not use this method and, for this reason, the child could not or did not receive enough food. The person responsible for the nutrition process (the pediatrician) never suggested feeding him/her with a nasogastric tube, though in conversations with the experts, s/he constantly declared that B.I. received the nutritional norm that was appropriate for his/ her age – with appropriate amount of proteins.

The experts of the monitoring group were suspicious of the accuracy of the aforementioned assertion and, with the aim of verifying the facts, attended the full process of feeding B.I. As a result, they found out that after receiving 70-80 grams of the 300 grams of the food portion, B.I. was no longer able to receive it and refused to eat. As the nurse explained, the aforementioned happened every time B.I. was given food.

Later, the members of the National Preventive Group found a bowl with 300-400 grams of pieces of meat, which lay separately from other products on a table in the locker room for the staff (cooks), instead of being kept in the refrigerator or other room; It was covered with a white cloth. When the experts asked the staff why the aforementioned pieces of meat were in the locker room, they declared that it was waste meat that was useless for consumption (however, on visual inspection, the experts did not assess the pieces of meat as spoiled). When asked why the meat was not in the garbage bin, they were unable to answer. A few hours later, when the experts returned to the aforementioned room, the meat was no longer on the table; The staff said that they had thrown it into a garbage bin. The experts checked the garbage bin, but could not find the pieces of meat there. The aforementioned fact gives rise to doubts about possible causes of the deterioration of the nutritional status of the children, which should become an object of adequate examination and response by the responsible agencies.

Public Defender of Georgia addresses the Ministry of Labor, Health and Social Affairs of Georgia with a recommendation to:

- **Ensure the introduction of the principles of full, balanced, and safe nutrition in the institutions for persons with disabilities.**

ASSESSMENT OF PHYSICAL ENVIRONMENT

The Issue of Accessibility in Boarding Schools

Of the aforementioned institutions, the Tbilisi Public Boarding School No. 200 has been fully rehabilitated, the public boarding schools of Tbilisi No. 202 and 203, Chiatura No. 12, and Kutaisi No. 45 have been rehabilitated partially,

161 Nutritional status – correspondence of food products for metabolic needs and processes

while the Akhaltsikhe Public Boarding School No. 7 is yet be rehabilitated. At the same time, all the aforementioned public boarding schools except School No. 203 have the status of an inclusive school.[162]

As a result of the assessment, it has been established that in terms of organization of adjacent areas, entrances to yards, and yards, only one school out of six (Boarding School No. 202) partially meets the norms[163] established by the construction standards. Likewise, in terms of penetrability of the buildings, only one boarding school (N 200) partially meets the established norms. The school building is equipped with a wheelchair ramp, though the angle of slope is less than the norm by 1-1.5% (<6%), and the movement area from the door of the central entrance to the ramp is less than 150 cm (<150 cm). The central entrances of the rest of the buildings are mostly unequipped with wheelchair ramps, have high-step staircases, and lack handrails, which creates a dangerous, uncomfortable, and/or impenetrable environment for a person with any mobility.

Unfortunately, the administrations of the institutions often have a mistaken opinion that if a building is equipped with a wheelchair ramp, it is accessible for persons with disabilities. Naturally, the level of penetrability of a building is very important, but, often, it is decisively important what means of movement there are inside the building. None of the buildings of the boarding schools is equipped with an elevator, which means that persons with disabilities can only use one particular floor. In the majority of the institutions, the first floor is occupied by the administration, whereas the aforementioned area is considered as the most accessible for persons with disabilities under conditions of limited accessibility. Restriction of movement inside the building is particularly visible in the Kutaisi Public Boarding School No. 45, despite the fact that the building is being renovated fundamentally, because, in this building, even corridors are connected with one another with high-step stairs, which are also without handrails.

In terms of the accessibility of living rooms of beneficiaries and renewed interior and implements, the situation is relatively good in the boarding schools of Tbilisi (No. 200) and Kutaisi (No. 45). In most of the remaining institutions, the living rooms contain old implements (in some institutions, the rooms are only furnished with beds); the interior is also old. In almost all institutions, the doors to the living rooms do not have locks, are non-functional, or can only be locked from the outside. In this respect, the situation is especially disturbing in the boarding schools of Akhaltsikhe (No. 7) and Tbilisi (No. 202). In the latter, the entrance door has glass panes and is covered with a curtain. It should also be taken into account that the beneficiaries of the aforementioned institution have visual loss or impairment. In one of the living rooms of Boarding School No. 203, the distance between the beds was 45 cm, while in the Akhaltsikhe Boarding School No. 7 this distance amounted to28 cm. All institutions are characterized with the absence of ventilation systems and the means to call a caregiver (helper), as well as with weak lighting.

All the sanitary facilities (toilets and bathrooms) without exception are impenetrable (door width <85) and/or inaccessible for use – toilets without toilet seats and, if toilets seats are in place, without a supportive handrail and surface, insufficient space – less than <150. The majority of the showers and taps are out of order, or they are absent; The doors cannot be locked, and the lighting is weak. Despite the fact that reconstruction works were carried out in the boarding schools of Tbilisi (No. 200) and Kutaisi (No. 45), unfortunately, we still saw toilets without toilet seats in their buildings.

The plumbing systems, taps, and sewage systems are in a need of repair and replacement. The majority of the canteens in the boarding schools (five out of six), meet the necessary standards of accessibility to some extent, though, unfortunately, this only pertains to the internal environment of the canteens, while the front areas and entrances to the canteens still remain inaccessible.

THE RIGHT TO PRIVATE ABODE AND SPACE

In a number of cases, the monitoring group documented violations of the beneficiaries' right to use private space and abode in the boarding schools. For example, the door to the living room of Boarding School No. 202 has glass panes,

162 The website of the electronic catalog of educational establishments (eCatalog) created by the Ministry of Education and Science of Georgia - http://catalog.edu.ge

163 Order No. 1 of the Ministry of Urban Planning and Construction of February 3, 2003 which approved: "Living Environment for Invalids, the Standards of Planning Elements" and "The Standards of Planning Elements of Public Buildings and Facilities for Invalids".

but not curtains; The doors to the living rooms, toilets, and shower rooms of the majority of the boarding schools are only locked from the outside, or they do not have locks at all.

The distance between 15 beds in the living room (area – 49.14 m^2) of Boarding School No. 202 was 46 cm (3.28 m^2 per beneficiary), while in the Akhaltsikhe Boarding School No. 7, this distance was 23 cm, which is a clear violation of a person's right to private space.

RESTRICTION OF ACCESS TO MEANS OF COMMUNICATION AND EXCHANGE OF INFORMATION

In none of the boarding schools do beneficiaries enjoy full access to means of communication to receive and impart information, communicate freely with the outside world, and not be isolated from the society.

There are no common use telephones in the boarding schools, which could be available to beneficiaries for 24 hours a day.

The computers are located in the educational part of the buildings; The computer rooms mostly open at 9 A.M. and close at 4 P.M., and they are closed on weekends. The computers are often occupied by teachers themselves; The situation is made worse by the small number of computers, their poor technical condition, and limited access to the Internet. A beneficiary of Boarding School No. 203 told us that s/he had last used a computer two months before and only for a very short time, while a beneficiary of Boarding School No. 202 declared that there was a queue for using a computer and the Internet. It is also noteworthy that, according to official data, Boarding School No. 203 has 41 computers and Boarding School No. 45 has 13 computers, whereas, in reality, Boarding School No. 203 has 10 computers and Boarding School No. 45 has 3 computers.

Under the existing situation, mobile phones remain the only means of communication for beneficiaries, but not everyone has his/her mobile phone and can afford paying for this service.

The boxes for complaints are unsealed in every institution, which makes it impossible to check when they are opened and closed and whether a complaint reaches the addressee.

RESTRICTION OF ACCESS TO MEANS OF PROTECTION FROM RISKS CAUSED BY NATURAL DISASTERS

"States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters."[164]

The staff and beneficiaries of the boarding schools have practically no information about risks (dangers) caused by natural disasters and about the means of avoiding and decreasing them. The majority of the institutions do not have an evacuation plan, or their evacuation plans are outdated. The staff and beneficiaries have never taken theoretical and/or practical training on these issues. The majority of the staff was not able to tell the difference between the actions that should be taken at the time of a fire and an earthquake.

The staff do not know in what form and by what means they should inform beneficiaries (Persons with visual impairment, those using a wheelchair or other subsidiary means, and those with hearing impairment, restricted mobility, or mental restriction) in the case of this or that disaster and with what procedure, sequence, and means beneficiaries should be evacuated from the building.

The majority of the institutions (four boarding schools out of six) are not equipped with fire safety equipment.

164 The UN Convention on the Rights of Persons with Disabilities of December 13, 2006, Article 11

Public Defender of Georgia addresses the Ministry of Education and Science of Georgia with recommendations to:

- **Ensure that the sanitary facilities and living rooms of the institutions are equipped with locks, so that beneficiaries are able to use their private space;**
- **Ensure that the institutions allot space for common use, where a telephone will be installed and function for 24 hours a day (with the observance of the right to confidential conversation);**
- **Equip the institutions with an optimal number of computers, with Internet access, so that beneficiaries living in the institutions are able to use the aforementioned for a reasonable period of time;**
- **Ensure that the heads of the institutions organize experts' assessment of the infrastructure of the buildings, so that the shortcomings, that hinder the exercise of rights to movement and other rights of the persons with disabilities, are revealed and eradicated in a consistent manner;**
- **Provide the staff of the institutions with training on the management of risks of natural disasters; Develop evacuation plans, which both, the staff and beneficiaries, will get acquainted with; Equip the buildings with means of safety – fire extinguishers, medicine bags/boxes, alarm systems (auditory and visual), etc.;**
- **Ensure that senior officers of the administrations seal the boxes for complaints with the corresponding procedure;**
- **Ensure that central ventilation systems are installed and put into operation in the buildings and facilities;**
- **Ensure that plumbing systems, taps, and sewage systems are repaired and replaced;**
- **Ensure that the equipments are repaired and replenished.**

THE ISSUE OF ACCESSIBILITY IN BOARDING HOUSES FOR PERSONS WITH DISABILITIES

According to the information posted on the official website of LEPL State Care Agency, in the Dusheti Boarding House for Persons with Disabilities, "in 2012, the first and second floors of the main block were fully rehabilitated, and construction works of open balconies were carried out." In spite of this, the central entrance to the institution still has a staircase whose step height amounts to 27 cm (the norm is no more than 12 cm); in addition, the staircase has no handrails, which makes it quite uncomfortable and dangerous to use. The same is the case with the wheelchair ramp attached to the left side of the staircase whose width (< 120 cm) and angle of slope (< 6%) make it dangerous to use.

In the two remaining boarding houses, the central entrances are penetrable, though there are also some shortcomings in these institutions. Specifically, the central entrance path to the Dzevri Boarding House is covered with concrete, but the concrete has come off in some places, which hinders movement with a wheel chair. In the Martkopi Boarding House, which has been fully rehabilitated, there is a wheelchair ramp leading to the central entrance, though the ramp does not have a 150-cm plat format any of its ends as determined by the norm; The four-step staircase at the entrance does not have a handrail and its height does not correspond with the established norms. The aforementioned does not create an impenetrable environment for wheelchair users or persons with restricted mobility, though it hinders their free movement.

As for the areas adjacent to the boarding houses, in Dusheti and Martkopi they are covered with asphalt and leveled, while in Dzevri the asphalt cover is uneven and has come off in some places. The squares of all the three boarding

houses are surrounded with high (<12 cm) kerbs, which makes it impossible for a wheelchair user to move around without another person's help.

As for the possibilities to move around inside the buildings, in the boarding houses of Dusheti and Dzevri, it is only possible to move between the floors using the staircase, with the step height exceeding the established norm and amounting to 16 cm, while the boarding house of Martkopi is equipped with a modern elevator which is turned off not to allow beneficiaries to use it, and, here too, people mainly move between the floors using the staircase, with the elevator used only in emergencies.

We must also note the positive changes that followed the full rehabilitation of the boarding houses of Dusheti and Martkopi. The façade, interior, and implements of the buildings have been renewed. The living rooms are equipped with new and comfortable furniture, TV sets, and central heating systems. A large part of the sanitary facilities have also become accessible.

At the same time, it has been documented that a large part of the TV sets in the living rooms are non-functional; The administration declares, that they do not have corresponding antennas. The living rooms of the Dzevri Boarding House, apart from rare exceptions, contain nothing but beds. The doors to the rooms cannot be locked; Three rooms of the institution have no doors at all. According to the caregivers of the institution, the doors were removed from the rooms of "agitated" beneficiaries to make it possible to pay more attention to them.

None of the living rooms of the boarding houses is equipped with an alarm button and/or a button to call a helper.

The boxes for complaints are unsealed in every institution, which makes it impossible to check when they are opened and closed and whether a complaint reaches the addressee.

None of the institutions has a functioning library; There is a small number of old books in the psychologist's rooms or resting rooms.

The canteens of the boarding houses of Dzevri and Martkopi are penetrable and accessible despite certain incompatibility with the norms. In the Dusheti Boarding House, the canteen is located in a separate building, and the beneficiaries have first to leave the building of the boarding house through high-slope stairs (> 12 cm) and then to reach the canteen though another set of high-slope stairs. There are unsanitary conditions in the canteen toilet, and it is entirely unadapted and damaged. As the monitoring group found out, the Dusheti Boarding House is planning a full rehabilitation of the canteen; The head of the institution is receiving consultations from NGOs for disabled persons to obtain the construction norms necessary for the arrangement of the canteen.

The **sanitary facilities** in the Martkopi Boarding House are accessible, though they are arranged in violation of the established norms. Some toilet seats do not have a surface, and the supportive handrails are located in the wrong place. The sanitary facilities in the Dusheti Boarding House are penetrable, though most of the toilet seats are either without a surface or rickety; In addition, the doors to the sanitary facilities cannot be locked. As for the Dzevri institution, the sanitary facilities there are impenetrable and inaccessible, and most of the common use toilets are without toilet seats and have high thresholds at the entrance.

The boarding houses of Dzevri and Martkopi do not have a stock of subsidiary means (wheelchairs, crutches, etc.). A large part of the beneficiaries use damaged wheelchairs. Despite the fact that the Dusheti Boarding House has a stock of mobility assistance equipment, the beneficiaries still use damaged wheelchairs. The beneficiaries in all the institutions express concern about the locally produced so-called "all-terrain wheelchairs".

Specifically, they point out that these wheelchairs come out of order soon, do not have a hand support, and a cushion cannot be attached to them, due to which they prefer to use damaged wheelchairs.

Common use telephones and computers are not available for beneficiaries of any of the institutions, with the exception of the Dusheti Boarding House where beneficiaries have Internet-connected computers under individual ownership.

Considering that the vast majority of the beneficiaries cannot move around independently outside the territory of the institution, it can be argued that technical means of communication remain the only way for them to communicate with the outside world. Furthermore, under the existing conditions, the majority of them are completely isolated from the society, which makes them even more alienated.

MEANS OF SAFETY FOR CASES OF NATURAL DISASTERS

None of the members of the staff and beneficiaries are informed about dangers caused by natural disasters and methods of avoiding or decreasing them, including the means available in the institution.

The boarding houses either do not have an evacuation plan or their plans are outdated. The staff and beneficiaries have never taken theoretical and/or practical training on these issues.

Public Defender of Georgia addresses the State Care Agency with recommendations to:

- **Ensure that the administrations of the institutions seal the boxes for complaints in compliance with the corresponding procedure;**
- **Ensure that central ventilation systems and elevators are installed and put into operation in the buildings and facilities;**
- **Ensure that plumbing systems, taps, and sewage systems are repaired and replaced;**
- **Ensure that the implements are repaired and replenished.**

ACCESSIBILITY IN INFANT HOUSES

Yards of Institutions – The adjacent areas are asphalted and accessible, but the existing squares are surrounded by high kerbs, which create an obstacle for nurses who walk children in baby carriages, on the one hand, and are impenetrable for persons with disabilities who use the institution, whether they are parents or staff members, on the other hand.

The building of the Tbilisi institution is impenetrable for disabled persons, as it has a high staircase without a handrail **at the central entrance to the building**. On the back of the building, there is a mobile (wooden) wheelchair ramp through which one cannot reach the central wing of the building. The Makhinjauri institution has a high threshold at the central entrance which creates an obstacle.

In most of the institutions, persons with disabilities cannot move around **inside the building** without assistance. The Tbilisi Infant House does not have an elevator; The Makhinjauri institution has an elevator, but it does not function. Accordingly, in both of the institutions, it is only possible to move between the floors through the staircase, the height of whose steps is also out of line with the established norms.

The **living rooms** are penetrable and accessible, despite the fact that they are also out of line with the construction norms. The institutions have no rooms for meetings with parents, while the existing rooms in which a parent can be alone with his/her baby are impenetrable and inaccessible for parents/guardians with disabilities.

The children in the institutions have meals in the living blocks; There are no separate canteens for them.

The sanitary facilities in the institutions are penetrable and accessible, though they are not in conformity with the established norms.

The Tbilisi Infant House has a stock of subsidiary means, while the Makhinjauri Infant House does not have any stock of subsidiary means.

The shelters for mothers and infants organized in the institutions are located on the top floors of the buildings, and they are impenetrable and inaccessible for persons with disabilities (parents), which discriminates those who may need to use the shelter.

There are no common use means of communication (telephones and computers connected with the Internet) in the institutions, including the shelters for parents. Due to non-observance of the sanitary norms, there are a lot of insects in the Tbilisi Infant House.

Public Defender of Georgia addresses the State Care Agency with recommendations to:

- **Take into account the needs of people with disabilities (parents and guardians) who use a wheelchair or have visual or hearing impairment when organizing meeting rooms and shelters for parents;**
- **Ensure that the administration seals the boxes for complaints in compliance with the corresponding procedure;**
- **Ensure that central ventilation systems are installed and put into operation in the buildings and facilities;**
- **Ensure that plumbing systems, taps, and sewage systems are repaired and replaced; ensure that the implements are repaired and replenished;**
- **Ensure that anti insect nets are attached to the windows of the Tbilisi Infant House.**

ACCESSIBILITY IN INSTITUTIONS FOR CHILDREN WITH DISABILITIES

The territory of the Senaki Institution for Children with Disabilities is covered with uneven asphalt on which a wheelchair user or a person with restricted mobility would find it hard to move around. On the territory of the Kojori children's home there is a square with attractions; the square is a long way from the building of the institution, while the road leading to it is covered with gravel, and a child who uses a wheelchair would not be able move around on it independently.

The central entrances to the children's homes are penetrable; They are equipped with wheelchairs ramps which are arranged in violation of the established norms. Inside the Senaki institution, it is impossible for a wheelchair user to move around without assistance; There is no elevator, and one can only move from one floor to another through a staircase with high steps. The corridors are connected with small stairs and wheelchair ramps, which are also out of line with the established norms and absolutely useless for beneficiaries with disabilities. In the Senaki institution, beneficiaries live on every floor, and, due to the existing environment, their ability to communicate with one another is severely restricted. All this restricts their right to private life.

The living rooms of the institutions cannot be locked and are equipped with old implements (furniture). In the Senaki institution, the light switches for the living rooms are installed outside the rooms.

The sanitary facilities in both institutions are arranged in violation of the established norms; They are penetrable, but inaccessible. The space in the toilets is not sufficient for a wheelchair (< 150 cm); The toilet seats are either without a surface or rickety; the supportive handrails at the toilet seats need reinforcement. The doors to the toilets and shower rooms cannot be locked.

The canteen in the Kojori institution is under repairs. The canteen in Senaki is penetrable and accessible, though it is arranged in violation of the established norms. A large part of the beneficiaries receive food in their living rooms. The staff takes food to the rooms by hand.

In both institutions, the beneficiaries use amortized implements. None of the beneficiaries uses special cushions for the wheelchair. The beneficiaries of both institutions are dissatisfied with the locally produced wheelchairs, despite the fact that, according to them, the wheelchairs were tailor-made for them.

None of the institutions offer beneficiaries accessible common use means of communication – telephones and Internet-connected computers**.** There are no computers in the Kojori institution, while there are only three computers in the Senaki institution; Only one of these computers is in working condition and it is also without Internet connection. Only the so-called "overgrown" beneficiaries use Internet-connected computers under individual ownership. There is no central heating system in the Senaki children's home.

OBSERVANCE OF SAFETY AT THE TIME OF NATURAL DISASTERS

None of the staff and beneficiaries of the institutions has any information about the dangers caused by natural disasters and the methods of avoiding or decreasing them, including the equipment available in the institution.

The Kojori children's home has fire safety equipment, but it does not have an evacuation plan. The staff and beneficiaries have never taken theoretical and/or practical training on these issues.

Public Defender of Georgia addresses the State Care Agency with recommendations to:

- **Provide beneficiaries with subsidiary means in accordance with their individual needs;**
- **Ensure that beneficiaries can move around freely inside the institution;**
- **Ensure that the administration seals the box for complaints with the corresponding procedure, since, in this case, there will be more guarantees that the complaints reach the addressees with the procedure established by law;**
- **Ensure that central ventilation systems are installed and put into operation in the buildings and facilities;**
- **Ensure that plumbing systems, taps, and sewage system are repaired and replaced;**
- **Ensure that the implements are repaired and replenished;**
- **Ensure that a room is allotted for a library and it is replenished with new literature.**

Monitoring results of Small Group Homes for Children

In December 2012, Public Defender's Special Preventive Group carried out its monitoring in the section of small group homes for children. Specificly, they checked small group homes for children in Khashuri (2 houses), Chiatura, Zestafoni, Khoni, Bajiti, Kutaisi (3 houses), Ambrolauri, Tsalnejikha (2 houses), Ckhorotsku, Lanchkhuti, Ozurgeti (2 houses), and Batumi. Public Defender's Special Preventive Group consisted of the Ombudsman's Office Prevention and Monitoring Department staff (lawyers), as well as National Preventive Mechanism experts – one psychiatrist, one psychologist, and one expert in childcare.

During the monitoring, checks were conducted on the environment where children were housed, the standards according to which they were looked after and the quality of the service, as well as the house infrastructure and the level of sanitation and hygiene.

Two members of the Special Preventive Group – the psychiatrist and the psychologist – held a confidential interview with the beneficiaries. The other members of the group interviewed the foster parents, the minders, and in some cases the members of the Special Preventive Group also spoke to the social worker or to the house manager. During the monitoring, a great deal of attention was paid to the children's psychosocial state, how they were treated and to their accessibility to medical assistance.

All this led to revealing problems which will be elaborated in detail below and that necessitate special attention, chiefly from the side of the Ministry of Labour, Health and Social Affairs of Georgia.

It is evident, there is no uniform control mechanism established by the state over the matter. Despite the fact that closing down big institutions was a step forward and bettered the children's conditions, there is an impression that the state has passed over the management of the Small Group Homes for Children to private organisations to an extent that it lost interest in further developing and bettering underprivileged children.

Until today, a core of problems needs to be addressed, for instance the care for a child's psychological and physical health is not fully ensured. Yet these aspects are vitally important, as most of the children, who live in these houses, are victims of violence, including by their parents. Such children need regular and highly qualified psychological and oftentimes also psychiatric help, and that is of course not ensured on spot. Until today instances of small scale violence from teachers and/or school staff signify the inadequate training they have received, as well as inappropriate mechanisms of control.

Like in previous years, at present, the paperwork is not fully and properly completed (form IV-100/a) or the forms are only filled out at a superficial level (individual development plans).

It has to be emphasised that the beneficiaries of children homes face an uncertain future that the state takes care of them until they are 18 and there is no further life plan for them after that age. In other words a plan for their subsequent education, development and work placement is simply non-existent.

Against this background, the initiative of the Georgian Brewery "Natakhtari", which is to take care of the Khashuri Children Home's past and present beneficiaries, aught to be warmly welcomed: during the monitoring of the Khashuri Small Group Home for Children, three girls were taking courses in a college in computing and another two girls were studying Russian and English. Out of the past beneficiaries, thanks to the support of „Natakhtari" one girl was studying towards a stylist diploma and another boy was an apprentice as car mechanic. It would be desirable other private companies in Georgia to follow Natakhtari in such initiatives and support children's homes, as well as that the State to show more initiative with this regard. In most of the cases the State and private companies pay attention to the children's homes during festive periods and provide them either with sweets or some sort of household appliances. This has to be supported; Nevertheless such activities are not aimed at fostering the long-term development of children's homes and their beneficiaries.

PHYSICAL ENVIRONMENT

In 2012 out of all the changes that were made in childcare institutions the most notable are infrastructural ones: the change from large institutions to small group homes. This was carried out in the entire western Georgia and small group homes were opened in Sachkhere, Ambrolauri, Khoni, Tsalenjikhi, Lanchkhuti, and Ckhorotsku Municipalities. These homes were added to those small group homes, which had been operating before 2012. The management of the newly opened small group homes was undertaken by various organisations, more specifically by "SOS", "Momavlis Khidi", and "Biliki". It is commendable that small group homes continue to exist under the management of organisations such as "Bres Saqartvelo" and the "Young Teachers Association".

The newly opened small group homes are based on Polish and British Models and envisage the service of 8-10 beneficiaries. The houses are identical as regards the internal make up and facilities; But the two models differ in their management, financing and upbringing rules of the beneficiaries.

It has to be seen in the positive light that almost all of the houses have central heating system (the heating is either provided by big wood burning ovens or gas ovens), necessary and adequate furniture, and appliances; In addition to this they have all the necessary prerequisites for hygiene, telephones as well as good ventilation and natural light flow thanks to big windows. The bathroom and dining facilities are well equipped. During the monitoring, in all of the facilities the expected standards of cleanliness were met. All of the beneficiaries have their own space and compartments to store their belongings.

In all of the small group homes the beneficiaries have adequate rooms to sleep: 2 modern bunk beds with adequate linen, closets, night tables, and study desks. The flow of natural light into the room is sufficient and all the windows have curtains that give additional cosiness to the rooms. All room measurements in the small group homes range from 11 to 17.6 m^2.

In addition to this, all of the small group homes have various sized patios and yards with trees and plants. All the houses have adjacent small concrete footpaths. The yards are encircled with fences of between 1.30 and 1.55 meters.

It is noteworthy that in Ozurgeti the backyard part of a small group home for children under the management of the "Young Teachers Association" was isolated from a small river with a concrete wall.

Despite the positive changes that were presented above, in some small group homes there are problems that need to be dealt with in a timely manner, so that the interests of the beneficiaries and the staff of such homes are protected.

Out of all problems, one ought to single out the inadequacy of the canalisation system, which as it turned out was due to a wrong calculation done when constructing the homes. To be more specific, in a number of small group homes where the canalisation system is not planned accordingly, oftentimes it breaks down and results in a fast filling up of the system, as well as in its blocking; This in turn results in the malfunctioning of toilets and in some houses there was also bad smell detected. This was the case in the small group homes of Sachkhere Municipality, Bajiti village, and Lanchkhuti municipality, Lesa village.

In some of the small group homes the water supply system presents a major problem. All of the houses receive water according to a timetable that exists in that area, be it a village or a city. In the cities the water supply aspect is more or less dealt with, but in the villages where some of the small group homes are located the water supply problem is apparent and still remains to be settled. In almost all of the houses, there is a well, but the problem with the water supply still persists. In Bajiti village, Sachkhere Municipality, where a small group home is located, water supply is not fully done via the central supply system, and only 4 to 6 buckets of water is being generated from the well thanks to an electric motor. This is the reason that small group home staff is forced to bring drinking water from the village spring. At times they also call the village fire fighters and the fill up the water tank that is installed near the house.

Various types of problems are detected in the Batumi small group home. The house is located in a two-storey building, where access to the second floor is only possible from the staircase installed outside. In general, the house needs repairing due to the climate and weather conditions in Batumi; The boys' sleeping room is badly affected by mould. The house has no central heating and the beneficiaries are forced to be in a common space room, where a wooden oven stands. The children's sleeping rooms are not warmed at all.

It is equally significant to stress the importance of beneficiaries' leisure time planning and the necessary equipment and environment. Despite the fact that the houses are well equipped with all the necessary appliances and have adequate infrastructure, in none of them there is internet and in some places, like in Khoni small group home, the PC was broken. In addition to this, during the monitoring the TV service was also inadequate due to the satellite dish not being properly set up. It is important that the beneficiaries have toys according to their age, the shortage of which was evident in all the small group homes. Equally important is the facilitation of sports activities and provision of adequate toys (for instance in some places the beneficiaries were complaining about not having footballs).

Based on the above and due to the peculiarity of the nature and aim of small group homes as well as their level of occupancy, it is important that all problematic issues are dealt with in time. It is also important to establish constant control over the infrastructure of the houses, so that problems do not worsen or spur anew.

PSYCHOLOGICAL ENVIRONMENT

Public Defender's Special Preventive Group (Psychiatrists and Psychologists) interviewed 103 beneficiaries, out of which 40 children were interviewed again.[165] During the monitoring process special attention was paid to revealing possible instances of violence, inhuman or degrading treatment, as well as negligence.

The interviewing of the beneficiaries was done in private and confidentially, voluntarily. In case the beneficiary consented to the interview, the interview was done in a familiar, friendly environment, using semi-structured interview method. The child could suspend the interview at any time. Additional information on beneficiaries was obtained via studying the documentation available at children's home and by interviewing those responsible for foster care (workers, foster parent, house managers etc.).

With informed consent the interview was audio taped. The used documentation during the assessment was photographed.

During the monitoring phase, the Special Preventive Group paid extra attention to those children who underwent the de-institutionalisation process painfully.

During the monitoring period, the Special Preventive Group experts revealed that in a comparison of the big institutional care with small group homes, children who had experience with big institutions now had a positive experience with small group homes. This was especially connected with the everyday living conditions, described in words such as: "it is cosy and warm", "it is clean", "it is renovated and new", "we are being fed as we would like", "we have clothes to wear", "we are looked after, cleaned and clothes are washed" etc. Nevertheless, none of the children has experienced close, family type of relationship or support, which are qualities that enable to differentiate between small group home

165 These youngsters were interviewed by the special preventive group during last year's monitoring as well.

and institutional care. Of course there were instances of lip service in favour for some upbirngers and this in turn raises suspicion that children were made to speak so.

Out of all small group homes, Ozurgeti small group home (Young Teachers Association) should be singled out with a life style that is calm and interesting. Beneficiaries are well informed and aware, and they can freely debate and discuss issues of child rights; They take decisions as a team, are concerned about other children who are forced to live in their biological families in dire conditions, and would like to see more interest and active participation from society and social services, so that these children have "normal and adequate living conditions" as well.

In 2011 the human rights defenders assessed the condition of one of the beneficiary of the institutional care, M.T., as grave and stated that the child was a victim of family violence as well as of inhuman treatment. At this stage it was not possible to interview the child due to him/her being at additional classes at schools. According to the child's foster parents, the child's behaviour had considerably improved and it was participating in an inclusive education programme, though it was lagging behind in the school programme in comparison to his/her age. The child, at this stage, did not need psychological intervention.

Khoni small group home children are in a different situation. They are unhappy about not having access to mass media information, leisure and sports facilities. They have no access to internet, footballs or tennis, the TV shows only 4 channels and fun times are spent playing cards or domino, or playing football with a borrowed ball. They say the following: 14 year old G.K.: " – what shall I watch on TV, there are 4 channels in total, why is it so complicated to install the satellite dishes... the computer crashed down, and they did not fix it... and it costs only 15 GEL to fix it... we play cards, or domino, or play football with the borrowed ball"; 9 year old M.J. recounts: "of course I am interested in football, but we do not have the ball... I was told they would buy one for us, but they did not... On the pitch we play football with a borrowed ball".

In the majority of small group homes, it is apparent that children are rather cautious and keep their distance from the up bringers. Some beneficiaries say they will never fully be frank and open about their problems with the up bringers, as they do not trust them or do not expect that the up bringers would actually take interest in their problems. Most of the children do not trust the foster-mother and prefer to open up about their problems with their peers or siblings, or not to speak at all with anyone about their feelings and problems.

The beneficiaries who have experience in the institutional care to closely work with psychiatrists underline the lack of psychological help available in small group homes.

Apart from children's distrust towards the up bringers/foster parents, oftentimes, in the up bringers notes, one can encounter observations of children's silence that expresses their sufferings and hardships: "...does not speak about his/her mother", "...does not want to speak about the biological family", "...they have negative feelings towards their family members, do not mention neither their mother nor their father. They only speak about their grandmother".

INAPPROPRIATE TREATMENT AND VIOLENCE AGAINST CHILDREN

Violence against children and child protection referral procedures

Pursuant to Article 19 of the Convention on the Rights of the Child, the state is obliged to protect the child from all forms of violence while in the care of parent(s), legal guardian(s) or any other person who has the care of the child and for this reason the state is obliged to take appropriate legislative, administrative, social and educational measures.

Obligation to protect children from violence is upheld by Article 11 of the Standards for Child Protection. This applies to all of the beneficiaries, not only during their stay in these homes, but also outside the stay period. To be more specific, the child care provider should be familiar and use the local law for child protection against violence such as Georgia's Law on "Prevention of Domestic Violence, Protection of an Assistance to Victims of Domestic Violence" http://codex.ge/1390and "Establishing Child Protection Referral Procedures" (Joint Decree of Georgia's Minister of Labour,

Health and Social Affairs, Minister of Internal Affairs, and Minister of Education and of Sciences of Georgia, 31 May 2010, N152/N-N496-N45/N). The decree aims to establish a system for child protection through a referral procedure unit coordinated work and identifying an effective mechanism for speedy reaction in case an instance of violence against a child occurs. Pursuant to the referral system, revealing cases of violence against children is the obligation of all entities that have contact with a child.

Article 4, para 4 of the said decree reads that in case there is suspicion that the child is a victim of violence, the child care entity specialised units, within the framework of referral procedure analyses in such instances, and in case of necessity, refers it to the police and to the social services for adequate reaction. In addition to this, in close cooperation with the agency, they have to check on the child's further condition.

During the conducted monitoring, the special preventive group learnt that the beneficiaries had become victims of violence in their own families, and despite the fact that guardians knew about this, no legal measures were taken against it. In Kvaliti village, the small group home foster mother C.I. informed that in May 2012, small group home beneficiaries K. C. and I. C. were visiting their father, B. C., but they left his place earlier than expected and returned to the small group home due to their father's physical violence. Despite the fact that the children complained about this fact to the small group home foster parents, the latter did not communicate this neither to the police nor to the social services agency. It has to be noted that not only was this instance not recorded in the violence or injury incidents journal, which ought to have been run by the small group home staff, but such a journal was even non-existent. Such a reaction should be considered as a violation of the standards for child protection against violence and abuse, as well as negligence, not only towards the process of children's rehabilitation, but also from the standpoint of failing to adopt legal measures against the reoccurrence of such a case and against the abuser himself.

In small group homes there is no mechanism that would reveal the acts of violence/inappropriate treatment recording, bringing those culpable to justice and internal monitoring system. In addition to this, no steps are taken towards eradicating child discrimination and the prevention of inhumane treatment.

Documenting facts of violence/inappropriate treatment is not done in any of the children care homes, as a fact gathering and documenting journal simply does not exist. Despite the fact that the National Preventive Group members, during last year's monitoring, recommended that "big" and "small" institutions staff open such journals – a recommendation seen in Public Defenders reports as well – in small group homes this recommendation was not taken into account.

Recommendation to Georgia's Ministry of Labour, Health and Social Affairs:

- **To make aware the small group home staff and to ensure their training and requalification according to Georgia's Law on "Prevention of Domestic Violence, Protection of an Assistance to Victims of Domestic Violence" and "Establishing Child Protection Referral Procedures" (Joint Decree of Georgia's Minister of Labour, Health and Social Affairs, Minister of Internal Affairs, and Minister of Education and of Sciences of Georgia, 31 May 2010, N152/N-N496-N45/N).**

INAPPROPRIATE TREATMENT ON BEHALF OF FOSTER PARENTS/UP BRINGERS

During 2012, instances of inappropriate treatment from foster parents/up bringers were reported by the beneficiaries to the National Preventive Group from the following childcare homes:

1. Kvaliti Children's home, 4 beneficiaries recounted their stories: 10 year old N.D. said that „the mother pulls his/her ear up;" 12 year old K. Ch. said that he/she was „under constant beatings, when uncle Vakho becomes angry with him/her, he goes to K. Ch. and usually gives him/her a kick with his foot"; 15 year old I. Ch. says: „Tsitso beats K.Ch., a couple of times she raised K. Ch. and dropped the latter on the bed, Dato, the so called „foster father" verbally insults and shouts at the two, i.e. K-Ch and the brother, and Tsitso closes the door to the room and says that until I do not

finish studying home work for school she will not open the door, they know how to push around, they shout, and they pull the ears"; According to 15 year L.M. „It is often that Dato and Tsitso shout"; 18 year old O.G. says that the beneficiary's brothers, K.CH. and I.CH. are shouted at, locked in the room by the „parents".

2. In Kutaisi Children's Home, 2 beneficiaries were interviewed: 13-year-old N.B said: "when the senior management is upset, he is shouted at and sometimes his ears are pulled up"; According to 18 year old T.Z: "up bringers sometimes shout".

3. Tsalenjikha Children's Home, 3 beneficiaries gave the recount: 11-year-old G.Sh. said "that Maia, the up bringer, shouts, pulls up the ears, she usually pulls Mari's ear, Tengo (the up bringer) pulled Lasha's ears up..."; 12 year old T.Sh: "Maia is stricter, she easily gets mad and shouts about everything"; According to 11 year old L.S.: "Maia gets mad easily, she is always shouting, pulling the hair, slapping and beating, pulling the ears out, slapping in the face and shouting happen frequently... Tengo usually pulls the ear out and shouts"...

4. Qutaisi SOS Children's Home, 5 beneficiaries: 10-year-old L.R says: "I sometimes upset aunt Nana and she pulls my ear and shouts at me... other aunties are also doing the same, they pull ears and shout... I do not like Tiko as she pinches my ears, she has long nails..."; According to 7-year-old M.R: "Aunt Nana knows how to hit hard at the head, mostly aunt Tiko slaps ones cheeks, aunt Shoka hits on the head, and Salome hits on the legs..."; 10 year old N.D and 7 year old R.D say: "Aunt Tiko vaccinates us (pinches us), she hits me in the head... Most of all shouts Tiko, Shoka shouts as well..."; G.M who is 10 says, "Marina pulls my ear up and pulls my hair, she shouts at me and tells me off, she treats the other children the same way as well..."

5. Batumi Children's Home, 2 beneficiaries: 8-year-old S.Q says: "Bachuki hits me, Mzia, Nunu and Otari do the same... I fear them a lot ... and they beat Luka often (this is the child who is mentally underdeveloped and is not diagnosed); According to C.Kh who is 16 years old "in Urekhi children's home the children were beaten". On our question if the same happens here, C.Kh responded: "I have not seen that someone was beaten... if you asked in Urekhi, I would respond that I have not seen that someone was beaten..."

6. Khashuri Children Home, 3 beneficiaries: 11 year old N.M "Marina gets after her, once when she was mad at her she beat me up...," N.M steals "malako" (Russian word for milk) and this is why N.M is beaten; N.M continues: "then me and Megi we beat each other, and then teacher Nona beat us both..."; 13 year old M.R: "when we make them mad, all of the teachers shout". According to M.M: "The teachers lock N.M inside the room...".

As regards other children's homes, out of the surveyed beneficiaries only two of them complained that the foster father would hit them in the head (14 year old G.K. in Khoni small group home) and pull their ear at school and at home (9 year old G.V. from Lanchkhuti small group home). Majority of the children say the up bringers "give them advice", "talk to us", "all of them shout, but nothing more".

Hence, in parallel with other problems, in small group homes for children still there are cases of beneficiaries being the victim of inhumane treatment of the small group home staff, more importantly "petty abuse", which manifests itself mainly in pulling of ears and shouting, though during this past year there are also instances of child beating. On the whole, cases of inhumane treatment and intensively of such actions are diminished in comparison to previous years.

We will touch upon some reasons that, to our mind, in most of the cases established such a malpractice. Despite the fact that in each small group home the number of beneficiaries does not exceed 10 children, violence between the beneficiaries and violence and inappropriate treatment from the up bringers still occurs. One of the reasons is that in some homes beneficiaries can be having various emotional and behavioural problems/violations. In case of inadequate treatment, home beneficiaries create conflicting and strenuous situations and the up bringers cannot deal with such instances other than physical and psychological violence.

The Special Preventive Group, in a number of institutions, identified beneficiaries with specific emotional and behavioural problems, who were not properly diagnosed and had no treatment or could not receive adequate treatment neither in the form of medicine nor psychological help. When the experts interviewed the beneficiaries, it was known

that that psychologists were coming with various intensities and that most of the beneficiaries did not avail themselves of such service for specific reasons. In addition to this, one could not get hands on the documentation that would depict psychologist's work. Apart from the said institutions, beneficiaries with emotional and behavioural problems were encountered in practically all of the institutions.

The said problem probably stems from the state's de-institutionalisation programme process error and inefficiency. More specifically, during the transit period from big institutions to small ones, the general criteria for assessing problematic beneficiaries' need for medical-psychiatrical assistance and receiving psychological help was not established, and this is undoubtedly one of the reasons of the above mentioned problem.

VIOLENCE BETWEEN CHILDREN

Physical and psychological violence between children were revealed in practically all of the institutions. This was mainly seen in older children, physically and psychologically abusing younger ones. Those who are managing and working in child care institutions when speaking to the Special Preventive Group do not single out this occurrence as a problem, probably because they regard such violent relationship among beneficiaries to be normal. These instances of violence are not documented and it is impossible to discern if the staff is informed about these issues, if they do not want to make it public so that no appropriate measures are taken, or if they fear that it will show their inability to manage such situations, or if this mere negligence, or if this is something else. More importantly, they do not see the need that those children who are violent receive psychological help and undergo psychiatrical assessment. Instead of sorting these problems as well as making them public, the institution staff tries to present the children's violent behaviour as irrelevant, thereby making the problem irrelevant with such phrases as: "everybody is disobedient", "they have a fight and calm down soon", "nothing serious" etc.

The reasons for violent behaviour among children, apart from discriminative reproaches, are the following: a child's uncontrollable aggressive behaviour and responses, using offensive language or raising concerns over hygiene of other children, trying to gain access to the computer, as well as support or protect older siblings. Often times, violence – heteroaggresive or auto-aggressive behaviour in a changed stresogenic psychosocial environment – represents a tool for self-assertion for the adolescent, who has no stress overcoming techniques or is characteristic of the behaviour of a child with mental problems. All this points to the fact, that not only have children with difficult behaviour a hard time adapting, but it also hinders the rest of the children's physiological adaptability to the environment.

Based on the Special Preventive Group monitoring results, we have ground to consider that physical violence amongst children has appallingly spread. Based on the monitoring results, physical violence has become systematic in the small group homes and if during previous monitoring there were only a few complaints by beneficiaries, now complaints on "bullying" are made by majority of them.

Apart from physical violence, often times, children engage in verbal conflicts and react to each other's actions with rage. This was especially evident in the case of Kashuri. One young person's, L.G, problems were documented by the up bringer in the house monitoring journal. From there, we learn that L.G had mental problems and due to his childish behaviour is often laughed at by his/her peers, and this causes aggression and a revenge mode. Mari Tumanishvili, the up bringer, writes the following about L.G in the monitoring journal: 16 year old L.G "in comparison to his age is mentally significantly behind... he/she is very worried about the situation he/she is in. L.G says that everyone laughs at him... L.G also says: "I want to study so I can become a Judge, so I can arrest everyone who makes me angry"... L.G is worried that no one loves him/her: "...I bathed in the water that is gathered behind the house, I was so interested..." L.G went there secretly and was bathing there and children were mocking him... L.G was aggressive".

Unfortunately, the Khashuri example is not an exception, rather an instance clearly showing children's behavioural problems in childcare institutions. Instances of beneficiaries engaging in mutual violence, more or less, were practically found in all childcare institutions. Below we will elaborate on one of the major causes of this problem.

TREATMENT OF BENEFICIARIES FROM SMALL GROUP CHILDREN HOMES IN PUBLIC SCHOOLS

Based on the monitoring results, special attention needs to be paid to instances of teachers in public schools recoursing to "petty violence" (pulling of ears, putting the child in the corner). These are not the sole examples, as most of the children complain about such treatment, irrespective of their mental state and geographical location. It is of high concern that children try to ignore such treatment and perceive this as a normal fact.

During the monitoring phase, cases of beneficiary discrimination by school teachers and their classmates were revealed. The social level of the beneficiaries or their physical disability are the cause of them falling into rage and create tension and bullying between the children. It seems that those working in the child care system cannot manage this problem or are not even informed about this matter. Furthermore, such facts are not documented or staff prefers not to speak about them.

16-year-old beneficiary K.A. from the Tsalenjikha children's institution is a stark example. According to him, children from the small group home are addressed by both the teachers and the classmates in an inferior manner, and which subsequently triggers his aggression and usage of bad language. According to K.: "the society thinks, since we are in children's home, we do not know anything... they make up thousand things... they let us hear: 'you walk around so smelly, we cannot even pass by close to you...' Then I fight..." In case he plays football and sweats, he says, "what, your children do not sweat? As if they are everything and we are nothing... We are human as well, aren't we? We are human as well!"

Another victim is 13-year-old M.K from the same children's home. M.K is the former beneficiary from Tsalenjikha big institution children's home, who during the 2011 monitoring period was qualified by the Special Preventive Group experts as the victim of inhumane treatment, a beneficiary whose safety was not ensured by the Tsalenjikha children's home, as the child lost the finger phalange and did not receive the appropriate medical care. Still today, his psychophysical health is neglected, which was the reason he moved to a small group home and where during the adaptation period he became a victim. Because M.K had such a physical deficiency his peers started to call him "you nine and a half", "you chicken breasted". On the other hand, the youngster tries to assert himself with violence and falls as a victim as well. M.K has to defend his older sister against offensive behaviour and addresses, since M.K has no positive support from the up bringer and cannot find anyone to support him in such an environment.

15-year-old G.K., who is M.K.'s sister and confirms the existence of discriminatory treatments at school, says that they fight often, and she herself gets upset easily, but tries to contain herself. She says: "I have a different temper, one week I can cry but later I can jump... M. is called 'nine and a half' and he shouts and fights all the time... at school as well". As it can be seen, to this date M.K.'s safety is not ensured. Violence and cruel treatment can lead us to a fatal result, as M.K. suffers from his physical disability and is desperate to end the cruel treatment by his environment, he does not see a way out from the existing situation.

POLICE PHYSICAL AND PSYCHOLOGICAL VIOLENCE AGAINST ONE OF THE BENEFICIARIES

Special Preventive Group Experts spoke to 13-year-old L.K., one of the beneficiaries of the children's home, and revealed that L.K. had suffered physical and psychological violence from the Police in the beginning of Winter 2012, before L.K. would actually come to the small group home (the beneficiary could not recall the exact dates of the violence suffered). L.K. was living in a socially deprived and poor family with his mother, in Gori municipality, Shindidi village. L.K.'s 18-year-old brother is in prison. Since L.K. was 10 year old, he/she worked in the garden. L.K said that at the age of 12 "a couple of times I stole something" and for this reason the Variani police showed up at his door step and put him in a pick up truck and drove him around the village in order to obtain certain information from him. L.K said: "...they were asking me and if I did not respond, they would hit me, especially our district officer Dato Doijashvili hit me on the head with hands or with a book. Twice a day they would pick me up and beat me, because they would beat me in the head, it would get dark in the eyes and I would faint." On one of such occasions of picking up, L.K

was forced to sit on a chair from 10am until 7pm. "Different police officers would come in and insult me, swear at me. Once these police officers took me to the Liakhvi River along with a neighbour, a 32-year-old man, who was a previous convict, and made us kneel down. They hit me with a stick and beat the man brutally. They were threatening they would drown us in the river Liakhvi". According to L.K: "after this the police officers were forcing me to cooperate with them and furnish information; They told me to tell of people what they were doing, and if not, they would put me in the room with rats, they would give me money and telephone, they put they saved their phone numbers into the phone, so I could call them, but I deleted that number. I was hiding from them, when I saw the police officers I would start to cry, I was scared, and they still caught me". Due to such pressure and violence, L.K was forced to leave his house and seek refuge in a children's home. Due to fear, L.K never reported the torture he/she suffered. After L.K suffered beatings in the head, he/she started to lose conscious and faint, had nightmares with the suffered traumatic scenes and phobias. Furthermore, L.K needs adequate medical, psychological and legal aid, which L.K does not receive in the institution. It has to be underlined, in all of the institutions there are beneficiaries who in past have experienced and suffered severe traumatic stress either at home in childcare institutions or on the street, and who cannot receive the necessary rehabilitation services. Such a situation and system failure ought to be dealt with expediently.

CHILD SECURITY

Members of the Special Preventive Group have also detected facts of child security negligence; children independently go to school and there are cases when without any due supervision they skip school and do not return home, and the up bringer does not know about this and about the child's whereabouts. There are cases when the child/young person leaves the small group home to have a walk in the street, or during weekends visits the biological family or "old friends" in the neighbouring cities and the up bringer/foster carer/foster parents cannot control such a behaviour and cannot ensure child's/young person's security.

KHASHURI SMALL GROUP HOME

13 year old L.G says: "I like to walk around, here as well I cannot sit still on one place, I go outside a lot or I go to the park". He sneaks out from school and goes either to the park or goes to see his friends". L.G found studying to be hard, and this was the reason why he/she skipped school, now L.G tries to catch up with peers. In the past L.G would sneak out from home, and travel from Gori to Tbilisi, spend the night on the street sleeping in the park and the family got him back via police search. L.G denies any theft, denies administering psychotropic substance, or suffering violence.

12-year-old D.J openly speaks about the difficulty he/she faces in following school programme, and is lazy to study and often skips school. Speaking to the expert psychiatrist, D.J admits skipping school for 150 hours and does not know what marks he/she will have at the end of the school year. D.J skips school as to have fun and wonder around. The up bringer, when speaking to the monitoring group, says D.J cannot follow the school programme and considers engaging D.J in an inclusive education system.

Based on the up bringer's/foster parent's/institution staff notes and primarily based on the interviews with children, it is evident: children/young persons often miss school, walk in the streets freely, or visit their friends in other schools in a manner that their up bringer is not aware of, and that children/young persons missing school has a negative impact on their academic development. Ultimately, it is of high concern that the security of such children is not provided for.

During the Special Preventive Group's visit, 16-year-old E.K was not at home. According to the foster carer and other beneficiaries**,** E.K is a "musician", a "rapper", and "even now he is with the band rehearsing and will be back home late" and this was the reason that the group could not interview the young person.

From the personnel documents we learn that E.K., started "coming home late", the school teacher said E.K. is "not acting normal... at times he laughs without any reason and is greening", " still makes the teacher angry", "goes off from the last class", "then hangs out in the school yard, and does not even attend the class", "was skipping school and

had problems because of this", "shouts in the middle of the night and uses bad language". According to the "Medical Park Georgia" issued form NIV-100/as note from 29.06.12, E.K. is healthy, no mention is made about E.K. difficult behaviour and the issue to assess the latter's psychological/psychiatric conditions was not raised.

There are activities that would develop the young person's educational skills and no psycho-rehabilitation activities are envisaged for difficult behaviour.

16-year-old L.G, who has mental problems, proudly says that he takes permission from the up bringer and goes for a walk "in a park... wherever you want, on Rustaveli, or to friends..." and sometimes his "buddies" let him drink beer. L.G who is mentally retarded and has behavioural problems, on his own initiative visits his family and says: "the up bringer let me go to Brojomi", "I went and came back by myself", and on 31.05.2012 from the up binger's notes it can be learned that "L.G called the latter and quite irritated and highly emotionally asked to be given permission to leave the biological family, saying: "my parents do not love me, take me away from here" ... he demanded".

During an interview with the Special Preventive Group expert psychiatrist the young person says that he does not want to go back home, as he does not love his mother: "she was beating me with a stick and kicked me out from the house." He does not even want to cross her, but loves his father as he treated him nicely.

According to the Special Preventive Group members in this concrete case the young person's right to security was violated when he went to another city/rayon without any accompanying person; He was also not protected from the mother's violence. Hence, the young person is re-traumatised which is seen in his emotional instability and not wanting to socialise with the biological mother – the young person became the victim of inhumane treatment. Apart from this story, 16 year old L.G has a long experience in living in the institution; According to him, he smoked, stole things, had fights, in the institution he was locked into his room so that he would not get out into the street, but he still managed to sneak off, in the street he was detained by the police and returned to the institution, sometimes he would spend the night either in one of the parks or in one of the tunnels. He says there were no instances of violence from the police and he is proud that "the police could not even lay a finger on him".

He is cross with D.J, one of the beneficiaries as "once, as a joke, I told D.J. I was gay and he went and told everyone about it". He then tries to explain "who is gay", what kind of external characteristics they have, as when sneaking off from the institution he came across gay persons "on Rustaveli avenue, in Nakhalovka district, or in a park", but he has not witnessed any intercourse between the gay men and says he has not been the victim of sexual violence. After being relocated to Khashuri small group home for children, because he did not have cigarettes he smoked paper, he does not deny that if he gets hold of cigarettes he will smoke again.

In light of the above, there is a high probability that in case this young person is without any adequate supervision, and when he finds himself in psycho traumatic environment, it is possible that the youngster will again act with deviational patterns.

According to the up bringer's notes, 16-year-old L.G is undergoing an inclusive education programme, but often breaks the school rules: "he did not get up early to go to school... Maia got him up and made him leave for school, and then he hid from other children and was late for the first class... He says he does not want to go to school."

From the foster carer's notes the following can be learnt about 16-year-old E.M.: E.M has school attendance deficits and problems to keep up with the study curricula. The foster carer notes that he/she spoke to E.M.'s class teacher as well as with the head teacher and learnt "that they do not show up often at school and all of the teachers are helping with doing mandatory tests", "they will not finish the year", "they somehow need to even out their absences with scores and they ought to see they pass all the subjects".

Speaking with the Special Preventive Group E.M is not that concerned about school problems and that he/she is behind with the school curricula. E.M says: "I do not study that well and it is not worth to continue studying". Currently, with two other girls, E.M is attending web design courses in a college and thinks he/she will continue to study in one of the colleges.

In Khashuri small group home for children, the Special Preventive Group learnt that 16-year-old beneficiary E.M. was constantly suffering from psychological violence by family members. The up bringer did not take care of the matter and on the contrary, often let E.M go alone and at times with another young person to E.M.'s biological family, which according to the monitoring team does not represent a safe environment for the beneficiary.

According to the up bringer N. Suleimanashvili's child monitoring journal (child's monitoring page), E.M. along with another beneficiary, 14-year-old M.S., often goes to a neighbouring city to visit their biological family, to visit her mother's grave, see her brothers as well, who systematically call on him/her and ask for money. If the brothers receive a no from E.M., then they address her with bad words, become angry with and blackmail her. They also tell E.M. "not to come home anymore". They do not even keep the promise to take E.M. home for New Year's festivities. The journal states that the child is very nervous about what is going on and the situation she has in the family. The small group home staff also knows that E.M.'s brother borrows money from relatives and "spends it prodigally". There are cases when E.M goes home and the brother is simply not there, so she waits for him, the latter never shows up and she then comes back.

KHONI SMALL GROUP HOME FOR CHILDREN

G.Ch, a 16-year-old beneficiary, rarely sees old friends. Nevertheless G.Ch does manage to do so when he/she independently travels to Kutaisi to his/her family.

Another beneficiary, 13-year-old T.D., seems to have problems at school. From the up bringer's notes we learn: "T. skips school and his/her class attendance is not satisfactory".

TSALENJIKHA SMALL GROUP HOME

Those who are responsible for children in small group homes let children independently travel to schools or colleges that are located in other cities. From children's dossier as well as based on the conducted interviews with them, we learn that they independently travel to their biological families, or visit their friends in other cities who live in other small group homes. Hence, apart from crude information that is being provided by the up bringers and foster parents in their monitoring journals, it is apparent that they are not taking any action or pertinent measures to protect children and young persons' physical security, as well as shield them from violence. The up bringers and foster parents do not recourse to specialists for their qualified help; the problem is not multidisciplinary assessed and ways for its overcoming are not sought; what is more appalling, they do not consider such acts to be a problem, and neither does the interaction of the up bringers and foster parents with the children's school teachers look successful or pedagogically right.

The social and economic destitution that plagues these children's biological homes and families, leaving children without adequate care; most often psychological and physical violence; neglect and stress infliction on these children and young persons in the caring institutions, as well as the social-pedagogical neglect of their education; failure to provide services that would be tailored and adapted for children's and young person's psychosocial rehabilitation; and a deficit of study skills – all of the reasons made small group home beneficiaries, who are practically without any psychological problems, have low academic development and with a knowledge inconsistent with the level of class they are in. All this, clearly, is not encouraging and it should be anticipated that when these children and young persons reach 18 years and start living independently, they won't be able to endure life competition. This, again, will lead to a failure.

It is salutable that small group home staff devotes time to the beneficiaries' professional development, based on their skills and interests in the subjects. Due to the insufficient knowledge and decline of the interest in studying, some beneficiaries see their way out in acquiring professional and handcraft skills. Nevertheless, the choice of professional schools is limited due to small group home's financial problems and because schools are not located in the desired region, and in some cases children have to independently go from one region to another, which itself is dangerous.

Note: social-pedagogical negligence and defectiveness, knowledge deficit in comparison to age and schooling will be assessed on an individual basis for each beneficiary's psychological and psychiatrical needs (see below).

NON-ADEQUATE PSYCHOLOGICAL/PSYCHIATRICAL ASSISTANCE/INHUMANE TREATMENT IN SMALL GROUP HOMES FOR CHILDREN

The State Standards for Child Care encompass a healthy lifestyle, ensuring healthy environment as well as ensuring beneficiaries' good health. The conditions existing in the small group homes do not meet the State Standards. This is especially evident with regards to creating a healthy psychological climate for looking after beneficiaries' health.

During the monitoring phase in the small group homes, the Special Preventive Group revealed a number of cases of neglecting children and inadequate and inhumane treatment. Furthermore, when the adolescent's right to psychiatric health is not satisfied the beneficiary cannot receive full psychological/psychiatric assistance or such assistance is not adequate, therefore the children's inclusive educational issues are also not settled. In Public Defender's 2011 Report, the de-institutionalisation process was characterised as imperative and of aggressive nature, and development of "syndrome of deinstitutionalisation" in small group home beneficiaries; This was due to the fact the social services did not take into consideration the beneficiaries' interests and individual needs, nor inform them about positive aspects of such a process. This caused the process of beneficiary integration into the small group homes to be stressful. The beneficiaries who were planning to move to small group homes developed a feeling of objection and thus their integration process became complicated.

In developing adaptation dysfunction, apart from major life events, particular importance is given to individual disposition and vulnerability. In older children/juveniles adaptation dysfunction is seen in behavioural problems (aggressiveness or anti-social behaviour), and in young children in regressive phenomena (for instance night urination/enuresis). In addition to this, adaptation dysfunction, that is, subjective distress and emotional stress situations hinder social functions and productiveness to deal with stress (changed psychosocial environment, for instance changing of domicile, school, up bringers, teachers, classmates etc.) and adaptation period with others.

The small group home beneficiaries belong to the stress-prone group. Most of the beneficiaries have a negative experience of living in big institutions where their vulnerable condition was not taken into account. Hence, they did not receive adequate psychological/psychiatrical help, nor did they acquire the necessary techniques to manage stress. Furthermore, for this reason they could not adapt to the changed environment (which was better and more humane than the one their biological parents were in or the environment of the big caring institution). This, on its part presents psychosocial stress. Adaptation dysfunction was visible among children, as expected, and resulted in emotional and behavioural dysfunction. This is characterised by anxiety, nervousness, stress, anger, night urination etc.

Adaptation dysfunction took an unmanageable form amongst the small group home beneficiaries who were psychiatrically vulnerable, and as mentioned above violent/aggressive behaviour became a common stereotype in their relationships.

Within the frame of the conducted monitoring, the Special Preventive Group revealed and analysed several psychological/psychiatric problems, based on the interviews results with small group home beneficiaries and a synthesis of the results of the beneficiaries' personal files. The group assessed the adequacy of psychological/psychiatric help that beneficiaries received from the persons working in childcare.

The Special Preventive Group members drew attention to children's health assessment during the child enrolment process and in most of the cases to the complete negligence of their psychiatric health. It has to be specifically mentioned that the social service workers, during the social preliminary assessment, in most of the cases describe a child's psychiatric disorders and problems and in the same assessment sheet state "that he/she does not have any problems related to health", or that "psychophysically, he/she is healthy". As an argument for this, they cite either the doctor's or the nurse's verbal statements or a health certificate issued by them (Form NIV-100/a). The latter document does not really depict an accurate psychophysical state of the child. Nevertheless, the recommendation issued is that the child is (practically) healthy and can attend school.

Those who are working in childcare institutions and social services could not identify the signs of psychiatric problems the beneficiaries had, or in most of the cases they neglected such problems and did not initiate psychological/psychiatric

checks; With the exception of a few cases, when through psychiatric assessment mental retardness and behavioural violations were diagnosed, even there recommendation was issued that the child continues to go to school without assessing his/her abilities and skills, and no recommendation was made as to whether or not the child needed to be engaged in an inclusive education programme.

A social worker is not qualified to assess a child's physical health and psychiatric state, but the data available to them gave them the opportunity and they were even obliged to bring such issues to the doctor and in case of necessity initiate the child's psychological/psychiatric assessment. With this it would be possible to grasp a child's psycho-biosocial problems and its individual development plan would be focused on the child's multifactorial needs and a multidisciplinary settlement.

Hence, the small group home beneficiaries' psychiatric problems have to be analysed in a single bio psychosocial model and their management is only possible in a multidisciplinary assessment and assistance system.

In practice, we only see pro-forma and insufficiently filled out individual development plans, short of individuality and not tailored to a child's specific needs. Aims, events, and deadlines are copy-pasted from one child's form to another, and reasons and indicators of both success and failure are not provided and analysed.

Negligence of assessment and proper planning, at times even incompetency, negligence of a child's psychiatric problems and no proper paper work on child's problems, serve as the basis for complicating children's adaptation to small group homes, thus exacerbating their behavioural problems and contributing to the rise of violence in their relationships.

It is particularly disturbing to identify the rising number of mental handicaps and study related disabilities among small group homes beneficiaries. The up bringers and staff of small group homes unexpectedly did not bump into mental and behavioural problems, about which they were informed, nor had the professional skills to deal with.

In Public Defender's 2010-2011 reports, special attention was paid to professional psychologist's work in children's upbringing and caring institutions; to children as the most vulnerable group; to psychological problem identification and subsequent management; to initiation of psychiatric assessment and help; to psycho-education of children and their consulting; to research and analysis; and management and uniform standards for documenting and tracking the conducted work, none of which was not carried out after the de-institutionalisation into small group homes by the childcare supervisory bodies.

It became evident to the Special Preventive Group that in small group homes children have no access to adequate psychological and psychiatric assistance.

In small group homes for children, the beneficiaries' access to psychological assistance is not organised and has only formal character. One part of up bringers does not recognise that children need psychological/psychiatric assessment and help, but they do say that in case the up bringers need consultation they call the psychologist from Tbilisi. Another part contends that the small group home beneficiaries have access to psychological intervention, but fail to provide evidence that would document such access. This raises questions and concerns and in some cases recourse to such help could not be confirmed. This was also evident when interviewing some children. Only Ambrolauri and Tsalenjikha small group home beneficiaries confirm sporadic help received from psychologists.

The results of the monitoring of the small group homes, done by the Special Preventive Group, give us ground to make the following conclusions/findings:

- During a beneficiary's enrolment in a small group home, a child's social assessment and medical certificate (in case such exists) does not speak about a child's mental health problems, does not consider a child's traumatic experience and vulnerability, signs of psychiatric problems are neglected and the child is not duly assessed psychologically or psychiatrically.
- The child development plan is formal and superficial, ignoring a child's peculiar problems and intellectual abilities. Hence, it is not individually tailored to a child's real needs.

- Small group home beneficiaries are not supported with adequate psychological assistance, that matches their problems.

- Small group home for children management units did not draft standards that would deal with a state-protected child's psychological assistance or that would take into consideration the beneficiary's traumatic experience, stress and psychological vulnerability.

- In most of the small group homes, the up bringer/carer invites a psychologist according to the "need" from the association "Georgia's Children", but as the monitoring results show such necessity arose "last time in Summer ", "one month ago", "yesterday, but has not spoken with the children" or, in best case, "one week ago"; or psychological intervention has remained a one-time occasion.

- The claim by Ambrolauri, Tsalenjikha, Bajiti small group homes staffs and up bringers that beneficiaries avail themselves of psychological assistance was only confirmed in Tsalenjikha and Ambrolauri small group homes by a couple of beneficiaries. As for Bajiti small group home residents, they denied this fact; Psychological assessment of the small group home beneficiaries, and the help they received, is not accordingly documented. This in turn makes it impossible to assess and monitor assistance received by children.

- In Public Defender's 2011 Report there is data about shortcomings of the de-institutionalization process and special attention was paid to the inability of small group home staff to manage beneficiaries with psychiatric problems and their massive exiting from such homes. Nevertheless, there are a large number of beneficiaries with psychiatric problems who are a burden to the small group homes and to their work.

- The up bringer, foster parents, care taker, leader or some other person who is engaged is childcare work either cannot grasp a child's/young person's psychiatric problems or ignores this problem and does not see to the fact that the child/young person receives qualified psychological/psychiatric assessment and assistance. Some cases are of course an exception, e.g. when a psychiatric assessment is done but psychiatric assistance is not dynamically rendered to a child/young person. Furthermore, there is no expertise and assessment that would deal with a child's/young person's psychosocial function ability assessment. Ensuring that the beneficiary has access to all the services and benefits and undergoes psychological/social/pedagogical rehabilitation, the non-existence of which gives ground to spurring of violence not only against, but between the beneficiaries as well, is key.

- Academic non-development of the Small group home beneficiaries; low school curricula knowledge and the frequency of their mental problems, which completely leave them out school competition and make their integration complicated; teacher's negligence; lack of interest and motivation to study; not having the necessary social skills and problematic behaviour – all these are due to the deficit and lack of psychological/psychiatric/pedagogical assistance and rehabilitation programme.

- It is incomprehensible why Lanchkhuti and Khoni small group homes have only male children/young persons as their beneficiaries. Such gender segregation is not recommended – neither from a pedagogical nor from a psychological perspective, nor with children who have completely no psychological problems. If there is no vital argument from the small group home management/organising staff that would refute the presented arguments, such a state of affairs is not permissible. Furthermore, such segregation hinders social skills development and identification of the sex of persons, both in girls and boys.

- Based on the close study of the beneficiaries' files, the Special Preventive Group, with experts/psychiatrists interviewing the beneficiaries, reached the following results: out of 54 beneficiaries that were interviewed, 23 of them (approximately 42.6 %) are mentally retarded; 12 children have adaptation related problems in their behaviour and emotional state; in 7 of them, post-traumatic stress related symptoms were seen; 21 cases revealed problems in behaviour, both characteristic of beneficiaries with or without mental retardation; 4 cases of night enuresis; and 1 case of epilepsy.

Hence, based on the above:

- The situation in the Bajiti small group home is as follows: out of 6 beneficiaries, 3 have mental retardation, and 2 of them have accompanying night enuresis; 1 beneficiary was diagnosed epilepsy in a neurological clinic; 2 beneficiaries have visible post-traumatic stress symptoms, 1 child has adaptation disorder (in difficult days the child has eating disorders) and 2 beneficiaries have accompanying retardation with behavioural problems.

Only in one case did they recourse to psychological help and despite the foster mother's statements that the children have access to such help, neither was such an information verified with the children themselves, nor could the foster mother provide with adequate paperwork evidencing psychological intervention. Despite the need of such help, psychological assessment initiation and access to pertinent psychological/social/pedagogical programmes were not ensured. The children cannot receive adequate psychological/psychiatric assistance.

- Ambrolauri small group home: out of 6 interviewed beneficiaries, 2 have mental retardation, another 2 adaptation distortion and problems, and 3 beneficiaries have behavioural problems. According to the foster mother, the children receive psychological help. The children confirmed this during their interviews. Nevertheless, there is no paperwork that would confirm that such help was given to the children. Despite the need of such help, psychological assessment initiation and access to pertinent psychological/social/pedagogical programmes were not ensured. The children cannot receive adequate psychological/psychiatric assistance.

- Khoni small group home: despite the assertion of the small group home up bringer that its beneficiaries do not have any psychological problems, of 7 beneficiaries that were interviewed, 2 had behavioural distortion and emotional problems and 5 had mental retardation with behavioural distortion and with 2 cases of night enuresis. Here too, psychological assessment initiation and access to pertinent psychological/social/pedagogical programmes were not ensured.

- Kutaisi small group home: out of 7 beneficiaries, 3 have mental retardation, 2 have visible post-traumatic stress symptoms, 1 has adaptation disorder, and 1 shows behavioural problems. Only in one case (May 2011) did they recourse to psychologist's assistance, and despite the social worker making them aware that all of the beneficiaries had psychological issues, the children are not provided with psychological help and no psychiatric assessment was initiated.

Great attention was paid to the case of 14-year-old T.G., when her mental retardation was diagnosed with a behavioural disorder. On 17.05.11 a concern was revealed to the house manager that when T.G. was enrolling into the small group home, T.G. was sexually abused. According to the human rights defenders, those persons who were involved in child protection did not take adequate steps. Only psychological and gynaecological checks were done. The child's psychological/psychiatric assessment, as well as pertinent psychological, social, and pedagogical help was neither provided, nor were legal actions taken and the right to legal remedy did not arise.

- Tsalenjikha small group home: 8 beneficiaries were interviewed. Out of this number, 1 child has mental retardation, 1 has signs of post-traumatic stress, 3 of the beneficiaries have adaptation disorders, with behavioural and emotional problems, 1 child demonstrates behavioural problems, 3 children state that the school children and teachers discriminate and use discriminative language against them either because of their dire economic and social conditions, or because of their physical deficiency, which contributes towards children's emotional distress and violent behaviour. From this group only 2 beneficiaries said they received pertinent psychological help (one month ago). The paperwork of such intervention and assistance could not be generated. Hence, the children are not ensured with adequate psychological/social/pedagogical programmes and assistance. There is no work being done with the school itself in order to provide these children with a favourable psychological environment that would facilitate their integration into the school environment. The beneficiaries of the small group home simply do not receive adequate psychological/psychiatric assistance.

- Lanchkhuti small group home: in all 8 beneficiaries mental retardedness was revealed, along with significant behavioural dysfunctions.

- Khashuri small group home: 7 beneficiaries were interviewed, out of which 4 cases of adaptation distortion with emotional anxiety and 1 case of mental retardation with accompanying somatic disease (cealiac disease, hypothyreosis) were established. The latter child is engaged in an inclusive education programme. But despite the fact that his up bringers are well aware of his/her health issues and problematic behaviour, they could not provide the child with adequate medical assistance and treatment. The child did not undergo complete somatic disease assessment or treatment, and no pertinent psycho-rehabilitation assistance was included. No special diet or meal plan was made available to the beneficiary. This worsened the child's psychophysical situation. The child's ability to study at school is limited as well, demonstrating difficult behaviour and he is a constant victim of discrimination and aggression. The child also demonstrates violence towards other children in the small group home. It is of outmost importance to assess the child's psychophysical health state and the assessment of his/her level of psychosocial function constraint so as to provide the child with adequate benefits and services.

Khashuri small group home children cannot manage to positively adapt to the changed psychosocial environment. They are characterised by a deficit of study motivation and no skills to study at school. They are characterized to be overwhelmingly independent, for instance, they can independently leave the small group home and go to their biological families, skip school and miss lessons and wonder about in the city or in the park. Male small group home beneficiaries try to adapt to the environment by auto- and hetero aggressive violent behaviour, whereas female beneficiaries see the problem to be solved by attending professional schools. The persons working in the childcare system and up bringers simply do not know and have no adequate skills to handle and address problematic situations such as these as described above. With this they neglect the children's problems. No initiation was made to assess children's and young persons' psychological/psychiatric state and provide them with adequate psychosocial and pedagogical rehabilitation.

Recommendations to Georgia's Ministry of Labour, Health and Social Affairs:

- Adopt and implement small group homes for children beneficiary thorough multidisciplinary assessment and identified problem handling adequate, tailored to every child individual psychological/social/pedagogical rehabilitation programmes, ensure and facilitate to young person's professional education according to individual skills and interests.

- Ensure the training of all the staff members - who work in childcare and small group homes – psycho-education via intensive psychological consultations, trainings, and by providing them with necessary material, so that they can identify signs of psychiatric problems and comprehend related symptoms, as well as provide the child with adequate psychological/psychiatric assistance initiation and further support;

- It has to be ensured that small group home beneficiaries receive psychological assistance without any disruptions and that beneficiaries have full access to such support. Drafting of uniform standards and guidelines for psychological intervention and documentation is a must, and in case of psychiatric problem, initiation of psychiatric assessment so as to provide adequate psychiatric help. In addition to this, if necessary and on a case by case basis, the level of psychosocial constraint and the functional ability must be determined and the beneficiary must be ensured with adequate services;

- In order to foster a child's integration into the micro - and macro - level social environment, from one side strengthen the ability to manage a child's complicated behaviour as well as his/her emotions, raise the child's aspiration and motivation to study and develop academically, providing with individual pedagogical services, constantly encouraging them; In addition, from another side develop psychosocial environment - protecting a child from discrimination, stigmatisation and violence;

- To adopt and implement uniform standards for documenting all cases and instances of state protected children's violence/inhumane treatment and such action prevention, as well as psychophysical violence/ inhumane treatment.

SGH CHILDREN'S RIGHT TO (RECEIVING) EDUCATION

According to article 28 of the "Convention on the Rights of the Child", a child is entitled to receive education and the state has to support realization of this right on equal footing.

Article 2 of the "Law on General Education" sets the principle of open and equally accessible education. In this regard, implementation of inclusive education program in public schools foreseeing inclusion of children with special needs into general study process along with their peers has to be considered as significant achievement of the reform of general education executed by the Ministry of Education and Science of Georgia. According to the "Law on General Education" pupil with special needs is a person who has difficulties studying as compared to his/her peers and who is in need of modification of the national study plan and/or adaptation with study environment, drafting and implementation of an individual study plan.[166]

"Student with special need" is identified by the Ministry of Education and Science's multidisciplinary team which assesses the student and selects the best education form relevant for him/her.[167] Furthermore, the school is charged with drafting individual study plan for a student with special needs fitting within the frames of the national study plan.[168]

According to Article 8 of the "Child Care Standards" approved by Order N01–59/N of the Minister of Labor, Health, and Social Protection from 30 August, 2012 (hereinafter "Child Care Standards"), service provider has to provide for inclusion of the beneficiary in pre-school and general educational process, as well as support him/her in receiving professional or higher education; In addition, service provider has to refer a child with special educational needs to relevant educational institution or specialist. Service provider's duty to create adequate environment for beneficiary to receive education, *inter alia,* implies children's inclusion in educational/professional study process taking note of their age and opportunities.

In the process of monitoring, special preventive group identified several beneficiaries of SGHs, who despite their special educational need, were not included in the process of inclusive education acquisition and no individual study plan was drafted for them.

Following recommendation from the psychologist, beneficiary of the Chkhorotskhu SGH, V. B., is currently undertaking special exercises; Previously the child had low school performance and had difficulty enumerating numbers. Despite his/her special need no special individual study plan was devised for V.B. during the period when monitoring took place.

Social servant's visit form included in the personal profile of B.B. -beneficiary of the same SGH. - indicates that the child is observed to have light mental difficulties, difficulties in studying, is unable to read; He/she also lacks functional skills relevant to developed age, cannot count money. Consequently the child is in need of adapted simplified material for studying but no such individual plan was drafted at public school. According to SGH caregivers - mother T.B. and father A.K. the child quit receiving education at public school and continued training for acquiring the profession of stylist at a vocational school pursuant to the decision of social worker and psychologist. It has to be noted, that relevant decision was not reflected in the personal profile of the beneficiary.

A case of beneficiary with special educational need was noted at Kutaisi SOS Children's Village N2 children's SGH; according to SGH's caregiver - mother N.V. – G.R. and M.R. need inclusion in the public school inclusive education group as beneficiaries have practically not received any education prior to moving to children's SGH; this is further certified with relevant individual development plans of children, according to which correction pedagogue is working

166 Law on General Education, article 2, para „ჰ[2]".
167 Law on General Education, article 2, para „ჰ[3].
168 Law on General Education, article 5, para 11.

with G.R. three times per week helping the child in improving his/her reading, writing and math skills. Despite intensive work, beneficiary is significantly behind relevant age group in terms of academic level. Need for inclusion of said children in the inclusive education program is also confirmed by school teachers, yet no individual study plans were developed. According to SGH's foster mother N.V., school teachers demonstrate support for beneficiaries by being less strict when assessing their academic performance.

Educational Development Plan for Kutaisi children's SGH beneficiary N.B. indicates that the child is behind the programme in all subjects taught. According to information provided by caregivers, they have addressed relevant public school with a request for drafting individual study plans for beneficiaries, but the school did not respond.

Abovementioned practice, when special education needs of the child is not assessed by multidisciplinary team of experts, when the public school fails to develop individual study plan, or when in other cases relevant decision of authorized person on discontinuing the process of acquisition of general education is absent, can be qualified as restriction of child's right to education.

With regard to supporting vocational education, one has to note that foundation "Natakhtari" supports majority of children's SGH beneficiaries' vocational studies for professions of beauty stylist, computer technology, nursing, car repair specialist, etc, as well as, their further employment. Nevertheless, problem with territorial accessibility of vocational education was observed with regards to Chkhorotskhu children's SGH; In particular, beneficiaries of this house have to be trained in Kutaisi vocational education colleges as there is no such institution available for beneficiaries in Chkhorotskhu. Problem often times is caused by nonexistence of transportation funds for teachers, circles, or even children because children's homes budget does not provide funding for such component. It has to be underlined also, that although majority of SGHs for children are equipped with computers, they are not connected to Internet, which hinders SGH beneficiaries' performance of schoolwork, as well as their professional development.

Recommendations to the Ministry of Labor, Health, and Social Protection (MoLHSP):

- **To ensure children's access to education in public schools in relevant form and level, with due regard to their individual needs;**
- **To ensure linkage of beneficiary with special educational need with multidisciplinary team and general education institution with an aim of developing individual study plan;**
- **To ensure access to vocational education by children's SGH beneficiaries in accordance with territorial accessibility principle.**

EMOTIONAL AND SOCIAL DEVELOPMENT

Pursuant to the Article 5 of the "Child Care Standards" referring to emotional and social development of beneficiaries, in-service environment should provide for emotional and social development of beneficiaries, support their social integration and strengthen their contact with the family, provided latter does not contradict best interests of the child. Service provider should support beneficiary's legal representative and the family in retaining close relations with the child and in realizing parental obligations.

Above standard, to a certain extent, is an implementation of requirements of Article 9 paragraph 3 of Child Rights Convention into national legislation; In particular, according to the Convention, state-parties respect the right of a child of divorced parents to retain regular personal relations and contacts with them, insofar as it does not contradict child's best interests. In some cases close contact with biological family is not granted adequate attention at children's SGHs.

For instance, according to SGH foster mother M.J. from SOS Children's Village children's SGH' N12 – beneficiary G.M. does not have official exit person, in contrast to information indicated in child's individual development plan

(CIDP) according to which regulation of relations with biological mother is important for improving child's emotional situation; one of the ways indicated for such improvement was child's visit to the family, or finding alternative ways of meeting with biological mother. According to said record, social worker has been informed about the issue, yet no close contact was established with the mother.

Several beneficiaries of Chkhorotskhu children's SGH have been restricted right to have relations with parents as because of severe financial situation the latter often does not have enough funds to cover transportation costs to SGHs. It has to be noted that SGH budget does not include funding of this component; Neither does it include relevant funding to cover costs of child's visit to biological family for retaining contact with parents accompanied by SGH foster mother/father.

Access to telephone at children's SGHs is limited (in some cases children have their own cell phones). Homes are equipped with MAGTIFix network phones, yet because of arrears to provider, outgoing call function is restricted most of the time, thereby creating obstacles for children to contact their parents over the telephone. Contact over telephone is especially problematic for those beneficiaries whose parents are working abroad, as fees for calls abroad are high.

Recommendation to the Ministry of Labor, Health, and Social Protection (MoLHSP):

- **To ensure, in the best interests of the child, maintenance of regular personal relations between beneficiaries and their biological families to the extent possible by providing relevant procedural and material-technical support.**

SUPPORT FOR INDEPENDENT LIVING OF BENEFICIARIES

According to "Child Care Standards" one of the aims of service provision is to prepare beneficiaries for independent living. Beneficiaries should leave the SGH for children according to plan for starting independent living, drafted in advance with the participation of social worker, service provider, beneficiary, child's legal representative/family and other persons.

It has to be noted, that while conducting monitoring, several beneficiaries were almost turning 18, this causing inevitable necessity of having to leave the SGH by the end of the year. Often these children have very vague and undeveloped vision of the living conditions they will be facing upon exiting the SGH. One of the components for preparing for independent living is receiving appropriate education and acquiring adequate professional skills. Part of beneficiaries representing relevant age group are trained towards future professions, yet, because these professions are low paid it is doubtful that these latter professions can serve as sole guarantee of adequate standard of living for beneficiaries after moving away from SGHs. This uncertainty and fear of the future cause irritation and emotional instability in beneficiaries.

In terms of positive practice, one has to note "Independent Living Support Program" for beneficiaries of SOS Children's Village Georgia, consisting of different stages. According to the said program, children's SGH beneficiary moves to the Youth House (YH) at the age of 15-16, i.e. a community integrated apartment or private house; This house is shared by up to 15 young person's; It has its own supervisor and four teachers.

The aim of the Youth House is to ensure preparation of the young person for independent living, support development of his/her skills, capacities and potential. At this stage youth can undergo training towards professions, be employed and prepare for independent living.

After the stage of 4 years of living at the Youth House (YH) beneficiary can be transfered to semi-independent living stage; Prerequisites for this are studying at a higher education institution or continuous employment for the period of 6 months. Final stage of independent living support programme is that the beneficiary moves to his/her own

house or rents an apartment. At the stage of independent living the organization helps young person in purchasing the apartment, mainly by covering 60-70 percent of its cost, the rest being covered by the young person with his/her savings.

There is no similar support to beneficiaries of other children's SGHs neither by provider organizations, nor from the government, often resulting in beneficiary's uncertainty and unpreparedness for independent living at the moment of exiting the children's SGH. In case of non-existence of the program, supporting independent living financially, it is particularly problematic and difficult for those children who have been unable to integrate with their biological families and do not have strong supporting network.

Recommendation to the Ministry of Labor, Health, and Social Protection:

- **To prepare effective program supporting independent living for those beneficiaries with relevant needs, who are leaving children's SGHs as a result of attaining the legal age, including by providing them with living space and supporting their employment.**

DOCUMENTATION EXISTING IN SGHs

According to the Article 3, paragraph 1 of the UN "Convention on the Rights of the Child", in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. The said article of the Convention indicates that in any action undertaken towards the child, child's best interests should be fully considered, *inter alia* including state's obligation for ensuring that institutions, divisions, and organs responsible for child care or protection correspond to adequate norms; In particular, with regard to a number and validity of personnel in the sphere of security and health protection, as well as with regard to the competent supervision.

Article 1, paragraph 2 (Standard N1) of the "Child Care Standards" provides the list of the documentation, that the service provider ought to keep and ensure, that it is accessible to any interested person.

National Prevention Mechanism (NPM) studied documentation existing in children's SGHs in terms of compatibility with abovementioned standard; The study highlighted problems related to the children's SGHs' functioning, as well as, problems of non-adequate implementation of other obligatory standards vis a vis to beneficiaries.

One has to note that some of the children's SGHs do not keep obligatory documentation at all, while some keep it on an incomplete level, which affects provision of quality service to beneficiaries, as well as, provision of adequate level of information to interested persons.

Internal regulations cannot be found in the most of the children's SGHs; The staff of those SGHs who were handed over for management to the association "SOS Children's Village Georgia" by the commission, which was set up for transferring management rights over children's SGHs, in accordance with the Decision N01-129/O of the Minister of Labor, Health and Social Protection "On approving competition requirements for revealing legal persons to be granted the right to SGH management", presented standard "Internal Regulations of SOS Children's Village Georgia". Abovementioned act with its essence and content does not substitute internal regulations, as it unilaterally regulates issues of professional conduct, ethics, rights and duties, confidentiality of persons responsible for beneficiary care; As well, foresees consequences of violation of the code of conduct. It has to be noted, that abovementioned document is of general nature and does not entail any particular, children's' SGH specific rules regulating beneficiaries' conduct and everyday life at home; Importantly, drafting process of such document should provide ambit for inclusion of beneficiaries and reflection of their views.

According to the Article 2 of the "Child Care Standards", internal regulations, along with other issues, should include rules and methods of managing socially inacceptable behavior; Procedures of feedback and complaint; Rules drafted

for avoiding inflectional diseases; Questions of confidentiality; As wll as, rules of conduct for staff, volunteers and interns.

Despite having no specific content of internal regulations, as an exception, short rules of conduct were posted on the wall in the most noticeable place at Khashuri children's' SGH, which according to the information provided by the leader of the said house, were drafted with participation of the beneficiaries and up bringers. Staff of children's SGHs (except for Chkhorotskhu childrens' SGH) also failed to present the upbringing programme, which according to the Article 1, Paragraph 2, Subparagraph (a. a.) of the "Child Care Standards" should reflect upbringing methodology and daily agenda. When asked about the daily agenda, foster mother Ts. I. from the Zestaponi municipality Village Kvaliti children's SGH explained to the persons conducting monitoring, that there is no need for any type of daily agenda; In particular, allocating specific time to eating, studying, and playing/leisure during the day is not acceptable for her. In Kutaisi children's SGH absence of prepared daily agenda was motivated by the need to be compatible with the recommendation of Polish expert conducting training of SGH management.

According to statements of other children's SGH up bringers (e.g. Khashuri SGH), they refrain from drafting daily agenda and prescribing activities, as they consider such action inappropriate in an environment resembling family one.

As a result of monitoring of the children's SGHs conducted by Special Prevention Group, it was concluded that SGH staff does not have information about rules and methods of managing socially inacceptable behavior by beneficiaries, as well as, management of incidents of violence among children and appropriate response mechanisms.

Management of such type of problems by up bringers is unsystematic, conducted in conditions lacking relevant professional qualification, often times based on one's own life experiences and views. In addition, almost all caregivers state that they have undertaken sometimes more than one training on aforementioned issues. One of the major challenges to the process of children's SHG management is lack of procedures of feedback and complaint, as well as lack of possibilities for expression of opinion by the child and procedures for its consideration. It has to be emphasized that 'complaints box' is not functioning at SGHs. Part of children SGH caregivers were not informed about necessity of implementing complaint procedures, while some consider that there is no need for the child to express his/her view or protest as beneficiaries have possibility to discuss openly their problems with the foster mother/father.

According to the manager of the Batumi children's SGH, complaints box proved inefficient; therefore a decision for discontinuing this mechanism was taken. In most of the children's SGHs absence of complaints box is explained by existence of a family environment excluding necessity for such mechanism as "box". In parallel to absence of the complaints procedure, there is no record of responses to freedom of expression by children at the children' SGHs; In addition, there is no special journal reflecting incidents of violence and procedures for investigating violence, as well as responses towards such violence.

It has to be noted that children's SGH documentation does not include journal for recording accidents. Foster mother and father often times do not have correct information on what types of accidents should be reflected in such documents. Most of the staff considers that the term 'accident' entails only natural disasters, fire, storm, etc. As it has been noted during conversation with the Special Prevention Group, caregivers have received specifically this type of interpretation of the term 'accident' during trainings conducted by service providers; Therefore, it is commonly shared understanding that there is no need to record in the journal negative facts/accidents related to health or life of the beneficiary. Some of the children' SGHs up bringers keep diary where they record daily happenings, including incidents and accidents, but they also indicate that this practice is solely their own initiative and cannot be viewed as an official record.

Recommendation to the Ministry of Labor, Health, and Social Protection:

- **To ensure accessibility of information about the service by adequately drafting internal regulations and all of its components for children's SGHs, in accordance with the requirements set forth by "Child Care Standards";**

- **To ensure retraining of children's SGH staff in rules and methods of managing socially inacceptable behavior by beneficiaries, as well as, procedure of management of incidents of violence among children and appropriate, efficient response mechanisms;**
- **To ensure retraining of children's SGH staff in appropriate ways of keeping documentation and correct conceptualization of the relevant contexts;**
- **To implement efficient mechanism of complaint and feedback from beneficiaries, as well as, record all reasonable incidents of such complaints/feedback.**

INDIVIDUAL SERVICE APPROACH

In the process of monitoring of children's SGH special prevention group conducted detailed study of beneficiaries' personal profiles, which should include documentation provided by the Article 6 of the Decision N52/n from 26 February 2010 by the Minister of Labor Health and Social Protection on "Approving Rules and Conditions of Placement and Release of Persons in/from Specialized Institutions"; In particular, along with the decision of the regional council on placement of the beneficiary in an institution, service provider should also keep copy of beneficiary's ID or birth certificate; Health certificate (Form NIV-100/A), copies of social worker's conclusion based on child's assessment form filled in by the social worker and overall assessment; Copy of child's individual development plan.

According to "Child Care Standards", service provided to the beneficiary should be individually tailored and responding to his/her individual needs; Pursuant to the same standard, within 30 calendar days from child's enrollment in service, service provider has the duty to draft individual service plan together with interested persons, (i.e. beneficiary/his/her legal representative/family), on the basis of assessment carried out by social worker, and with due regard to child's needs. The plan should clearly prescribe the kind of service that will be provided to the beneficiary, along with reference to the in-service planned activities/implementation schedule. The plan should indicate prospective results of service provision, as well as, identity and duties of persons responsible for carrying out implementation.

In accordance with the standard, Child's Individual Service Plan is subject to periodic, obligatory review and assessment, which should be carries out at least once in 6 months with the participation of beneficiary, his/her legal representative and representative of the child custodial and guardianship institution.

Article 25 of the Child rights Convention states the need for periodic assessment of the child in custody and obliges the state to protect the right of the child given for care into custody by competent state organs - to have his/her custodial conditions assessed periodically.

In the Report of the Child Rights Committee, dedicated to the subject of children lacking parental care, Committee underlined the principle of individual approach towards the child. Individual approach implies particular attitude towards each child, which is based on situation of each particular child, his/her personal family and social conditions. Individual approach provides possibility for elaborating child's long-term development strategy. Pursuant to Committee's recommendation all decisions pertinent to separating the child from his/her parent, as well as periodic assessment of the situation should be based on the principle of individual approach.

As a result of the monitoring, following problems were outlined with regard to keeping children's SGH beneficiary profiles:

Practically none of the children's SGH beneficiary profiles include full documentation. For instance, profiles of 3 beneficiaries of the Village Kvaliti children's SGH lacked decision of the regional council on enrollment of the beneficiaries. In addition, journal recording placement and release of beneficiaries in/from specialized institution was incompletely filled. Because of mentioned discrepancies, the issue of drafting and assessment of children's Individual Service Plan, and further Individual Development Plans within established deadlines failed; Decisions of regional council were also not kept in profiles of Kutaisi children's SGH beneficiary profiles.

As regards children's SGH beneficiaries' Individual Development Plans, following overall discrepancy can be noted: Plans grant inappropriate attention to individual needs of the beneficiary; Information stated in the Individual Development Plan is scarce, and does not reflect in detail objectives, activities planned for achieving objectives, and indicators of success. Review of Individual Development Plans is not conducted within the set periods.

Individual development plans of Chkhorotskhu children's SGH are mainly elaborated during relocation of beneficiaries from Zugdidi Orphanage and are oriented on implementation of activities related to change of domicile, such as transportation of children's belongings, enrolment in general educational institution, purchase of cloths, etc. Individual Development Plans elaborated by foster mother/father do not include enough information for individual needs of the child. Each of the graphs of the plan are completed in an uninformative and unprofessional manner, and do not adequately reflect objectives stated and results attained. Graphs on reviewing efficiency of the stated objectives and activities are not completed. For Individual Development Plans of certain beneficiaries, foster father - A.K. is named as responsible, but when members of the monitoring group asked A.K. about child needs, the latter replied that his signature on the Individual Development Plan bears only formal character and it was drafted by foster mother T.B. The said person also being in charge of its implementation. Children's' Individual Development Plans are not signed at Village Kvaliti children's SGH, which gives rise to doubts about the validity of these documents. On the positive side, it has to be noted that foster mother - Ts. I. - of the mentioned SGH, keeps unofficial records in her private diaries where she reflects problems related with children, objectives set and results achieved.

In the Individual Development Plan of beneficiary T.Sh. from the Tsalenjikha children's SGH, elaborated by foster father Z. K. and social worker N.S. one finds following ambiguous record: "Objective - that the child would not follow others in everything with advice and counseling" , " that the child would not take into account bad behavior of others", and as an indicator of success – "that the child would not follow example of others in bad behavior". Aforementioned fact highlights the problem that persons responsible for elaboration and implementation of Individual Development Plan are not sufficiently qualified for the tasks to be performed.

Individual Development Plans were absent in some beneficiary profiles of Batumi children's SGH. Often time's beneficiary profiles did not include social worker's assessment form and conclusion about the child. Speaking with the staff of children's SGH revealed major challenge, namely the fact that SGH receives documentation regarding the child at a later stage, following one month after child's placement in SGH. Consequently, during this period foster mother and father have no detailed information about the child.

LPL Social Service Agency Decision N04-385/o from 20 June, 2012 on "Allocating functions and duties of social worker and service provider in the children's Small Group Home" defines minimal number of social worker's visits to the children's SGH, as well as activities to be undertaken in the framework of such visits. According to the said act, when enrolling adolescents in children's SGH, at the moment of social worker's first meeting with the service provider, social worker should have at hand all existing information available about the child: Decision of the regional council, certificate of birth/ID, insurance police, Form N100, assessment by the social worker, conclusion, etc. Service provider should be acquainted with all this information about the child before latter is actually placed in children's SGH. In Batumi children's SGH, manager M.K. explained that confidentiality was the reason why beneficiaries' profiles did not include Individual Development Plans reviewed according to set periods. In particular, according to the same person, Individual Development Plans along with psychologist's conclusions are stored at AALP "Batumi Center for Education, Development, and Employment Center". Aforementioned argument creates doubts whether quality service provision based on individual needs of the child is ensured by responsible persons – foster mother and father – without being guided by relevant plan.

Major problem which was revealed after studying personal profiles of children' SGH beneficiaries is that Individual Development Plans do not grant appropriate attention to child's specific needs. For instance, Individual Development Plan of Ozurgeti children's SGH beneficiary P.G. indicates that for reasons of managing child behavior consultations with the psychologist and periodic supervision of psychiatrist are needed. The same Plan, under the graph "comments" indicates record about the visit of - M.G. - Doctor of psycho neurological clinic. Foster mother could not remember this inscription and explained that such activity did not take place as the child did not reveal need for such consultation while

living at the SGH. Social worker's visiting form, assessing child's psychosocial condition kept in the personal profile of Z. Kh. - beneficiary of the same house – indicates, that according to the Batumi Orphanage psychologist, Z. Kh. is characterized by anti-social behavior and is in need of intensive intervention. Individual Development Plan elaborated by social worker I.S. states, that for reasons of controlling child's health he/she is in need of psychological services and difficult behavior management work, as well as consultation with psychiatrist. In the Individual Development Plan additionally sent via electronic post by manager of the Home I.U., meeting with the psychologist is indicated as one of the activities for managing child's aggressive behavior; Yet, the document indicates neither schedule nor timeframe for implementing said activity. The results part of the Individual Development Plan states: "has been consulted by psychologist" as the result achieved. Despite existence of such record, information about activity exercised is not sufficient as it does not reflect information about intensiveness of consultations with the psychologist, as well as indicators of success. Similar problems were observed with regard to several beneficiaries of the Batumi children's SGH. For instance, according to the conclusion of neuropsychologist I.Z., found in the personal profile of beneficiary L.Y., child has problems of mental development. His skills fall behind required level of development for the same age group category; Child is in need of intensive work with special program for stimulating perceptive social and motoric skills and self-service habits. It has to be noted, that Individual Development Plan was not included in beneficiary's personal profile. According to foster mother, a pedagogist is working with the child, yet information about activities undertaken and success achieved is absent from child's personal profile.

Comparatively different situation can be observed at children's SGHs, following so called Polish management model, where more attention is given to up bringers' individual work with children. Staff of aforesaid children' SGHs (Kutaisi and Khashuri SGHs) are comprised of four up bringers and a leader. Each up bringer is in charge of 2-3 beneficiaries and is responsible for having individual working hours with each child twice per week. Up bringers change according to day shifts, but the Home has information sharing journal, where up bringers record information about the child on a daily basis, thereby giving staff opportunity to gather enough data on individual needs of the child.

Polish management model SGHs also practice different approach towards running beneficiaries' personal profiles. Each of the profiles contain different types of information cards, mainly providing information about strong sides of the child and analysis of his/her needs recorded within one month from the child's enrollment in SGH; In parallel to this, personal profile includes following additional documents: Filled in child observation card, clothes card, contact with parents card, contact of up bringer with the school card, contact with the doctor card, plan for developing educational services, additional activities card, chart of long-term goals. Apart from mentioned cards, Individual Development Plan and monthly plan are drafted in relation to each beneficiary and reasons for family crisis are analyzed. Consistent and accurate keeping of such documentation makes it possible to identify child's individual needs and plan/implement relevant activities, as well as provide interested person with somewhat complete information about the child.

Recommendations to the Ministry of Labor, Health, and Social Protection:

- **To provide accurate and complete maintenance of personal profiles and documentation of children's SGH beneficiaries, with a view of protecting the principle of individual approach and meeting individual needs;**
- **Provide complete accessibility of beneficiary related documents for persons responsible for child upbringing and care.**

CHILDREN'S HEALTHCARE AND MEDICAL SERVICE ACCESSIBILITY IN SGHs

The aim of the reform of the child care system with regards to the socially unprotected child, deprived of parental care, is to create better opportunities and environment for their upbringing and development. Deinstitutionalization is the priority for the government of Georgia, entailing relocation of children from large-sized orphanages to small

alternative forms and gradual substitution of the orphanages with alternative services. As of today, 50 Small Group Homes (SGH) are operating with 320 children enrolled. The functioning format of these homes differ from each other: those organized according to the British model: children and foster parents (real couple) along with weekend shift of aunt and uncle (also a couple) inhabit the house. Those organized according to the Polish model: supervision is performed by four up bringers and a leader; and SOS Children's Village model, which is the oldest to be implemented and entails presence of single foster mother being substituted by aunt on weekends.

It has to be noted that infrastructure existing at new type of children's SGHs indeed have positive effect on child health and welfare. SGH is an environment with maximum resemblance of a biological family, where children can receive care and adequate service during 24 hours.

Access to medical service at child care institutions is exercised in accordance with the Article 135 of the "Law of Georgia on Health Protection", indicating that "the State provides medical assistance for orphans, children deprived of parental care, children with physical and psychical disabilities in institutions".

In reality, irrespective of the location where the child is placed, the Article 24 of the Child Rights Convention is applicable, according to which: "States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services"; In addition, according to the Child Care Standard N9 – "Support to and Protection of Child's Health", "In-service support for conditions required for beneficiary's physical and psychological health are established. Beneficiary will be provided information regarding his/he health and self-care. Service provider ensures beneficiary's accessibility to immunization and medical-prophylactic check. Beneficiary has healthy and age-relevant diet; Child's physical activity and leisure are balanced; Where relevant, beneficiary will be provided with qualified medical service".

Monitoring team assessed children's health situation and actual possibilities of accessing medical services in children's SGHs operating in regions of the Western Georgia.

Monitoring was conducted across different child care service providers for SGHs. In 9 children's SGHs coordinated by SOS Children's Village: Zestaponi Municipality Vil.Kvaliti, Chkhorotskhu, Sachkhere municipality Vil.Bajiti, Ambrolauri, Khoni, Tsalenjikha and two children's SGHs in Kutaisi, as well as Ozurgeti, Kutaisi "Bres Georgia", Lanchkhuti municipality Vil. Lesa "Ray of Future", Ozurgeti "Young Pedagogists Union", Batumi and Khashuri two children's SGHs. According to the Decree of the Government N503 from 29 December, 2011 on "Approving State Program on Social Rehabilitation and Child Care for the year 2012" with regard to the Article 2 on family service subprogram for children deprived of parental care, subprogram activities include: k) Provision of dynamic surveillance of a child in primary health institutions and, if needed, provision of initial medical assistance, as well as organization of outpatient and inpatient medical service specified or not specified by the state programs; Despite aforementioned duties, monitoring team observed different kinds of inconsistencies with regard to monitoring beneficiaries' health, accessibility to medical services and supervision over flow of chronic diseases in children's SGHs.

INDIVIDUAL DEVELOPMENT PLAN AND THE REALITY

All SGHs supervised by SOS Children's Village keep Individual Development Plans elaborated by Children's Village (first part consists of 14 paragraphs, including comprehension development assessment, study skills and abilities, behavior and other). Assessment format entails paragraph (N3) of physical development assessment, accompanied by Individual Development Plan questionnaire. Second part of the Individual Development Plan indicates activities to be completed across time and schedule of protraction of indicators of success.

Paragraph N3 on physical development comprises following questions: "overall health condition; does physical development correspond to age group requirements or it runs behind? Are there any physical signs, e.g. illness, uncontrollable enuresis, etc.? How do psychomotorics look (e.g. postures, gesticulation)?

It is important to note that physical development itself is one of the components for determining health condition and not vice-versa, as it is stated in the individual development data questionnaire. "Overall health condition" is of such importance, that maybe dedicating a separate paragraph to this issue could have an effect of increasing attention towards monitoring of the health condition of beneficiaries, particularly in cases of chronic diseases. It is also difficult for a non-medic to fill in "physical development" questionnaire without having special diagram for physical development at hand, moreover considering the fact that foster mother, father, and up bringers have not received any training on assessing physical development or rules for medication administration. During monitoring of the children's SGHs often times Individual Development Plans were seen as partially complete, lacking date and signature, with incomplete and non-real records. After speaking with foster mother, father, and up bringers, it became evident that often cards are filled in together with the social workers; at times they had difficulties expressing concrete opinion or commenting on beneficiary's health/behavior from cards certified with their signature. It could be that aforementioned is caused by lack of clear and straight instruction regarding "Individual Development Plan" of the child.

Conversation with foster parents and up bringers revealed that up bringers have been trained for urgent medical assistance at a learning center in the framework of so called "Polish Model".

Majority of SGH up ringers have undertaken preparatory training conducted with joint organization and financing from USAID, MoLHSA, UNICEF, Save the Children, Association "Children of Georgia". British charity organization "Every Child" prepared textbook (consisting from three parts) on "Child Care Issues for SGH Caregivers" in the framework of the project on "Strengthening Child Care System and Services"; with the support of the Polish project training materials "Methods for Individual Plan for Children and Families in Crisis" were prepared. Provided textbooks review issues of attachment and development; Upbringing style and effective communication; Management of difficult behavior, aggression and other acute topics potentially applicable and relevant to be used by the up bringer in daily life. Nevertheless, there is no information as to health support and prevention of diseases, rules for medication administration and storage security during the period of child's sickness, importance of balanced full diet for normal health physical development, as well as information pertinent to other acute topics which could have been beneficial for up bringers of children's SGHs.

Recommendations to the Ministry of Labor, Health, and Social Protection:

- **To ensure within the framework of the reform of the child care system assessment of the effectiveness of different child care models (British, Polish, SOS Village models);**
- **To elaborate uniform, practical, and reality adapted standard and work forms for improved supervision of children's SGHs beneficiaries' growth and development and monitoring of their health;**
- **To ensure preparation of practical study training course for retraining up bringers and SGH foster parents for the purposes of improved supervision of children's SGH beneficiaries' growth and development and monitoring of their health;**
- **To ensure preparation of relevant textbooks and their dissemination in SGHs, with due consideration of Child Care Standards, support to and protection of health, and principles of appropriate diet.**

CONDITION OF HEALTH

Article 25 of the Child Rights Convention provides: "States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement."

Article 6 "Placement of beneficiary in Round Clock Specialized Institutions" of the Decision N52/n from 26 February 2010 by the Minister of Labor Health and Social Protection on "Approving Rules and Conditions of Placement and Release of Persons in/from Specialized Institutions" indicates that service provider should receive regional council decision on beneficiary placement accompanied by "beneficiary's health condition certificate (Form NIV-100/A) further defined in paragraph 1.b."

There were instances when beneficiaries were placed in SGHs without form NIV-100/A (3 beneficiaries in Chkhorotskhu, 1 –in Kutaisi, 6- in Ambrolauri, 1- in Khashuri, 2 - in Kutaisi "BRES Georgia" children's SGH, and 2 beneficiaries in Lanchkhuti, Vil. Lesa).

In terms of health condition, there are no children having disability status living in SGHs, but among inhabitants of the Home, there are children with various chronic diseases which shall be discussed further on when considering accessibility to medical services.

During relocation of children from one SGH to another, I.Ch. and K. Ch. (Zestaponi) health certificates, form NIV-100/A, indicated that form NIV-100/A was completed "to be presented upon request", statement on health condition reads: "healthy" and only short brief indicates, that "according to the mother, child is overly emotional". In reality, as SGH foster mother stated, "children have difficult behavior, and there is frequent need for calling psychologists from the organization "Children of Georgia", "they have been visiting psychiatrist for consultation in Kutaisi, concrete treatment was prescribed".

It has to be noted that there are cases when form NIV-100/A indeed reflects child's actual health condition as well as outlines treatment recommendations; nevertheless, in practice these children have not received any type of medical support, health certificate presented by the beneficiaries on the stage of enrolment in SGH (medical documentation form NIV-100/A) was only kept in the administration.

In the case of beneficiary L.R., form NIV-100/A indicates diagnosis – "night enuresis" (SOS Children's Village , Kutaisi House N12), while treatment recommendations outline "needs overall urinary test, medical check of urinary systems" beneficiaries; treatment recommendations for M.R. and L.R. with the diagnosis of night enuresis indicate "consultation with neurologist, medical check of urinary system". Beneficiary G.R.'s recommendations for treatment of "endemic thyroid linked with iodium deficit" indicate " requires echoscophy of the thyroid gland, additional hormonal tests, control of TSH and FT4", despite these diagnosis we were unable to find information and recommendations about laboratory tests/ medical checks and treatment provided to beneficiaries, and consequently any change or improvement in their health conditions.

In Kutaisi form NIV-100/A concluding remarks on the health condition of SOS Children's Village children's SGH beneficiary G.M. stated that the he/she is "practically healthy", nevertheless, according to consultation of ophthalmologist, beneficiary has significant regress of sight (0,3) in his/her right eye. This health condition is inadequately assessed; neither appropriate medical intervention took place. Moreover, according to SGH foster mother, beneficiary "is only suffering from enuresis and is already receiving treatment with relevant medicine – "Merlipramin".

Similar situation was observed in Ozurgeti "St. Barbare" children's SGH, where beneficiary A.Y. was relocated to from Tbilisi; according to form NIV-100/A received from children's orphanage "Charity", beneficiary is "healthy", yet based on information provided by SGH's foster mother: "she has enuresis, is often emotionally anxious, is under supervision of neuropathologist, has obstructions of the menstrual cycle."

Similarly, beneficiary of the SOS Children's Village Sachkhere municipality Vil. Bajiti children's SGH suffers from night enuresis, as stated by foster mother. Yet, Form NIV-100/A conclusion indicates that the child is "healthy"; the part of "diagnostic checks/tests and consultancies conducted" reads: "Mental capabilities are slightly limited as a result of living in an downgraded environment." The document does not at all mention enuresis. The child has not had any consultation with the doctor, medications were also not prescribed. According to the SGH foster mother, "the child is using diapers, and one diaper is satisfactory only in case the child will be woken up at 1 a.m., otherwise he/she needs to change for second diaper.

Record done by up bringer with regard to health condition of beneficiary S.K. (12.02.2012) states that S.S. had "pneumonia, and was hospitalized to Tsalenjkha hospital for 4 days; was subjected to treatment". Record done by the up bringer does not indicate time when beneficiary was hospitalized, what specific treatment was he subjected to; there is also no information as to the flow of disease after sickness; form N100/A is absent. 3 more beneficiaries were hospitalized with similar problems, in their cases also form N100/A was lacking (Tsalenjikha).

Certificate of Health Condition (medical documentation form NIV-100/A) is an important medical document regulated by Georgian legislation.

Article 56"on keeping medical records" of the "Law on Medical Undertakings", paragraph 2.b. states: "medical records should be complete. Subject of independent medical activity should complete each part of the record (patient's personal, social, medical data)" subparagraph (d) of the same paragraph (2.b) points out to the requirement that "medical records adequately reflect every detail related to patient's medical service".

Indeed inadequately, non-objectively completed medical document cannot guarantee comprehensive supervision of children and adolescents who are under children's SGH custody.

Despite that fact that often form NIV-100/A was only formally filled in, only "upon request", it has to be noted that even in cases where form NIV-100/A indicated chronic diseases, there is no evidence of any laboratory tests/ checks, consultations, treatment, or rehabilitation recommendations for beneficiary G.B. (Zestaponi) diagnosed with sheer bone bump Ostheochondropathy", making us think that no consultation of specialist was ever accessible to the latter person. Since form NIV-100/A is dated with 29 December, 2011, neither SGH foster parents, nor their provider organization showed interest towards health condition of the abovementioned beneficiary during the period of almost one year (monitoring was conducted on 12.12.2012.).

It is a regrettable fact that similar instances often happen in different SGHs, including more complicated cases with severe negative results stemming from child's initial behavioral dysfunction diagnosis.

Child Health Support and Protection Standard (Standard N9) obliges service provider to ensure targeted prophylactic, treatment procedures irrespective of the type of institution where the child or adolescent is placed. "Service provider shall ensure beneficiary's access to immunization and medical prophylactic check". Up bringers of SGHs have no information about immunization, as form NIV-100/A presented at the enrollment stage, it does not contain relevant records. Save for several exceptions (such as Ozurgeti "St. Barbara" children's SGH; Khashuri "Biliki";) children moved from Zugdidi Orphanage to Chkhorotskhu children's SGH had accompanying development cards; up bringers stated that "district doctor promised to inform them about the time for vaccination".

Social worker's records indicate that children have been immunized, but no supporting documentation is attached. Social worker's records usually contain following type of information: "according to medical records child has gone through age –relevant prophylactic immunization procedures". G.Ch.'s Child Development History Form IV -008/a is not complete (only 17 pages are present) and the rest (15-16 pages) are torn out and lacking. Social worker's records pertaining to said beneficiary: "Overall health condition is satisfactory; according to boarding school nurse M.V. the child undertook age relevant preventive inoculations, certified by child medical history found in Kutaisi N44 Public boarding school. It is notable, that same information is not reflected in "Individual Development History" of the child sent from the boarding school to SGH; Similar situation was observed with regards to other beneficiaries of Khoni children's SGH.

Despite the fact that primary healthcare institutions are responsible for timely immunization and quality, it is possible to reflect relevant information in "Development Cards" kept by SGHs, which would prevent complications in cases where preventive inoculation is needed following injury, different types of trauma or animal bite.

Prophylactic medical check is defined by 2012 State Program on Social Rehabilitation and Child Care; article 2, paragraph (k) of Family Service Subprogram for Children Deprived of Parental Care defining subprogram activities, in particular: "Provision of dynamic surveillance of a child in primary health institutions and, if needed, provision of initial medical

assistance, as well as organization of outpatient and inpatient medical service specified or not specified by the state programs." Beneficiaries have not taken any medical check after moving to SGH. Some noted that medical check was conducted in the summer prior to sea holidays. SGH foster father stated: "3 months ago district doctor visited us and conducted medical check of all children" (Chkhorotskhu).

Implementation indicator "d" of Standard N9 on Child Health Support and Protection indicates: "service provider in charge of control over infections; attempts to prevent them through quarantine and other measures recommended by the doctor". According to up bringers of SGHs "children have not been ailing with transmittable infectious diseases". There is not much possibility of isolating the child from his/her peers in case of infectious diseases. Two beneficiaries inhabit each dorm room, there is no additional room. In some SGHs there is a possibility for temporary isolation of one child in the ironing room (Chkhorotskhu) or in the library (Khashuri, Kutaisi). In some SGHs up bringers noted possibility of isolating the infected child, namely child infected with virus stays in the room, while healthy child is moved to other beneficiaries. (Sachkhere, Ambrolauri, Lanchkhuti, Ozurgeti, Tsalnjikha, Khashuri, "Bres Georgia" Kutaisi children's SGH").

Implementation indicator "a" of the Child Care Standard N9 notes that "service provider supports the child in receiving advice on issues of personal hygiene and healthy lifestyle."

In this regard, up bringers engage beneficiaries into conversations; Many children are involved in sports activities (Zestaponi, Chkhorotskhu); Although according to up bringers, children often times need to be reminded about the need to wash their hands, major challenge was studying to flush the toilet; It was also hard to teach them brushing their teeth (Tsalenjikha). There were occasions of infection with fleas mostly after returning from summer holidays.

Up bringers of both of Khashuri children's SGHs noted: "There were instances of scabies at the time of SGH opening". According to child care system reform, alternative forms of child care should be more flexible, practical, and child welfare oriented. Successful positive infrastructural changes further highlight only formal and non-objective assessment of child's health condition, denial of beneficiaries' need for medical assistance, insufficient objectivity of supervision of normal growth, development, and health conditions at the beneficiary enrollment stage in SGHs.

Recommendations to the Ministry of Labor, Health, and Social Protection:

- **To ensure correct and complete keeping of medical documentation -** form NIV-100/A health condition certificate - in accordance with the rule on enrollment of beneficiaries in children's SGHs;
- **To elaborate simple indicators of supervision of SGH children's health condition** with a view of improving and monitoring their health;
- **Conduct monitoring of SGH beneficiaries' health conditions, prevention of diseases and rehabilitation procedures with due regard to their health condition; particular attention should be given to cases with chronic disease presence;**
- **To ensure, in the framework of state program on social rehabilitation and child care, comprehensive medical check at Tbilisi city or regional multi-profile medical institutions undertaken at the stage of enrollment of children in SGHs and indicating, whenever necessary, appropriate treatment, rehabilitation, and relevant recommendations.**

ASSESSMENT OF CHILD'S HEALTH CONDITION BY SOCIAL WORKERS

When conducting primary or full assessment of the child, social worker assesses beneficiary's health condition. In the process of monitoring, up bringers often note that social workers do not provide them with full information about child's health condition; Consequently, they unexpectedly encounter beneficiaries' health problems during their work.

In the process of the monitoring, health conditions records done by social workers were reviewed; the most of these documents provide incomplete information, which does not reflect clear picture of child's health condition.

Document on "Allocating functions and duties of social worker and service provider in the children's Small Group Home" provides that social worker should have at hand all existing information available about the child: decision of the regional council on enrollment, certificate of birth/ID, insurance police, Form N100, assessment by the social worker, conclusion, intervention plan, certificate on disability etc. Service provider should be acquainted with all this information about the child before latter is actually placed in children's SGH. Yet there were instances during the monitoring process when SGH up bringers, foster parents often stated that they were not informed about beneficiary's health problem (Sachkhere, Kutaisi, Ambrolauri, Khashuri). It was also revealed that several beneficiaries did not have health insurance (Sachkhere); in several cases health insurance was overdue (with regards to: one GPI health insurance policy beneficiary from 01.11.2012 -Chkhrotskhu; one ALDAGI – BCI health insurance policy beneficiary from 01.09.2012 – Kutaisi, two beneficiaries of "International" health insurance from 01.10.2012 –Batumi). Several beneficiaries' personal profiles did not include form N100/A to be presented at the stage of enrolment in SGH (3 beneficiaries –Chkhorotskhu, 1 beneficairy – Kutaisi, 6 beneficiaries –Ambrolauri, 1 benefiaciary -Khashuri, 2 beneficiary - Kutaisi "BRES Georgia" children's SGH, 2 beneficiaries - Lanchkhuti vil. Lesa).

Sachkhere municipality Vil. Bajiti SGH beneficiary G.Ts. health certificate issued by JSC ""My Family Clinic" Tkibuli Regional Hospital" states: "child's psychical and psycho-motoric development pace is appropriate to relevant age group development, overall condition is satisfactory, without any complaints observed. Psycho-emotional sphere is slightly behind age; beneficiary has problems with conceptualizing the material read. According to up bringers beneficiary has problems with concentration and demonstrates inadequate behavior. Social worker's assessment concludes that the child is healthy; the document does not refer to any problem indicated by the up bringer. According to the up bringers of M.Kh., beneficiary of the same SGH, the latter has aggressive behavior towards his/her siblings, in contrast, health certificate of M.Kh. states that "child's physical and emotional development responds to relevant age requirements". Social worker's assessment form is also absent.

Beneficiary N. N.'s personal profile holds data about child's health conditions where it is indicated that the child has health related problems, in particular - has periodic night enuresis. Doctor's prescription paper indicates: "epilepsy with big generalized fainting. Last fainting was observed 10 days ago; non-treated mental development retardiness (accompanied by social background)". Child was prescribed drugs treatment. Social worker's assessment form reads: "child is healthy according to family members and neighbors' statement, as well as external inspection; Child's medical documentation and family members' information both indicate that beneficiary has no signs of any disease."

Beneficiary N.Y. profile (Ambrolauri children's SGH) includes "LTD Medical Park Georgia" 113 medical card where only patient's complaints are listed. Illness progress, its treatment and results achieved are not reflected in the documentation. According to up bringer, the child is healthy, but has mental difficulties and requires speech corrector. Foster mother stated that the Home does not have adequate specialist support; Consequently the child has not received any medical consultation. Up bringer notes that the child cannot study and is unable to differentiate between morning, noon, and evening; Beneficiary has problems with remembering up bringer's name, is unable to tell time; Child is not diagnosed; Doctor has not been consulted.

It is interesting to look at the conclusion of the social worker based on overall assessment of beneficiary N.Y. which reads: "according to district doctor and family members, child is practically healthy; Medical documentation is duly arranged and kept at Khotevi ambulatory. Whenever necessary, beneficiary is supervised by Doctor N.B.; Child's psychological and mental development meets relevant age requirements". In this case, data recorded by the social worker with regard to N.Y. is not compatible with actual situation. It does not reflect problems faced by the beneficiary.

Personal profile of one of Kutaisi BRES Georgia SGH beneficiaries does not indicate appropriate medical documentation pertinent to child's enrollment in SGH. Information about the health condition of beneficiary became accessible to the monitoring group only through social worker's assessment and data recorded by the latter. Social worker's assessment (Child Assessment Form, Chapter 4 – Information about needs for development of the beneficiary, 4.1. - Health) reads: According to the doctor child does not need regular medical supervision; Child is listed in TSU Pediatric Clinic;

Preventive inoculation has been conducted, the fact being certified by relevant document. Beneficiary has undergone annual deep medical check at Tskneti boarding school, although no documentation certifying aforementioned is attached to child's personal profile. Social worker elaborated Child's Individual Development Plan for the same beneficiary dated as of 26.12.2011. Objective N2 (supporting biological factors) provides for "monitoring of child's health", but does not indicate person(s) responsible for monitoring and the record is incomplete.

In the course of monitoring the social worker's assessment forms following was observed: Gibo Sh.'s assessment form reads: "Diana is a healthy child and has no complaints about illnesses (4.1.1.); Diana has no signs of any chronic or acute disease (4.1.2.) (Kutaisi). Abovementioned once again emphasizes, that documentation completion takes place only formally, by mechanically transferring data from one personal profile to another (copy – paste).

Recommendations to the Ministry of Labor, Health, and Social Protection:

- **To oversee precision and quality of implementation of the duties prescribed by the document on "Allocating functions and duties of social worker and service provider in the children's Small Group Home";**
- **To ensure, that social workers fully inform SGH up bringers/ foster parents about children's health conditions.**
- **To ensure, that social workers provide required medical documentation (Form N100/A, health insurance policy) to be presented to children's SGH upon enrollment of the beneficiary.**
- **To ensure, that social worker's child assessment form reflects precise information about the beneficiary.**

ACCESSIBILITY OF MEDICAL SERVICE

2012 State Program on Social Rehabilitation and Child Care; Article 2, Paragraph (k) of Family Service Subprogram for Children Deprived of Parental Care, defining subprogram activities, establishes for "Provision of dynamic surveillance of a child in primary health institutions and, if needed, provision of initial medical assistance, as well as organization of outpatient and inpatient medical service specified or not specified by the state programs."

Accessibility of medical services for SGH beneficiaries is provided by insurance policies, whereas medications, purchase of spectacles and other medical assistance not covered by insurance policy - are paid for by the provider organization.

Almost every beneficiary of the SGH holds policies of various insurance companies. In some cases, as it has been noted with regards to completeness of documentation related to insurance policy was overdue. One beneficiary of the children's SGH did not have insurance policy. SGH foster mother could not name the problem, but indicated that she had addressed Social Service on this issue.

Dental care of SGH beneficiaries is still problematic in regions, as they are not covered by any insurance package. Moreover, necessary medical checks, such as hormonal analysis, electroencephalogram, dermatologist consultation, and other checks are possible only with additional funding. When children are ill, up bringers address either ambulatory or hospital; In special cases Emergency is called which transports the child to the regional hospital, and whenever necessary – to the regional medical center.

There is no practice (neither obligation) to record instances and reasons for calling Emergency, such as: Beneficiary's high temperature and fainting (Chkhorotskhu), muscle pain (Kutaisi), stomach ache (SOS Children's Village House N12); Neither any record on hospitalization (Zestaponi, Chkhorotskhu, Kutaisi) was made; Absence of such obligation complicates medical monitoring, including assessment of support given to the child. In most of the cases child

returning from the hospital is not issued copy of the form NIV-100/A with relevant record and recommendations for further treatment, regime, or diet. Neither special "Cards Reflecting Health Condition" provides such information. There were instances when beneficiary was issued form NIV-100/A after visiting the hospital and consulting the doctor, yet the document was incomplete (often times lacking: date of referral, date when the form was issued, doctor's signature; The record was incomplete and not providing relevant information about the patient). Ozurgeti SGH was outstanding as all cases of child illness were supported with existence of the Form 100/A. SGH foster mother noted that they encounter problems receiving Form 100/A from institutions; Even in this latter case, documentation issued by hospitals was not properly kept and complete and did not include full and exhaustive information about patient's health condition.

Sachkhere SGH beneficiary has hearing deficiency. According to the up bringer, he/she accidentally encountered the problem when seeing pus trace on the pillow. According to SGH foster mother, child was taken to Sachkhere hospital. No medical documentation or record exists on this fact. Information relating to beneficiary is recorded in up bringer's personal notes.

Despite the fact that SMG foster parents are only ones entitled to fill in the special form provided by SOS Children's Village – "Cards reflecting Health Condition", in reality these pages are either empty (Zestaponi, Kutaisi SOS Children's Village House N12), or records are incomplete, in some cases only indicating medications prescribed (Chkhorotskhu, Tsalenjikha). From the records it cannot be discerned actually how many days the child administered the prescription, when it was completed, and what was success which resulted. Conversation with foster parents revealed that "no one ever mentioned such records, neither during the training or verbally, when we entered this house".

As a result of Kvaliti Ambulatory Doctor's diagnosis - "1st stage of diffusion thyroid" - I.Ch. was prescribed iodbalance. The only way we can ascertain the period during which the beneficiary should have taken medicines, is the amount of tablets indicated on the prescription (i.e. approximately 2 months), as relevant form elaborated by SOS Children's Village - "Cards reflecting Health Condition", contains no such record. SGH foster mother was convincing the monitoring group that "children take whatever medications doctors prescribe".

In cases of beneficiaries being prescribed medications on certain days, there is no information transmission mechanism between foster parents of SGH and weekend up bringers on medication administration rules and dosages. Information transmission is done verbally or according to the written list of medications based on the prescription, which is mostly held on the kitchen along with medications (Kutaisi, Ozurgeti, Khoni), "so that children would not forget to take them".

Most of the medications are purchased in accordance with need – only emergency aid box is present on the SGH location, but this does not create problems, as purchase of prescribed medications is possible at every drugstore.

As an example of positive practice, one could note that at Khashuri district SGH (provider "Biliki") detailed records present in "Card of Contact with Doctor" indicate identity of the doctor that beneficiary has consulted, doctor's diagnosis, doctor's prescription. All records are certified by the up bringer. In this regard, Ozurgeti SGH (Young Pedagogists Union) is an exception, as records provided by SGH foster mother about beneficiary's diseases are detailed, also indicating treatment prescription and information regarding child's health condition progress. Data are informative and consistent, thereby enabling acquisition of information on beneficiary's health condition. Necessity for sharing information on about beneficiaries' medical assistance ensures comprehensive monitoring of child and adolescent health condition at children's SGHs.

Mental retardiness, as well as different chronic diseases are common among SGH beneficiaries (enuresis, encopresis, iod deficit, diffusive thyroid, 2nd stage overweight and obesity); There are children with behavioral dysfunction, inexact behavioral dysfunction and psychological problems.

Although overseeing organizations provide additional medical assistance and purchase of medications based on up bringers request ("SOS Children's Village", "Biliki"), in reality medical problems cannot be solved in the region: human resources of the regional center medical institutions, their qualification, and medical technologies cannot ensure

accessibility of medical assistance in such difficult cases when MR check or consultations of child and adolescent psychiatrist, gynecologist or endocrinologist are needed.

It is important to find means for solving abovementioned problems. Indeed medical checks conducted prior to placement of beneficiary in children's SGHs should prioritize improvement of child's health. It would be advisable to place children and adolescents with chronic diseases, severe behavioral dysfunction in or near the capital, thereby ensuring their accessibility to all types of medical services, including locations, where consultation with narrow specialists of particular subjects (child psychiatrist, child endocrinologist, including rehabilitation endocrinologist) is more accessible.

Currently children with diagnosis such as enuresis and encopresis are left without treatment while placement of a child in SGH is an alternative form of childcare and entails implementation of the standard for "Health Support and Protection".

Recommendations to the Ministry of Labor, Health, and Social Protection:

- **To determine medical-psychological needs of children and adolescents with mental health problems, taking into account psycho emotional stress and facts of violence experienced by such beneficiaries in the past.**
- **To ensure placement of children and adolescents with special medical-psychological needs in a manner providing for their medical and psychological rehabilitation (selection of SGHs located in or close proximity to the capital or regional centers).**
- **To ensure conducting of relevant educational trainings for SGH foster parents and up bringers in urgent medical assistance, medication administration, and storage rules.**
- **To provide for conditions for storing medications and following of security rules in children's SGHs.**
- **To elaborate simple, practical, and dynamic monitoring paper for children's SGHs overseeing medication administration by beneficiaries of the Home.**

EATING

According to the Article 6 of the Child Rights Convention: "States Parties recognize that every child has the inherent right to life. States Parties shall ensure to the maximum extent possible the survival and development of the child." Development of the child and adolescent greatly depends on full, balanced diet.

According to the Article 24, Paragraph 2, Subparagraph (c) of Child Rights Convention dedicated to accessibility to healthcare and medical services, "States Parties shall pursue full implementation of this right" .. "Through the provision of adequate nutritious foods and clean drinking - water".

Child Care Standard N10 indicates: Service provider provides the beneficiary with safe food satisfying beneficiary's physiological requirements for food and energy, at the same time considering beneficiary's individual requirements. Service provider propagates healthy eating habit in front of the beneficiary. In case of absence of medical prescription, provider does not force beneficiary to eat, as well as does not forbid food for reasons of punishment". According to expected results of the Standard: "beneficiary receives the quality and amount of food necessary for satisfying his/her individual needs. Point "a" indicating implementation of Standard N10 indicates that service provider shall ensure that beneficiary receives safe food satisfying individual needs of each beneficiary"; here information about detailed list of menu-schedules is provided so as to "define to what extent food offered corresponds to physiological needs".

VIOLATION OF RULES OF SAFE COOKING OF FOOD

Kitchens at SGHs are renovated, sunny, equipped with hot water, heating and adequate ventilation. Nevertheless there is no single insect-free net installed on kitchen windows.

When serving food to beneficiaries one has to grant attention to consumption dates and cooking instructions. Raw animal products, for instance meet processing utensils - cutting board, knife should be different from utensils for processing bread and vegetables.

Often times kitchen lacked knifes and cutting boards for: set aside, marked, raw, and boiled meat and vegetables (Zestaponi, Sachkhere, Ambrolauri,Khoni, tsalenjikha, Lanchkhuti, Khashuri). Existing utensils, as explained on the spot, were either found in the SGH when relocating, or were included in the shopping list (Chkhorotskhu), although allocated amount of money – 10 GEL – was not enough for purchasing several cutting boards.

Knifes do not vary in color or size; therefore they cannot be separately used for raw and boiled meat, fish and bread (Zestaponi). Some knifes are lacking handles and there are practically no ways for using them safely (Chkhorotskhu). Tsalenjikha has only one shop where it is possible to receive receipt for the products purchased. In addition, it was revealed on the spot, that there is a taxi allocated to the SGH staff by the coordinator serving them on one particular day during the week to transport them to Zugdidi, but such instances are not being used for buying cheese and meat.

Water is supplied by motor pumping gathered water pumped from the well, which is then centrally distributed across the whole house and passes through appropriate filter (Zestaponi, Kutaisi, Tsalenjikha, Sachkhere); Alternatively, some SGHs gather water in water tanks (Chkhorotskhu, Tsalenjikha, Ambrolauri, Khoni, Kutaisi, Ozurgeti) equipped with special filter, the water is then distributed across the whole building.

Some houses were short of kitchen utensils, including those required for cooking (Zestaponi, Chkorotskhu); Surface of enamel pots was damaged.

MENU

Government Decree N503 from 29 December, 2011 on "Approving State Programme on Social Rehabilitation and Child Care for the year 2012" with regard to the Article 2 on family service subprogram for children deprived of parental care subprogram activities indicates:

2.B) "Serving meals minimum three times a day, out of which one should be a three course dinner".

Nevertheless, during monitoring, neither the menus nor any records connected to food were found. Meal preparation was done according to children's desires. Only in Ozurgeti did they bring the menu and names of the food products for the whole week. The monitoring group, right on spot, studied the food diaries that were kept daily. Based on these diaries, one can assess what kind of food the beneficiaries received.

With regards to this, the children's up bringers were indicating that they "lived simple, like in a family", "we know what the children like and we do that", "the written menu did not find success amongst the children and they wanted a change". Often the up bringers cannot explain what is "simple living" and have no answer to it, nor do they explain how good is for health and child normal development to have those "products that the children like".

One has to single out the principle of an "open fridge" (in Kutaisi), a Polish model of upbringing "a person eats when he/she wants". Yet, note has to be taken as to how such an approach ensures N 9 standard of child care, to what extent does it help to develop correct eating behavior, to the normal functioning of digestion system and health improvement.

As it became apparent from the conversation with the up bringers and foster parents, they have zero information about balanced and proper eating habits. Furthermore, no special training was held on these issues, nor is there any material about full, balanced diet in their training handouts.

Hence, there is no menu and no journal for monitoring eating. For this reason, it is difficult to identify what food the small group home beneficiaries received.

The children have no set schedule for eating, which means they study at various times and who comes when, eats then. Often children say "they eat as many times as they want" and they consider this to be a positive aspect. We ought not to forget, we are dealing with traumatized children, who in the past could not eat properly and had no access to food. Therefore, they have unordinary relationship with the food. For instance, at times they might be bulimic. Due to this, adequate eating time schedule should be determined.

It has to be said, that during the monitoring one week menu was seen only in Khashuri and Ozurgeti small group homes for children (Young Teachers Association), the provider of which is "Biliki". In Khashuri they regularly have menus and the beneficiaries participate in the menu planning. According to the house manager even though he/she did not have a special training on eating and food matters, he/she constantly tries to get information on these topics, consult specialists on the matter and use all the acquired information during his/ her work. According to the manager in upcoming days there is a training planned to be held by a dietologist for the house foster mothers and foster fathers.

PURCHASING OF FOOD SUPPLIES

As usual, Small Group Homes do not stock up on food products as the home management has easy access to buying food every day or once in couple of days. Not in every region of Georgia where the small group homes are located, meat and cheese products are bought by the house administration. This is explained with a fact that they cannot receive the receipt. Nevertheless, potatoes and carrots are bought strait from the seller.

Due to such method of purchasing, when buying of food stuff, major attention is allocated to financial accountability, which does not always, guarantee purchase of quality and healthy food for children.

On the positive side it should be mentioned that in Kutaisi "BRES Georgia" and Ozurgeti "Young Pedagogists' Union" run SGHs, beneficiaries do not receive frozen food products (meat, chicken legs, chicken), usage of ham and sausage is limited to maximum extent, dairy products are systematically purchased (cheese, cottage cheese, white yogurt – "matsoni" – and sour cream). House managers indicated that they often speak with beneficiaries about healthy eating habit and its importance, especially in adolescence years.

In some of SGHs following products without relevant labels were found: Ham "Eco-miti" stored in the refrigerator lacking production date (Zestaponi), sour cream stored in 2kg. jar without label (Kutaisi), 20 pieces of "Khinkali - new faces" (meat dumpling) stored in the freezer lacking inscription about expiration date and having only production date inserted on (Tsalenjikha). Overdue minced meat was stored in the freezer, production date indicated on the product was 16 June, 2012, and its storage time defined at -10 degrees Celsius -10 days and at -18 degrees – 30 days (Khashuri).

Following products were inappropriately stored: tomato paste (Zestaponi), condensed milk (Khashuri) stored in an open iron can.

Recommendations to the Ministry of Labor, Health, and Social Protection:

- **To prepare and conduct adequate trainings on child and adolescent full, balanced diet for their normal physical and psychomotoric development;**
- **To grant due attention to security of food products, considering dates of purchasing food products, their storage conditions and validity dates;**
- **To allocate additional funds to following security rules during food preparation at SGHs;**
- **To elaborate week-long simplified format menus and establish diet diaries aimed at ensuring varied, balanced diet.**

STAFF QUALIFICATION AND REMUNERATION

UN Committee on the Rights of the Child in its General Comment N7 "Implementing Child's Rights in Early Childhood"[169] states, that states parties must ensure that the institutions and services responsible for childcare conform to quality standards, also implying that "staff possess the appropriate psychosocial qualities and are suitable, sufficiently numerous and welltrained". Committee notes, that persons working with young children should be socially valued and properly paid, in order to attract a highly qualified workforce; It is of particular importance that staff have sound, uptodate theoretical and practical understanding about children's rights and development. Monitoring conducted across SGHs revealed the problem of low qualification and insufficient retraining of the employed staff. Majority of up bringers could not remember the topics they were trained in to by service provider institutions, fragmentally naming violence against children and primary medical services themes. Most of the staff could not present certificates from special retraining courses.

As it has been already mentioned, apart from insufficient guidance in document keeping, majority of up bringers does not have sufficient and systematized information on methods of upbringing, Difficult behavior management, security, healthy life and such other spheres which are essential for conducting quality pedagogic or upbringing work.

The issue of staff adequate remuneration and work conditions should stand alone from others. Since objective for establishing of the SGHs was creation of an environment with maximum resemblance to the family, house personnel is composed of: In British model cases – only from foster parents (24 hour work schedule, 5 times a week) and weekend substitute up bringers, whereas in the Polish system average of 4 up bringers and a leader are working in shifts (10:00-18:00 to 18:00-10:00). The British model entails allocation of a separate room for foster parents; While at the Polish model Homes up bringers have no private room and can only rest on the sofa.

As regards the question of remuneration and work conditions, despite different work schedules, average salary for foster parents and up bringers is 440 GEL; One also has to consider that persons employed, in addition, have to perform all kinds of home chores and family duties accompanied by requirement to take grant due care to the development of the child. Staff of SGHs is also not insured.

Different situation can be observed with regards to SOS Children's Village staff remuneration. Mainly, average salary of SOS Children's Village SGH foster mothers is 800 GEL; Additional funds are allocated to cover their meals. According to information provided, in case of 15 years of continuous employment in the capacity of SOS Children's Village's SGH foster mother, at the time of attainment of the pension age, employee receives additional pension from her employer. Aforesaid benefit and comparatively high salary considerably motivates staff and contributes to their positive approach to their duties.

Recommendations to the Ministry of Labor, Health, and Social Protection:

- **To conduct periodic qualification trainings and thematic retraining courses for staff employed at SGHs;**
- **To provide staff of SGHs with adequate work remuneration and issue to them, to the extent possible, health insurance policies.**

169 UN committee on the Rights of the Child, General Comment N7, 2005, paragraph 23; CRC/C/GC/7/Rev 1.

2012 Parliamentary Elections and Human Rights

Georgian Parliamentary Elections was the most important event in 2012; Therefore, it was the busiest and difficult periods in terms of human rights. Public Defender of Georgia has not specifically studied the issue of realization of the right to suffrage, but he analyzed trends identified before the elections.

In 2012 an election subject "Georgian Dream" was established by launching a rigorous pre-election campaign. Public Defender of Georgia has received a number of appeals and applications related to violations of the rights, of the coalition members and activists. The nature of those violations varied. Specifically, there have been identified occurrences of administrative detentions, physical abuse and intimidation on the part of law-enforcement agency representatives. Facts of verbal, also physical insults between the parties involved, intimidation and physical injuries have occurred during the campaign meetings with the population. It is noteworthy, that not only public authorities and local self-government representatives were part of these incidents, but also ordinary civilians.

Georgian legislation has been amended, specifically, the Law on Political Unions of Citizens, Criminal Code of Georgia, and Code of Administrative Offices and the New Election Code. These changes were made in December 2011 and they were specifically targeted to limit large funding of political processes. Despite the fact that the goal itself – to limit large financial resources to be used in the political processes - is legitimate, those legislative changes lead to controversial conclusions. Specifically, initial version of the the Organic Law of Georgia "on Political Unions of Citizens" unreasonably limited the very important rights of the respective political subjects. The first version of the law has been operating for a 4 months period, resulting, in certain occasions, in legal consequences against specific individuals. According to the amendments made to the Organic Law of Georgia "on Political Unions of Citizens", made on December 27, 2011, stringent limitations have been imposed on party financing activities, Chamber of Control (now referred to as State Audit Office) was assigned to oversight party financing activities. While assessing the activities of the Georgian Chamber of Control acting within the above scope of authority, Public Defender of Georgia identified specific violations, further reviewed in great detail below.

Later, based on the request of the watchdog NGOs, responsibility for violating the Organic Law of Georgia "on Political Unions of Citizens" has become more moderate and in certain circumstances - removed.

One more issue to be definitely mentioned with regards to the legislation is the amendments to the media-related legislation, widely known as the "must carry". In the pre-election period, television companies not under government control were deprived of the opportunity to have coverage of their channels in the regions. The Parliament of Georgia adopted relevant legislative amendments obligating relevant cable providers to include non for government television channels in their cable packages in the pre-election period for only two months before the Polling Day. We negatively assess the timeframe for application of the so-called "must-carry" rules, which envisages its expiration just before the Election Day under the section 17, Paragraph 51 of the Election Code. We find that availability of diverse information on election related issues shall be continuously provided, since it does not carry the function of just informing the

electorate only before the election: Pluralistic media environment is a significant instrument for ensuring transparency of the entire electoral process and raising confidence in it.

Moreover, these efforts do not have a positive outcome in the regions. As it is widely known, cable operators mainly operate in large cities, while for those almost 50% of the Georgian population residing in provinces, the only alternative source for obtaining information remain to be satellite dish antennas.

Due to this problem two TV companies not controlled by the authorities made a decision to sell satellite antennas for a low price on terms of a long-term credit to enable citizens in provinces to have access to not only TV channels that were loyal to the authorities, but also to those out of government control. However, the Prosecutor's Office seized the satellite dish antennas shipped to Georgia on the grounds of alleged vote buying. The decision of the state controlling bodies restricting the distribution of satellite dish antennas contradicted with the spirit of the so-called "must-carry" principle widely upheld by the Parliament of Georgia.

INCIDENTS THAT OCC.URRED DURING THE PRE-ELECTION CAMPAIGN MEETINGS WITH THE POPULATION

Pre-election activities have been conducted either in the form of rallies, or, in some instances, assemblies and meetings with citizens. The state shall not interfere into such activities, unless they are of illegal nature. Moreover, the state shall perform its positive obligation and ensure safety of participants of such assemblies and manifestations.

There have been occurrences of political party meetings with the population to grow into verbal and physical conflict due to particular tension in the pre-election period. It should be noted, that activists have often been assaulted by public servants and local self-government officials.

Furthermore, number facts have been identified, during which, due to inaction and/or insufficient response on the part of law-enforcement officials, there were incidents of clashes between supporters of different political parties. In some instances, due to the direct interference of law-enforcement officials, some political force representatives – specifically, members and activists of the coalition "Georgian Dream", were not allowed to attend the holiday festivities.

The following are the most outstanding incidents that have occurred during the reporting period: Incidents of Mereti, Karaleti, Beshumi and Didgori.

Mereti Incident

On May 26, 2012, leaders of coalition "Georgian Dream"- Bidzina Ivanishvili and Irakli Alasania were holding a pre-election campaign meeting with the local population in the Gori municipality, village Mereti. The meeting was attended by part of the local population, that expressed its protest on the visit of the "Georgian Dream" representatives to the village. Verbal insults grew into physical clashes, resulting in injury of several participants.

A representative of the Office of Public Defender took explanatory notes from the "Georgian Dream" supporters, injured during the village Mereti incident. The notes indicated names of individuals identified by the injured. The list allegedly included names of Gori municipality and Georgian Ministry of Internal Affairs officials.

Office of Public Defender applied to the Gori municipality and Georgian Ministry of Internal Affairs on this matter and requested information on whether the individuals reported in the notes were employed by the respective public agencies. According to the response submitted by the Ministry of Internal Affairs, individuals reported in the notes were not the employees of the respective agency. As for the feedback received from the Gori municipality, one individual identified by the plaintiff turned out to be Vasil Tevdorashvili – Attorney (trustee) of the territorial entity.

Afterwards, on June 27, 2012, Ministry of Internal Affairs of Georgia released the news on the detention of individuals participating in the above incident, informing the public that these individuals were brought to court as administrative offenders. However, it is important to note, that Vasil Tevdorashvili was not among the detainees.

Karaleti Incident

Similar fact occurred in village Karaleti on July 12, 2012, during clashed between local residents and political party supporters. More specifically, one of the leaders of the coalition "Georgia Dream" Kakhi Kaladze was visiting the village of Karaleti in Gori municipality and holding meetings with local residents. Part of the residents intended to disrupt the meeting and engaged in confrontation with political party representatives and supporters attending the meeting. The confrontation grew into a fistfight and political party representatives had to leave the territory.

The fight resulted in injuring civilians and also journalists – Saba Tsitsikashvili, Giorgi Kevkhishvili, Nino Bolashvili, Levan Aleksidze and Revaz Nadiradze.

Public Defender of Georgia applied to the Chief Prosecutor's Office of Georgia on this matter and requested information on investigation conducted on this case.

On August 14, 2012 Public Defender's Office was notified that, in relation to the incident in the village of Karaleti in Gori Municipality, the following individuals had been administratively detained for action (hooliganism) defined under Article 166 of the Code of Administrative Offences: Giorgi Gochashvili, Levan Maisuradze, Vladimer Janezashvili, Kakhaber Gogiashvili and Tsotne Shengelia. The detainees were imposed with administrative imprisonment for 15 days.

It should be underlined that, as it is widely known, detained Giorgi Gochashvili was an employee of Karaleti Gamgeoba (municipal district).

Beshumi Incident

On August 4, 2012 local community festivity "Shuamtoba" was held in resort Beshumi in Khulo municipality. The festivity was attended by the President of Georgia and the political party "National Movement" supporters. While the President was giving a speech, leader of the political coalition "Georgian Dream" Bidzina Ivanishvili and coalition supporters tried to arrive to the resort. The road leading to the resort was blocked and the "Georgian Dream" members had to walk to the destination.

The road was blocked by "national Movement" supporters and "Georgian Dream" members were not allowed to continue their way. There were incidents of scuffle between the opposing parties. Public Defender of Georgia applied to the Ministry of Internal Affairs of Georgia on this matter and requested information on the MIA response to the resort Beshumi incident. As a response, our office was informed that the law-enforcement officers protected interests of both parties and tried to stay in the middle to keep opposing parties at distance and prevent confrontation.

Notwithstanding, various media sources released video footage demonstrating that law-enforcement forces were not present on the ground during the confrontation and they showed up afterwards. Therefore, law-enforcement forces failed to ensure the right of the "Georgian Dream" supporters to attend the "Shuamtoba" festivity.

Didgoroba Incident

On August 12, 2012 coalition "Georgian Dream" members were planning to visit village of Didgori to attend Didgoroba traditional festivity. Patrol police prevented them to attend Didgoroba festivity, as they blocked the road to the festival territory.

Released video footage demonstrates that a police officer blocks the access to "Georgian Dream" activists by the motive, that there was an event going on at the same area organized by the political party "National Movement". Moreover, as explained by the patrol police officer, he had a list of cars eligible to access the premises.[170]

As opposed to "Shuamtoba" Festivity, during which an inaction of law enforcement forces served to the reason of violating the right of the assembly participants, during "Didgoroba" festivity direct interference on the part of law-enforcement officials led to the violation of the Constitutionally guaranteed rights of the "Georgian Dream" supporters – police acted in a discriminatory manner, when it allowed access for individuals to the Didgori territory according to party affiliation.

ADMINISTRATIVE DETENTIONS

While reviewing the facts of human rights violation during the pre-election period, it is important to elaborate on numerous cases of administrative detentions of coalition "Georgian Dream" activists and opposition supporters, which frequently took place throughout 2012 and the number of such incidents especially grew in September. Detentions took place in Kutaisi, Kaspi, Khashuri, Rustavi, Mestia, Sagarejo, Kareli and other places.

Officials of the Georgian Public Defender's Office visited a number of administratively detained individuals and interviewed them. Office of Public Defender of Georgia identified up to 60 cases of administrative detentions of "Georgian Dream" members.

It is important to note, that administrative detentions of political party activists were conducted under the basis of disobedience to the police. By default, the court applied administrative imprisonment to the detainees, as the most serious administrative punishment.

Number of studied and identified cases and their similar nature created substantiated suspicion, that the practice of administrative detentions was abused with the aim to remove political opponents from political processes.

This cases attracted attention of international, as well as national watchdog organizations. International organization "Human Rights Watch" issued an article on the pre-election detention processes, strongly criticizing ongoing developments.[171]

On September 26, 2012 Office of Public Defender of Georgian issued a special a statement with regards to administrative detentions and urged the parties to particularly restrain themselves in the pre-election period to ensure that these developments do not further increase tension in the country.

FACTS OF PHYSICAL ABUSE OF POLITICAL ACTIVISTS

Numerous facts of physical abuse of political activists have been identified within the reporting period. After analyzing circumstantial evidence around the case, reasonable doubt emerged that such facts occurred in a connection with pre-election period and political activities of certain individuals. There have been facts of intimidation and property damage. Also, some individuals referred to one case, when pressure was allegedly exercised by law-enforcement officials.

It should be underlined that investigation on the most of these cases has started, but majority of them have not been completed so far.

On September 24, 2012 four activists of the youth wing of coalition "Georgian Dream" were waiting for a microbus at the bus stop. They were approached by 7-8 individuals who verbally and physically assaulted them. It is also reported that unknown individuals have beaten several more associates of collation "Georgian Dream".

170 http://www.youtube.com/watch?v=vb3jqwul7Ng, video was seen on February 10, 2012.
171 http://www.hrw.org/news/2012/09/26/georgia-misuse-administrative-detention-violates-rights. As of March 1, 2013.

We applied to the Chief Prosecutor's Office of Georgia on this case. We have been informed that investigation has started on this case and as of January 11, 2013 investigation activities are still underway.

On September 23, 2012 Mr. Merab Bolashvili – supporter of political coalition "Georgian Dream" – was physically assaulted and his grocery store was raided. More specifically, in the village of Ditsi, around 10-15 cars stopped in front of the store, owned by citizen Bolashvili and around 20-25 individuals got out of the cars. These individuals entered the store and asked for an owner. Unknown individuals damaged store interior, while one of them verbally and physically assaulted Merab Bolashvili.

Again, we applied to the Chief Prosecutor's Office of Georgia on this case, which informed us that investigation started on September 23, 2012 in the first division of Gori district department on the case of damaging grocery store of Merab Bolashvili in the village of Ditsi in Gori municipality, based on indication of crime defined by first paragraph of Article 187 of the Criminal Code of Georgia. As we have been informed, investigation is ongoing on this case.

Another fact of physical assault of "Georgian Dream" supporter Avtandil Nikolaev needs to be noted. On September 19, Avtandil Nikolaev, accompanied by other individuals, was posting election posters in village Dviri. In this process, he met with Gamgebeli (Head of local municipality) of the village of Dviri and the two had a brief conversation. After finishing his work, unknown persons equipped with sticks and stones, physically assaulted Avtandil Nikolaev 200 meters away from the village bridge.

To our knowledge, investigation is underway on this fact and investigating activities are being carried out to identify the offenders.

On June 23, 2012, at around 23:00 pm, law-enforcement officers detained Giorgi Mkhchiani - owner of the coalition "Georgian Dream" Akhalkalaki office building. As clarified by the political coalition member Giorgi Zhvania, before renting out the office, law-enforcement officials had been threatening Giorgi Mkhchiani with the arrest in case he allowed the party office to be opened in his building.

In the response to the above fact, Office of Public Defender of Georgia applied to the Chief Prosecutor's Office of Georgia several times until 1st of October, 2012, but failed to get proper feedback. Chief Prosecutor's Office of Georgia only informed us about the ongoing investigation on the criminal case of Giorgi Mkhchiani.

After the Parliamentary Elections, on November 27, 2012, we re-applied to the Unit of Supervision over Prosecutorial Conduct in Regional Territorial Authorities of the Ministry of Internal Affairs of Georgia in the Chief Prosecutor's Office of Georgia, requesting information on the response to the fact of alleged intimidation on the part of law-enforcement officials against Giorgi Mkhchiani.

In response to our request, we have been informed that on December 19, 2012 in the district investigative unit of the district prosecutor's office of Samtskhe-Javakheti, investigation was launched on criminal case N08419121801 on the persecution of Giorgi Mkhchiani by police officials during the pre-election campaign of the 2012 Parliamentary elections, in accordance with indication of a crime defined under Article 156 (2,b) of the Criminal Code of Georgia.

Furthermore, there was a fact of physical assault and intimidation conducted against Giorgi Kikilashvili - member of "Georgian Dream".

On August 4, 2012, Giorgi Kikilashvili was contacted by his acquaintance Gocha Khositashvili. The latter took him to the Cottage located in the town of Sighnaghi, where they met Soso Tsitsishvili and Beso Lekviashvili. As reported by Giorgi Kikilashvili, the above individuals had been working at various positions at the Ministry of Internal Affairs. Soso Tsitsishvili and Beso Lekviashvili verbally and physically assaulted him for his political affiliation. Namely, Soso Tsitsishvili slapped him on his face and threatened to arrest him unless he left the territory of Georgia. Applicant stated that threats were also directed to his family members.

We requested information from the Chief Prosecutor's Office over the above fact. According to the information submitted by the Chief Prosecutor's Office, investigation was based on indication of a crime defined under the Article

333 (a) of the Criminal Code of Georgia. However, later we have been notified that investigation was terminated due to the lack of elements of crime.

CASES OF INDIVIDUALS DISMISSED FROM THEIR JOBS

During the pre-election period number of persons applied to Public Defender of Georgia on cases of dismissals based on political affiliation. Teachers prevailed among individuals, who submitted such applications to Public Defender of Georgia.

Generally, documentations submitted by them illustrated that, an employer has terminated labor relations under article 37 of the Labor Code or terminated the contract under Article 38.

Considering the private nature of legal relations, and keeping in mind the limitations in this regard applied to Public Defender of Georgia under the Organic Law of Georgia "on Public Defender of Georgia", identification of political or pre-election motivation behind any of the above dismissals was particularly complicated. However, large number of similar cases created substantiated suspicion on the compliance with the law of such decisions made by the employers.

Moreover, after the elections, under the Order of the Minister of Education and Science of Georgia, a Special Commission was created to review the cases of dismissals based on political affiliation of employees of territorial bodies of the Ministry of Education and Science - educational resource centers and public schools. Among the members of the above Commission is Public Defender of Georgia or representative of Public Defender. Based on our information, 830 applications have been submitted to the commission. The Commission identified three facts of politically motivated dismissals as of March 2013, while in 8 cases dismissals were not associated with an employee's political affiliation. However, the Commission maintains that the rights of the dismissed individuals were violated, therefore we recommended the Ministry to submit relevant document to the investigation agencies.

ILLEGAL ACTIVITIES BY THE ADMINISTRATIVE AGENCIES IDENTIFIED IN THE PRE-ELECTION PERIOD

"An administrative agency may not perform any action that is against the law" [172]

The principle of the Rule of Law restricting administrative agencies from violating the law is defined by the Article 5 of the General Administrative Code of Georgia. The principle of legality of activities of administrative agencies envisages restriction of illegal activities, as well as liability of administrative agencies to exercise power in compliance with the law.

Despite the imperative nature of the above legal norm, Public Defender of Georgia identified a number of facts demonstrating incompliance with the law of actions performed by the administrative agencies in exercising government functions. Public Defender of Georgia identified facts of violation of the law following the review of the cases both, initiated by Public Defender's Office[173], and submitted by citizens/legal persons.

Therefore, it is important to identify negative trends, that have occurred in the pre-election period and which clearly illustrate breach of principles of legality by certain administrative agencies. Subsequently, we present several cases demonstrating the status of protection of human rights by administrative agencies in the pre-election period. In addition, detailed analysis of this problem will be presented later, in a Special Report by Public Defender of Georgia.

172 Article 5 (1) of the General Administrative Code of Georgia of June 25, 1999.

173 According to Article 12 of the Law of Georgia on Public Defender of Georgia of May 16, 1996,"Public Defender shall verify independently the situation regarding the protection of human rights and freedoms, the alleged facts of their violation, as on the basis of applications and complaints lodged with him, as well as on his own initiative where he is informed of those infringements".

ADMINISTRATIVE AGENCIES ACTIONS OF WHICH LEAD TO HUMAN RIGHTS VIOLATIONS DURING THE PRE-ELECTION PERIOD

STATE AUDIT OFFICE (PREVIOUSLY CHAMBER OF CONTROL OF GEORGIA)

On December 28, 2011, following the amendments made to the Organic Law of Georgia "on Political Unions of Citizens", Chamber of Control was assigned to monitor legality and transparency of financial activities of the parties, which was authorized to respond to violations of legislation related to party financing and to apply sanctions defined by law"[174]. According to the Law "on Chamber of Control of Georgia"[175], Chamber of Control, which had been a state supreme financial-economic control agency responsible for performing audit, was an administrative agency.[176] Within the authority defined by the Georgian legislation[177], it drew up a protocol on violation of the Law related to financing and adopted the Decree on imposition of a respective fine. This decree was an individual administrative-legal act[178], issued in accordance with the administrative legislation[179].

Therefore, Chamber of Control of Georgia, in accordance with the Paragraph 9, Article 34 of the Organic Law of Georgia "on Political Unions of Citizens" (then applicable version), drew up a protocol on the violation defined by this Article and adopted the Decree on imposition of a respective fine. For specific cases it applied rules of legal proceedings defined by the Georgian Code of Administrative Offences. It is noteworthy, that according to the Article 231 of the Administrative Code of Georgia, agencies authorized to review cases of administrative offences (by the officials) and rule of conducting administrative cases shall be defined by the Georgian Code of Administrative Offences and other normative acts of Georgia.

Accordingly, Chamber of Control of Georgia, drew up a protocol on legal violations related to party financing and based on the latter adopted the Decree, which was an individual administrative-legal act, developed and issued in accordance of the rules of legal proceedings defined by the Georgian Code of Administrative Offences, as well as applied common rules of administrative proceedings defined by the General Administrative Code of Georgia, since, pursuant to the Article 2 (1,j) of the General Administrative Code of Georgia, "Administrative proceedings" means activities performed by an administrative agency to develop, issue [….] an administrative decree.[180]

Based on the above, Public Defender of Georgia maintains that, in taking a testimony from a witness by the authorized persons of the Georgian Chamber of Control, they should have applied relevant rules of Administrative Code of Offences, as well as those provisions defined by the General Administrative Code, which complied with the administrative Code of Offences.

174 Article 34 of the Organic Law of Georgia on Political Unions of Citizens, October 31, 1997.

175 Article 3 (1) of the Law on the Chamber of Control of Georgia, December 26, 2008

176 According to Article 2 (1,a) of the General Administrative Code of Georgia "Administrative agency" means any state or local self-government agency or institution, Legal Entity of Public Law (except for political and religious associations), and any other person that exercises public authority in accordance with law".

177 Article 17 (2/1) of the Law on Chamber of Control of Georgia, December 26, 2008, and Articles 34/1 and 34/2 of the Organic Law of Georgia on Political Unions of Citizens, October 31, 1997.

178 "In certain cases, the law assigns the responsibility to the administrative agency to issue an individual legal-administrative act even in case of absence of an application submitted by a citizen. For instance: traffic police officer is responsible for imposing an administrative fine on a citizen if he/she identifies a traffic violation. Please, see Z. Adeishvili "Guidelines for the General Administrative Code", Chapter XI, administrative proceedings, page 235. Additionally, please see, the protocol of violation and/or a practice or the General Courts of Georgia in considering of an order/decree issued based on the above protocol as an individual administrative-legal act.

179 Article 2 (1,d) of the General Administrative Code of Georgia, June 25, 1999.

180 "Administrative Code distinguishes between several types of administrative proceedings. Common administrative proceedings, formal administrative proceedings or public administrative proceedings represent three main types of administrative proceedings. It should be noted, that this list is not comprehensive and, in some cases, special proceedings may be applied for the issuance of individual administration – legal acts. General Administrative Code includes three more types of administrative proceedings: administrative proceedings in the counterpart administrative agencies, administrative proceedings for the issuance of normative acts and administrative proceedings to review the complaints. In addition, the code distinguishes one more type of proceedings – administrative proceedings by an independent body. Administrative Code of Offences includes a special type of administrative proceedings with regards to imposing administrative sanctions. Notwithstanding, Common, formal and public administrative proceedings remain to be three main types of administrative proceedings and any other proceeding is a variety of one of the three". See Z. Adeishvili "Guidelines for the General Administrative Code", Chapter XI, administrative proceedings, page 231.

Within the powers defined by the Organic Law of Georgia "on Political Unions of Citizens", on March 13-14, 2012, Chamber of Control of Georgia summoned for testimony dozens of physical persons "in order to testify on alleged facts of financing through false deals and fraudulent transactions in the course of administrative proceedings" in various cities and towns of Georgia (including, Kutaisi, Zugdidi, Poti, Batumi, Sagarejo, Gurjaani, Lanchkhuti, Chokhatauri).

Based on the news released through media, in the course of performing the above procedures by the Chamber of Control, lawyers of the above mentioned individuals in certain circumstances were not allowed to exercise their authority in a comprehensive manner. Moreover, complaints were expressed with regards to alleged limitation of access to media, that was demonstrated by the latter not having been allowed to attend the process of giving a testimony. On March 14, 2012 Georgian Chamber of Control posted on its website abstracts from the individuals interviewed. These abstracts made public such personal and private information as those related to health conditions, income and other private matters of the interviewed individuals.

On March 15, 2012 Public Defender of Georgia initiated the study of the above case with the purpose to identify, whether there was a violation of the legally guaranteed rights of those individuals summoned for questioning by the Chamber of Control of Georgia in conducting administrative proceeding, as well as rights of journalists.

In the course of study of these cases, in their testimonies given before the attorneys of Public Defender of Georgia, journalists pointed to the facts of restricting their freedom of movement within the administrative premises, and therefore, obstructing the conduct of journalist activities in the process of interviewing members of political parties by the Georgian Chamber of Control in certain cities of Georgia (Kutaisi, Zugdidi, Zestaponi, Gori, etc).

Moreover, it is important to mention, that in their reports provided to the attorneys of Public Defender of Georgia, dozens of political party members, volunteers and their legal representatives underlined that, when entering administrative buildings in different cities of Georgia, State Security Police officers conducted detailed screening (using metal detectors and hand searching), requested that they removed their shoes, took their personal items, etc.

On March 15, 2012, attorneys of Public Defender of Georgia were present at the administrative building in the town of Zestaponi, where these persons were interviewed. Based on the observation of the representative of the Georgian Public Defender's Office, it was confirmed that State Security Police officers were carrying out recording of attendance of those summoned for questioning and their escorting to the interview room. Before entering the room, on each call, these officials conducted clearance of the relevant individuals using detectors and hand searching. Citizens were not allowed to take personal items with them to the room (telephone, watch, document folder, etc.). The same procedure of screening was applied to the lawyers as well and they were not allowed to take with them their document bags containing legislative acts. After the interviews were completed State Security Police officers did not allow the interviewed individuals to stay in the building, including for the purpose of talking to attorneys of Public Defender, and they were escorted out from the building. There was a case when a State Security Police officer did not allow a citizen to go to the restroom unescorted. Moreover, none of the interviewed citizens were informed about the content of legal proceedings in the Chamber of Control; neither had they known the reason for their summoning for questioning.

This case was made even more confusing by the ambiguity of the received text of summon. On the one hand, the letter of summon stated that an individual was authorized (not obligated) to give an explanation, whereas, on the other hand, there was an indication on the mandatory nature of testifying.

After studying the documentation related to this case, maintained at the Office of Public Defender of Georgia and submitted by the Chamber of Control of Georgia, facts of restrictions and violation of human rights have been identified, after which Public Defender of Georgia submitted the following recommendations to the Chairman of the Chamber of Control of Georgia Levan Bezhashvili:

- The summon of witnesses for interrogation shall include and those to be interviewed shall be explained their rights and freedoms (including, the right to have a defense counsel, right to refuse to testify against himself/herself or close relatives and friends, etc), reason for summoning for interrogation and specific fact(s) on which they are requested to testify;

- Special attention shall be attached to controlling the behavior of State Security Police officers to avoid unwarranted restriction of rights of individuals summoned for questioning.[181]

- Summoning of individuals for a testimony shall be scheduled during work hours (unless there is an urgent necessity);

- Respective norms of the Code of Administrative Offences, as well as the provisions defined by the General Administrative Code of Georgia that are in compliance with the Code of Administrative Offences shall apply to the process of taking a witness testimony by an authorized person of the Chamber of Control (Public Defender of Georgia maintains, that application of such provisions would eliminate many ambiguities in the process and regulate such issues as witness testifying, participation of a defense counsel and a representative, getting familiar with the proceeding material, etc);

- Instructions shall be elaborated (regulations) – a codified document defining a detailed rule for witness testimony, rights of a witness, ethical standards of dealing with a witness, etc. The document shall be mandatory for the employees of the Georgian Chamber of Control and its violation shall entail disciplinary punishment;

- All facts related to publicizing of the witness testimonies interviewed in March and April, 2012 shall be studied and in case of a written consent documented in accordance with appropriate procedures, disciplinary punishment shall apply to the officials who failed to protect private information of those interviewed;[182]

- Video and audio recording of the processed witness questioning shall be ensured and individuals to be questioned shall be notified about it in advance;

- Relevant measures shall be undertaken to provide access to comprehensive information about the ongoing process to the interested media representatives, unless such information contains state, commercial or personal confidential data.[183]

Moreover, in this particular case, chairman of the Chamber of Control of Georgia, Levan Bezhashvili failed to meet the obligation defined under the Article 24 of the Organic Law "on Public Defender of Georgia", which envisages that recommendations or proposals from Public Defender shall be considered within one month and Public Defender shall be informed in writing on the results of the findings.

In addition to the above case, Public Defender of Georgia identified a case of violation of the principle of the Rule of Law in the process of undertaking administrative functions by an administrative agency - Chamber of Control of Georgia - in relation with the case of **JSC "CARTU BANK"**. After reviewing this case, Public Defender of Georgia found that Chamber of Control of Georgia undermined requirements defined by the Georgian Law, as it qualified an action – payment of salaries as a bonus payment in the amount equal to one-year salary to its employees - as an administrative offence, while the Law does not consider such actions to be illegal. Moreover, no administrative punishment shall apply to such an act.

181 Furthermore, Public Defender of Georgia suggested to the Chairman of the Chamber of Control of Georgia Levan Bezhashvili to study the above cases and hold those officials responsible for disciplinary violations, whose direct competence was to protect the rights of witnesses during the interview in respective territorial units.

182 Georgian Chamber of Control made the witness testimonies public numerous times, that contained data, qualified as confidential private information about witnesses and their family members, including information related to their finances and health conditions. Moreover, witnesses and their lawyers who testified before Public Defender's attorneys claimed that, in most cases, authorized representatives of the Chamber of Control of Georgia requested the kind of information that was not related to the issue concerned. The testimonies studied by Public Defender's Office submitted by the Chamber of Control to us in an unidentifiable form, confirmed obtaining of the type of information, which is in no way connected to the issue concerned, including information about a person's previous convictions, political affiliation and so on. The lawyers are claiming that they were not allowed to add their comments to the testimonies, the latter was considered by them as a restriction of their activities.

183 In conversations with attorneys of Public Defender of Georgia, some of the media representative pointed out that their professional work process has been restricted. Journalists lawfully expressed their protests due to the fact that in administrative building within which, generally, they had unlimited access without no additional barriers; however in this particular proceedings, limitations have been imposed upon their operations.

Public Defender of Georgia analyzed the following circumstances in the course of reviewing this case:

"According to the protocol of administrative offence №000008 drown up by the Monitoring Service of Financial Operations at the Chamber of Control of Georgia on March 9, 2012, in order to avoid fulfillment of the Organic Law of Georgia "on Political Unions of Citizens" and for the purpose of making illegal donations, on February 8, 2012, JSC "CARTU BANK" paid salaries to its staff as bonus payments in the amount equal to one-year salary. For example, deposit of GEL 47 256 was made to Z.Kh.'s account, and deposit of GEL 55 500 was made to R.K.'s account, after which these individuals were requested by the leadership of the bank to donate these funds to the "Public Movement – Georgian Dream", the latter having been a subject regulated by the organic law and the following restrictions under the Organic Law of Georgia on Political Unions of Citizens applies to it: Article 26 (1,a(1)); Article 27 (6), Z Articles 33^1(2), 34^2 of the Organic Law of Georgia.

According to the decision of March 12, 2012 delivered by the head of the Financial Monitoring Service of the Chamber of Control of Georgia on the imposition of an administrative penalty, "With the purpose to evade the restrictions defined under the Organic Law of Georgia on Political Unions of Citizens JSC "CARTU BANK" made an illegal donation and tried to portray this illegal transaction as legal. [...] In order to cover the act of political financing carried out by a legal entity, JSC "CARTU BANK", for the first time of its functioning as a bank, paid salaries to its 19 staff members in the form of bonus payments in the amount equivalent to one-year salary, later to be transferred to the non-entrepreneurial (non-commercial) legal person "Public Movement – Georgian Dream", by doing so an illegal donation was made to a political subject. GEL 55.500 was transferred to the account of JSC "CARTU BANK" Director of the Legal Department R.K. to finance the political subject non-entrepreneurial (non-commercial) legal person "Public Movement – Georgian Dream". The same motivation applied when Head of Securities Section Z.Kh. received a bonus in the amount of GEL 47.256. Both individuals declined illegal orders of the Bank leadership and subsequently, refused to the legal entity JSC "Cartu bank" to make a political donation through him as of a physical person. Therefore, it was an illegal donation made by the legal entity through a physical person, as JSC "CARTU BANK" took every measure at its disposal to donate to the political subject the funds allegedly paid as bonuses to its staff".

After a detailed study of the administrative proceedings carried out by the Financial Monitoring Service of the Chamber of Control of Georgia, submitted to Public Defender of Georgia, and following the analysis of the Georgian legislation, Public Defender of Georgia found that there are factual and legal grounds for affirming incompliance of the imposition of administrative penalties on JSC "CARTU BANK» by the Chamber of Control of Georgia with the legal foundation of its imposition, due to the following reasons:

As we are well aware, administrative offences in Georgia are regulated by the Code of Administrative Offences of Georgia, which defines what types of action or omission is considered to be an offence, what kind of administrative penalty, by which agency (official) and based on which rule shall be imposed on an administrative offender.

In accordance with Article 10 of the Code of Administrative Offences, administrative offence (misconduct) is defined as an action or omission, which violates state or public order, property rights, civil rights and freedoms, unlawful, culpable (deliberate or negligent) act against established government rule, which entails administrative liability, as envisaged by the legislation. According to the above definition, administrative offence is considered to be committed, if all of the necessary elements characterizing an administrative offence listed below are present, when:

1. There is an act defined by the legislation (action or omission) which envisages administrative punishment under the Law;
2. An act is unlawful;
3. An act is committed culpably (intentionally or negligently);
4. There is a causal link between an act and an outcome.

Therefore, the content of the abovementioned norm clearly indicates that, in order to qualify an act as an administrative offence, it is necessary that all above mentioned four elements are simultaneously present. In case of absence of one of

the elements characterizing an administrative offence, an action may not be considered as an administrative misconduct, which inherently rules out the possibility of imposing an administrative responsibility.

It is hereby worth noting, that in order to identify the fact of violation of the regulations defined by the Organic Law of Georgia "on Political Unions of Citizens",[184] and in particular, while an administrative offence is present and in the course of adopting relevant decision on the above fact, administrative body, authorized thereof, in the present case – the Chamber of Control of Georgia, was under a duty to establish the following: "whether the administrative offence was committed, is the person culpable for its commitment, is this violation subject to administrative liability, are the mitigating and aggravating circumstances of liability in place"[185].

In accordance with Article 26(1, a[1]) of the Organic Law of Georgia "on Political Unions of Citizens", it is prohibited to accept financial and material contributions from legal persons, their unions or other types of organizational formations. Furthermore, pursuant to the Article 27(6) of the same Organic Law, making donations via other individuals or otherwise avoidance of the restrictions established by this Law shall cause transfer of these donations to the state budget and offender will be held liable in accordance with the legislation of Georgia.

Moreover, Article 33[1] of the Organic Law of Georgia "on Political Unions of Citizens" stipulates, that agreement that intends avoidance of rules and restrictions prescribed by this chapter shall be void. Furthermore, according to the Article 34[2](2), making financial or material donation prohibited by Georgian legislation carried out by physical or legal entity in favor of a party – will result in fine of a physical or legal entity implementing prohibited financial or material donation with tenfold of the donation.

Hence, above rules of the Organic Law of Georgia "on Political Unions of Citizens" gives a clear and precise prohibition to making donations with respect to persons and/or parties having political goals and objectives as declared by the legal entity[186] and not an effort to make a donation, implementation of the donation through other person or otherwise avoiding restrictions established by law. Therefore, the content of the above cited provisions leads us to conclude that in order to identify the fact of violation, it is essential that the completed unlawful act committed by a legal person is present – evidenced by making a donation with regards to person and/or parties having political goals and objectives declared through another person.

It is hereby worth referring to the imperative rule envisaged in the Article 8 of the Code of Administrative Offences, according to which nobody shall be imposed with the measures of influence for an administrative offence, except for the grounds and rules stipulated by the legislation. Pursuant to the same rule, cases of administrative offences are being preceded under the strict observance of law. Bodies and officials designated for these purposes shall impose measures of influence within their competence, in accordance with the legislation.

Consequently, Public Defender of Georgia concluded that the Chamber of Control of Georgia violated the Rule of Law principle, provided that the present decision does not comply with the requirements defined by the Code of Georgia on Administrative Offences, Organic Law of Georgia "on Political Unions of Citizens" and the General Administrative Code of Georgia. Thus, Public Defender of Georgia considers that Decree of the Chamber of Control of Georgia on imposition of an administrative penalty against JSC "CARTU BANK" is contrary to the law, which resulted into the breach of legal rights of JSC "CARTU BANK".

Taking into consideration all above stated, it may be concluded that the Chamber of Control of Georgia (presently, the State Audit Office of Georgia) has violated the rights guaranteed by the Georgian legislation, which resulted into the grave breach of rights and freedoms of a number of citizens or legal persons.

184 Article 26(1, a1), Article 27(6), Article 331 and Article 342(2) of the Organic Law of Georgia on Political Unions of Citizens, dated October 31, 1997.

185 Article 264 of the Code of Administrative Offences of Georgia of December 15, 1984

186 In accordance with Article 26(1,c) of the Organic Law of Georgia on Political Unions of Citizens, dated October 31, 1997 , restrictions on a party prescribed by this chapter shall also apply to a person, who has declared political and electoral goals and objectives, persons related to that person, as well as a person having business relations with that person, who has political and electoral goals, or carries out such activity, which effects the expression of political will of Georgian citizens in the elections, plebiscite and referendum and these activities are conducted with the aim of avoiding the regulations of this Law.

NATIONAL BANK OF GEORGIA

During the pre-election period, Public Defender of Georgia identified a violation of the rights of JSC "CARTU BANK" due to its unsubstantiated inspection and an extension of the process without set deadlines by the National Bank of Georgia.

After reviewing the statement of the Director General of the "CARTU BANK" and inspecting the case material, Public Defender of Georgia found that there was a violation of the requirements defined by the Georgian legislation with regards to development and issuance of individual administrative-legal acts on making amendments and changes to the October 19, 2011 Ordinance N767 of the Vice-President of the National Bank of Georgia on the inspection of JSC "CARTU BANK".

After reviewing the above case, Public Defender of Georgia concluded, that the right of JSC "CARTU BANK" guaranteed by the Georgian legislation were violated due to the following circumstances:

In accordance with the documentation of the case, under the October 19, 2011 Ordinance N767, issued by the Vice-President of the National Bank of Georgia, several officials of the National Bank of Georgia were tasked to examine financial status of the JSC "CARTU BANK" and, by applying selective approach, to inspect whether JSC "CARTU BANK" met the requirements defined by the Law of Georgia "on Facilitating the Prevention of Illicit Income Legalization" and "the procedure for the *receipt*, *systematization*, *processing*, and transfer of *information* to the *Financial Monitoring Service* of *Georgia* by the commercial Banks of Georgia" approved under the Order № 95 of July 28, 2004 by the Head of the Financial Monitoring Service of Georgia. Under the Article 2 of this Ordinance, the timeframe for making donations was defined from October 19, 2011 to include December 18, 2011.

On December 16, 2011, Vice-President of the National Bank of Georgia, under Ordinance N872, made an amendment to the Article 2 of October 19, 2011 Ordinance N767 of the Vice-President of the National Bank of Georgia "on the inspection of JSC "CARTU BANK" and the timeframe for the inspection under the above Article of the Ordinance was extended to February 20, 2012, while all other Articles of the October 19, 2011 Ordinance N767 of the Vice-President of the National Bank of Georgia remained unchanged.

Subsequently, specifically on February 2012, Vice-President of the National Bank of Georgia issued an Ordinance N156 "on the amendments and changes to the October 19, 2011 Ordinance N767 of the Vice-President of the National Bank of Georgia on the inspection of JSC "CARTU BANK" under which the timeframe for the inspection, defined by the Article 2 of the October 19, 2011 Ordinance N767, was extended to May 21, 2012, while all other Articles of the October 19, 2011 Ordinance N767 of the Vice-President of the National Bank of Georgia remained unchanged.

Financial sector oversight powers of the National Bank are regulated by the Organic Law of Georgia "on the National Bank of Georgia"[187], Law of Georgia "on Activities of Commercial Banks"[188], Law of Georgia "on Facilitating the Prevention of Illicit Income Legalization"[189] and other sub-legislative and normative acts.

187 According to Article 48 (1) of Organic Law of Georgia on the National Bank of Georgia, The National Bank shall be granted a full authority to supervise the operation of commercial banks on the basis of this Organic Law and Georgian legislation, and according to Article 49 (1) of the same Law, The National Bank shall be authorized to supervise the operation of commercial banks, including conducting of audit and regulation.

188 According to Article 29 (2) of the Law of Georgia on Activities of Commercial Banks, Each bank and each of its subsidiaries shall be subject to inspections by inspectors of the National Bank or by auditors appointed by it. According to Article 29 (3,a,b) of the same Law, In their inspections of banks and their subsidiaries, the National Bank and its auditors may: examine all books, records, accounts, funds and other documents of banks and their subsidiaries; Require that administrators and employees of banks and their affiliates submit to review information on the bank's shareholders, controlling persons and administrators and any information concerning the bank's operation and transactions. In case these requirements are not fully observed sanctions set forth in Article 30 shall apply.

189 According to article 11 (1) of the Law of Georgia on Facilitating the Prevention of Illicit Income Legalization, National Bank of Georgia, as supervisory body shall be responsible for overseeing the compliance with the obligations (with respect to transactions, including the systemization, and forwarding the information for identification of parties to the transaction, and performance or internal control, etc) prescribed by this law by the monitoring entities, in accordance with the set rules and procedures.

Although the above acts do not directly imply existence of specific factual preconditions for conducting an audit in the financial sector, neither legislative acts regulating activities of the National Bank define the timeframe and the deadline for the conduct of an inspection, respective legal acts issued by the National Bank for conducting the supervisory functions are individual administrative-legal acts, and they shall be issued by the administrative body - the National Bank, in accordance with the General Administrative Code of Georgia.[190]

Although the above legal acts grant discretionary powers to the National Bank to perform supervisory functions under the relevant act, in exercising discretionary powers a person authorized by the National Bank shall act in accordance with the Article 6 of General Administrative Code of Georgia, as prescribed by the Law. This norm clearly maintains that "If an administrative agency enjoys discretionary power to resolve any matter, it shall exercise discretionary power in compliance with law". Moreover, in accordance with the Article 5 (1) of the General Administrative Code of Georgia, "an administrative agency may not perform any action that is against law".

In issuing individual administrative-legal acts (decisions made on extension of the timeframe of inspection of JSC "CARTU BANK"), during administrative proceedings, National Bank of Georgia "shall investigate all important case-related circumstances and render the decision through the evaluation and comparison of those circumstances" in accordance with the General Administrative Code of Georgia.[191]

Furthermore, authorized official of the National Bank, during administrative proceedings, in integrating decisions, delivered through the evaluation and comparison of all important case-related circumstances into individual administrative-legal acts, in accordance with the General Administrative Code of Georgia,[192] the written justification shall include reference to all factual circumstances, that were substantially important for the issuance of the act, since the administrative agency acted within its discretionary authority.

Based on the above, Public Defender of Georgia has established that, in issuing individual administrative-legal acts (In this particular case, decisions made on the extension of the timeframe of inspection of JSC "CARTU BANK"), National Bank of Georgia violated legal provisions, since the written justification of administrative-legal acts issued by the bank failed to include reference to all factual circumstances, that served as a basis for all issued ordinances on the amendments and changes to the October 19, 2011 Ordinance N767 of the Vice-President of the National Bank of Georgia on the inspection of JSC "CARTU BANK".

All the above factors served as a reason for Public Defender of Georgia to conclude that, in this particular case, National Bank has violated the requirements of issuing individual administrative-legal acts prescribed by legislation. Specifically, Article 53 (2,4,5) of the General Administrative Code of Georgia (that is, written administrative-legal acts issued by the bank failed to include a written justification). In these acts, the resolution part of the administrative-legal acts was not preceded by the justification (only legal justification was indicated), and there was no reference to any factual circumstances that were substantially important for the issuance of the individual administrative-legal act.

Therefore, Public Defender of Georgia concluded, that in measures discussed, that measures stipulated in the individual administrative-legal acts issued by the Vice-President of the National Bank while acting within its discretionary authority, which may restrict legal rights and interests of certain individuals, was not properly substantiated, which is inconsistent with the principle of proportionality of public and private interests of the General Administrative Code of Georgia.

Thus, aimed at restoring the violated rights of JSC "CARTU BANK", Public Defender of Georgia submitted recommendations to the President of the National bank of Georgia, to void individual administrative-legal act issued by the Vice-President of the National Bank and deliver a new decision based on examination and evaluation of substantially important circumstances for this case.

190 Article 2 (1,d) of the General Administrative Code of Georgia.
191 Article 96 (1) of the General Administrative Code of Georgia.
192 Paragraph 4, article 53, the General Administrative Code of Georgia

LEPL - NATIONAL BUREAU OF ENFORCEMENT

During the pre-election period, Public Defender of Georgia identified number of facts of violation of the rights and legitimate interests of certain citizens by the enforcement officers of Tbilisi Enforcement Bureau of the National Bureau of Enforcement of the Ministry of Justice of Georgia.

Violation of the rights defined by the legislation by the Tbilisi Enforcement Bureau of the National Bureau of Enforcement of the Ministry of Justice was identified in the cases of the following citizens: Nodar Javakhishvili, Nato Khaindrava, Davit Galuashvili, Irakli Beraia, Ia Gamtsemlidze, Davit Matikashvili, Inga Javakhia and Gocha Chikviladze.

After the examination of the material submitted by the above citizens and substantially important circumstances for this case, it was found that the substance of the facts of violations are as follows:

On August 10, 2012 under the ruling of the Administrative Cases Panel of Tbilisi City Court citizens Nodar Javakhishvili, Nato Khaindrava, Davit Galuashvili, Irakli Beraia and Ia Gamtsemlidze were found as offenders for charges pursuant to Article 34^2 (2) of the Organic Law of Georgia "on Political Unions of Citizens" and the following fines were imposed to Nodar Javakhishvili – 85 000 GEL, Nato Khaindrava 68 000 GEL, Davit Galuashvili 62 000 GEL, Irakli Beraia 166 720 GEL and Ia Gamtsemlidze 7500 GEL.

Moreover, on August 10, 2012, under the ruling №4/3013–12 of the Administrative Cases Panel of Tbilisi City Court, citizens Davit Matikashvili and Inga Javakhia were found as offenders for charges pursuant to Article 34^2 (2) of the Organic Law of Georgia "on Political Unions of Citizens" and the following fines were imposed to Davit Matikashvili 30 000 GEL and Inga Javakhia 15 000 GEL.

Furthermore, on August 10, 2012, under the ruling №4/3011–12 of the Administrative Cases Panel of Tbilisi City Court, Gocha Chikviladze was found as offender for charges pursuant to Article 34^2 (2) of the Organic Law of Georgia "on Political Unions of Citizens" and the following fine in the mount of 27 500 GEL was imposed upon him.

On August 14, 2012, under respective rulings of the Administrative Cases Panel of Tbilisi City Court, above rulings of the Administrative Cases Panel of Tbilisi City Court were left unchanged on imposing fines and confirming an attachment.

On August 14, 2012 a notification of enforcement of decisions were sent to citizens Nodar Javakhishvili, Nato Khaindrava, Davit Galuashvili, Irakli Beraia, Ia Gamtsemlidze, Davit Matikashvili, Inga Javakhia and Gocha Chikviladze by an enforcement officer of the National Bureau of Enforcement of the Ministry of Justice of Georgia, according to which these specific cases were under consideration at the Tbilisi Enforcement Bureau on the enforcement of relevant enforcement sheets issued by the Administrative Cases Panel of Tbilisi City Court.

In addition, in the above notifications, citizens were notified, that under Article 25 of the Georgian Law "on Enforcement Proceedings", they shall voluntarily fulfill the requirement prescribed in the notification within 7 (seven) days and deposit the amount of imposed fine to the deposit account of the National Bureau of Enforcement.

In accordance with the electronic registry of the enforcement proceedings, Tbilisi Enforcement Bureau launched one of the compulsory enforcement phases, namely, it announced an auction on the private property of the offenders, after failure of the above persons to voluntarily pay the fine within 7 days as defined by the Law.

Moreover, according to the certificates issued by JSC "CARTU BANK", it was verified, that the above individuals were employed by this organization and were receiving specific salaries for performing assigned work.

We are all aware that acts adopted by the common courts, administrative bodies (officials) [...] and the rules and terms and conditions for enforcement of the decisions to be enforced, as prescribed by this law, is regulated by "the Georgian Law on Enforcement Proceedings". Paragraph 1 of Article 90^9 of the same legislative act clearly defines the actions to be undertaken by an enforcing officer in the process of compulsory enforcement of an order of fine. Paragraph 1 of

the above mention article stipulates that in case of failure to pay the fine by an offender, a resolution on the imposition of a fine shall be sent to the place of work in order to deduct the amount of fine from his/her salary or other income source under coercion.

It shall be noted that Paragraph 2 of Article 90^9 of the Georgian Law "on Enforcement Proceedings", if a fined individual is unemployed, or if it is impossible to cover the fine from the salary or any other income of an offender, under the resolution of an administrative agency (official), the National Enforcement Bureau will be tasked a compulsory enforcement of the payment through the private property of an offender, and if neither this option is possible, National Enforcement Bureau shall be authorized to apply to the administrative agency (official) that issued a resolution on replacing the fine with another type of penalty.

Thus, content of the above norm clearly implies that the payment of the fine shall be enforced by the payment through the private property of an offender (auction, etc.), if an offender is unemployed and does not receive remuneration or does not have another source of income.

At the same time, regulations envisaged in Chapter XXV of the Administrative Code of Offences of Georgia[193], which include the formulations similar to the above mentioned norms of the Georgian Law on Enforcement Proceedings and define the timeframes and the rules for the enforcement of resolutions on the imposition of fines in the same manner. Specifically, according to the Article 291 (1) of the Administrative Code of Offences of Georgia, in case of failure by the offender to pay the fine within the timeframes defined in Paragraph 1 of Article 290 of this Code the resolution on imposition of a fine shall be enforced under compulsion from the salary, pension, stipend or other income of an offender, in accordance with procedures stipulated in the Georgian Code of Civil Procedures […]. Whereas, Paragraph 2 of the same Article stipulates, that if a fined person is unemployed or if it is impossible to cover the fine from the salary, pension, stipend or other income of an offender for other reasons, under the resolution of the agency (official) imposing a fine, a compulsory enforcement of the payment of fine shall be undertaken by an enforcement officer through the private property or a share of an offender in a joint property.

Based on the above, Public Defender of Georgia concluded, that during the compulsory enforcement proceedings by a relevant enforcing officer of Tbilisi Enforcement Bureau of the National Enforcement Bureau of the Ministry of justice of Georgia, compulsory enforcement of payment of fine through the private property of the citizens Nodar Javakhishvili, Nato Khaindrava, Davit Galuashvili, Irakli Beraia, Ia Gamtsemlidze, Davit Matikashvili, Inga Javakhia and Gocha Chikviladze in conditions, when all the above mentioned individuals were employed and received remunerations, is ambiguous.

Therefore, after the examination of substantially important circumstances for this case and presented material, Public Defender of Georgia maintained, that in the course of compulsory enforcement proceedings conducted by a relevant enforcing officer of Tbilisi Enforcement Bureau of the National Enforcement Bureau of the Ministry of justice of Georgia with regards to citizens Nodar Javakhishvili, Nato Khaindrava, Davit Galuashvili, Irakli Beraia, Ia Gamtsemlidze, Davit Matikashvili, Inga Javakhia and Gocha Chikviladze, the imperative requirements defined by the Georgian Legislation have been violated, while article 17 (7) of the Georgian Law "on Enforcement Proceedings" clearly defines the responsibility of an enforcement officer to undertake all legal measures for a prompt and actual enforcement of decisions, […] assist the parties in protecting their rights and legitimate interests.

Based on the above, it is obvious that in this particular case, Tbilisi Enforcement Bureau of the National Enforcement Bureau of the Ministry of justice, by violating the requirements defined by the Georgian legislation, defied legitimate interests of Nodar Javakhishvili, Nato Khaindrava, Davit Galuashvili, Irakli Beraia, Ia Gamtsemlidze, Davit Matikashvili, Inga Javakhia and Gocha Chikviladze, which would have led to confiscation of their properties, had the process of enforcement not been terminated.

Based on facts described in the previous chapter, it can be concluded that all violations undertaken by the administrative bodies, which have been identified by Public Defender of Georgia during the pre-election period, represent a concerning

193 Chapter XXV of the Administrative Code of Offences of Georgia - "Enforcement Proceedings of the resolution on imposition of fines".

trend in terms of protection of human rights and freedoms in Georgia. Therefore, we urge the law-enforcement agencies to stay politicaly neutral and be guided solely by the principles of the Rule of Law, which will have a positive impact on the status of protection of human rights and freedoms in the country and its democratic development.

Recommendations:

To the Ministry of Internal Affairs of Georgia:

- **To effectively investigate all facts related to criminal persecution of various political party activists due to their activities.**

To the administrative and law-enforcement bodies of Georgia

- **Stay politically neutral and guided by the principles of the Rule of Law.**

To the Parliament of Georgia:

- **Ensure reform of the electoral legislation in a way to rule out creation of artificial barriers by administrative bodies against election subjects in the pre-election period; Reduce the circle of political officials for election purposes and to include only elected officials in those circles;**
- **Improve legislature on financing of political unions, as a normative base. Moreover, Office of the State Audit shall ensure fair, rational and equal enforcement of the law;**
- **Establish an interagency working group for proper investigation of illegal acts during the previous elections.**

CASES OF HIGH PUBLIC INTEREST

High Profile Cases

Within his competence provided under Organic Law of Georgia "on Public Defender of Georgia", Public Defender of Georgia initiated the review of all high profile cases with high public interest. Namely cases of Tengiz Gunava, Bachana Akhalaia, Giorgi Kalandadze, Davit Akhalaia have been thoroughly studied by Public Defender's Office.

It should be noted that, currently, these cases have been partially assessed by Public Defender of Georgia in terms of violation of procedural rights. However, their re-examination in this direction is still ongoing and findings of the review will be further presented to public.

Moreover, it should be underlined that within the competence[194] prescribed by the Organic Law of Georgia "on Public Defender of Georgia", Public Defender shall examine cases of violation of human rights and freedoms if the violation of human rights and freedoms guaranteed by the Georgian legislation was committed during the consideration of the case. Based on the above, it falls within the competence of Public Defender of Georgia to examine facts of violation of procedural norms of certain cases in accordance with criminal procedural norms. Since the only body exercising justice is a court, it has an exclusive authority to identify the factual circumstances of the criminal case and indication of crime and to assess a crime. Thus, assessment of evidence, it's sharing and qualification as a crime is only a court's prerogative.

Moreover, it should be noted that Public Defender of Georgia by his own initiative examines other criminal cases of former high officials. Legal findings on these cases will be publicized later.

Based on the high profile of the above criminal cases, we present the comprehensive analysis of Public Defender of Georgia on cases of Tengiz Gunava, Bachana Akhalaia, Giorgi Kalandadze and Davit Akhalaia.

CASE OF TENGIZ GUNAVA

On November 16, 2012, an investigation was launched by the Criminal Department of the Ministry of Internal Affairs of Georgia on the criminal case against Tengiz Gunava on charges of acquisition and possession of narcotic drugs and illegal acquisition and possession of firearms. Article 260 (1) and Article 263 (1) of the Criminal Code of Georgia shall apply to the above charges.

On November 16, 2012, detective-investigator T.Sh. of the Criminal Department of the Ministry of Internal Affairs of Georgia issued an order on conducting an urgent personal search of Tengiz Gunava, based on which a search of Tengiz Gunava was conducted on the same day.

194 Article 14 (1,b) of the Organic Law of Georgia on Public Defender of Georgia, May 16, 1996.

On November 16, 2012, detective-investigator T.P. of the Criminal Department of the Ministry of Internal Affairs of Georgia issued another order on the urgent search of Tengiz Gunava's apartment based on which a search of Tengiz Gunava's apartment was conducted on the same day.

It shall be noted that none of the above orders included the reason for conducting an immediate search, that is, it did not specify which clause of procedural legislation created conditions of urgency for Tengiz Gunava's personal and apartment search.

Above orders generally specify Article 112 (5) and Article 121 of the Code of Criminal Procedure of Georgia, but it did not specify which concrete clause created conditions of urgency for Tengiz Gunava's personal and apartment search.

Notwithstanding, on November 16, 2012 in the Departments of the Ministry of Internal Affairs of Georgia, General Inspection, Criminal Police, Patrol Police, and the division of fight against illegal drug flow of the Special Operations Department, Prosecutor of the Fight Against Illicit Narcotic Drug Trafficking of the Department of Investigation Procedures T.Kh. post factum indicated the basis for conducting the process in an urgent manner in the motion on the validity of an immediate conduct of Tengiz Gunava's personal search as well as in the motion on the validity of an urgent conduct of Tengiz Gunava's apartment search, which, in the case of Tengiz Gunavas personal search was constituted as a real threat of losing trace and material evidence, and in the case of search of the apartment - real threat of impossibility of obtaining important factual evidence for the investigation in case of delay and a threat of destruction of important factual information for the investigation.

Article 112 of the Code of Criminal Procedire of Georgia fully protects the private property, ownership and personal privacy of an individual from unreasonable and illegitimate restriction. According to Article 112 (1) "Investigation, which restricts private property, ownership and personal privacy of an individual, shall be conducted under the court decision based on a motion of a party". Paragraph 5 of the same Article stipulates exception from the above rule only in case of an immediate urgency. It comprehensively defines the basis for an urgent action. Namely, according to the Code of Criminal Procedure, reasons for immediate urgency are the following:

- When delay may cause the destruction of important factual information for the investigation;
- When delay makes it impossible to obtain above data;
- When an item, document, substance or any other object containing information is found during conducting a different investigation (if it was found during a superficial search);
- When there is a real threat to life or health.

Therefore, searching without the court ruling shall be permitted only under above circumstances, following which, the court, according to the established procedure, shall inspect the lawfulness of the investigation process that had been conducted without court judgment.

Law protects the legal rights and freedoms of individuals by specifying the basis for urgency to ensure, that, in such circumstances, investigator are not entitled to interpret the law. As defined in of the Article 2 (1) of the Criminal Code of Georgia, in the process of criminal prosecution, procedural norms shall be used, which apply during the investigation and court proceedings. Third section of the same Law stipulates, that in case of errors in the law, an analogy of the criminal procedure norm may apply, if this does not restrict the human rights and freedoms defined by the Georgian Constitution and international agreements.

Therefore, the law-enforcement officials, and in this case, individuals who delivered the resolution mentioned above, should have observed the requirement of the legislator and should have conducted the search of Tengiz Gunava and his residential apartment only based on specific grounds. Moreover, prosecutor was not authorized to indicate the basis for personal search instead of an investigator after conducting the searching, as he/she was not the person who conducted the investigation process. Therefore, an investigator who drew up the resolution was authorized to specify in the resolution which exact conditions created the basis for the conduct of immediate search of Tengiz Gunava.

Furthermore, since Article 212 of the Criminal Code of Georgia does not define special procedures for conducting immediate personal search and refers to rules stipulated in the Article 120 of the Code of Criminal Procedure of Georgia, in accordance with Paragraph 1 of the same Article 120, in the case of immediate urgency, the investigator was authorized to conduct search only based on the resolution. In addition, as already noted previously, this resolution shall specify concrete information based on which under the Code of Criminal Procedure of Georgia justifies the urgent necessity of conducting the search. Furthermore, if there was a basis for an urgent conduct of the above investigation activity, the investigator was responsible for specifying it in the resolution, thus substantiating the lawfulness of restricting the personal inviolability of Tengiz Gunava. Especially keeping in mind that, as pursuant to of Article 120 (2) of the Code of Criminal Procedure of Georgia, before starting the search procedure, in case of urgent necessity, an investigator shall introduce the resolution to the person towards which the search and seizure is conducted. Thus, an investigator shall inform the relevant individual about the basis of an immediate urgency and substantiate the rationale for conducting the search without the judge ruling.

Notably, the protocol of November 16, 2012 on the conduct of personal search of Tengiz Gunava was also drawn up in violation of requirements of the Code of Criminal Procedure of Georgia. It is indicated, that "According to Paragraph 8, Article 120 of the Code of Criminal Procedure of Georgia, it is permitted to conduct a personal inspection/search of a person present at the venue of conducting the search or seizure, if there is a substantiated assumption that this individual had hidden an item, document, substance or other object containing information. Such a case is deemed urgent and personal search shall be conducted without a court ruling or resolution of an investigator."

Incorporation of this norm into the protocol of the personal inspection of Tengiz Gunava is a violation of the law, since this rule primarily refers to cases, when search or seizure is conducted in a storage, garage, depot or other property, of where it is a substantiated assumption against an individual present on the ground that he/she had hidden an item, document, substance or other object containing information. This is a special rule which referes to search of another individual at the venue of incident. In the Case of Tengiz Gunava, his personal search was not conducted in a storage, garage, depot or other property based on the assumption emerged following the search, but it was an investigation act conducted directly towards him.

On the other hand, the protocol of the personal inspection of Tengiz Gunava refers to the previous version of Paragraph 8, Article 120 of the Code of Criminal Procedure of Georgia[195], according to which personal search of an individual present on the ground where search and/or seizure is conducted, shall be undertaken without court ruling or resolution of an investigator. However, according to the current version of the above Article,[196] during the personal search of Tengiz Gunava such personal search shall be conducted without a court ruling, but the Law does not permit the possibility of conducting search without a resolution of an investigator.

Despite the above violations, under the ruling delivered by the Judge D.J. of the Criminal Cases Panel of Tbilisi City Court on the review of lawfulness of the investigation conducted without the ruling of the judge, personal search of Tengiz Gunava, during which the inviolability of his personal life was legally restricted, was conducted in full compliance with requirements of the Procedure Law. Moreover, according to the court judgment, there have not been substantial violations of legal requirements identified in the process of conducting the search and its procedural documentation. In addition, the court refers to the basis of urgency indicated in the motion on validity of an immediate conduct of Tengiz Gunava's personal search, conducted on November 16, 2012, by the prosecutor of the division of Fight Against Illicit Narcotic Drug Trafficking of the Department of Investigation Procedures - T.Kh. at the General Inspection, departments of Criminal Police, Patrol Police of the Ministry of Internal Affairs of Georgia, and the division of Fight Against Illicit Narcotic Drug Trafficking of the Special Operations Department, and asserts that "Tengiz Gunava's personal search was conducted due to urgent necessity, since the delay of the personal search may have led to elimination of factual evidence important for the investigation, and therefore, failure of obtaining the above evidence, due to which there was an immediate necessity of conducting the searching without court ruling under paragraph 5, Article 112 of the Code of Criminal Procedure of Georgia".

195 October 9, 2009 version of the Criminal Procedure Code of Georgia, which was effective before amendments were made to the Criminal Procedure Code of Georgia under the Georgian law on amendments to the Criminal Procedure Code of Georgia of June 22, 2012.

196 In accordance with amendments to the Criminal Procedure Code of Georgia, on October 9, 2009, under the Georgian law on the amendments to the Criminal Procedure Code of Georgia of June 22, 2012.

During the search of Tengiz Gunava's residential apartment, on November 16, 2012, similar violations occurred. Namely, the resolution of the investigator does not specify which concrete basis under Paragraph 5, Article 112 of the Code of Criminal Procedure of Georgia created urgency for an immediate search of Tengiz Gunava's residential apartment. Despite this, on November 16, 2012, prosecutor of the division of Fight Against Illicit Narcotic Drug Trafficking of the Department of Investigation Procedures - T.Kh. at the General Inspection, departments of Criminal Police, Patrol Police of the Ministry of Internal Affairs of Georgia, and the division of Fight Against Illicit Narcotic Drug Trafficking of the Special Operations Department, in the motion on validity of conducting the search of Tengiz Gunava's residential apartment due to urgent necessity, *post factum* indicated the basis for conducting an immediate search – possible failure of obtaining factual evidence important for the investigation, in case of delay, and the possibility of elimination of factual evidence. As a result, in the ruling of November 16, 2012 on the review of lawfulness of the investigation conducted without the ruling of the judge, Judge D.J. once again clarified that "Investigation act - search of Tengiz Gunava's residential apartment - was conducted due to urgent necessity, since the delay of the search may have led to elimination of factual evidence important for the investigation, and therefore, failure of obtaining the above evidence, due to which there was an immediate necessity of conducting the search without court ruling, under Article 112 (5) of the Code of Criminal Procedure of Georgia". The court ruling additionally stated that "investigation activity, which restricted the right to private property, was conducted in compliance with the requirements of the Code of Criminal Procedure; Moreover, no substantial violations were identified in the process of search and its procedural documentation."

Based on the above, judge D.J. of the Criminal Cases Panel of Tbilisi City Court declared the immediate conduct of personal search and Tengiz Gunava's residential apartment search, under urgent necessity without the court ruling on November 16, 2012, to be legal.

Analysis of above Articles of the Code of Criminal Procedure of Georgia indicates that a Georgian lawmaker has a particularly cautious approach towards the rights of private property, ownership and inviolability of personal life. Due to this reason, the law defines in detail the rule and basis for search and seizure. Therefore, it is an unconditional duty of every law-enforcer to comply with the requirements of the law in good faith, and adhere to self-restrain by abiding to the rules in conducting investigation. But if a law-enforcer fails to assess the emerged circumstances and break the law, in that case the only guarantor of the law and the human rights is the Court. Therefore, judge has a responsibility to assess the legality of actions and activities undertaken by the law-enforcement officials. Each judge shall ensure examination of compliance of conducted investigation activities with the legislation, and its outcome may be expressed by the recognition of specific investigation activities by the court as legal or illegal.

The judge shall have an obligation to argue and substantiate in the acts issued by him/her, in this case in the ruling on legality of the conduct of investigation activities, whether there was a violation of requirements of the law in the course of conducting an investigation. And if the judge finds that there was a violation, but it was not of significant nature, he/she shall substantiate why this specific violation failed to affect the legality of conducted investigation and why this violation is not a basis for recognizing the investigation activities unlawful. In particular, when the law comprehensively defines the basis for conducting investigation activities immediately, and states that these grounds serve as restrictions for law-enforcers, if he/she conducts relevant investigation without a court ruling. Despite the fact that act issued by a judge is the final document that shall include comprehensive responses on every question related to all serious violations, Judge D.J. failed even to discuss the above violations and limited its decision by abstract conclusion in the ruling, that the requirements of the law were not significantly violated. This does not clearly indicate which violations were discussed by the judge and why did the judge find that failure to define preconditions for the urgently/immediately conducted investigation activity to be an insignificant violation.

Based on the above, by the immediate conduct of personal search and residential apartment search of Tengiz Gunava under urgent necessity, and by recognizing these as lawful actions, there was a material breach of requirements of the Procedure Law on the part of the investigator and the prosecutor, as well as the judge.

Therefore, Public Defender of Georgia, under paragraph "d" of article 21 of the Organic Law of Georgia "on Public Defender of Georgia", applied to the High Council of Justice of Georgia with the proposal to launch disciplinary

proceedings towards the judge, while it applied to the General Inspection of the Ministry of Internal Affairs of Georgia with a proposal to launch disciplinary proceedings towards the investigators and the prosecutor.

CASE OF BACHANA AKHALAIA

Following examination of the documentation presented with respect to the case of Bachana Akhalaia at the Office of Public Defender of Georgia, it was concluded that Article 4 (1) of the Law of Georgia "on Police" was violated by K.K. – investigator at the Anti-corruption Department on Cases of Particular Importance, Prosecutor's Office of Georgia. The above Article stipulates that the police activities shall be based on the principle of legality. In particular, the violation by K.K. – investigator at the Anti-corruption Department on Cases of Particular Importance, Prosecutor's Office of Georgia, was demonstrated by the following actions:

Among other documentation of the criminal case proceeded against Bachana Akhalaia, the defendant presented at the Office of Public Defender of Georgia the interrogation protocols of two witnesses – V.B. and N.K. interrogated on January 8, 2013 by K.K. – investigator at the Anti-corruption Department on Cases of Particular Importance, Prosecutor's Office of Georgia.

As a result of examination of the said interrogation protocols, it was found that concerning the criminal case proceeded against Bachana Akhalaia, K.K. – investigator at the Anti-corruption Department on Cases of Particular Importance, Prosecutor's Office of Georgia, on January 8, 2013 was interrogating the witness V.B from 15:05 to 15:25, while, in parallel, K.K was interrogating the other witness N.Q. within the framework of the same case and on the same day from 15:05 to 15:15.

Article 305 (2) of the Code of Criminal Procedure of Georgia (Code of Criminal Procedure of Georgia of February 20, 1998[197]) clearly requires that *"A witness shall be interrogated separately from other witnesses. Furthermore, an investigator takes measures to ensure that witnesses interrogated on the same case do not have contact before the interrogation is completed".*

In the present case, the interrogation protocol mentions nothing about the postponement of interrogation or announcement of a break. Moreover, as it was already noted, interrogation of witnesses together is prohibited by the legislation. Despite this, investigator K.K. on both interrogation protocols endorses by signature the fact that on January 8, 2013 he/she has been conducting the interrogation of two witnesses simultaneously during ten minutes (from 15:05 to 15:15), which constitutes the breach of Article 305 (2) of the Code of Criminal Procedure of Georgia (Code of Criminal Procedure of Georgia of February 20, 1998). Thus, if the interrogation of these witnesses did not take place simultaneously, then the question is - how this investigator managed to interrogate two witnesses separately.

It is to be noted that according to Article 4 (1) of the Law of Georgia "on Police", police activities shall be based on the principle of legality. Therefore, a policeman, while carrying out his/her official duties, shall observe the law and fulfill the requirements of law in good faith. A law enforcement officer is bound by law to observe the principle of legality in the course of carrying out his/her official duties. Moreover, each person has a right, on the one hand, that criminal prosecution against him/her is conducted without substantial breach of law, and on the other hand, it is the right of all citizens that the law enforcement officers carry out their official duties in full compliance of law. All above-mentioned requirements have not been met in the criminal case proceeded against Bachana Akhalaia, by K.K. – investigator at the Anti-corruption Department on Cases of Particular Importance, Prosecutor's Office of Georgia.

Taking into consideration all above stated, Public Defender of Georgia, pursuant to Article 21 (d) of the Organic Law of Georgia "on Public Defender of Georgia", submitted to the General Inspection of the Ministry of Justice of Georgia a request on initiating a disciplinary proceedings and taking relevant measures as stipulated by law against K.K. – investigator at the Anti-corruption Department on Cases of Particular Importance, Prosecutor's Office of Georgia.

197 In accordance with Article 332 (1) of the Criminal Procedure Code of Georgia, interrogation in the course of investigation before September 1, 2013 shall be proceeded pursuant to the rule established by the Criminal Procedure Code of Georgia of February 20, 1998 (except for article 305 (6)).

CASE OF GIORGI KALANDADZE

Following examination of the documentation presented with respect to the case of Giorgi Kalandaze at the Office of Public Defender of Georgia, the following factual circumstances have been established:

Under the court decision of November 9, 2012, Tbilisi City Court partially upheld the motion of the Minister of Justice of Georgia and imposed a bail, as a coercive measure, to the accused Giorgi Kalandadze. In spite of this fact, Giorgi Kalandaze continued to hold the position of the Chief of Joint Staff of the Georgian Armed Forces.

On November 10, 2012 a prosecutor G.Sh. submitted the motion to the Criminal Cases Panel of the Tbilisi City Court and requested the removal of accused Giorgi Kalandadze from office/work, which was upheld by the judge L.O. under the Tbilisi City Court decision of November 11, 2012.

The Office of Public Defender of Georgia was notified by the Letter dated February 13, 2013 of the Administration of the President of Georgia that the letter of the Minister of Defense and attached to it the copy of the decision of the Criminal Cases Panel of the Tbilisi City Court, dated November 11, 2012 was registered at the secretariat of the Administration of the President of Georgia on November 20, 2013. On January 18, 2013 the Ministry of Defense of Georgia submitted to the Office of Public Defender of Georgia the Ordinance of the President of Georgia, dated November 20, 2012 concerning the removal of the Brigadier General Giorgi Kalandaze from office/work, the Chief of Joint Staff of the Georgian Armed Forces.

On November 13, 2012 the prosecutor of an Anti-corruption Department of the Chief Prosecutor's Office – G.Sh. applied to the Criminal Cases Panel of the Tbilisi City Court and requested the imposition of an arrest, as a coercive measure, to Giorgi Kalandadze. Judge B.Sh. did not uphold the motion of the prosecutor. However, the judge partly upheld the motion of the lawyer of Giorgi Kalalndaze and imposed a bail, as a coercive measure, to Giorgi Kalandadze.

After comparing the above factual circumstances on the case, Public Defender of Georgia maintained that the Judge L.O. violated Article 2(2.f) of the Law of Georgia "on Disciplinary Responsibility and Disciplinary Prosecution of Judges on Common Courts", meaning that the judge failed to properly fulfill its duties under the law, which was illustrated by the following:

On November 11, 2012 the Judge L.O. of the Criminal Cases Panel of the Tbilisi City Court, upheld by his ruling the motion of the senior prosecutor of an Anti-corruption Department of the Chief Prosecutor's Office – G.Sh. and held that "the accused Giorgi Kalandadze, until the final decision is made on the case, shall be removed from the position of the Chief of Joint Staff of the Georgian Armed Forces." According to the same ruling, based on the decision of the judge L.O. the above ruling was to be delivered for enforcement and notification to the persons and bodies as indicated in Article 206 (7) of the Code of Criminal Procedure of Georgia.

It is essential to note that Article 206 (7) of the Code of Criminal Procedure of Georgia sets forth the obligation to keep one copy the ruling on the imposition, change or annulment of a coercive measure in the court, as well as sending each copy to the accused or its lawyer, investigator, prosecutor and the institution enforcing the coercive measure. Nevertheless, it should be taken into account that according to the Code of Criminal Procedure, removal of accused from office/work does not constitute a coercive measure, thus persons/bodies receiving the ruling on imposition, change or annulment of a coercive measure shall not be bound to enforce this ruling. Obligation to enforce the ruling on removal of accused from office/work shall be implemented by the subjects as provided by Article 160 (2,3) of the Code of Criminal Procedure of Georgia.

Therefore, judge L.O. breached an obligation to properly fulfill his/her duties by indicating the persons and bodies as stipulated in Article 206 (7) as the enforcement subjects of November 11, 2012 ruling. Moreover, judge, in accordance with Article 160 (2,3) of the Code of Criminal Procedure of Georgia, failed to define the authorities of which specific institution, enterprise or organization was under a duty to enforce the respective court ruling, meaning that, in accordance with Article 160 (3) of the Code of Criminal Procedure of Georgia, the judge failed to indicate that in this particular case the President of Georgia was obliged to enforce the ruling of the court on the removal of accused Giorgi Kalandadze from office.

Apart from the all said above, after studying the factual circumstance of the present case, Public Defender of Georgia also considers that Judge L.O. violated Article 2(2.f) of the Law of Georgia "on Disciplinary Responsibility and Disciplinary Prosecution of Judges on Common Courts", meaning that the judge failed to properly fulfill its duties under the law, which was illustrated by the following:

Judge B.Sh. of the Criminal Cases Panel of the Tbilisi City Court in his/her ruling of November 13, 2012 generally held that the accused Giorgi Kalandadze is removed from the position of the Chief of Joint Staff of the Georgian Armed Forces, based on the November 11, 2012 ruling. Furthermore, it is clear from the record of the hearing[198] of Tbilisi City Court held on November 13, 2012 that the Lawyer of Giorgi Kandelaki broadly referred to the illegal nature of criminal prosecution against Giorgi Kalandadze and the issues of his removal from office. Despite this fact, judge B.Sh. in the ruling of November 13, 2012 of Tbilisi City Court only noted that, while Giorgi Kalandadze was held accused, as well as in the course of carrying out other procedural acts, case materials do not verify the fact of substantial procedural violations that would result into the refusal to impose a coercive measure.

As you are aware, in accordance with Article 3 (2) of the Decree N462, dated August 8, 2007 of the President of Georgia on the Approval of Regulation of the General Staff of the Georgian Armed Forces, *"Chief of General staff shall be appointed and removed from office/work by the President of Georgia, under the nomination of the Minister of Defense of Georgia".*

Article 159 of the Code of Criminal Procedure of Georgia envisages the grounds for removal of accused from office, according to which *"The accused may be removed from office/work if the reasonable doubt exist that his stay in the office/work will impede the investigation, the compensation for damage resulted out of the offence, or will lead to the continuation of criminal activities."*

Pursuant to Article 160 of the Code of Crimina Procedure of Georgia:

"1. Following the decision on removal of the accused from office/work, the prosecutor shall address the court, based on the place of investigation, with a written petition, who shall, subject to sufficient grounds, order the imposition of the measure. The Court is authorized to examine the petition without an oral hearing.

2. The court ruling on the removal of the accused from office/work shall indicate the identity of a person to be removed from office/work, his place of work and position held, the ground for his/her removal from office/work, the request for removal of the accused from office/work, which shall be forwarded to the authorities of the institution, enterprise or organization.

3. The court ruling on removal of the accused from office/work shall be binding upon the authorities of a respective institution, enterprise or organization which shall, upon the receipt of the court ruling,, immediately execute it and report thereof to the court."

In accordance with Paragraph 2 of the above Article, the court ruling on the removal of the accused from office/work shall indicate "the request for removal of the accused from office/work". Thus, according to this provision, the court ruling on the removal of accused from office/work shall not automatically mean that the person is removed from office/work. The legislation clearly determines the compulsory nature of forwarding this kind of ruling to the authorities of the respective institution, enterprise or organization for execution. The latter does not, certainly, imply the discretion of authorities of the respective institution, enterprise or organization in the course of the execution of ruling. Article 160 (3) of the Code of Criminal Procedure of Georgia does not empower them with the capacity to reject the execution of the court ruling. The law evidently binds the addressee of the court ruling to execute it. Thus, according to the law requirements, the court ruling on the removal of the accused from office/work needs to be executed, which means that the relevant legal acts shell be issued, which will be based on the court ruling, and, by its content, this act shall define the fact of removal of accused from office/work, as stipulated by the court ruling.

Based on the above-mentioned, pursuant to the requirements set forth by the Article 160 (3) of the Code of Criminal Procedure of Georgia, before the execution of the ruling of the Criminal Cases Panel of the Tbilisi City Court, dated

198 First hearing on the case of Giorgi Kalandadze.

November 11, 2012, Giorgi kalandadze was not to be deemed as removed from the position of the Chief of Joint Staff of the Georgian Armed Forces and nobody had a right to initiate criminal prosecution against him, except for the Minister of justice of Georgia, in accordance with the Article 8 (1,c) of the Law of Georgia "on Prosecutor's office". Thus, the senior prosecutor of an Anti-corruption Department of the General Prosecutor's Office – G.Sh was not authorized to initiate prosecution against Giorgi Kalandaze, the Chief of Joint Staff of the Georgian Armed Forces, until the President of Georgia officially executed the relevant ruling of the Tbilisi City Court.

It also should be underscored that in accordance with the Article 89 (i) of the Law of Georgia "on Civil Service", duties of a civil servant shall be suspended *"in other cases of temporary dismissal of the civil servant (pursuant to the law or based on the law)."* Under Article 92 of the same law, *"Suspension of duties is registered by order or decree."* In the present case, prior to the adoption of the final decision on the criminal case, Tbilisi City Court ruled on the removal of Giorgi Kalandadze from the position of the Chief of Joint Staff of the Georgian Armed Forces based on the grounds as stipulated by the Code of Criminal Procedure of Georgia; Thus, according to the Article 92 of the of the Law of Georgia "on Civil Service", an ordinance should have been issued by the relevant authorized person, in this particular case – the President of Georgia, which would have executed the court ruling on the temporary removal of Giorgi Kalandadze from the position of the Chief of Joint Staff of the Georgian Armed Forces. Therefore, prior to the issuance of the relevant ordinance by the President of Georgia, the ruling of the Criminal Cases Panel of the Tbilisi City Court could not have been deemed as executed and only the Minister of Justice of Georgia was authorized to initiate criminal prosecution against Giorgi Kalandadze, holding the position of the Chief of Joint Staff of the Georgian Armed Force.

Consequently, by initiating criminal prosecution against Giorgi Kalandadze, Article 8 (1,c) of the Law of Georgia "on Prosecutor's office" was violated, provided that the prosecutor G.Sh. was not empowered to start and conduct criminal prosecution against a person holding senior military or senior office rank or equivalent.

It is, hereby, obvious that the court is the only body that is competent and authorized to reveal the substantive violations of legislation. Therefore, the judge was under a duty to examine and hold in his/her ruling the reasons why Giorgi Kalandadze was considered dismissed prior to the issuance of the Ordinance of the President of Georgia and thereafter what was meant under the will of the legislator, when Article160 of the Code of Criminal Procedure of Georgia clearly determines, that the court may only "request" the removal of accused from office/work in its ruling. Despite the fact that an act of a court is a final document, which shall give comprehensive and substantiated answer on all of the essential breaches and substantial questions regarding the case, judge B.Sh. only briefly and abstractly indicated in the ruling that the law has not been materially violated. Certainly, the judge is not obliged to refer in details to all the questions concerned, however judge B.Sh. Should have given a grounded and substantiated reasoning of the court with respect to issues that has been raised by the lawyer of Giorgi Kalandadze on the alleged illegal nature of the criminal prosecution against him. Hence, it should be stated that the present factual circumstances leads us to conclude that the judge failed to properly fulfill his/her official duties.

As a sum-up, Public Defender of Georgia, pursuant to the Article 21 (d) of the Organic Law of Georgia "on Public Defender of Georgia", applied to the High Council of Justice of Georgia with the proposal to initiate a disciplinary proceedings against the judges – L.O. and B.Sh., whereas it submitted to the General Inspection of the Ministry of Justice of Georgia a proposal on initiating a disciplinary proceedings against the prosecutor – G.Sh.

CASE OF THE CITIZENS RELATED TO THE FOUNDATION "KOMAGI" AND DAVIT AKHALAIA

The Office of Public Defender of Georgia studied the case-file presented by the lawyer of Davit Akhalaia, including the letter of summon of Davit Akhalaia issued by the Chief Prosecutor's Office of Georgia, dated December 1, 2012.

The following information was identified at the Chief Prosecutor's Office: identity of the person preparing the letter of summon, criminal case number, identity of the person summoned and his/her personal identification number, address, where Davit Akhalaia was to be appear, identity of a person before whom Davit Akhalaia was to appear, time of his appearance and general indication on the consequences of failure to appear without good cause.

On January 16, 2013, The Office of Public Defender of Georgia was informed by the letter of the Chief Prosecutor's Office, that "On December 1, 2012 Davit Akhalaia was summoned at the Chief Prosecutor's Office of Georgia for the purpose of conducting procedural activities. The letter of summon included the number of the criminal case. Moreover, the person receiving the letter of summon was notified on the fact that Davit Akhalaia was called as an accused".

According to the same letter of the Chief Prosecutor's Office "decision on holding Davit Akhalaia accused was adopted on December 1, 2012, on which his lawyer became aware on December 2".

Considering all above stated, letter of summon of Davit Akhalaia did not mention under what status and on which criminal case he was summoned. Accordingly, he could not have foreseen the outcomes of his failure to appear at the investigation body, which violates the right guaranteed by the legislation. Furthermore, provided that it is practically impossible to verify the existence of the fact that the person receiving the letter of summon was actually orally notified on the legal status of Davit Akhalaia, the latter raises reasonable doubt that such a notification has not been delivered orally to the person concerned.

It is hereby noteworthy that in accordance with the protocol drawn up by K.Ch. – investigator at the Anti-corruption Department on Cases of Particular Importance, Chief Prosecutor's Office of Georgia, on December 1, 2012 the investigator tried to find out the home telephone number of Davit Akhalaia in order to call him or his family members and inform on the decision adopted by the Anti-corruption Department on Cases of Particular Importance, Chief Prosecutor's Office of Georgia concerning bringing Davit Akhalaia to trial as accused based on which he was to appear at the Chief Prosecutor's Office of Georgia on December 2, 2012, on 17:00. The above protocol reaffirms the fact that the reason for summoning Davit Akhalaia at the Chief Prosecutor's Office on December 2, 2012 was to inform him on the decision on bringing him to trial as accused.

It should be underscored that the same fact occurred with respect to the citizens related to the Foundation "KOMAGI". In particular, On June 12, 2012, Ia Metreveli – Head of the Charity Foundation "KOMAGI" submitted an application to the Office of Public Defender of Georgia. According to this application, Ia Metreveli requested from Public Defender of Georgia to protect the right of the citizens related to the Foundation, provided that these citizens have been systematically called for interrogation by the Constitutional Security Department of the Ministry of Internal Affairs of Georgia without providing relevant information thereof.

For the purpose of thorough examination and obtaining detailed information on the case, Office of Public Defender of Georgia contacted the citizens indicated in the application of Ia Metreveli and interviewed them. Majority of those citizens stated that they have been called at the law-enforcement agency and the letter of summon only contained the number of the criminal case and no indication on the content of the case itself. The latter is endorsed by the letters of summon of the Ministry of Internal Affairs presented at the Office of Public Defender of Georgia by the citizens – A.Ts. and Ch.S.

On October 4, 2012, within the framework of the present case, the Office of Public Defender of Georgia received a letter from the Chief Prosecutor's Office stating that 16 people have been summoned at the investigation body and interrogated as witnesses on June 9, 2012 on the criminal case concerning vote buying, which is the crime envisaged by the Article 164[1] of the Criminal Code of Georgia. Before the interrogation, these citizens were informed on the case with respect to which they were called and explained of their rights and obligation as witnesses.

Based on the above-mentioned, the letters of summon did not imply the information on the content of the case.

Unfortunately, all said above constitutes a systematic problem. Apart from this particular case, in the course of studying the case by the Office of Public Defender of Georgia, citizens often referred to the fact that the letter of summon does not provide for the status of the person called and there is no indication of the criminal case concerned.

It is to be noted that such letters of summon only imply the criminal case number. Such referral is solely a technical indication and information not enough for conducting expected procedural activities. The latter puts a person in

information vacuum and creates a fear with respect to the law enforcement agencies. Such an act by the law enforcement agencies reduces the level of trust of the rest of the society and infringes the interest of an efficient, transparent investigation.

Moreover, according to the European Court of Human Rights, a person shall be informed on the motive and status prior to summoning at the investigation body, to foresee the legal consequences of the failure to appear. Persons in charge of carrying out criminal proceedings are under a duty, for the purposes of ensuring the security of persons, observe the legal authenticity and do not mislead the person regarding the real interest with respect to him/her.[199]

The issues is also aggravated by the fact that when the decision on bringing a person to trial as accused is made against the person and he/she fails to appear before the relevant authorities, this is an additional argument and ground for the Prosecutor's Office to request from the court and impose an pre-trial detention to the person, as a coercive measure. Furthermore, in case of summoning and not appearing by person as a witness, may result in bringing him/her before the investigation bodies by force or this might become the ground for this/her liability.

In addition, notifying a person on his/her legal status is important for him to consult with the lawyer, determine the need to hire the lawyer and in case of having the status of an accused, the person can plan an effective protection strategy, as well as enjoy other rights guaranteed by the legislation.

Hence, the law-enforcement agencies should carry out their activities based on the principles of good faith, transparency and protection of human rights. Thus, in case of summoning a person, even if it concerns the interrogation as a witness, a person shall be provided with maximum amount of information, for the society not to lose the trust and for the fear not to be created towards the law enforcement agencies. Finally, the most importantly, a person shall have the possibility to foresee the legal outcomes of his/her actions (for instance, in case of nonappearance) in addition if such an action causes his/her imprisonment.

Based on all the above-mentioned, Public Defender of Georgia, pursuant to the Article 21 (b) of the Organic Law of Georgia "on Public Defender of Georgia", applied to Chief Prosecutor's Office and the Ministry of Internal Affairs with a proposal to include the following information in the letter of summon sent to the person with respect to the criminal case by the investigator or a prosecutor: Who, which status, for what, with whom (by indicating the identity and position of a person) and at what address is the person summoned, a time of summon, as well as the explanation of consequences in case of non-appearance. At the same time, it is not enough to technically indicate only the number of the criminal case, but the letter of summon shall by all means include the information on which case the criminal proceeding is underway.

199 See, the case Giorgi Nikolaishvili vs. Georgia, European Court of Human Rights, January 15, 2009 [application N37048/04].

Special Operation Carried Out in Village Lapankuri, Lopota Gorge

Public Defender of Georgia studied the series of events taking place in late August in the village of Lapankuri in Lopota Gorge. The information collected by Public Defender from confidential sources and next of kin of some of the deceased as the result of the special operation, contradicts the official narrative and version provided by the Georgian law enforcement and senior government officials, according to which the armed group of Chechens entered Georgia from the North Caucasus. Therefore, the present conclusion underlines the details obtained by Public Defender on factual circumstances of the case. The inadequacy of measures applied by law enforcement bodies corresponding to the case, based on the official version will be discussed in the chapter on Law Enforcement Bodies and Human Rights in details.

According to the information collected from a confidential source affiliated with the militants and their leaders participating in Lapankuri special operation, the negotiations were initiated with the veterans of the Chechen war, Chechen refugees and the representatives of resistance committee of Chechens movement living in Europe in accordance with the instruction/request of the senior officials from the Georgian Interior Ministry, in February, 2012.

Further to the source of information, Georgian military authorities were promising to Chechen armed militants so called "corridor" to Chechnya, as well as training, equipment, creation and provision of all necessary conditions for facilitation of their passage to Chechnya.

Arrival of Chechens from Europe started from March. The flats were rented for them in various neighborhood of Tbilisi (mainly in Saburtalo district). According to promise of the officials of Georgian Interior Ministry, approximately fifty militants would avail the passage to Chechnya each month.

According to the information provided to Public Defender, around 120 Chechens and other militants, natives of North Caucasus, arrived to Georgia with subsequent aim to move to Chechnya. Upon their arrival the Chechens were met by the officials of Georgian Interior Ministry at the airport, allocated to dislocation or accommodation areas, provided and granted with the firearms and driving licenses, as well as other required documentation and items.

It should be mentioned that Public Defender was provided with gun registration certificate (authorizing the preservation of the gun (Stechkin System APS, gun #GB 3638)) issued on July 23, 2012 by the Interior Ministry to Aslan Margoshvili, deceased during Lopota special operation. The above fact points towards the existing link of Georgian Military Forces to this operation.

Further to the source of information, the Chechen militants were divided into the groups. The militants of such groups were undergoing training in Vaziani and Shavnabada Military bases nearby Tbilisi. The officials of Georgian law enforcement authorities and Chechen militants having rich war experience operated as the instructors of the militants' groups.

The facts of deployment of large groups of Chechens from Europe to Pankisi gorge in summer 2012 are also confirmed by Pankisi gorge inhabitants. The interviewed Pankisi gorge inhabitants stated that "The facts of arrival of Chechens

from Europe to Pankisi in previous years were rare, as for the summer 2012 more than 100 young Chechens arrived from various countries of the Europe".

According to a confidential source of information (the name is not revealed due to personal security), Gia Lortkipanidze, the Deputy Minister of Interior and Sandro Amiridze and Zurab Maisuradze - other officials of Interior Ministry had immediate connection with these groups and handled all relevant issues (deployment, pick up, meals, financial sources, transport, provision with all needed items etc.).

Since March 2012 the militants' training lasted longer than expected, triggering the militant's negative evaluations. According to the information by former Chechen field leader, the training of military groups generally requires two or three weeks. Chechen militants were demanding from Georgian Interior Ministry officials to organize their promised so called "corridor" to Chechnya. Georgian Interior Ministry officials made various promises and indicated different dates of passages for the groups. Some of Chechen militants were gradually losing trust in Georgian authorities and Interior Ministry officials.

2012 parliamentary elections were approaching; Internal political situation was getting tense in Georgia, triggering assumptions among Chechen militants that reason behind keeping them in Georgia longer than scheduled was possibly related to elections and possibility of being used in some form in the electoral process.

According to the source of information, Chechen militants were freely moving in Georgia, including nearby territories of Lopota gorge and village Lapankuri, they did not avoid appearance to local community, however, they did not get into close contact with them. According to the source, such self-confident movement of Chechens was grounded on guarantees of security and assistance provided to Chechen militants by senior officials of the Ministry of Interior.

According to a source, group of Chechen militants was deployed in the Lopota gorge several days before the so called special operation. Further, according to a confidential source, they entered Lapankuri gorge with pickup vehicles provided by the Interior Ministry's anti-terrorism center and brought necessary armament, food and other essentials. Chechen militants were waiting for authorization to transit to Chechnya.

According to a confidential source, two days before the clash, the units of the Georgian special task forces, were deployed by helicopters at the Dagestan part of the Georgian-Russian border, presumably to prevent the militants from moving towards North.

Simultaneously Chechen militants, deployed in the Lopota gorge, were demanding the promised "corridor" and passage through the Degastani part of Georgian-Russian border. However, at the last moment the Georgian Interior Ministry refused to give them "corridor" and demanded from the militants to surrender their arms and to return either to Pankisi gorge or to a military base. This demand strained relations between the Chechen militants and Georgian Interior Ministry employees. According to a confidential source, Chechen militants did not trust Georgian Interior Ministry representatives and refused to surrender arms in Lapankuri gorge, instead offering to lay down armament only after returning to the Pankisi gorge.

For the purpose of defusing tensions and holding negotiations with the militants, the Interior Ministry employees turned to mediators – credible Chechen individuals. Militants refused to surrender their arms. After the refusal Georgian troops launched so called anti-terrorist operation, due to which several Chechen militants, as well as Georgian military servicemen were killed. According to a confidential source the Georgian servicemen, who died in the Lapankuri special operation, were accompanying the group of Chechen militants from the very first day of their deployment there. According to a source, the duties of Georgian members of the group deployed in Lapankuri encompassed providing medical service to the group, instructing and accompanying it to Dagestani border.

In his statement to Public Defender, Merab Margoshvili, a father of Aslan Margoshvili - the militant killed in the clash - stipulated that his son was trained at the Shavnabada base and among his instructors were Archil Chokheli and Solomon Tsiklauri – two Georgian Special Forces servicemen killed during the special operation.

According to the source affiliated with Chechen militants, they established close and friendly relationships with Georgian Interior Ministry senior officials during last months. They were trained by them and could not imagine to be shot by Georgian Military Forces. According to the representatives of Chechens, the deployment of this group in

Georgia, as well as their training and passage to Chechnya was agreed with senior state officials, therefore they did not expect such betrayal. In addition, apparently, not all necessary measures were applied to convince Chechen militants to avoid this event. As an example, the engagement of elders or parents in negotiation process with Chechen militants might be possible.

According to the source, aviation participating in the special operation started shooting the group members. As a result of the clash, seven Chechen militants were killed, three out of which were Pankisi gorge inhabitants. As stated by the source, nine militants survived in the clash; Several days afterwards they left Georgia with the assistance of Georgian Interior Ministry representatives and went to Turkey through Vale border crossing point.

After the special operation, corpses of the deceased were not handed over to the relatives for several days. According to relatives of Margoshvili, Kavtarashvili and Bagakashvili, deceased during the special operation, G. Lortkipanidze the Deputy Georgian Interior Minister and S. Amiridze, Senior Official of Georgian Interior Ministry agreed on handing over the corpses on the sole condition if their burial would be conducted on the same day: they had to be buried without traditional funeral processing, quietly and without presence of people. The family members of the deceased were forced to accept the conditions of senior officials of the Georgian Interior Ministry.

On September 3, late at night the corpses of the deceased were taken from morgues of Gldani Penitentiary Establishment and handed over to the next of kin of deceised persons. Only fathers of the deceased were authorized to attend the funerals. Senior officials of Georgian Interior Ministry attended the burials too.

Corpses of other Chechen militants killed during the special operation were buried on the so-called abandoned cemetery nearby the Airport route. Despite the request, the corpses were not handed over to the family members for a considerable period.

According to the information provided by the parents and relatives of the deceased during the special operation, G. Lortkipanidze, Deputy Georgian Interior Minister requested them to inform him in case Chechen militant survivors of the Lapankuri special operation would appear. He was undertaking the obligation to passage these militants safely to the border. As stated above, this group was later accompanied by the Georgian Interior Ministry to the Vale border crossing point.

The deployment of Chechen militants, promises, failure to fulfill upon promises, the manner of their destruction and insulting attitude towards the corpses of the deceased, as well as, family members, seriously impaired Georgian-Chechen relationships. As a result Chechens accuse Georgians in treason.

On the basis of the information provided by the confidential source, parents and family members of inhabitants of Pankisi gorge deceased during the special operation, the acts of senior officials of Georgian Ministry of Interior and others may constitute the sings of criminal case in line with the Article 223 (part one, two and three) of the Criminal Code of Georgia, as well as the Articles 151 (threat) and 156 (persecution) of the Criminal Code of Georgia.

Recommendations:

- **Public Defender addresses the Parliament of Georgia to set up an ad hoc investigative commission to look into armed clash in Lopota gorge, at the village Lopota, in late August, 2012. It should be mentioned, that in case of the establishment of the parliamentary commission Public Defender and several leaders of Chechen community exiled from Chechnya express their willingness to cooperate with it.**
- **Public Defender calls on the chief prosecutor to launch investigation in connection of alleged involvement of former senior Interior Ministry officials in setting up illegal armed groups in 2012; Public Defender, also addresses the chief prosecutor to investigate cases of intimidation of family members of killed militants during the special operation at the village Lapankuri, Lopota gorge. Public Defender calls on the chief prosecutor to periodically inform the society on the course of investigation of events occurred at the village Lapankuri, Lopota gorge in August 2012, due to its high public interest.**

Developments in Local Self-Government Bodies

According to Article 102[2] of the Constitution of Georgia: "Self-government unit exercises its authority independently and at its own responsibility, in accordance with the rule defined by the Georgian Legislation. Powers, defined by the organic law, shall be exclusive". Therefore, illegal interference in matters of a self-government unit shall be prohibited.

Public Defender of Georgia is studying the developments in local self-government bodies after the October 2012, Parliamentary Elections, and special report will be drawn up on its findings. Meanwhile, we deemed it necessary to focus in the Parliamentary report on major trends identified during this period.

As it is known, before the elections, in almost every local self-government bodies majority was held by the political party "National Movement". Subsequently, the victory of political coalition "Georgian Dream" in the October, 2012 Parliamentary Elections, created inaccurate expectations with regards to local self-government bodies. It should be underlined, that insufficient level of political education of the society created inaccurate expectations with regards to the fact, that change of central government should have naturally led to respective changes in local self-governments, which resulted in chaotic confrontations, often within "Sakrebulo" (local self-government representative body), among various parties struggling for gaining power. Local population was artificially involved in the process of obtaining influence over the self-government bodies, which was demonstrated by blocking the premises of local self-governments, rallies, including the most extreme form of protest – hanger strike. Therefore, number of facts of obstruction of functioning of local self-governments has been identified, and law-enforcement agencies failed to adequately react to many of these facts.

Furthermore, after the replacement of Gamgebelis [head of local municipality] and their deputies following the 2012 Parliamentary elections, significant number of staff of local self-governments left their jobs based on personal letters of resignation. Therefore, some suspicion arose, that the process was not healthy and it was related to politically motivated decisions.

Specifically, according to the report of "International Society of Fair Elections and Democracy", within the timeframe of October 1, 2012 and December 21, 31 Gamgebeli [head of local municipality] resigned, 29 of them - based on personal letter of resignation, and two of them - under the decision of Sakrebulo [local municipality]. During the same period, 16 Chairperson of Sakrebulo [local municipality] resigned; Among them, 14 resigned under personal resignation letter and two of them - under the decision of Sakrebulo [local municipality].[200]

Office of Public Defender of Georgia requested information on the number of employees resigned/dismissed from every Gamgeoba [local municipality]. Based on the information obtained by our office, since October, 2012 a total of 1434 employees have resigned/dismissed from 49 Gamgeoba [local municipality]. It should be noted, that most of

200 http://www.isfed.ge/pdf/2012-12-21(rep).pdf

them – 881 individuals, have resigned based on their personal resignation letters. In relations to these developments, it can be concluded that the processes have developed in accordance with unprecedented historical practice. Namely, this kind of approach that change of government automatically results in the change of staff was reflected on local self-government bodies as well.

Despite the fact that individual cases are difficult to examine, the number of employees resigned based on personal letter of resignation generates a substantiated suspicion that the process was partly developing under pressure. Moreover, additional obstacles are created due to silence of the dismissed/resigned individuals. Public Defender of Georgia got interested in number of facts related to specific pressure exerted over certain individuals. However, in the most cases these individuals refused to provide clarification or information on this matter. As noted above, Public Defender of Georgia continues examination of the ongoing processes in local self-government bodies. Although, it should be underlined that it is important to involve all relevant agencies to keep the process develop within democratic and legal frames.

Law-Enforcement Bodies and Human Rights

Law-Enforcement Bodies play particular role in the protection of human rights. Public Defender of Georgia welcomes adequate response of law-enforcement bodies to its recommendations/proposals, as well as, to information provided by the Office of Public Defender of Georgia. However, case analyses shows that violations of human rights by law-enforcement bodies remained one of the major problems in the reporting period. The Office of Public Defender of Georgia examined numerous applications addressing verbal and physical assault, pressure and other abusive acts of police officers during or after arrest.

Office of Public Defender of Georgia has identified negligence of investigative bodies related to launch of investigation on several instances. Facts containing the signs of crime were extensively covered by mass media, particularly in the pre-election period. In several cases similar information was provided to law-enforcement bodies by Public Defender of Georgia. Nevertheless, in a number of cases investigative bodies failed to carry out adequate measures.

Reporting period also marked facts of incompliance of law-enforcement representatives with lawful order of Public Defender of Georgia. Representatives of law-enforcement bodies shall not undermine the activities of Public Defender of Georgia and his representatives toward the protection of human rights in a country, which thrives to become a fully-fledged member of the European family.

Office of Public Defender of Georgia examined numerous cases relating to the rights of administrative detainees, particularly in pre-election period. In accordance with their statements, law-enforcement bodies did not inform them promptly of their rights during the arrest. In several instances custody reports did not indicate whether police officers informed detainees of their rights, which later caused difficulties to determine the truth on concrete facts by Public Defender of Georgia. Examination of cases by Public Defender of Georgia revealed the systemic nature of this problem, which needs to be solved. Pre-election period also marked the problem of administrative arrests of "Georgian Dream" activists. A number of the detainees suggested that the actions of law-enforcement authorities had certain political motivation. This issue will be discussed in details in a chapter dedicated to Human Rights Violations Related to Election Period 2012.

Reporting period also outlined infringements of presumption of innocence. During and after elections numerous facts were identified, where Public Officials and/or representatives of law-enforcement authorities violated one of the most important principles – presumption of innocence in their public statements.

Hereby, we present several major problems identified by the Office of Public Defender of Georgia during the reporting period.

RIGHT TO LIFE

Special operation for the release of Georgian citizens captured by militants and the arrest of members of the armed group in Lopota Gorge, territory of Georgia, at the Dagestan section of Russian-Georgian boarder was one of the prominent cases occurring at the end of August 2012. As a result, several members of the armed group died.

Factual circumstances surrounding the case pose several questions, which have not been answered yet. Public Defender of Georgia studies this case extensively. Information obtained by us is discussed in the Report separately.[201] Therefore, this chapter will analyze measures taken by law-enforcement authorities in response to the event.

Pursuant to the Article 18 (e) of the Organic Law of Georgia on "Public Defender of Georgia" Public Defender of Georgia lacks the opportunity to study materials of the criminal case on Lopota Special Operation before the end of investigation, in order to examine factual circumstances of the case and/or to determine whether means employed during investigation were adequate to ascertain, that the law-enforcement representatives, involved in special operation, used excessive force. Therefore, at this point the necessity of interference in the right to life during the special operation and the effectiveness of investigation were examined. Office of Public Defender of Georgia requested information from the Chief Prosecutor's Office of Georgia regarding the commencement of investigation on the alleged excessive use of force by law enforcement officials.

In November 2012 the Chief Prosecutor's Office of Georgia informed Public Defender of Georgia, that the investigation has been launched in accordance with Article 144 (2; "a", "c" and "i") of the Criminal Code of Georgia at Kakheti Regional Main Division of the Ministry of Internal Affairs of Georgia, on the fact of taking several hostages by armed individuals in the Village Lapankuri, Telavi region. In accordance with the information provided by the Chief Prosecutor's Office of Georgia in several months, and particularly in January 2013, investigation on the fact of taking hostages was still ongoing at the Counter Intelligence Department of the Ministry of Internal Affairs. Furthermore, fact of alleged excessive use of force by law-enforcement officials is under investigation in the framework of this case.

In order to comprehensively study the case, Office of Public Defender of Georgia requested information from the Ministry of Internal Affairs of Georgia concerning the official inspection of the alleged excessive use of force and illegal use of fire-arms by law-enforcement officials, involved in the special operation and the outcome of the inspection. The Ministry informed the Office of Public Defender of Georgia, that such inspection has not been conducted.

It should be outlined that several problems were identified in this case. One of them includes adequate and effective measures carried out by law-enforcement officials vis-à-vis the occurred facts. In particular, according to Article 15 (1) of the Constitution of Georgia, the inviolable right to life "is protected by law". This provision also obliges the state to put in place legislation, which shall qualify murder committed by state agents or private individuals as a crime. Meanwhile, state should ensure the enforcement of this legislation in practice.

The positive obligation of a state to protect right to life is ensured by Article 2 (1) of the European Convention on Human Rights, according to which *Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally* […].

The Article 1 of the European Convention on Human Rights determines that states shall "secure" to everyone the rights and freedoms defined in the Convention. As a result of such formulation, Article 1 of the European Convention on Human Rights was interpreted as to impose negative, as well as positive obligations on a state. According to this provision, the state is obliged not only to restrain from intervention into the exercise of rights and freedoms guaranteed by the Convention and its Protocols thereto (negative obligation), but also to protect them (positive obligation), including from third parties (private individuals and legal entities). The State's failure to comply with its duty to ensure human rights protection institutes legal basis of ultimate attribution to State responsibility for the acts of private individuals or legal entities.[202]

201 See P. 408 above

202 K.Korkelia, Application of European Convention on Human Rights in Georgia

Nevertheless, considering the information provided by the Chief Prosecutor's Office and the Ministry of Internal Affairs of Georgia, independent, prompt and effective investigation of facts occurred at the end of August 2012 in Lopota Gorge, Dagestan Section of Russian-Georgian boarder is under doubt.

Such suspicion is based on several circumstances. In particular, criminal proceedings were initiated and underway only on facts of taking hostages. Criminal investigation on alleged excessive use of force by law-enforcement officials had not been launched before the end of 2012. Notwithstanding the six months surpass after the special operation, investigative bodies have not produced the concrete outcome.

Moreover, investigation on taking hostages is carried out by the Ministry of Internal Affairs of Georgia, whereas in accordance with Article 2 of #178 Order of September 29, 2010 of the Minister of Justice of Georgia on "Investigative Jurisdiction of Criminal Cases", criminal acts of law-enforcement officials, including alleged excessive use of force for the arrest of the perpetrator, shall be investigated by the prosecutor's office.

In similar cases, the European Court of Human Rights found the failure of state to comply with its obligation to protect right to life as a result of ineffective and unprompted investigation. In particular, *The Court has had occasion to find a violation of Article 2 in its procedural aspect in that an investigation into a death in circumstances engaging the responsibility of a police officer was carried out by direct colleagues of the persons allegedly involved. Supervision by another authority, however independent, has been found not to be a sufficient safeguard for the independence of the investigation.*[203]

Therefore, the European Court of Human Rights found a violation of Article 2 of the European Convention on Human Rights.

According to the Court, *A requirement of promptness and reasonable expedition is implicit in this context. It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating a use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.*[204]

According to the established case law of the Court, *the investigation must also be effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances and to the identification and punishment of those responsible. This is not an obligation of result, but of means. Any deficiency in the investigation which undermines its ability to establish the cause of death or persons responsible will risk falling foul of this standard.*[205]

Absence of effective investigation of the use of fire-arms by law-enforcement bodies during the special operation in the Lopota Gorge before the end of 2012, resulting in death of several armed individuals may constitute the violation of positive obligation of the state to protect right to life enshrined in international instruments and national legislation. It is necessary to single out criminal proceedings on alleged excessive use of force by law enforcement officials involved in special operation at Lapankuri Gorge, which will be led by the Prosecutor's Office, in accordance with the Order of Minister of Justice of Georgia of September 29, 2010. Investigative bodies shall carry out subsequent actions for effective investigation of this case.

THREAT AND PHYSICAL ASSAULT BY LAW-ENFORCEMENT BODIES

Along with national legislation, treatment of individuals during or after arrest is regulated by several international conventions to which Georgia is a party. These provisions guarantee that no one shall be subjected to torture or to inhumane or degrading treatment or to arbitrary deprivation of liberty under any circumstances.

Reporting period marked unprecedented growth of complaints relating to alleged criminal acts perpetrated by law-enforcement officials. These includes physical assaults from the side of law enforcement staff, both, at the moment of

203 Hugh Jordan v United Kingdom, §120, 2001; Ramsahai v Netherlands §337, 2007
204 Hugh Jordan v United Kingdom, §108, 2001
205 Hugh Jordan v United Kingdom, §107, 2001

arrest and after bringing individuals before the law enforcement authorities. Furthermore, Public Defender identified the case where the representative of the Judiciary made a public statement on criminal actions against him/her by law-enforcement officials. This is a quite a concerning trend, particularly, since it had been maintained during January-February 2013.

The Case of E.S.

On May 22, 2012 and June 1, 2012 G. Ch., a lawyer of the accused E.S. addressed Public Defender of Georgia. According to the applicant, on May 15, 2012 Kutaisi police officers, led by V.Gh., the Head of the Police Division, entered the apartment of E.S. without any explanation, they conducted the search of the apartment. While Police officers assaulted E.S. physically and verbally, other members of the family were also injured. E.S. was arrested and brought to the Police Division with excessive use of force. During the arrest E.S. was not informed of the reasons for his/her arrest and his/her rights.

Chief Prosecutor's Office of Georgia informed the Office of Public Defender of Georgia, that the investigation was launched on the fact of excess of the official authority in accordance with Article 333 (3, b) of the Criminal Code of Georgia.

The Case of K.Ch.

On November 27, 2012 the accused K.Ch. addressed Public Defender of Georgia. According to K.Ch., he/she was subjected to ill-treatment by law-enforcement officials for several times, during May 31 – September 18, 2012. In his/her application K.Ch. described illegal acts against him/her in details, named the perpetrators and requested their conviction.

Chief Prosecutor's Office of Georgia informed the Office of Public Defender of Georgia, that on January 5, 2013, investigation was launched on the fact of excess of the official authority by police officers against K.Ch. in accordance with Article 333 (3, b) of the Criminal Code of Georgia.

The Case of Z.Kh.

On February 10, 2013 representative of Public Defender of Georgia obtained a written explanation of the accused Z.Kh. at Adjara and Guria Temporary Detention Isolator. According to the applicant, on February 8, 2013 he/she was subjected to ill-treatment, verbal and physical assault by law-enforcement officials, who also infringed procedural guarantees enshrined in the legislation.

Chief Prosecutor's Office of Georgia informed the Office of Public Defender of Georgia, that on February 20, 2013, investigation was launched on the fact of excess of the official authority by the agents of the Ministry of Internal Affairs of Georgia in accordance with Article 333 (1) of the Criminal Code of Georgia at the investigation division of the prosecutor's office of Adjara Autonomous Republic.

The Case Concerning Pressure of the Assistant of a Judge

According to the disseminated information by mass media on December 20, 2012, one of the Assistants of a Judge at Criminal Law Collegium of the Tbilisi City Court was subjected to pressure for collecting particular information on the activities of the Court by the officer of the Ministry of Internal Affairs of Georgia.

On January 17, 2013 Chief Prosecutor's Office of Georgia informed the Office of Public Defender of Georgia that investigation was launched on act of coercion of I.B. in accordance with Article 150 (1) of the Criminal Code of Georgia.

Public Defender of Georgia considers that investigative bodies shall pay particular attention to facts of physical assaults or acts containing signs of crime by law-enforcement officials in order to avoid systemic nature of such offences.

FAILURE TO COMMENCE INVESTIGATION

Another issue, which we would like to pay particular attention to in this chapter is the failure to commence investigation. Prompt, adequate and effective response to alleged signs of crime is a positive obligation of a State. Pursuant to the Article 1 of the European Convention on Human Rights, state shall not only abstain from human rights violations (negative obligation) but shall ensure their protection (positive obligation).

The Article 100 of the Code of Criminal Procedure of Georgia establishes the duty to initiate investigation. According to this provision, *when an investigator and/or prosecutor receives information about a crime, s/he shall be required to initiate investigation.* Article 101 (1, 2) specifies that the grounds for the initiation of investigation shall be information about a crime, that is provided to an investigator or prosecutor, is revealed during the criminal proceedings, or is published in the media. Furthermore, information about the crime can be in writing, verbal or otherwise recorded.

The Code of Criminal Procedure of Georgia does not envisage any exceptions, which give the law enforcement officials possibility to refuse the initiation of investigation when they have received information about signs of a crime. Article 100 of the Code of Criminal Procedure of Georgia establishes imperatively the requirement to initiate investigation when an investigator and/or prosecutor receives information about a crime. Article 105 of the Code of Criminal Procedure of Georgia only provides grounds for termination of investigation and/or no-prosecution or termination of criminal prosecution and does not determine the possibility of the refusal to initiate investigation.

Therefore, in each concrete situation, investigative bodies shall commence investigation if they have received information on facts allegedly including signs of a crime. Unfortunately, Office of Public Defender of Georgia examined the case where the applicant claimed the inadequate response from the side of investigation authorities to commence investigation on alleged crime committed against him/her. By undertaking relevant measures state is under the obligation to ensure effective protection of violated rights. Particular attention shall be paid to facts of ill-treatment by law-enforcement agents.

Justification of the failure to respond to criminal acts on the basis of lack of prospects of investigation is inadmissible. Such attitude of law enforcement officers towards illegal acts creates threat of establishing the harmful practice.

The Case of T.Z.

According to the information disseminated by mass media on July 9, 2012 the juvenile T.Z. was transferred to Kobuleti Police Division on June 24, 2012. Police officers were coercing him to reveal details of his sexual connection in the past. In accordance with the information disseminated through media, T.Z. was under threat and pressure.

Representative of Public Defender of Georgia requested written explanation on the factual circumstances of the case from T.Z. and his mother, M.Z. The account of the events provided by T.Z. and M.Z. describe the evening of June 24, 2012 in details. Furthermore, T.Z. and M.Z. stated that they could identify the perpetrators and requested their conviction.

The examination of account of events and the application of M.Z. revealed that crimes might have been committed by the law-enforcement officials. Therefore, the Office of Public Defender of Georgia transmitted the account of events

provided by the applicants to the Chief Prosecutor's Office of Georgia for further consideration of the case on July 13, 2012.

On July 27, 2012 the Chief Prosecutor's Office of Georgia informed the Office of Public Defender of Georgia that the investigation was launched on the fact of domestic violence against T.Z. in accordance with Article 126[1] (2, a) of the Criminal Code of Georgia on July 11, 2012. By the same latter the Office of Public Defender of Georgia was informed that alleged ill-treatment of T.Z. at the Kobuleti Police Division would be examined in the framework of this case.

Later on, the Office of Public Defender of Georgia requested information from the Batumi Prosecutor's Office on measures carried out on alleged crimes committed by Kobuleti police officers on June 24, 2012.

According to the official response of the Batumi Prosecutor's Office, investigation was ongoing only on the fact of domestic violence, in accordance with Article 126[1] (2, a) of the Criminal Code of Georgia.

Stemming from the above mentioned, it was clear that investigation had not been launched on alleged crimes committed against T.Z. by law-enforcement officials, which contradicts the requirements of the Article 100 of the Code of Criminal Procedure of Georgia.

Hence, in line with Article 21 (c) of the Organic Law on Public Defender of Georgia, Public Defender of Georgia submitted the proposal to the Chief Prosecutor's Office of Georgia to initiate investigation on alleged crimes committed by law-enforcement officers against juvenile T.Z.

The Case of P.G.

According to the information disseminated via mass media on July 9, 2012, judiciary proceedings on the fact of hooliganism in the village Mereti on February 17, 2012 by A.E., J.E. and G.M., members of "Georgian Dream" Coalition, were renewed at Gori Regional Court. Prosecution interrogated 4 witnesses, including P.G. After the court proceedings P.G. indicated on the pressure by the prosecution. According to his statements, unknown individuals brought him before the Prosecutor's Office and warned him to name the accused as the initiator of the fight. Otherwise, he was threatened with detention.

Office of Public Defender of Georgia addressed the Chief Prosecutor's Office of Georgia to further consider the case and transmitted video material unfolding the event for several times.

According to the letter of the Chief Prosecutor's Office of Georgia, P.G. was interrogated as a witness on criminal cases against E.M., A.E., and J.E. at the investigation and trial stage. According to the same correspondence, P.G. confirmed that he gave testimony voluntarily and was not subjected to pressure or threat.

In this case, Office of Public Defender of Georgia informed the Chief Prosecutor's Office of Georgia on the alleged crime committed for several times; However, the latter did not provide adequate response to the allegations. In accordance with the information of the Chief Prosecutor's Office of Georgia, law-enforcement authorities only limited themselves with the interrogation of P.G., which in accordance with the Code of Criminal Procedure of Georgia does not constitute the alternative to the initiation of investigation. As stated above, the Code of Criminal Procedure of Georgia requires the initiation of investigation and adequate response to alleged signs of a crime. Article 105 of the Procedure Code establishes legal grounds for termination of investigation, in case signs of a crime are not confirmed by effective investigative actions.

UNDUE PERFORMANCE OF OFFICIAL DUTIES BY LAW-ENFORCEMENT OFFICERS

According to the Article 4 (1) of the Georgian Law "on Police", actions of the police shall be based on principle of legality. Therefore, during performing his functions, police officer shall observe the law and duly perform his duties.

Pursuant to the Article 42 (3) of the Constitution of Georgia, *the right to defense is guaranteed.* Furthermore, right to defend oneself through legal assistance is a fundamental element of the fair trial principle. In spite of the fact that right to defense does not constitute absolute category of rights, limitations placed on this right shall carry temporary character, be stipulated by extreme necessity, serve a legitimate purpose and shall not threaten the mere notion of effective defense.[206]

In the reporting period the Office of Public Defender of Georgia studied the case concerning the interference of the police officers in the right of a defense to meet with the detained. The same case related to the failure to comply with the lawful order of Public Defender of Georgia.

The Case of Z.A.

On August 15, 2012 Z.A., member of the Coalition "Georgian Dream" was arrested by the police officers of the Second Department of Kutaisi Police Division to undergo test on drug usage.

On the same day, at about 12 p.m., R.T. the defense counsel of Z.A. addressed the Office of Public Defender of Georgia. Since the defense counsel was not given the possibility to meet with the detained, he/she requested the Representative of Public Defender of Georgia to visit the Second Department of Kutaisi Police Division.

Analysis of the case materials, presented at the Office of Public Defender of Georgia, showed that the defense counsel was unable to enter into Police premises after the detention of Z.A. by the police officers of the Second Department of Kutaisi Police Division. Notwithstanding the fact that the defense counsel presented the Order and Bar Certificate to the police officers, the request was not fulfilled and the defense counsel was deprived of the possibility to meet with the detained for an hour. Furthermore, law-enforcement agents did not comply with the lawful order of the Representative of Public Defender of Georgia.

In particular, on August 15, 2012 at about 12:05 p.m. Representative of Public Defender of Georgia arrived at the Second Department of Kutaisi Police Division and tried to enter the Department in order to meet with Z.A.

At the moment when the Representative of Public Defender of Georgia arrived at the Police premises, the Second Department of Kutaisi Police Division was closed. One of the police officers was standing from the backside by the glass door in the police building. The Representative of Public Defender of Georgia presented his work pass, as well as the credentials of Public Defender of Georgia and requested to open the door. However, his request was not fulfilled. The Representative of Public Defender of Georgia explained his powers granted by the law and stated that non-fulfillment of his lawful order constituted an administrative misconduct. For about an hour, the representative of Public Defender of Georgia periodically requested the police officers to give him the possibility to carry out his official duties. Nevertheless, the Representative of Public Defender of Georgia was deprived the right to enter the Second Department of Kutaisi Police Division.

During this time, police officers of the of the Second Department of Kutaisi Police Division were constantly relocating inside the building; In spite of the fact that they saw credentials of Public Defender of Georgia presented by his representative, they failed to provide adequate response to the situation.

On September 4, 2012 the Administration of the Ministry of Internal Affairs of Georgia informed the Office of Public Defender of Georgia that neither Z.A. requested legal assistance during detention, nor R.T. addressed the Second Department of Kutaisi Police Division to realize his rights as a defense. According to the same correspondence, defense counsel of Z.A. did not participate in the proceedings due to the abovementioned reasons.

It is vital to point out that in case of Z.A. there was no extreme necessity to place limitations on his right. In addition, Z.A. did not refuse to be represented through legal assistance. Nevertheless, the defense counsel R.T. was deprived of the possibility to meet with the detained by the law-enforcement authorities.

206 Application #7854/77; Bonzi v Switzerland, [1978] European Court of Human Rights,; Kröcher and Möller v. Switzerland, [1982] European Court of Human Rights

Stemming from the abovementioned, police officers of the Second Department of Kutaisi Police Division infringed the right of Z.A. to legal assistance. Non-fulfillment of the lawful order of Public Defender of Georgia has also taken place.

INCOMPLETE ADMINISTRATIVE CUSTODY REPORTS

One more problem that has been dealt with by the Office of Public Defender of Georgia in the reporting period relates to the incomplete administrative custody reports. Individuals, on whom administrative imprisonment was imposed, claim that police officers do not inform them of their rights and the reasons for their arrest. As a result of examination of the documents prepared upon detention, it is impossible to identify the fact of informing the detained of his/her rights, since such information is not kept anywhere. This in itself creates substantial difficulties to identify human rights violations during examination of the case. In addition, it is impossible to determine whether the law-enforcement officials acted in due diligence, while executing their duties in said regard.

Article 18 (5) of the Constitution of Georgia imperatively states that *an arrested or detained person shall be informed about his/her rights and the grounds for restriction of his/her liberty upon his/her arrest or detention. The arrested or detained person may request for the assistance of a defense upon his/her arrest or detention, the request shall be met.*

In line with the Articles 5 and 6 of the European Convention on Human Rights, everyone who is deprived of his liberty by arrest or detention shall have the following minimum rights:

1. To be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
2. To have adequate time and facilities for the preparation of his defence;
3. To defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
4. To examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
5. To have the free assistance of an interpreter, if he cannot understand or speak the language used in court.

It should also be mentioned that for the Convention purposes, the European Court of Human Rights applied the autonomous interpretation of "Criminal Charge"[207], which is not grounded on signs of a crime determined by the national legislation, and has a broader scale of application.

Particular importance is attached to informing the arrested individual of the reasons for his arrest in a simple and understandable language. In this case, he shall be notified about facts related to the cause of the arrest, as well as their legal qualification. As to the legal qualification, it is vital that the individual understands the substance of an illegal act upon which he is charged. Merely the indication of a legislative provision[208] constitutes the so-called technical explanation, which fails to provide the detainee with any relevant information, since he does not necessarily need to have a legal background in order to foresee the content of a legal provision. The information on reasons of the restriction of liberty provided to the detained individual shall be correct and clear.[209]

207 Application #5100/71; #5101/71; #5102/71; #5354/72; #5370/72; Engel and Others v. Netherlands, [1976], European Court of Human Rights, – In this case, the European Court of Human Rights applied an autonomous notion of criminal charge. Application #8544/79, Öztürk v Germany, [1984], European Court of Human Rights; Application #9912/82; Lutz v Germany, [1987], European Court of Human Rights.

208 For example: As in case of Z.A.'s detention – Article 45 of the Code of Administrative Offences of Georgia was indicated as grounds for custody and personal search records of August 15, 2012

209 Application #10959/84; Chichlian and Ekindjian v France, [1989], European Court of Human Rights

Consequently, Public Defender of Georgia addressed the Minister of the Internal Affairs of Georgia with a recommendation to reflect the fact of informing the detainees of their rights and reasons of their detention, along with the indication of the disposition of the relevant norm, in custody reports. In addition, Public Defender of Georgia requested to reflect the fact of informing the detainee of his/her right to legal assistance or voluntary refusal of such assistance, which shall be confirmed by the signature of the detainee.

PRESUMPTION OF INNOCENCE

An individual shall be presumed innocent until the commission of an offence by him/her is proved in accordance with the procedure prescribed by law and under a final judgment of conviction. No one shall be obliged to prove his innocence. A burden of proof shall rest with the prosecutor.[210]

Such guarantee is equally provided in the Article 5 of the Code of Criminal Procedure of Georgia, which ensures the presumption of innocence and freedom on the level of procedural legislation.

The Article 6 (2) of the European Convention on Human Rights and the case law of the European Court of Human Rights imposes the obligation on State Parties to guarantee the presumption of innocence.

It is noteworthy, that principle of innocence encloses several key aspects. The main element relates to the burden of proof, according to which a burden of proof rests with a prosecutor and no one shall be obliged to proof his innocence. Furthermore, any doubt shall be decided in favor of the defendant.[211] Presumption of innocence requires, *inter alia*, that the court shall not commence to carry out its duties with the preconceived idea that the accused has committed the offence charged. In accordance with the legislation, the burden of proof rests with a prosecution, and any doubt shall benefit the accused. Such inference gives the rise to the obligation of the prosecution to inform the accused properly on prima facie case against him in order to aptly prepare and exercise his defense, as well as the obligation of the prosecution to obtain enough sound evidence for finding the accused guilty.[212]

One of the main components of the presumption of innocence refers to the statements made by public authorities. It shall be outlined, that public officials do not have the rights to make statements, reflecting their views to the effect, that an individual has committed criminal acts, until the guilt is proven according to the law.[213] Of course this does not mean, that the authorities may not inform the public about ongoing criminal investigations; However in *Kraus v. Switzerland* case the European Court of Human Rights established that the presumption of innocence may be violated in case public officials declare an individual guilty of an offence, before this is found by a competent court.

Public Defender of Georgia welcomes the transparency of investigation on cases of high public interest and considers that along with protecting interests of investigation, informing the public of issues related to the criminal proceedings strengthens the confidence of citizens to law-enforcement structures. Nevertheless, it shall also be outlined that informing the public on criminal investigation shall not violate rights and freedoms of concrete individuals.

Infringement of presumption of innocence by public authorities is particularly acute. The European Court of Human Rights has examined number of cases on the alleged abuse of presumption of innocence by public officials and found violation of Article 6 (2) of the Convention.[214] In one of the cases the European Court of Human Rights considered that statements made by public officials *served to encourage the public to believe Minister of Foreign Affairs guilty and prejudged the assessment of the facts by the competent judicial authority.*[215]

210 Constitution of Georgia, Article 40 (1,2)
211 Application: #10588/83, 10589/86, 10590/83; Barbera, Messegue and Jabardo v Spain, European Court of Human Rights, 1988
212 Application #33501/96; Telfner v Austria, European Court of Human Rights, 2001
213 Application #7986/77; Krause v Switzerland, European Court of Human Rights, 1978
214 Application #48297/99; Butkevicius v Lithuania, European Court of Human Rights, 2002; Application #15175/89; Allenet de Ribemont v France, European Court of Human Rights, 1995, Application #42095/98; Daktaras v Lithuania, European Court of Human Rights, 2000
215 Application #48297/99; Butkevicius v Lithuania, European Court of Human Rights, 2002

Unfortunately, facts of violation of presumption of innocence were identified in Georgia during the reporting period of 2012. Statements made by public authorities that violated presumption of innocence were constantly disseminated through mass media. It shall also be mentioned, that frequently, public officials casted doubt in the innocence of concrete individuals, grounded on populist political motives. The situation was further complicated by the fact of making official statements on criminal culpability of an individual by law-enforcement authorities and senior public officials. Such statements were also identified in the speeches of the President of Georgia.

It shall be considered that in cases where senior public officials and individuals with high public authority make such statements, the risk to perceive the addressee guilty of an offence is lifted unreasonably. It is impermissible that the law enforcement bodies declare a person guilty of an offence, when the criminal persecution has not been yet initiated and guilt is not proved by a Court.

In the meantime, it shall be mentioned that press and public relations services of law-enforcement structures made public statements on solving criminal cases during 2012. These statements declared several individuals responsible for criminal acts, despite the fact that they had not even acquired the status of an accused.

The report illustrates several facts of violations of the presumption of innocence by law-enforcement authorities and public officials. Hereby, it shall be noted that due to intensive nature of the infringement of the presumption of innocence during the reporting period, Public Defender of Georgia will present a special, more detailed report on this issue in the nearest future.

CASE OF TAMAZ TAMAZASHVILI

On September 18, 2012, the Ministry of Internal Affairs of Georgia issued a statement, according to which it had launched an investigation into facts of degrading and inhuman treatment of prisoners on the part of individual employees of the Department of Prisons on the basis of operation information received from the Gldani Establishment No. 8.

As noted in the statement, the joint investigative actions of the Ministry of Internal Affairs of Georgia and the Penitentiary Department under the Ministry of Corrections, Probation and Legal Assistance of Georgia established that organization of inhumane treatment of prisoners, a footage of the ill-treatment and proposal of its transmission to the clients for solid remuneration was made to the staff members of the Establishment by Tamaz Tamazashvili, the convict serving the sentence in the same prison.

According to the statement disseminated by the Ministry of Internal Affairs of Georgia, Levan Purtskhvanidze, the head of security section of Gldani Establishment #8, Levan Pkhaladze, the controller of the section, and Boris Parulava, the section inspector were afforded the status of an accused for committing the crime in the course of investigation. As for Vladimer Bedukadze, he was announced as wanted.

It stems from the above that Ministry of Internal Affairs of Georgia declared Tamaz Tamazashvili as an organizer of the crime without being found guilty of the offence officially. Furthermore, such unofficial allegation led to the illegal accusation of Tamaz Tamazashvili and to perceiving him guilty for several times.

CASE OF DAVID AKHALAIA, GERONTI ALANIA, IOSEB TOPURIDZE AND OLEG MELNIKOV

On November 30, 2012 the Chief Prosecutor's Office of Georgia disseminated information according to which the Chief Prosecutor's Office of Georgia launched investigation on facts of beating the officers of the Mtatsminda-Krtsanisi Police Division on November 19, 2012. According to this statement, David Akhalaia, Geronti Alania, Ioseb Topuridze, Oleg Melnikov and other individuals have brutally beaten up the Head of Criminal Investigation Department of Mtatsminda-Krtsanisi Police Division. The same statement described the criminal act in details and indicated that

David Akhalaia, Geronti Alania, Ioseb Topuridze and Oleg Melnikov would be charged with criminal offence in the foreseeable future.

According to the information disseminated by the Chief Prosecutor's Office of Georgia on December 29, 2012, charges against David Akhalaia, Geronti Alania, Ioseb Topuridze and Oleg Melnikov for abovementioned criminal act were filed in absentia on December 2, 2012.

Therefore, since there was no court order on criminal responsibility of David Akhalaia, Geronti Alania, Ioseb Topuridze and Oleg Melnikov for committing the crime, as well as criminal persecution was not launched against these individuals at the moment of publishing the statement and they were not afforded the status of the accused, the Chief Prosecutor's Office of Georgia violated the presumption of innocence of these individuals on November 30, 2012.

CASE OF VAHAGAN CHAKHALYAN

Several thousand prisoners, including Vahagan Chakhalyan, who served the sentence for illegal purchase of weapons, engagement in the organized disturbances and hooliganism, were released from the penitentiary establishments in January 2013 under the Law of Georgia "on Amnesty".

In the statements made by the President of Georgia and the representatives of "United National Movement", Vahagan Chakhalyan is mentioned as a spy, statehood enemy who demands civil unrest. There is no doubt that the state security is the greatest value; However in case acts of Chakhalyan or any other individual include alleged threats, relevant materials shall be transmitted to the state agencies to provide prompt respond to alleged misconduct. Diffusion of such information may result in the violation of presumption of innocence on the one hand, or it may become a ground for an acute confrontation on the other; Especially when such statement is made by the highest political authority of the state.

Case of D.K.

In the reporting period Public Defender of Georgia examined the case of D.K. Among the case materials presented at the Office of Public Defender of Georgia, the decision of the Criminal Law Collegium of the Batumi City Court dated March 3, 2012, on bringing the accused D.K. before the court and applying remand measures against him/her, was assessed.

It shall be noted that D.K. was accused in the fabrication of an official document for the usage purposes, and falsification of evidence by a participant in civil proceedings.

The Judge V.D. indicated in the abovementioned decision:

It shall be taken into consideration that several investigation activities must be carried out in order to determine where and in which conditions the accused prepared the false documents.

Therefore, the judge indicated that the location and the conditions for fabrication of the false documents constituted the only subject matter to be determined without rendering a judgment of conviction. Consequently, in accordance with the mentioned judicial decision the judge presumed the accused to commit the fabrication of false documents, which violated the presumption of innocence of D.K.

The European Court of Human Rights has explicitly stated that the judicial decisions shall not reflect an opinion that an individual is guilty before he is found responsible for the criminal act. The European Court of Human Rights deemed that presumption of innocence would be violated if without the accused having previously been proved guilty according to law a judicial decision concerning him reflects an opinion that he is guilty. It suffices that there is some reasoning suggesting that the court regards the accused as guilty.[216]

216 Application #8660/79; Minelli v Switzerland, European Court of Human Rights, 1983

Recommendations:

To the Chief Prosecutor of Georgia:

- To ensure the immediate initiation of investigation on the alleged excessive use of force by law enforcement officials leading to fatality and/or damage to health (by separating it from the main case) and to carry out a thorough investigation by the Prosecutor's Office in accordance with Order #178 of September 29, 2010 of the Minister of Justice of Georgia.

To the Ministry of Internal Affairs of Georgia:

- To ensure that the representatives of law-enforcement bodies undergo relevant theoretical and practical trainings, in order to use lethal force during special operation only in extreme circumstances;
- To launch investigation immediately and to carry out prompt and effective investigation in accordance with the Code of the Criminal Procedure of Georgia when the information on alleged crime is received;
- To carry out legal measures on acts of law-enforcement officials who are directly responsible for human rights infringements;
- To carry out education activities in order to depoliticize law-enforcement bodies of Georgia;
- To reflect facts of informing detainees of their rights and grounds of their arrest, by indicating the disposition of the relevant provisions in administrative custody reports;

To Public Servants, particularly Law-enforcement bodies/officials:

- To consider the necessity to respect presumption of innocence while making public statements;

To the Parliament of Georgia:

- To discuss the introduction of special regulations for the violations of presumption of innocence, in order to prevent such abuse.

2012

Right to Fair Trial

Right to fair trial is one of the most important and core principles of the human rights law. Principle of fair trial is ensured by the Article 42 of the Constitution of Georgia, according to which everyone has the right to apply to a court.

Pursuant to Article 6 of the European Convention on Human Rights:

"1. *In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly by the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*"

The realization of the right to fair trial always constituted a particular interest of Public Defender of Georgia since practical application of this right represents the test for a democratic state, where the Rule of Law is upheld.

Reform of the Judiciary has been ongoing in Georgia for several years already. Work on the legislative amendments of the judicial system is in process. We express hope, that amendments will lead to strengthening the judiciary and public confidence building. The latter, in itself, is a necessary precondition for due functioning of the judiciary and constitutes the catalyst for the effectiveness of the state authority. Public Defender of Georgia is actively involved in this process; However, since the process has not been concluded yet, we will not address this issue in details in this chapter.

Public Defender of Georgia discussed the right to fair trial for several times in his reports; Numbers of recommendations were published throughout the years. Nevertheless, problems identified in last year still persist in 2012. Public Defender of Georgia acknowledges the significance of principle of judicial independence, therefore case studies, as well as activities of the Office in this direction are carried out with due respect of this principle. It shall also be noted that, in accordance with the interpretation of the European Court of Human Rights, the courts have always come under the supervision of the Ombudsmen institutions in judicial procedure, which does not breach the principle of the independence of the judiciary.[217]

This chapter deals with those problematic issues that were identified on the basis of case analysis at the Office of Public Defender of Georgia during 2012. In addition, the results of monitoring conducted by authorized representatives of Public Defender of Georgia will also be provided.

217 Application #18781/91; Gaspar v Sweden, European Court of Human Rights, 6 July, 1998

MONITORING OF THE PROCEEDINGS

Office of Public Defender of Georgia has carried out the monitoring of court proceedings for the second time with the financial support of the United Nations Development Program (UNDP). Number of problematic issues exposed during the first monitoring in 2011 is reflected in the Annual Report of Public Defender of Georgia for 2011.

In November 2012, the representatives of Public Defender of Georgia attended the hearings at Gori District Court, Kutaisi City Court, Kutaisi Appellate Court, Zugdidi District Court, Batumi City Court, Akhaltsikhe District Court, Tbilisi City Court, Telavi District Court and Bolnisi District Court. Such monitoring is a significant and interesting opportunity for the Office of Public Defender of Georgia in order to observe the court and supervise the course of proceedings.

The Office of Public Defender of Georgia fully acknowledges the principle of separation of powers of state authority. Hence, the monitoring of proceedings were carried out with due respect of this principle.

While administering justice, the judiciary constitutes a significant element of fair trial and its consecutive rights. Therefore, the aim of the monitoring was to identify alleged problems and to prepare recommendations of Public Defender of Georgia for the annual report purposes, in order to regulate and improve relevant standards.

The subject of the court monitoring were logistical nuances of District and Appellate Courts as well as main issues of court proceedings, which generally can be exposed by attending the hearings. For the monitoring purposes, the Office of Public Defender of Georgia prepared the form, which was used to concentrate on problematic issues identified last year. Processing of the material and their presentation in a cohesive form was made following the analysis of the form.

Technical means

The first and one of the ominous problems exposed at the common courts is the prohibition to carry mobile phones or any other communication devices in the court rooms. According to the relevant Court Chairmen Decree distributed in the court premises, the court bailiffs were under an obligation to prohibit the convey of mobiles or other communication equipment in a court sitting. Such prohibition applied (and may still apply) to those devices that are equipped with the function of audio or video recording. The Article 13 of the Organic Law on Common Courts of Georgia was indicated as a ground for such limitation.

According to Para. 4 of this Article:

"Photo-, film-, video recording and broadcasting of the court sitting shall be inadmissible, save the cases when it is administered by the court or a person authorized by the court. A court shall disseminate materials of photo-, film- and video-recording if it does not contradict with the law. Shorthand taking and audio recording of the court sitting shall be admissible on the basis of procedure established by the court (the judge). This right may be restricted with the motivated decision adopted by the court (the judge)."

Public Defender does not consider the limitation or prohibition to make photo, video or film recording at the trial problematic, in case relevant human rights standards are respected and the balance between, on the one hand, the authority of the court and on the other hand freedom of expression and the right to fair public hearing is ensured. From the human rights perspective, the obligation to protect authority of the court may be considered as a justified legitimate aim. In such case, the limitation only extends to the recording at the trial, whereas it does not imply the restriction to carry recording devices. The Article 13 (4) of the Organic Law "on Common Courts of Georgia" addresses the prohibition to make a recording in the court room and does not imply the restriction to bring such devices at the trial. Generally, the risk of infringement does not justify the application of the preventive measures, except where the scale of damage substantiates such interference. Individuals are not authorized to carry recording devices at the trial only due to the prohibition to make photo, film or video recording. Such limitation will be justified only in cases, where the scale of relevant threat necessitates the interference.

Right to public hearing constitutes one of the core elements of right to fair trial, which is ensured by the Constitution of Georgia, European Convention on Human Rights and International Covenant on Civil and Political Rights. The same standard applies to the guarantees of the freedom of expression. The restriction of these rights requires the existence of legitimate bases, which constitute the primary grounds for limitation of basic human rights.

According to the Article 13 (4) of the Organic Law "on Common Courts of Georgia" (from the perspective of Constitutional or Human Rights Law, it constitutes a "legal act"), photo, film or video recording and broadcasting of the court sitting by private individuals is prohibited. The same Article authorizes the courts to establish different procedures for steno-graphing or video recording of the proceedings. This provision does not prohibit carrying certain devices into the court sittings. Prohibition of certain activity does not entail a ban on a subject inherently linked to the execution of such act, except for special cases, when it is prescribed by law (this in itself implies necessity and justification of the restriction).

Stemming from the above, the prohibition of video, photo and film recording in the court premises lacks legitimate grounds and hence, does not comply with the Constitution of Georgia and International Human Rights Law. Such approach is incorrect and shall be eradicated. Prohibition of recording in any manner does not implicitly involve the prohibition to carry the relevant device in the court room. This issue has more problematic implications in case the recording device is equipped with double function in parallel with the development of modern techniques. For example, the equipment of the mobile phone with the system of video and audio recording shall not cause any limitations, especially when it is used without interference to the proceedings or for any other reasons. Computers shall be discussed within the same framework, as right to defense might require their application.

By adding the Article 182^1 to the Code of Criminal Procedure of Georgia, on January 18, 2013, the legislature tried to moderately improve existing situation. Pursuant to Article 182^1 (7):

"Deprivation of the personal belonging inside the court building, like cell phone, computer photo, video, audio recordings is inadmissible in accordance with the provision stipulated by the court."

In line with the Law "on Making Amendments in the Code of Criminal Procedure of Georgia" of January 18, 2013, the mentioned provision will enter into force from March 1, 2013. In spite of the fact that this act has positive objectives, it might lack practical application without the abolishment of Article 13 (4) of the Organic Law on Common Courts of Georgia, which imperatively prohibits photo, video and film recording in the court premises.

As the prohibition to carry mobile devices and other technical means in the court premises is based on the Organic Law "on Common Courts of Georgia", it is vague how the Law "on Making Amendments in the Code of Criminal Procedure of Georgia" of January 18, 2013 will influence such prohibition. The Law "on Common Courts of Georgia" is the organic law, which according to the hierarchy stands higher than the ordinary legal act. According to a probable explanation, since Article 182^1 (7) of the Law "on Making Amendments in the Code of Criminal Procedure of Georgia" of January 18, 2013 constitutes the special regulation, any conflict of laws shall be excluded (such determination also represents the basis for defining the hierarchic priority between legislative acts). Nevertheless, in order to avoid human rights violations, it is necessary to make amendments to the Organic Law "on Common Courts of Georgia" and to add the provision with the same content as Article 182^1 (7) adopted by the Law "on Making Amendments in the Code of Criminal Procedure of Georgia.

Accessibility of the court for persons with disabilities

Physical accessibility of the court for persons with disabilities remained one of the major problems for 2012.

The outcome of the monitoring conducted by the Office of Public Defender of Georgia in 2012 exposed the lack of full infrastructural accessibility of the courts for persons with disabilities in the common court system. In a number of cases court premises are adapted to the needs of persons with disabilities; However the Kutaisi Appellate Court, as well as buildings of City Courts require additional arrangements to increase physical accessibility for persons with

disabilities. Relevant technical modifications shall be undertaken, in order to ensure infrastructural accessibility of the court.

Article 14 of the Constitution of Georgia, as well as international documents ensure equality of everyone before the law. Article 14 of the Constitution of Georgia entails guarantees for equal opportunities, which imply positive and negative obligations of the State. In accordance with the negative obligation, the differentiation between human rights where one's rights may be diminished in comparison with others is prohibited. Positive obligation implies acts of the State to be applied for eradicating discrimination, including more favorable treatment (so called positive discrimination). This is a permitted legal category and is directed to making individuals equal.

On January 10, 2013 Public Defender of Georgia addressed the Tbilisi City Court with a recommendation to adapt the building of the court to the needs of persons with disabilities.[218] It is worth to mention that this is one of the important problems faced by the regional courts. Therefore, there is a need of systemic approach toward this problem, as well as the necessity to determine relevant legal obligations. In the meantime, it shall be noted that regularization if this issue requires necessary budgetary means, which shall be mobilized by the Parliament of Georgia.

Language of proceedings

Serious problems of interpretation were found in the course of proceedings monitored by the representatives of Public Defender of Georgia. The interpreters did not provide a comprehensive interpretation or provided interpretation in a superficial manner. Cases where other members of the proceedings carried out interpretation were also identified. Such problem has been exposed in civil, administrative and criminal proceedings.

Inadequate assistance by an interpreter was reflected in lack of precise and comprehensive interpretation. This implies incomplete interpretation, as well as provision of no assistance in translating certain texts. Such cases were exposed by the monitors of the Office of Public Defender of Georgia.

In certain cases superficial interpretation was exposed in inaccurate translation which implied the rapid conduct of court proceedings. In general, interpretation entails deceleration of the proceedings, as the duration of the hearing is doubled. Court hearings monitored by our representatives were conducted rapidly and the participants of the proceedings were provided with superficial information. These circumstances lead to the fiction involvement of a party in the process. Therefore it is necessary to:

- Determine the obligations of the court to carry out proceedings, where a person who cannot understand the state language, can be fully integrated via consecutive translation; or to
- Ensure synchronous interpretation of the court hearings.

In addition, representatives of the Office of Public Defender of Georgia identified the case where the Judge of the Zugdidi District Court was involved in the interpretation for the accused in several instances. This constitutes the mixture of procedural functions and shall not be permitted under any circumstances. Such practice raises the risk of partiality of a judge. In the same case, the judge was transforming the interpreted answers of witnesses and indicating altered information in the minutes of the trial.

Adversarial Proceedings

Legislation of Georgia on Criminal Procedure, as well as the Constitution of Georgia, European Convention on Human Rights and International Covenant on Civil and Political Rights impose an obligation on the State to provide adversarial environment for the parties, where the trial will be carried out based on the principle of equality of arms.

218 Information can be retrieved from the following website: http://www.ombudsman.ge/index.php?page=1001&lang=0&id=1628, last visited on March 13, 2013

As a result of the monitoring carried out by the Office of Public Defender of Georgia, several problems in this direction were identified.

The motions of the parties concerning the objection of questions were affirmed by the judges without relevant justification. Several motions of the prosecution were affirmed in part of the trials monitored by the Office of Public Defender of Georgia. In such cases prosecutors did not justify the request for such objection. However, on the basis of the request of the defense, the judge was justifying the motion without due acknowledgement of the defense position. This fact per se does not infringe the right of the defense, but in combination with other factors it may give rise to state responsibility for the protection of human rights. One of the guarantees of the adversarial proceedings is to give the parties possibility to present their arguments; only afterwards the court is authorized to provide relevant justifications.

Consequently, it is necessary to regulate this issue on a legislative level in order to impose the obligation on the party to justify the motion, which afterwards will give the court possibility to make decision in accordance with the presented justification.

Furthermore, the monitoring exposed that judges asked clarifying questions without the consent of the parties. Similar cases were identified repeatedly. Such practice contradicts with the second sentence of Article 25 (2) of the Code of Criminal Procedure of Georgia. According to this provision:

In exceptional cases, the judge shall be authorized to ask a clarifying question, if this is necessary for ensuring a fair trial.

Such legal connotation is imperative in nature and requires the consent of the parties prior to rendering the judgment; Nevertheless, practical application of this right entails certain gaps, therefore, in order to better ensure adversarial nature of the trial, Public Defender of Georgia recommends to specify relevant provision, due to the fact that the legislature is only limited to carry out subsequent legislative amendments.

Questioning of the witnesses with no ID

During the monitoring process, representatives of the Office of Public Defender of Georgia identified the case related to the questioning of a defendant's witness without presenting his/her ID. Public Defender of Georgia condemns such fact and deems that the information obtained through such questioning shall not be taken into consideration. Consequently, there is a need to adopt a legislative provision that will prohibit the witness, who is unable to prove his/her identity through a legal document, from testifying.

Announcement of the cases to be discussed

Monitoring carried out by the representative of the Office of Public Defender of Georgia, identified several occasions when the discussions on postponed cases were renewed, composition of the court panel, as well as the right to challenge the judge were not announced. General requirement of the Code is that the court shall notify parties of the composition of the judicial panel and their right to challenge the judge. In spite of the fact that this might constitute a formal requirement, informing the party of his/her rights stipulates their application in many cases, especially when the individual is not represented by a lawyer.

Similar problem exists, vis-à-vis warnings for infringing the court order during the hearing. There were several incidents noted during the monitoring period.

In order to resolve abovementioned problems, it is necessary to provide more precise regulations regarding the review of the postponed cased. The court shall be obliged to inform parties of their rights during each postponed case. This is particularly important for those individuals who lack legal education and are not represented at the court hearing by a counsel.

Problems of technical nature

Apart from substantial issues, some technical problems were exposed, that might cause specific human rights violations or merely lessen the access to court.

During one of the monitoring missions carried out by representatives of the Office of Public Defender of Georgia, Telavi regional court was not provided with electricity. As the result, stenographical system was switched off and consequently part of trial minutes was erased; Hence, the process had to start again. To this end, relevant funds shall be allocated for the courts in the next year budget in order to obtain technical facilities which will ensure that the minutes of the trial will not be erased in case electricity is switched off.

It is worth to mention that the list of the hearings was not published in Bolnisi District Court and Khobi Magistrate Court that generally makes the accessibility to the court more difficult. Consequently, such approach shall be improved.

ADJUDICATION ON CASES CONCERNING ADMINISTRATIVE OFFENCES

Compliance of the activities of Georgian Judiciary with international human rights standards while examining the cases concerning administrative offences remains a significant problem. The problems found in respect of adjudication on administrative offences stem from the obsolete character of the Code of Administrative Offences, but also from the lack of adequate attention to this category of cases.

On numerous instances Public Defender of Georgia stressed the need to adopt a qualitatively new Code of Administrative Offences. All three branches of the government consent that this Code is unable to endure any criticism. In spite of this fact, dynamic steps have not been undertaken in this direction yet. Therefore, it is necessary to make the process more active.

Problems were identified in practical application of the Code. By examining particular cases at the Office of Public Defender of Georgia, it can be considered that the Georgian judiciary still paid inadequate attention to this category of cases, resulting in ignorance of rights of individuals charged with administrative offences.

September 2012 was marked with the number of cases relating to administrative infringements. Therefore, Office of Public Defender of Georgia focused on the analysis of summary acts adopted by courts as a result of examination of cases concerning administrative offences in the mentioned period.

Analysis of the cases clearly shows that most of the rulings are made on template and contain inadequate reasoning.

It is to be noted that while the court presents reasoning to its decision, special attention shall be paid to those cases where the alleged offender does not confess the infringement and submits completely different information from evidence presented to the case. In such instances, courts rely on evidence indicating the guilt of the individual. The court decisions lack justifications as to the reliance on evidence confirming the guilt of alleged offender and rejection of other testimonies. Courts only assert that materials presented by the law enforcement bodies are sufficient to confirm the charges, whereas they do not consider evidence that might confirm the innocence of the individual. In majority of the cases court decisions lack reasoning and are limited to the formal explanation of the procedural regulations.

It is to be noted that common courts do not justify the necessity and expedience of imposing imprisonment as a last resort in court decisions. As a rule, final decisions indicate that whilst imposing the sanction, the court gave consideration to the personality of the offender, his/her property status, factors for mitigating or aggregating the responsibility; However, in the majority of cases, rulings are made on template, do not correspond to reality and are not confirmed by the records of court hearings.

In certain instances, materials presented to the court do not include information on the personality and conditions of an administrative offender. There are cases when the court does not consider above circumstances: i.e. case of Sh.D.

where the court imposed administrative imprisonment for 30 days on a person with disability (diagnosis: paranoid schizophrenia, continuous condition, paranoiac syndrome with hallucinations).

While the legislation provides the possibility to impose more lenient administrative penalty, the courts invoke imprisonment and do not render well-substantiated decisions on the reasons of less stringent means, which are unable to secure the purpose of administrative penalty.

APPLICATION OF JUDICIAL NOTICE IN CRIMINAL PROCEDURE

Several applications were submitted to the Office of Public Defender of Georgia concerning the application of judicial notice in violation of right to fair trial, which led to the abuse of rights of defendants enshrined in the Constitution of Georgia and International Law. Public Defender of Georgia exercised twice the *Amicus Curie* (friend of the court) function in Common Courts and Constitutional Court of Georgia in accordance with the Organic Law "on Public Defender of Georgia".

On the basis of case analysis, the Office of Public Defender of Georgia identified the necessity to limit the application of judicial notice in the Code of Criminal Procedure of Georgia.

Public Defender of Georgia submitted *Amicus Curie* Briefs to the Common Courts twice, which analyzed comparative research in details. The number of *Amicus Curie* Briefs submitted on this issue by Public Defender of Georgia underlines the acuteness of the problem. Therefore, we consider the application of systemic approach and the regulation of this issue on the legislative level necessary.

On February 26, 2013 the Government of Georgia initiated the draft law in order to modify the norm of the Code of Criminal Procedure of Georgia regulating the Judicial Notice (Article 73). The legislation is in process of modification; However, it does not ensure the resolution of the problem in its entirety. In order to determine the reasonable balance between public and private interests, institute of Judicial Notice shall comply with relevant standards which will be provided below.

In parallel with the development of human rights law, it becomes essential to save the costs of the court and relevant resources. In such case judicial notice may play a positive role and ensure the right of the judge to make additional intervention in the framework of adversarial proceedings.[219] Furthermore, the wide application of the judicial notice ensures the factual uniformity of the case law.[220] Judicial Notice of adjudicated facts establishes the presumption which may be revised by other testimonies at the trial.[221] In general, application of judicial notice implies the release of the parties to the case and the court from the obligation to prove facts that are universally known or are determined from sources the accuracy of which cannot reasonably be questioned. One of the best examples of the reliable source is the factual circumstances of the case established by a Court judgment entered into legal force. According to the Article 73 of the Code of the Criminal Procedure of Georgia *the following shall be accepted as evidence without examination:*

a) A universally known fact;

b) A judgment of previous conviction;

c) A factual circumstance established by a court judgment entered into legal force;

d) Any other circumstance or fact upon which the parties have reached an agreement (stipulations).

One of the important problems of the legal practice is related to the factual circumstances of the case established by a court judgment entered into legal force (so called judicial notice of adjudicated facts). Pursuant to the Article 279 (1)

219 Uniform Law Conference of Canada, Report of the Federal/Provincial Task Force on Uniform Rules of Evidence (The Carswell Company Limited, 1982) 42

220 McQuaker v.Goddard, Decision of the House of Lords [1940] 1 KB 687

221 K. C. Davis, 'Judicial Notice',(1955) 55 Columbia Law Review, 945, No. 7, 948-9

of the Code of the Criminal Procedure of Georgia the judgment shall enter into legal force immediately after the court announces it publicly. The term "entered into legal force" does not imply final *res judicata*[222] decision and hence, it can be appealed in the higher instance court. In such case, only factual circumstances established by a court judgment are subject to judicial notice of adjudicated facts in comparison with the concrete evidence presented to the case (which can be shared or rejected by the court decision).

By applying judicial notice, it is possible to establish concrete factual circumstances of the case.[223] Circumstances presented in the court decision make the presumption of concrete facts being proved, which may be re-examined and contrary asserted.[224] The judicial notice does not release the prosecutor from his obligation to bear the burden of proof as a State accuser. The prosecutor merely does not have to present additional testimonies for the same circumstances. The defense has the right to present evidence which may revoke the judicial notice of adjudicated facts.

Court judgment, including the decision, is a result of the process between two parties which is concluded by the resolution of the issue. Circumstances established by the court and adjudication of the dispute have only *inter parties* nature rather than *erga omnes*.

The judicial notice established by the court shall be in compliance with presumption of innocence and the guarantees of the right to fair hearing. Article 6 of the European Convention on Human Rights, Article 14 of the International Covenant on Civil and Political Rights and Article 42 of the Constitution of Georgia ensure the right to fair trial. One of the components of this right is the guarantee to fair hearing, which embraces the right to adversarial proceedings and principle of equality of arms.[225] The former implies the right of the defense to have knowledge on evidence against him and the possibility to rebut them by providing comments on presented evidence.[226] Principle of the equality of arms is evaluated retroactively, which determines the level of realization of right to defense of one party in comparison with the other.[227]

According to the case law of the European Court of Human Rights "equality of arms" implies that each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent.[228] Right to adversarial proceedings is interpreted as the right of the individual charged with the criminal offence to dispute and comment on evidence against him.[229] The European Court of Human Rights noted that *it must be examined in particular whether the applicant was given the opportunity of challenging the authenticity of the evidence and of opposing its use. In addition, the quality of the evidence must be taken into consideration, including whether the circumstances in which it was obtained cast doubts on its reliability or accuracy. While no problem of fairness necessarily arises where the evidence obtained was unsupported by other material, it may be noted that where the evidence is very strong and there is no risk of its being unreliable, the need for supporting evidence is correspondingly weaker.*[230]

Right to reject charges includes two elements. The first refers to the presumption of innocence and implies the guarantees to reject the whole case by the individual charged with the criminal offence.[231] Second component is more specific and entails the guarantee to rebut the concrete evidence.[232] In *Salabiaku v. France*[233] case, the European Court of

222 In such case, the term res judicata is applied in accordance with the European Convention on the International Validity of Criminal Judgments. In line with the explanatory report of the Convention, the decision has res judicata force, when no further ordinary remedies are available or when the parties have exhausted such remedies or have permitted the time-limit to expire without availing themselves of them.

223 It might only relate to a criminal fact and not the actus reus and the mens rea supporting the responsibility of the accused for the crimes in question. IT-98-29/1-AR73.1; Decision of International Criminal Tribunal for Former Yugoslavia (ICTY), CASE NO. June 26, 2007, #16.

224 In accordance with Article 13 (1) and Article 82 (2) of the Criminal Procedure Code of Georgia, evidence shall not have a pre-determined legal effect.

225 Inter alia, Ruiz-Mateos v Spain, European Court of Human Rights, Judgment of June 23, 1993, #25

226 S.Trechsel, Human Rights in Criminal Proceedings (with the assistance of Sarah J. Summers, OUP, 2005) 85.

227 Ibid

228 Inter alia, Dombo Beheer B.V. v the Netherlands, European Court of Human Rights, Judgment of October 27, 1993

229 R.C.A.White, C.Ovey, Jacobs, White and Ovey, The European Convention on Human Rights (5th edn, OUP, 2010), 261.

230 Yaremenko v Ukraine, Judgment of the European Court of Human Rights, June 12, 2008, #76

231 P.V.Dijk, M. Viering (rev), "Right to a Fair and Public Hearing (Article 6)", Peter van Dijk, Fried van Hoof, Arjen van Rijn, Leo Zwaak (eds), Theory and Practice of the European Convention on Human Rights (4th edc, Intersentia, 2006), 625

232 Castillo – Petruzzi et al. v Peru, Inter-American Court of Human Rights, Judgment of May 30, 1999, #140

233 Judgment of the European Court of Human Rights, October 7, 1998

Human Rights discussed the issue of burden of proof. According to the European standards, defense shall have the possibility to adduce supporting evidence. It is not allowed to apply preliminary established facts (which are difficult to rebut) during the proceedings.[234] Such approach was shared by the court of several states.[235] Different jurisdictions apply higher standards from human rights perspective.[236] The approach of the European Court of Human Rights on rebutting particular evidence (authenticity/substance) is grounded in right to a fair hearing.[237]

The above assessment, presented in connection with evidence from the human rights perspective, applies to the judicial notice of adjudicated facts. Ground thereto is the similar legal status of both institutes in the Code of the Criminal Procedure of Georgia.

In accordance with the comparative analysis, a court judgment entered into legal force may be applied as a judicial notice of adjudicated facts by a two-step test. On the first stage the compliance of factual circumstances established by a court with the relevant standards is assessed. The second step implies *ad hoc* examination of the application of judicial notice in the framework of right to a fair hearing and presumption of innocence. On the first hand, we present the so-called absolute criteria which *per se* prohibit the application of judicial notice of adjudicated facts:

1. Excerpts submitted shall relate to the matter at issue in the current proceedings[238]

Pursuant to the Article 82 of the Code of Criminal Procedure of Georgia, evidence shall be evaluated from the standpoint of its relevance to the criminal case. This serves the purpose to avoid the court from heavy workload on irrelevant issues.

2. The proposed fact must be concrete, identifiable and distinct [239]

Facts shall be identified in the judicial decision on adjudicated facts and must be understood in the context of the judgment from which they have been taken.[240] Judicial notice of adjudicated facts shall not be taken when factual circumstances of the case provided in the old judgment and other circumstances are presented in the aggregate, which in itself does not comply with the requirements of the judicial notice, or when it is mixed with accessory facts that serve to obscure the principal fact.[241]

3. Facts are formulated in the proposed wording by the party seeking judicial notice in a way, that does not differ significantly from the wording adopted in the original judgment[242]

Only facts, not subject to reasonable dispute shall be judicially noticed, or such dispute shall bear minor importance.[243] Minor differences or obscurities shall be specified by the court; however it shall not alter the whole context of the decision.[244]

4. Facts presented by the party shall not be unclear or misleading in the context in which they have been placed[245]

Additional criteria for taking the judicial notice are narrowed to the context and are subject to mandatory examination in that regard.

---

234 Pham Hoang v France, European Court of Human Rights, September 25, 1992 #35, #36; Janosevic v Sweden, European Court of Human Rights, July 23, 2003, #102;
235 Sheldrake v DPP [2005] 1 A.C. 246, Decision of the House of Lords, Lord Bingham, #21
236 R. v Oakes, 26 D.L.R. (4th) 200, Supreme Court of Canada; State v Mbatha [1996] 2 L.R.C. 208, Constitutional Court of South Africa
237 In Kamasinski v Austria, European Court of Human Rights found that inability of the defendant to comment on evidence obtained constitutes a violation of Article 6 (1). Judgment of December 19, 1988.
238 ICTR-96-14-A, International Criminal Tribunal for Rwanda, Appeals Chamber, May 17, 2004, #16
239 IT-04-81-PT; International Criminal Tribunal for the former Yugoslavia, Trial Chamber, June 26, 2008, #18
240 IT-01-47-T; International Criminal Tribunal for the former Yugoslavia, Trial Chamber, April 14, 2005, #5
241 IT-04-74-PT, International Criminal Tribunal for the former Yugoslavia, Trial Chamber, March 14, 2006, #12
242 IT-00-39-T, International Criminal Tribunal for the former Yugoslavia, Trial Chamber, March 24, 2005, #14
243 Ibid
244 IT-05-88-T; International Criminal Tribunal for the former Yugoslavia, Trial Chamber, September 26, 2006, #7
245 Ibid, #8

5. Facts introduced by the party shall be sufficiently clear[246]

The main purpose of this paragraph is to provide concrete reference of the text, rather than to speak to the general currency of the fact. Only concrete sections of the judgment shall be cited or relevant measures, making the issue clear for the court, shall be employed.[247]

6. Fact shall not contain legal characterizations or opinions[248]

Such regulation seeks to restrain from the application of judicial notice of adjudicated facts. Otherwise, the significance of the mechanism in itself is lost and is transformed into the precedent, in the context of Anglo-Saxon Law. As an exception, different facts might include legal characterizations. Case law of the International Courts only excludes facts, containing essentially legal nature and subjective opinions.[249]

7. Fact shall not be based on an agreement between parties to the original proceedings[250]

Code of Criminal Procedure of Georgia foresees the possibility of plea agreement between the parties. Such agreement does not constitute a proper source of a judicial notice and hence, shall not to be applied against other individuals. Facts shall not be judicially noticed, if there is a doubt, under which it is difficult to determine whether a particular fact is a matter of agreement between the parties.[251] This implies cases where plea agreement is reached between the parties on guilt or penalty in accordance with the Code of Criminal Procedure of Georgia or where parties agree on factual circumstances in line with Article 73 of the Procedure Code.

In contrast, legal framework of United Kingdom provides the possibility to take decisions,[252] adopted in other proceedings based on the agreement of the parties, as a judicial notice.[253] Nevertheless, the House of Lords has further stated that such act shall have an exceptional nature and shall comply with additional procedural guarantees.[254] This in itself is reflected in the possibility to dispute the judgment in full.[255]

8. Fact shall not relate to the acts, conduct or the mental state of the accused.[256]

By taking a judicial notice of adjudicated facts in such cases, right to fair trial would lose its significance, since the defendant would be left without a possibility to revoke evidence against him introduced in the original proceedings. On the other hand, this rule applies only to the objective and subjective elements of the responsibility of the defendant in the ongoing proceedings and does not apply to other individuals. For example, if an individual is persecuted for committing certain crime, *actus reus* and *mens rea* of a crime shall not be judicially noticed. However, judicial notice of adjudicated facts might be taken for establishing the guilt of individuals who have particular relevance to determine current guilt. Such regulation applies to organized crimes, superior responsibility and other instances.[257]

9. Fact shall be final, against which no appeal or review proceedings are under way.[258]

Such regulation excludes to take judicial notice of facts which are not final, and may be altered by appellate or review proceedings.

246 IT-95-16-A; International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, May 8, 2001, #9
247 Ibid, #12
248 IT-02-60-T; International Criminal Tribunal for the former Yugoslavia, Trial Chamber, December 19, 2003, #12; #19
249 IT-02-65-PT; International Criminal Tribunal for the former Yugoslavia, Trial Chamber, April 1, 2004, #4
250 IT-00-39-PT, International Criminal Tribunal for the former Yugoslavia, Trial Chamber, February 28, 2003, #15
251 Ibid, #14
252 Article 74 if the Police and Criminal Evidence Act states, that finding of fact in any proceedings may be taken as a judicial notice of adjudicated fact for the purposes of any other proceedings
253 85 Cr App R 298, O'Connor case, Decision of the House of Lords (1987)
254 P.Murphy, Murphy on Evidence, (8th ed, OUP, 2003) 418
255 J. H.Wigmore, A Treatise on the Anglo-American System of Evidence in Trials at Common Law (3rdedn, Vol 9, Little, Brown and Company, 1940) 265-6; J. B. Thayer, 'Judicial Notice and the Law of Evidence' (1890) 3 Harvard Law Review, 285,309; G. D. Nokes, 'The Limits of Judicial Notice' (1958) 74 Law Quarterly Review, 59, p. 73.
256 Ibid, Judgment of the ICTY, Appeals Chamber, #50
257 IT-05-88-T; International Criminal Tribunal for the former Yugoslavia, Trial Chamber, September 26, 2006, #12, #13
258 IT-95-16-A, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, May 8, 2001, #6

If the judicial notice meets the above criteria, second step implies the assessment of whether the judicial notice serves general "interests of justice".[259] It is essential that the balance is maintained between the terms of the proceedings and the resources of justice on the one hand and rights of the defendant on the other. If judicially noticed facts are presented in full or in major part for proving the guilt, judicial economy is promoted only to the benefit of the prosecutor,[260] aggravating the burden of proof for the defense. In case judicial notice is of concluding character and provides excessive proof of guilt of a defendant, the defense is placed in a disproportional position, making the realization of human rights impossible. Furthermore "interests of justice" do not constitute the basis of the judicial notice where there are several judgments providing different descriptions of the one and the same fact.[261]

In spite of the fact that above rules and regulations are set by the decisions of Tribunals established by the United Nations, which have no mandatory character for Georgia, they shall be considered and introduced directly into the landscape of the Georgian legislation as these regulations balance human rights and administration of criminal justice. Such approach ensures the attainment of public law purposes and guarantees the protection of human rights on highest level possible.

The initiated draft law by the Parliament of Georgia on February 26, 2013 is indeed a positive step forward in the sphere of judicial notice. Nevertheless, it shall be noted that the draft does not consider certain issues which require regulation and advancement in accordance with above criteria.

When taking the judicial notice of adjudicated facts and admitting the judgments as evidence without further examination, it is necessary that the decision adopted as a result of the main court hearing is final and indisputable. No appeal, cassation or re-examination proceedings of a judgment due to newly discovered evidence shall be under way. Moreover, the possibility to find subjective and objective elements of a crime by the judicial notice shall be excluded imperatively in order to ensure right to fair hearing. These are the issues that are not regulated by the Government of Georgia in the initiated draft law and which need to be solved immediately.

VALIDITY OF MEASURE OF PREVENTION PROBLEMS RELATED TO CASES OF DETENTION

One more problem linked to the realization of the right to fair trial in the reporting period of 2012 relates to the well-grounded decision on application of concrete measure of prevention against the defendant. In order to analyze general tendencies in this direction, the Office of Public Defender of Georgia requested court decisions on bringing the individual charged with criminal offence before the trial and imposition of preventive measures from Tbilisi, Kutaisi and Batumi City Courts as well as from Telavi Regional Court. It shall be noted that requested documents were obtained by the Office of Public Defender of Georgia only from Tbilisi City Court and Telavi Regional Court.

The analysis of the court decisions show that in the majority of the cases where detention is imposed upon defendant as a measure of prevention, a judge substantiates his/her decision on the grounds that the defendant might flee, exert pressure on witnesses, hinder to collect evidence as well as commit further criminal activities.

Pursuant to Article 198 of the Code of the Criminal Procedure of Georgia:

"1. Preventive measures are applied to ensure that the defendant does not avoid appearing in court, to prevent him/her from committing further criminal activities, and to ensure enforcement of judgments. Detention or other preventive measures shall not be applied against the defendant if a less restrictive preventive measure meets the objectives provided for in this Paragraph.

2. Established probable cause that the person will flee or fail to appear in court, will destroy information relevant to the case, or commit a new crime shall be the ground for applying a preventive measure.

259 IT-02-54-AR73.5, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, April 10, 2003, #3, #4
260 Economy of justice is reflected only in such aspect
261 IT-05-88-T, International Criminal Tribunal for the former Yugoslavia, Trial Chamber, September 26, 2006; #15-19

3. When filing a motion to apply a preventive measure, the prosecutor must justify the reason behind his/her choice of preventive measure and the inappropriateness of a less restrictive preventive measure.

4. The court shall apply detention as a preventive measure for the defendant only when the goals referred to in Paragraph 1 of this Article cannot possibly be accomplished by applying less restrictive preventive measures.

5. When deciding on the application of a preventive measure and its specific type, the court shall take into consideration the defendant's character, scope of activities, age, health condition, family and financial status, restitution made by the defendant for damaged property, whether the defendant has violated a preventive measure previously applied, and other circumstances."

Therefore, it is evident that during imposition of detention upon defendant as a preventive measure, the mentioned Article obliges the Court to consider circumstances justifying probable cause that the defendant will fail to appear in court or before investigative bodies, judgment will not be enforced, the defendant will exert pressure on witnesses, hinder the collection of evidence or commit a new crime in case he is not placed in the penitentiary establishment and his liberty is not restricted during the course of investigation.

The analysis of the court decisions obtained by the Office of Public Defender of Georgia show that the court only lists above reasons to justify the necessity of imposing detention as a preventive measure, and does not provide clarification on concrete circumstances leading to the establishment of probable cause.

The court might establish probable cause that the individual charged with criminal offence might continue criminal activities (which are only rarely indicated in the court decisions) in case the defendant has previously been convicted for the similar offence and appeared before the court for the imposition of preventive measure. Generally the court fails to justify other circumstances (hindering the collection of evidence by the investigation, possibility to exert pressure on witnesses), it does not indicate grounds establishing possible cause that the defendant will carry out these activities and does not provide reasons on why the application of less restrictive, non-custodial measures cannot accomplish goals of preventive measures.

Together with this, it shall be mentioned, that the risk that the defendant will flee in case his liberty is not restricted is justified on the bases of severance of a possible sentence.

European Court of Human Rights found the violation of Article 5 of the European Convention on Human Rights in cases where the court justified its decision on imposing pre-trial detention due to the severance of possible sentence and failed to indicate other grounds for establishing the possible cause that the defendant would flee from justice. Furthermore, according to the court decisions presented to the Office of Public Defender of Georgia, the court almost fails to consider other circumstances indicating that the defendant will not flee and the objectives of preventive measures will be accomplished by imposing non-custodial measures.

As stipulated by one of the court decisions, the court imposed detention upon defendant as a preventive measure, who was accused for other offence and was serving the sentence in the form of detention. In this case the purpose of preventive measure is vague and the reasons behind the imposition of detention upon individual whose liberty has already been restricted and who would not be able to flee or impede the collection of evidence are unclear. Furthermore, the possible cause that the defendant would be able to commit a crime was not established.

Public Defender of Georgia deems that consideration of the necessity to detain the defendant would be relevant in case the sentencing period would soon be expired and the defendant would be released from the penitentiary establishment. However, according to the decision, the court did not consider this particular condition. Even in case this condition is met, the legislation of Georgia obliges the court to justify any other circumstances necessitating the imposition of detention upon defendant.

Apart from imposing detention as a measure of prevention, court decisions on the application of the bail against a defendant are not well substantiated. In spite of the fact that the bail constitutes a less restrictive preventive measure, the analysis of the court decisions show that the court fails to consider financial conditions of a defendant. Article

200 of the Code of the Criminal Procedure of Georgia does not enshrine the obligation of the court to consider financial conditions of the defendant in details. However, in case the amount of imposed bail does not correspond to financial conditions of the defendant, the bail, as a preventive measure will not be able to accomplish the objectives of preventive measures prescribed by the Code of the Criminal Procedure of Georgia.

In addition, in case the defendant fails to post the bail within the determined period (including due to his financial situation), the Code of the Criminal Procedure of Georgia grants the prosecutor right to request the court to apply a heavier preventive measure (detention) against the defendant. In such an instance, the detention is imposed upon the defendant even if other necessary circumstances are not in place (risk to continue criminal activities, to flee or to hinder the course of investigation). This contradicts with the standards established by the European Court of Human Rights as well as the relevant provisions of the Code of the Criminal Procedure of Georgia, which stipulate that pre-trial detention shall be applied only in case the objectives of preventive measures – enforcement of judgment, avoidance of the risk of committing further criminal activities or to carry out investigation without any impediment – will be impossible to meet if the liberty of the defendant is not restricted, which shall also be justified.

Problems related to court proceedings on the application of non-custodial measures

Trials related to the imposition of non-custodial measures against the defendants still remain as one of the major problems of criminal proceedings.

In the second half of 2012, the Office of Public Defender of Georgia requested information from Tbilisi and Kutaisi City Courts on pending and adjudicated cases, where the court imposed non-custodial measures against the applicant.

According to the information provided by the Tbilisi and Kutaisi City Courts, by October 18, 2012 10 621 (9 379 cases in Tbilisi City Court, 1 242 cases in Kutaisi City Court) cases were submitted to the courts. By the same date 10 239 cases have been considered (9 011 cases by Tbilisi City Court, 1 228 by Kutaisi City Court). Therefore 382 cases (368 cases before the Tbilisi City Court, 14 cases before the Kutaisi City Court) are pending before the courts.

Tbilisi City Court indicates that the prolongation of considering the cases where non-custodial measures are applied is grounded in Article 8 (3) of the Code of the Criminal Procedure of Georgia according to which the court is obliged to give a preference and priority to a criminal case in which detention is applied against the defendant as a measure of prevention. Nevertheless, such legal implication cannot justify the prolongation to consider cases of non-custodial measures for several months.

The study of materials obtained by the Office of Public Defender of Georgia from Tbilisi and Kutaisi City Courts revealed that several cases where non-custodial measures were applied, have been under consideration for 15, 16, 17 and 18 months. In several instances similar cases have been examined by the courts for 20 and 32 months. Furthermore, as already mentioned above, by the moment the Office of Public Defender of Georgia requested information from the courts, 382 cases were still pending before the court.

For several times in its case law the European Court of Human Rights has pointed out, that while discussing the reasonableness of the length of proceedings brought before the national courts, consideration shall be given to the following:

1. The complexity of the case;
2. Acts and behavior of the applicant;
3. Actions taken by state administrative and judicial bodies.[262]

Consequently, national judicial authorities are obliged to ensure the prevention of unreasonable length of the proceedings brought before them at the highest level possible. Most importantly, states are obliged to organize their

262 Application #7759/77; Buchholz v Federal Republic of Germany, European Court of Human Rights, May 6, 1981

legal systems in a way to allow the courts to comply with the requirements of Article 6 (1) of the European Convention on Human Rights including the rights of a trial within a "reasonable time".[263]

The European Court of Human Rights established that states shall carry out adequate measures to ensure expedient and effective judicial system. Adequate measures may also imply the appointment of additional judges and administrative personnel. Nonetheless, the European Court of Human Rights has pointed out, that a temporary backlog of business does not involve liability on the part of the state provided that it takes, with the requisite promptness, remedial action to deal with an exceptional situation of this kind.[264]

However, prolongation of court proceedings on non-custodial cases for several years acquired systemic nature, which in the majority of instances contradicts with the European standards.

It shall also be noted that generally, courts impose bail against a defendant, rather than the third party's personal guarantee as a type of non-custodial measure. Unfortunately, measure of placing a juvenile defendant under supervision was applied only once in 9379 cases, supervision of a military serviceman by Commanders-in-Chief was imposed against 4 defendants, and agreement of assigned residence and due conduct has never been used by the courts.

When it comes to the imposition of non-custodial preventive measures by Kutaisi City Court, it is worth to mention that measures, such as placing a juvenile defendant under the supervision, supervision of a military serviceman by Commanders-in-Chief and agreement of assigned residence and due conduct have never been applied since January 1, 2010 (1 242 cases). In the meantime, increase of number of cases where a third party's personal guarantee is imposed as a preventive measures is recommended, as the application of different forms of preventive measures will constitute a clear example that the courts assess each case individually and make decisions on the imposition of particular preventive measures by examining concrete circumstances of the case and personal characteristics of the defendants.

RIGHT TO DEFENSE

One more issue we would like to discuss in this Chapter is the right to defense. In particular, right to effective defense constitutes an indivisible and one of the important elements of right to a fair trial. It is a fundamental procedural guarantee of a defendant. Right to defense is guaranteed in several national legislative acts and international treaties, however, at the outset it shall be presumed as a constitutional principle.

The supreme law of the state – the Constitution of Georgia, as well as international treaties and national legislative instruments ensure the defendant's right to defense as the possibility and will of the individual to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.

The state is under a positive obligation to provide relevant assurances of right to defense on legislative level. Furthermore, it is of particular importance that defendant's right to defense is realized effectively by measures implemented in practice. The state is under an obligation to ensure the possibility for the enjoyment of effective right to defense.

Right to effective defense implies right of the individual to have adequate time and facilities for the preparation of his defense. One of the important means for the preparation of the defense is the right to have a lawyer. Stemming from the objective of the right to effective defense, the communication between the defendant and his lawyer shall be free and confidential and must be carried out without any unreasonable impediment.

263 Application #8737/79; Zimmermann and Steiner v Switzerland; European Court of Human Rights, July 13, 1983

264 Application #8130/78; Eckle v. Federal Republic of Germany, European Court of Human Rights; June 21, 1983; Application #10527/83; Milasi v. Italy, European Court of Human Rights, June 25, 1987; Application #12728/87, Abdoella v. The Netherlands, European Court of Human Rights, November 25, 1992; Application #25444/94; Pelissier and Sassi v. France, European Court of Human Rights, March 25, 1999; Application #16026/90; Mansur v. Turkey, European Court of Human Rights, June 8, 1995

Realization of a fair trial principle is impossible without granting the defendant possibility to realize right to effective defense. Due to its positive obligation, the state bears the responsibility to realize fair trial principle and the right to effective defense.

Unfortunately Public Defender of Georgia identified cases related to the violation of the right to defense during the reporting period of 2012. Below, we present several such cases.

Case of V.Dz.

On May 31, 2012 Kh.B. and V.K., lawyers of the defendant V.Dz. addressed Public Defender of Georgia. The assessment of case materials presented to the Office of Public Defender of Georgia established that the investigator and prosecutor violated the right to defense of V.Dz.

In particular, investigator appeared to impose charges against the defendant V.Dz. placed in the penitentiary institution. The defendant requested the assistance of a lawyer, to ascertain circumstances of the case and to defend his interests effectively. However, the investigator did not comply with the lawful request of the defendant. He contacted the prosecutor who later visited the penitentiary institution and tried to identify reasons behind the rejection to sign the notification of the charges by the defendant. The defendant requested the assistance of a lawyer, however his request was still not granted.

In line with Article 42 (3) of the Constitution of Georgia *the right to defense shall be guaranteed.* According to Article 38 (2) of the Code of Criminal Procedure of Georgia, *at the moment of detention, or, if a detention does not take place – immediately upon being recognized as a defendant, as well as before any questioning, the defendant shall be informed that he/she has the right to a defense counsel.* Paragraph 5 of the same Article stipulates that *a defendant shall have the right to a counsel and the right to choose the counsel, as well as the right to substitute the counsel of his/her choice at any time.* Furthermore, Article 41 of the Code of Criminal Procedure of Georgia establishes rules for appointment of a counsel by a defendant. According to this Article *a defendant or his/her close relative or other person acting in accordance with the defendant's will, shall select and appoint a defense counsel.*

At the same time, Article 169 (5) of the Code of Criminal Procedure of Georgia imperatively determines that *the prosecutor, or upon prosecutor's order, the investigator, shall present the indictment to the defendant and his/her defense counsel (in case the defendant has a defense counsel), who shall confirm, with their signatures, that they have familiarized themselves with the ruling and have received a copy. A copy of the indictment listing defendant's rights and duties shall be handed to the defendant or his/her defense counsel. If the defendant and his/her counsel refuses to sign and confirm that s/he has familiarized him/herself with the indictment and received a copy, the reasons for refusing to sign shall be noted on the indictment.*

Therefore, the appointment and participation of the defense counsel in the criminal case is a right of the defendant and the request thereto shall be met immediately. Right to defend oneself through legal assistance is a central element of the fair trial principle. In spite of the fact that this right does not fall within the absolute category of rights, its restriction shall have a temporary nature. For the purposes of Article 6 (3, c) of the European Convention on Human Rights, restriction of the right shall be necessary, serve a legitimate purpose and shall not substantially threaten the essence of the right to effective defense.[265]

The defendant V.Dz. expressed his will to get familiar with the indictment through his lawyer. In spite of the fact that the limitation was not necessary, the prosecutor and the investigator did not comply with the requirements of article 38 (5) and 169 (5) of the Code of the Criminal Procedure of Georgia. The defendant was not provided with the possibility to invite his lawyer during getting familiarized with the indictment, in spite of the defendant's clear message to do so.

265 Application # N7854/77; Bonzi v. Switzerland, European Court of Human Rights, July 12, 1978; Application # 8463/78; Krocher and Moller v. Switzerland, European Court of Human Rights, July 9, 1981.

Case of M.R.

On June 6, 2012 T.K. the defiance counsel of M.R. addressed Public Defender of Georgia. The assessment of the materials presented to the Office of Public Defender of Georgia revealed that the investigator of the Department of Investigation under the Ministry of Finance of Georgia violated the right of M.R. by refusing his lawyer to obtain complete information on evidence presented by the prosecution.

Examination of this case established that lawyer T.K. was presenting interests of M.R. from May 28, 2012. Third Division of Tbilisi Main Division of the Department of Investigation under the Ministry of Finance of Georgia was carrying out the investigation of this case. On May 27, 2012 M.R. was charged *in absentia* for committing a crime envisaged by Article 180 (3, b) of the Criminal Code of Georgia. Since M.R. avoided appearing before the investigative bodies, indictment on his charges was presented to mandatory defense counsel to whom all information and copies of the evidence in the possession of the prosecutor were handed over in accordance with the Article 83 of the Code of Criminal Procedure of Georgia.

On May 28, 2012 lawyer T.K. got involved in the case. As T.K. was unable to receive evidence from the previous defense counsel in a short period, he addressed the investigator with a written request to hand over copies of evidence proving the charges against the defendant M.R. However, the prosecution handed over T.K. only those information and copies of the evidence, which were obtained by the prosecution after presenting the materials to the mandatory defense counsel.

Stemming from the above, the investigator violated Article 44 (3) and Article 83 (1,3) of the Code of Criminal Procedure of Georgia. In particular, pursuant to Article 83 (1) *at any stage of a criminal proceeding, the request of a defense party to familiarize him/ her with information to be submitted by the prosecution in court as evidence should be immediately satisfied. The prosecution is also obliged, in cases provided by this paragraph, to hand over any exculpatory evidence in its possession to the defense.* Paragraph 3 of the same Article specifies the volume of information and determines the obligation to provide the defense with *all materials available at that moment*, since pursuant to the same paragraph the fact of failure of the prosecutor to hand over all materials to the defense results in finding material as inadmissible evidence.

In such circumstances, the legislator establishes the only exception envisaged by Article 83 (5) of the Code of Criminal Procedure of Georgia, according to which the right of defense to request the information may be restricted on the basis of court order; the restriction may only apply to the information obtained through operative-investigative actions and only prior to the preliminary court hearing. Right of the prosecution to refuse to hand over other type of information is not guaranteed by the legislation. The legislation does not restrict the defense to request information on evidence repeatedly, especially when the defense counsel is changed and the new counsel does not possess any potential evidence in favor of the defendant. Therefore, the defense has the right to request information on materials available at the moment at any stage of criminal proceedings; The prosecution shall satisfy such request immediately and at full extent.

Obtaining information on evidence in possession of the prosecution is of crucial importance to the defense in order to effectively realize right to defense guaranteed by Article 42 of the Constitution. The reason behind this is to ensure proper defense of the individual charged with criminal offence. In accordance with Article 44 (3) of the Code of Criminal Procedure of Georgia *a defense counsel shall have right for discovery of the prosecution evidence within the limits and procedure envisaged by this code, obtain copies of evidence and criminal case files.* A defense counsel shall employ every lawful means to protect the interests of a defendant, at the same time, relevant authorities shall not create artificial, unreasonable and illegitimate obstacles.

In the abovementioned case, request of the defense counsel T.K. aimed at gaining full information on charges against his client and carrying out measures for protecting interests of M.R. (to appeal the order on the application of a preventive measure, which is limited to 48 hours). Unfortunately, the investigator of the case did not provide T.K. with such possibility. Therefore, he infringed the right of M.R. and his counsel T.K. to obtain information on evidence from the prosecution, as well as the right to effective defense.

It shall also be mentioned, that the defense was further claiming that the investigator failed to hand over the evidence based on the request made verbally and through a telephone call. In accordance with the advice of the investigator and the prosecutor, the defense counsel had to address the investigator of the case in a written form. All this prolonged the process of providing defense with evidence.

Finding the truth on the abovementioned issue is practically impossible for the Office of Public Defender of Georgia; however it shall be noted that in accordance with Article 83 (1) of the Code of Criminal Procedure of Georgia *at any stage of a criminal proceeding, the request of defense party to familiarize him/ her with information to be submitted by the prosecution in court as evidence, should be immediately satisfied.*

"Immediately" does not imply instant satisfaction of the defense's request. Application of a due time for the preparation of relevant documents will not be considered as acts contrary to the legislation. However, the prosecution shall foresee that any unreasonable restriction of a right may result in the violation of human rights. Parties shall not create additional artificial obstacles to each other, especially when the legislator establishes certain time limits: For example the order on applying a preventive measure may be appealed within 48 hours. At the same time, the Code of Criminal Procedure does not establish an obligation of the defense to address the prosecution in a written form in cases mentioned above.

PROBLEMS RELATED TO ADDRESSING THE COURT REGARDING CRIMINAL CASES ON APPLICATION OF PROPERTY ARREST (SEIZURE)

In the reporting period of 2012, the Office of Public Defender of Georgia identified facts of restricting and infringing property rights during property arrest applied in accordance with Criminal Procedure Code of Georgia. The latter has been caused by the incompleteness of relevant norms of the Code.

In particular, Article 151 of the Criminal Procedure Code of Georgia grants the state right to seize the property of an individual not charged with the criminal offence.

Therefore, while application of property arrest, the Criminal Procedure Code of Georgia limits the owner, including an individual, not being party to the case, to use and dispose property under his possession or ownership during investigative and court proceedings. At the same time, the Criminal Procedure Code of Georgia does not provide an individual, not having the status of a party to the case, with the possibility to appeal court order on arrest of property and to request the review of the decision. In accordance with the provisions of the Criminal Procedure Code of Georgia being in force, such rights are conferred only on the parties to the case (a prosecutor and a defendant).[266]

Consequently, in accordance with the provisions of the Criminal Procedure Code of Georgia, an individual, not recognized as a defendant is deprived of the right to appeal the court order on arrest of the property under his ownership and to request the restoration of his right.

Stemming from the above, individuals, whose property may be seized and the right to property restricted as a result of criminal proceedings, lack the possibility to appeal the decision on restricting their rights and to request the restoration of their rights to use and dispose property under their possession or ownership without any hindrance. This in itself limits the right of an individual to apply to a court for the protection of his/her rights and freedoms (in this case, right to property) enshrined in Article 42 (1) of the Constitution of Georgia.

It is noteworthy that such regulation is contrary to the Constitution of Georgia as well, since the standards established by the European Court of Human Rights within the framework of right to fair trial (Everyone has the right to apply to a court for the protection of his/her rights and freedoms and to appeal the decision of the court that limits his/her rights, to take part in the proceedings in person or through legal assistance, be informed on justifications and circumstances indicated in the decision of the court, present to a court his/her personal opinions).

As a result, in accordance with Article 21 (a) of the Organic Law on Public Defender of Georgia, Public Defender of Georgia submitted the proposal to the Parliament of Georgia on relevant amendments and additions to the Criminal

266 Article 156 of the Criminal Procedure Code of Georgia, October 9, 2009

Procedure Code of Georgia which would enable an individual whose property was arrested and who is not a party (defendant) to the criminal case to appeal the court order on the arrest of the property in person or through legal assistance and to protect his rights in court.

Recommendations:

- Monitoring implemented by the Office of Public Defender of Georgia in common courts revealed several issues, to be solved on legislative level.

Recommendation to the Parliament of Georgia:

- **To harmonize Article 13 of Law on Common Courts and Law on introducing amendments in the Criminal Procedure Code of Georgia of January 18, 2013 and not to refuse to carry certain devices into the court rooms, where there are no lawful bases for such refusal or it is not justified from human rights perspective;**
- **To establish an obligation, according to which the courts will be responsible to ensure access to court for everyone;**
- **To establish legal basis for interpretation of such a quality that will make the individual, having no knowledge of a state language, capable to fully integrate in court proceedings, to ensure the preciseness and prevent the possibility of the court being partial;**
- **To ensure the establishment of an obligation of a party to provide justifications to the relevant motions that will enable the court to make the decision in the framework of that justification;**
- **To carry out relevant legal amendments, which will enable the witnesses to testify only after the presentation of an ID document;**
- **To carry out relevant amendments and additions to the Criminal Procedure Code of Georgia that will give the party, whose property was arrested, possibility to appeal the court order on arrest of the property under his ownership in person and/or through legal assistance.**

Recommendation to the Ministry of Internal Affairs of Georgia:

- **Investigative bodies shall ensure that defendant has the possibility to effectively enjoy his/her defense rightsin practice without any artificial or unreasonable impediments.**

Recommendation to the Chief Prosecutor's Office of Georgia and the Ministry of Internal Affairs of Georgia:

- **To implement in practice the requirements of the Criminal Procedure Code of Georgia, on exchange of information, concerning the evidence. In particular, to fully meet the request of the defense to familiarize him/her with information to be submitted by the prosecution in court as evidence. Rules regulating Administrative Proceedings shall not apply to handing over of such information.**

Recommendation to Common Courts:

- In case of application of detention as a preventive measure, the court shall discuss and assess circumstances, which according to its findings might hinder to meet the objectives of a preventive measure, in case less restrictive means are applied;
- To eradicate facts of prolongation of court proceedings on cases where preventive measures, other than detention are imposed on individuals;
- Parties shall be given the possibility to present and examine evidence on equal footing with each other in administrative proceedings. Special attention shall be paid to the justification of a court decision on application of detention as an administrative sentence.

Recommendation to High Council of Justice:

- To implement relevant steps in courts, being overloaded with cases, and namely Tbilisi City Court, in order to avoid unreasonable prolongation of court proceedings.

Enforcement of Court Judgments

Enforcement of Court Judgments constitutes an indivisible element of the right to fair trial and one of the preconditions for its realization in practice. Obligation to enforce court judgments is guaranteed by the Constitution - the highest law of Georgia. In particular, according to Article 82 of the Constitution of Georgia:

Acts of courts shall be obligatory for all state bodies and persons throughout the whole territory of the country.

Different problems identified during enforcement proceedings were discussed in previous parliamentary reports of Public Defender of Georgia. Failure to enforce judgments concerning the tax lien/mortgage registered on a debtor's property constituted one of the important problems of 2011. Therefore, based on Georgian law, the Enforcement Bureau was not in a position to carry out an enforcement action to the benefit of the creditor[267] before the claims made by the state were satisfied.[268]

Reports of Public Defender of Georgia also dealt with problems related to the enforcement of the court judgment by the organizations funded from the state budget. Typically, court judgments concerned the repayment of arrears of wages or other indebtedness. Furthermore, problems related to the imposition of an order for the collection of payment on the bank account of the Fund for Payment of Accrued Salary Arrears and Enforcement of Judgments in cases where indebted budgetary organizations have failed to enforce the respective court decisions voluntarily.

Public Defender of Georgia issued several recommendations pertaining to alternative of addressing each of the above problems. Regrettably, no meaningful steps have been taken by state authorities to follow on Public Defender's recommendations, therefore the problems identified last year still persist, and the recommendations made in past remain valid.

As to the reporting period, it shall be mentioned that in comparison with previous years, number of applications concerning the enforcement of court judgments has decreased. Majority of the applications addressed issues such as prolonging enforcement period and obtaining information necessary to enforce a judgment. Applicants stated that despite submitting writs of enforcement to Enforcement Bureau, effective execution of court judgments was delayed.

According to the data of LEPL National Bureau of Enforcement under the umbrella of the Ministry of Justice of Georgia, the number of enforced cases by the enforcement bureaus – territorial units of the National Bureau of Enforcement stood at 37 901 during 2012. This indicator is lower than 2009 and 2010 figures and higher than the number of enforced cases in 2008 and 2011.[269]

267 A creditor whose claim is not secured by a pledge of property (mortgage), lien or other means of securing liability
268 2011 Report of Public Defender of Georgia on Human Rights Situation in the Country, p 37-41
269 http://nbe.gov.ge/index.php?lang_id=GEO&sec_id=194&info_id=5749

DELAY IN THE ENFORCEMENT OF COURT DECISIONS IN THE PROCESS OF FORCED EVICTIONS

Analysis of applications submitted to the Office of Public Defender of Georgia during the reporting period of 2012 revealed the problem related to the delay of enforcement of court decisions on the cases of claiming of immovable property from the ownership and/or use of other party.

During 2012 Public Defender of Georgia examined numerous applications concerning the delay of forced evictions on several instances, resulting in the violation of the prescribed period for the claiming of immovable property from the ownership and/or use of other party.

Article 84 of the Law on Enforcement Proceedings establishes relevant rules and terms related to the enforcement of court decisions on the cases of claiming of immovable property from the ownership and/or use of other party. According to the said provision, National Bureau of Enforcement issues a written warning to the debtor on voluntary fulfillment of the decision within 10 calendar days. The written warning also includes information on forced eviction in case of the failure to fulfill the decision within the term prescribed by the National Bureau of Enforcement.

Cases examined by the Office of Public Defender of Georgia related to the failure to enforce decisions on cases of the above category for months and/or years and the violation of the term prescribed by law. As a rule, LEPL National Bureau of Enforcement under the umbrella of the Ministry of Justice of Georgia justified the delay in the enforcement due to the high volume of cases of claiming of immovable property from the ownership and/or use of other party registered in the Bureau and their execution according to the established schedule.

It shall be mentioned that problems concerning the cases of claiming of immovable property from the ownership and/or use of other party were discussed in the Parliamentary Report of Public Defender of Georgia for 2010.[270] In this case, problems related to the eviction of internally displaced persons from the immovable property under the private ownership.

According to the legislation in force, the bailiff does not have the obligation to address the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia during the process of forced evictions of individuals having IDP status and to enforce the decision in accordance with the answer of the Ministry. However, as the Internally Displaced Person is indicated as a debtor in the enforcement sheet, in practice the National Bureau of Enforcement addresses the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia to resettle the debtor. In such cases, the Ministry provides the National Bureau of Enforcement with information on the State Strategy related to the resettlement of IDPs residing in private sector in a standardized form. Therefore, enforcement of cases of claiming of immovable property from the ownership and/or use of other party may not only be delayed in time, but it may not be carried out for years. Such practice directly violates the rights of property owners.

Obviously, Public Defender of Georgia always welcomes the existence of additional guarantees in legislation of Georgia for vulnerable groups, or groups with special needs. However it is essential that such regulations or practices do not result in unreasonable restriction or violation of rights of other groups.

Enforcement of court decisions constitutes an element of the right to fair trial guaranteed by Article 42 of the Constitution of Georgia; therefore its realization is of substantial importance to the interests of justice. State must develop the system of enforcement, which will protect the interests of creditor as well as the debtor on legislative and practical level effectively. In above mentioned cases, not only interests of justice, but also interests of creditor are threatened. It is important that the individual has the possibility to realize rights conferred by the court efficiently. At the same time, in similar cases the National Bureau of Enforcement shall be guided in accordance with rules established by law, rather than procedures introduced through practice. Therefore, it is essential that problematic issues formed by the practice are introduced in the legislation, in order to frame such practice within legal boundaries.

270 Report of Public Defender of Georgia on Human Rights Situation in the Country for 2010, Right to Property, P. 213-224

Herewith, we deem that the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia shall be involved in such processes more actively. Protection of IDPs residing in private property (where court decisions on the eviction of IDPs exist) shall be carried out by finding adequate shelter and resettling IDPs there, and not by leaving them in third party's ownership permanently.

MECHANISM FOR EXECUTING DECISIONS OF HUMAN RIGHTS COMMITTEE

Further problem relating to the process of execution of judgments is the lack of a mechanism to enforce decisions of Human Rights Committee.

In particular, by considering the communication of Mr. Ratiani against Georgia (Communication No 975/2001), the Human Rights Committee was of the view that the facts before it disclosed a violation of Article 14 (5) of the 1966 International Covenant on Civil and Political Rights. According to this Article, everyone shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law. In line with the decision, the State party became obliged to grant the applicant appropriate compensation and to take effective measures to ensure that similar violations do not reoccur in the future.[271]

Office of Public Defender of Georgia requested information on awarding compensation from the Ministry of Justice of Georgia. According to the received correspondence, due to the recommendatory character of the decisions adopted by the Human Rights Committee, legislation in force does not provide the possibility to undertake individual measures to give effect to the Committee's views of July 21, 2005.

Stemming from the above, Government of Georgia is unable to take relevant measures in order to implement individual measures recommended by the Human Rights Committee.

We deem that the Ministry of Justice of Georgia shall resolve this issue effectively together with the Parliament of Georgia.

Recommendations:

- **To establish a mechanism for the enforcement of individual measures considered by the Human Rights Committee;**
- **To include in the Law on Enforcement Procedures the terms and procedures of attachment of the monetary funds held in the respective account of the state budget, applied as a coercive enforcement action in case the debtor budget-supported organization fails to fulfill voluntarily the liability imposed on it by the act of the court;**
- **To define in the Law on Enforcement Procedures a mechanism to allow coercive retrieval from a debtor organization of the information necessary for the enforcement of the act of the court;**
- **To define concrete cases to apply the search of a debtor, provided for in Article 30 of the Law on Enforcement Procedures, i.e. those cases where the enforcement of the act of the court is not possible without the presence of the debtor, secure debtor's appearance, its duration and other action involved therein;**
- **To define in legislation measures to be taken into account by the National Bureau of Enforcement where the case concerns forced eviction of IDPs living in the household under the ownership of a third party.**

271 Views of the Human Rights Committee under article 5, paragraph 4 of the Optional Protocol to the International Covenant on Civil and Political Rights, paragraph 13, CCPR/C/84/D975/2001

Public Defender and Constitutional oversight

Participation in the process of constitutional justice is an important part of the work of Public Defender of Georgia. Public Defender is authorized to initiate abstract constitutional oversight and argue the constitutionality of the elections and referendum.

Public Defender can lodge a constitutional complaint with the constitutional court on the norms related to the referendum and elections as well as the elections (referendum) conducted or to be conducted on the basis of these norms, or in case when the human rights and freedoms laid down in Chapter 2 of the Georgian constitution are violated by a normative act or its particular norms (so called abstract constitutional oversight).

It should be considered that other state institutions also have similar powers, but so far this authority has been used most commonly and effectively only by Public Defender. Public Defender's constitutional claims mainly refer to the compliance of normative acts with the regulations of rights and freedoms set forth in Chapter 2 of the Constitution. As for the dispute on constitutionality of elections, this competence has not yet been used by Public Defender.

As a rule Public Defender addresses the constitutional court in cases where through examination of complaints and applications, Public Defender reveals a conflict between certain normative act and the provisions of Chapter 2 of the Constitution.

At the same time, under the paragraph "d" of the Article 14 of the Organic law on Public Defender of Georgia, any person can apply to Public Defender if the applicant contests conformity of the normative acts with the provisions of Chapter 2 of the Constitution of Georgia.

Over the reporting period the Constitutional Court examined two constitutional complaints lodged by Public Defender of Georgia, of which one was examined in essence and second - on preliminary hearings. It is noteworthy that the first constitutional claim was partially satisfied. It shall also be noted that for identification of problematic issues of compliance with the Constitution mainly characterized by the legislation (especially procedural law) and for preparation of appropriate constitutional claims, the consultations with acting lawyers and other human rights organizations are scheduled this year. Currently, Public Defender is preparing at about ten constitutional claims which will be submitted to the Constitutional Court during this year.

THE JUDGMENT OF APRIL 11, 2012 OF THE CONSTITUTIONAL COURT OF GEORGIA ON THE CASE "PUBLIC DEFENDER V. PARLIAMENT OF GEORGIA"

On April 11, 2012, the Constitutional Court made a decision on Public Defender's constitutional claim №468.

Public Defender disputed the norms of the Law of Georgia on Broadcasting, which require obtaining of license for transmission via cable network or satellite. Public Defender considered unconstitutional the license modification liability while the types of transmission via cable network and satellite would be altered.

Substantiating the constitutional claim and referring to the case law of the Court of Human Rights, the plaintiff pointed out that the media licensing is justified only for licensing the TV and radio transmission though frequency spectrum, as this exhaustible resource is limited in nature. Transmission via cable or satellite network is not related to the use of limited resources and does not contain abuse or threat of interest for any social group. At the same time, the plaintiff pointed out that the state shall control the activities of broadcasters' compliance with the established legislative requirements.

The representative of the National Commission of Communications of Georgia invited as a witness on the substantive examination indicated:

- There is no need for technical regulation requiring the licensing for transmission via cable network;
- The broadcasters transmitting via cable or satellite TV network do not interfere with each other from a technical point of view;
- Setting up of competition regarding the frequency is merely connected to determination of price and exhaustible resources.

Within the framework of constitutional complaint the Constitutional Court assessed:

- The issue of compliance with paragraph 1 and 4 of the Article 24 of the broadcast licensing via cable network;
- The compliance of wording "cable network" of paragraph 3 of the Article 38 of the Law of Georgia on Broadcasting with the paragraphs 1 and 4 of the Article 24 of the Constitution;
- The compliance of the licensing system liability through satellite TV, as well as general and specialized types of broadcasting licenses (of the wording "terrestrial stations of satellite systems" of paragraph 3 of the Article 38) with paragraph 1 and 4 of the Article 24 of the Constitution.

The Constitutional Court of Georgia concluded that:

- TV licensing is not necessary condition to achieve legitimate objectives. The goal can be attained through provision of the interested parties in the committee with certain information. Accordingly, the normative contents of the wording: "Holder of the license" of paragraph "t" of the Article 2 of the Law of Georgia on Broadcasting, which refers the broadcasting via cable networks, contradicts with paragraphs 1 and 4 of the Article 24 of the Constitution.
- Mandatory modification of the license is not considered as a reasonable means to achieve the objective in case the licensed specialized broadcaster decides to go beyond the issues regulated within the existing license. Therefore the wording: "Cable network" of paragraph 3 of the Article 38 of the Law of Georgian on Broadcasting contradicts with paragraphs 1 and 4 of the Article 24 of the Constitution.
- The "Declaration on principles governing the use by states of artificial earth satellites for international direct television broadcasting" is adopted by the General Assembly of the United Nations (Resolution 37/92, December 10, 1982). The document sets the principles of an artificial satellite-based broadcasting and imposes to the state government the responsibility to conduct broadcasting on its territory and within its jurisdiction. In addition, the European Convention on Transfrontier Television defines the responsibilities of member states and provides that "the responsibilities of the broadcaster shall be clearly and adequately specified in the authorization issued by, or contract concluded with the competent authority of each Party,

or by any other legal measure". Consequently, the Constitutional Court considered that licensing of the broadcaster satellite system and imposition of obligation on the broadcasting entity to furnish in advance the identification information to the relevant administrative bodies, as well as determination of transmission format and area, is in compliance with paragraphs 1 and 4 of the Article 24 of the Constitution.

Public Defender's Constitutional Claim on the constitutionality of the Resolution #53 (2007, April 24) of the Government of Georgia on "Determination of compensation rules for industrial injures/damages caused to health in the course of employment".

In 2012 the Constitutional Court of Georgia launched essential examination of Public Defender's constitutional claim №537, which claimed the compatibility of certain norms of the decree №53 (March 24, 2007) of the Georgian Government on "Determination of compensation rules for industrial injures/damages caused to health in the course of employment", with paragraph 2 [272] of the Article 21 and paragraph 1[273] of the Article 42 of the Constitution.

The Presidential Decree №93, of February 6, 2007 replaced and invalidated the Presidential Decree № 48 of February 9, 1999 on the compensation of damage for injuring the health of the worker in the course of employment. As of Decree №53 issued by the Government of Georgia on March 24, 2007, the rule of compensation of industrial injures/damages caused to health in the course of employment were approved. In spite of fact that the above bylaws are regulating relations of similar nature, they establish different rules for the compensation of industrial injures/damages caused to health in the course of employment in case of liquidation of employer.

Further to the decree №48, the successor bears responsibility to award the compensation for industrial injures in case of reorganization. As concerns the entity with no successor and with 100% of state share, the estimations and compensation is rendered by State United Social Insurance Fund in the framework of assignations prescribed for the above purpose in the state budget law. According to Regulation №53 of March 1, 2007 the obligation to render compensation was terminated for the entities not having successors.

Consequently, the individuals employed by the entities before March 1, 2007, had reasonable expectation to receive adequate compensation in case of health damage caused in the course of employment, and in case of the death - to have relevant compensation and subsistence for their dependants. Regulations established by the Resolution #53 are in force since March 1, 2007 and do not provide any basis for such expectations.

Accordingly, Public Defender concluded that the provisions of Resolution №53, referring to the termination of the subsistence, contradict with national and international human rights standards. In particular:

- According to Resolution №53, the liquidation of an employer is a ground for termination of Injury's benefits. Regardless the issue is under litigation or not. According to Article 42 of the Constitution of Georgia, everyone has the right to appeal to the court for the protection of his/her rights and freedoms. Article 6 of the European Convention on Human Rights and Article 14 of the International Covenant on Social and Political Rights also guarantee the right to appeal to the court. In line with the general right to appeal to the court, the entry also abuses the right violation of which is a ground for appealing to the court.

- Coverage of receivables before March 1, 2007 on the basis of undisputed request, termination of liability on awarding subsistence and other payments, as well as imposition of liability on single compensation, implies the termination of liability on damage reimbursement on the later period. The above entry contradicts with the property right and the right to appeal to the court (in terms of enforcement of court's decision) that are guaranteed by the Constitution of Georgia. The precedents of the European Court of Human Rights reinforce Public Defender's above assumption.[274]

272 According to paragraph 2 of the Article 21 of the Constitution of Georgia: "The restriction of the rights referred to in the first paragraph shall be permissible for the purpose of the pressing social need in the cases determined by law and in accordance with a procedure established by law."

273 According to paragraph 1 of the Article 42 of the Constitution of Georgia: "Everyone has the right to apply to a court for the protection of his/her rights and freedoms."

274 See the decisions of the European Court of Human Rights on the cases: : Kjartian Asmundsson v. Iceland, Burdov v. Russian Federation

Further to the Article 7 of the Constitution of Georgia, the state shall protect universally recognized human rights and freedoms as eternal and supreme human values. While exercising the authority, individuals and state shall be bound by these rights and freedoms as by acting legislation. Accordingly, Public Defender of Georgia considers that the protection of the right to appeal to the court and property right of the individuals with industrial injuries shall serve as the restrictive tool itself.

The preliminary hearing of the court on the acceptance of the above mentioned constitutional claim for substantive examination was held on December 19, 2012. Along with the observation of substantive examination, the Court interrogations referred to the assessment of formal requirement, the practice of application of the norm, the injured party categories and their tentative number. The substantive examination of the above claim will be held in 2013.

Freedom of Assembly and Manifestations

The right to freedom of assembly and association is laid down in the Constitution of Georgia, in Georgian Law on Assembly and Manifestations, similar provision is set forth in Article 11 of the Universal Declaration of Human Rights, and in the Article 21 of the International Covenant on Civil and Political Rights.

It is noteworthy that the year 2012 was not active in terms of legislative changes, however certain recommendations still persist. The implementation of those recommendations will facilitate the harmonization of legislation with international standards.

As concerns the practical exercise of the respective right, the reporting period saw the large scale demonstrations, part of which passed without violation of fundamental rights. However, some of assemblies and manifestations evidenced absence of effective response from the law enforcement bodies to secure the exercise of the above right. It shall be positively noted that in 2012 compared to previous years, no cases of legislative infringement and/or disproportionate use of force by law enforcement bodies during dispersal of assemblies and manifestations were documented by Public Defender.

It is also to be mentioned that in certain instances during pre-election meetings taking place throughout Georgia, Public Defender examined several cases of assemblies and manifestations where the rights of concrete persons and groups exercising this freedom were violated. In particular, despite the large scale pre-election meetings, the law enforcement bodies did not ensure public safety. On June 29, 2012 the coalition "Georgian Dream" addressed the law enforcement bodies to secure public safety on the rally scheduled in Mtskheta. It shall be noted that other several large scale rallies were held by "Georgian Dream" in Tbilisi, Kutaisi and Ozurgeti, were law enforcement bodies did not appear.

In the reporting period several instances were detected when the law enforcement bodies failed to secure full exercise of the respective rights. In number of cases, the facts of physical and verbal abuses among supporters of political parties were identified. The similar incidents were reported in resort Beshumi, Municipality of Khulo and in the village Karaleti, Municipality of Gori.

After the elections, several rallies and blockage of roads were held in local self-governments, interrupting normal functioning of local authorities. In certain instances the inactivity of law enforcement bodies was observed. Further observations on pre-election developments in local governments will be discussed in a separate chapter. [275]

275 See p. 209

LEGISLATION ON FREEDOM OF ASSEMBLY AND MANIFESTATIONS

Unlike the previous year, the Georgian Law on Assembly and Manifestations was not amended in 2012. Therefore the deficiencies of the Georgian Law on Assembly and Manifestations previously dealt extensively in Public Defender's Annual Report 2011 still remain problematic and the Parliament still has to make changes in accordance with the issued recommendations.

One of the particularly problematic issues is the possibility to hold spontaneous assemblies, referred to in the Final Opinion of the Venice Commission of October 14-15, 2011 regarding the amendments to the Law on Assembly and Manifestations of Georgia.[276]

On September, 2012 it has been clearly proved that the legislative possibility to hold spontaneous assemblies is of essential importance. Numerous spontaneous assemblies were held after the release in media of video materials containing scenes of apparent serious ill-treatment of prisoners in penitentiary system. The representatives of Public Defender observed these assemblies. In many cases the full blockage of carriageways was caused due to large number of people participating in the assembly. Number of protest rallies were held in the form of blockage of roads as well. Local self government bodies have not received prior notification concerning most of such assemblies, which clearly illustrates violation of Article 5 and the Article 11 of the Georgian Law on Assembly and Manifestations. However, it shall be positively assessed that the law enforcement bodies did not impede with most of the assemblies.

Public Defender considers that it is essential to establish legal regulations providing the possibility to hold spontaneous assemblies. Georgian Law on Assembly and Manifestation shall provide the possibility to hold spontaneous assemblies and thus safeguard free realization of the respective right. The law shall explicitly provide for an exception from the requirement of an advance notice. Even in case the participants of an assembly fail to provide the advance notice, the state authorities still bear the responsibility to protect them. [277]

EXERCISE OF FREEDOM OF ASSEMBLY AND MANIFESTATIONS

As already highlighted, no facts of dispersals of assemblies by law enforcement bodies or use of excessive force were observed in 2012, however Public Defender examined several cases illustrating the improper performance of state positive obligation, particularly the facts of police officers' inadequate response and/or inaction.

Facilitation of freedom of peaceful assembly by Law enforcement bodies

It is the responsibility of the state to put in place adequate mechanisms and procedures to ensure full exercise in practice of the freedom of assembly. Furthermore, the state shall rather facilitate and guarantee its full protection. In this light it is essential that the state protects participants of a peaceful assembly from any person or group that attempts to disrupt or inhibit it in any way.[278]

Over the reporting period the law enforcement bodies failed to secure full exercise of the respective right. On May 17, 2012 the nongovernmental organization "Identoba" held a peaceful march in observance with the International Day against Homophobia. The organizers preliminary notified the Tbilisi City Hall on exact date and place of march, as established by the legislation.

During the march, participants were followed by a group of citizens whose members assaulted them verbally. Later on, they blocked the pedestrian part of Rustaveli Avenue and did not allow the participants to continue the march. They

276 Final Opinion On The Amendments To The Law On Assembly And Manifesta ons Of Georgia, Adoped by the Venice Commission at its 88th Plenary Session (Venice, 14-15 October 2011), Opinion no.547/2009, CDL-AD(2011)029, Strasbourg, 17 October, 2011

277 Guidelines on Freedom of Peaceful Assembly - Strasbourg- Warsaw, 9 July 2010, Study no. 581/2010, CDL-AD(2010)020 – European Commission for Democracy Through Law (Venice Commission), OSCE/ODIHR p.15

278 Ibid

attacked some of the participants physically. It is to be noted that the disseminated video materials[279]of the incident show that the police were present at the site of the march in order to safeguard the security of participants. However the march was suspended after the members of "Orthodox Parents' Union" and "St. King Vakhtang Gorgasali Union" blocked the way for demonstration which lead to the escalation of the situation and physical assaults. The situation was released as a result of interference of law enforcement bodies, although the participant were not able to further proceed the peaceful march.

Any offences grounded on intolerance are inadmissible. At the same time it is a positive duty of the state to take reasonable and appropriate conditions for the exercise of the right to hold the peaceful assembly. Timely and effective measures shall be undertaken in similar cases with the aim to avoid physical assaults and ensure full exercise of the right to hold assembly and manifestation.

Inadequate follow-up on the actions by participants of assemlies and manifestations

Over the reporting period several cases were detected, when the law enforcement bodies failed to protect the participants of assemblies on the spot. Among them are the assemblies held on December 19, 2012 in Kutaisi and on February 8, 2013 in Tbilisi. In both cases protestors were rallying against the representatives of parliamentary minority - the United National Movement political party. The participants of protest were restricting freedom of movement of MPs of the parliamentary minority. The incidents of verbal assaults were identified. Specifically, on December 19, 2012, a meeting with the President of Georgia was under way in the office of the National Movement political party in Kutaisi. In parallel, citizens were holding protest outside the building. After the meeting ended, the protest participants confronted members of the National Movement.

The footage disseminated by news outlets shows that the protest participants were not allowing the MPs of the parliamentary minority and the President of Georgia to leave the building. The incidents of verbal assault and attempts to assault MPs physically were detected. Notwithstanding the fact that representatives of law enforcement bodies were on the ground, they failed to take appropriate measures on the spot.

Similar case occurred on February 8, 2013 in Tbilisi, nearby territory of the National Library. In particular, President was scheduled to deliver his annual speech to the Parliament in Tbilisi National Library. This was followed by the assembly of hundreds of people protesting the expected appearance of the President of Georgia. Part of them demanded the entrance into the building in order to have the possibility to ask the President questions. The representatives of Public Defender of Georgia were also sent there to monitor the further development of the assembly. As revealed by the monitoring and disseminated information, participants of the assembly occupied the territory in front of the building, the steps and the main entrance. Approximately at 18:00 members of the parliamentary minority and Tbilisi Mayor arrived at the building. Aforesaid was followed by physical violence, which is also confirmed by the disseminated video material.

Although the Ministry of Internal Affairs of Georgia was informed on the number, demands and attitude of participants of the above assembly, the number of law enforcement representatives and preventive measures carried out by them were not sufficient to ensure the safety of individuals attending the reception at the National Library building.

It shall be additionally noted that some of the video materials focus on scenes of provocations undertaken by several state officials, resulting in frustration of the demonstrators. The state officials bear responsibility to refrain from any kind of confrontation and not yield to provocations.

Public Defender addressed the Minister of Internal Affairs of Georgia to carry out appropriate measures regarding the aforesaid facts. It should be positively assessed that relevant actions were undertaken by the Ministry later on. In particular, the investigation has been launched on the incident of December 20, 2012 in accordance with the Article 239 of Penal Code of Georgia and six individuals participating in the demonstration were detained. As regards the incident of February 8, 2013 - two individuals were sentenced to administrative detention.

279 http://www.youtube.com/watch?v=-Qmj_NFu5ok

VIOLATION OF PROTESTERS RIGHTS BY LOCAL SELF-GOVERNING BODIES

Over the reporting period several facts of violation of the protestors' rights by local self-governing bodies were revealed. In particular, on May 2, 2012 the symbolic protest of the youth movement of Coalition "Georgian Dream" was held in connection with the Kutaisi Day. Symbolic protest started with a peaceful procession from Rustaveli Street and ended at Aghmashenebeli Monument, where the youth wrote with lit candles wording "Happy Day of Kutaisi".

According to disseminated video material, the cleaning car service of Kutaisi City Hall appeared spraying water cannon at the protesters, impeding them to proceed with the protest. Further to the clarification made later on by The City Hall these measures had sanitary-hygienic and fire safety character.

The legitimate reason, given herewith, is not predominant to the freedom of assembly and expression. Any event held in a public place implies falling out from the ordinary rhythm of the daily life. If the individuals participating in the assembly do not use violence than it triggers the obligation of tolerance on the part of the state authorities. Peaceful expression of opinions in the form of lighting the candles is an essential part of the freedom of assembly and expression, therefore state has the negative obligation not to intervene in this process.

Local self-governing bodies shall take into consideration the particular significance of assemblies and manifestations and restrain from any action that may cause violation of the respective right.

Recommendations:

To The Parliament of Georgia:

- **The Parliament of Georgia shall implement the legal amendments to the law on Assembly and Manifestations with the aim to ensure the possibility to hold spontaneous demonstrations.**

To The Ministry of Internal Affairs of Georgia

- **The Ministry of Internal Affairs of Georgia shall take measures to provide members of corresponding structural unit with the adequate training on prevention of accidents in the process of demonstrations and as a result of their immediate response - facilitate to the possible extent the full realization of the respective rights.**

To The Chief Prosecutor of Georgia

- **The Office of the Chief Prosecutor of Georgia shall carry out effective investigation into all the facts related to the dispersals of all assemblies and manifestations referred to in the recommendations issued by Public Defender over several years (June 15, 2009; May 26, 2011 etc.)**

To The Chief Prosecutor of Georgia and to The Ministry of Internal Affairs of Georgia:

- **The Office of the Chief Prosecutor of Georgia and the Ministry of Internal Affairs of Georgia shall ensure effective and objective measures on all facts of restriction of freedom of assembly and manifestation and full realization of this right in order to evade precedent of impunity.**

Freedom of Expression

"Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfillment".[280]

As in the preceding years, in 2012 the overseeing protection of the right of freedom of expression is one of the priority areas of Public Defender. The situation in the perspective of the above right, as well as the press freedom index for Georgia traditionally was evaluated by international nongovernmental organizations. It is to be noted that according to the survey published by the international NGO Reporters Without Borders the press freedom index for Georgia increased compared to the previous year regardless of numerous existing problems. In terms of press freedom in 2012 Georgia moved to 100th place.[281] Further to the annual report drafted by the Freedom House, Georgia has the freest and most diverse media landscape in the region. According to the above report the only significant numerical improvement in the region occurred in "Partly Free" Georgia[282], which moved from 55 to 52 place. Founding of new publications, assigning the broadcast license to media group critically disposed to the government and the enforcement of new requirements on transparency of ownership led to the above results.

At the same time, the year 2012 was distinguished with unprecedented number of violations of the rights of mass media representatives. One of the main reasons was the strained pre-election period. In particular, Public Defender of Georgia studied about 50 cases of prevention and intervention into the journalists' professional activities in the reporting period. Especially large number of complaints was observed in spring, 2012 when the pre-election campaign entered an active phase. Analysis of the cases examined by Public Defender identified number of key trends. In particular, prevention of journalists' activities by the public servants, facts of intervention in the professional activities, physical and verbal insult and threatening, placing journalists in unequal conditions at the time of performing their professional activities.

Unprecedented cases were observed when the representatives of unknown media outlets deliberately impeded professional activities of their colleagues. In several instances the facts of their permanent persecution and oppression were revealed.

Public Defender's reports permanently looked into the standards of insufficient investigation and qualification of the cases concerning the violation of journalists' rights. The results of affective measures undertaken by investigative bodies on the cases of violation of journalists' rights were observed in the reporting period. Hopefully appropriate measures will be carried out on all pending cases as well.

In the view of the situation of freedom of expression in the country in 2012, emphasis should be placed on the problem of dissemination of information and materials by. Particularly, several instances were observed in 2012, when the dissemination of materials led to the violation of other individuals' rights.

280 Lingens v. Austria, 1986.
281 http://en.rsf.org/press-freedom-index-2013,1054.html
282 http://www.freedomhouse.org/country/georgia

It is to be noted that on April 11, 2012 the First Panel of the Constitutional Court of Georgia announced its decision on Public Defender's complaint of December 2, 2008, which claimed unconstitutionality of subparagraph "t" of the Article 2, paragraphs 3, 4, and 5 of the Article 38, and paragraph 1 of Article 41 of the Law of Georgia on Broadcasting with respect to paragraphs 1 and 4 of the Article 24 of the Constitution of Georgia.

The Constitutional Court partially met Public Defender's constitutional complaint and found unconstitutional the obligation to obtain license for transmission via cable network with respect to the Article 24 of the Constitution of Georgia. The above shall be assessed as a positive step in the legislative system. Regrettably, the obligation to obtain license for transmission via satellite system remained in force.

The Court noted that the power to carry out different forms of regulation, including the authority to assign license for activity may be related with the realization of state›s main authority. However, constitutional rights and freedoms bind the state. Intervention in the rights and freedoms is not justified unless it is inevitable for achieving certain legitimate goals set forth in the Constitution and constitutes the proportionate and less restrictive measure.

The Constitutional Court fully shared our argument concerning possibility of achieving the legitimate goals named by the Parliament through measures which less restrict the constitutional rights, such as the assignment of obligation to submit to the Regulatory Commission certain information after initiating the broadcasting activity.

HUMAN RIGHTS SITUATION OF MEDIA REPRESENTATIVES

As mentioned in the introduction, several instances of interference in the activities of media representatives by the state government and local self-government were detected in the reporting period. Physical assaults of media representatives also took place. Public Defender observed cases of creating unequal conditions for certain categories of journalists compared to other media representatives in the process of their professional performance. Violation of media rights can be divided into following several types: obstruction and intervention in the journalists' professional activities, facts of journalists' verbal and physical assaults, provision of unequal access to different events and activities. In 2012 the case related to news agency "Info 9" was observed, during which the agency's representatives were not allowed by other media agents to carry out their professional activities. Due to the unprecedented number of cases, only several of them are dealt with in this chapter for the purpose to illustrate the main problems.

Illegal interference with journalists' professional activities

In the reporting period Public Defender of Georgia examined the facts of illegal interference with the professional activities of journalists.

In the number of cases examined by Public Defender the government officials, local councilors, the employees of Interior Ministry impeded the journalists to perform their professional activities. In particular instances journalist's questions were reacted with the aggression from various officials and civil servants, followed by damage to the equipment and/or their physical or verbal abuse.

Obtaining information regarding the issues that are essential for the public is vitally important for press and media. Correspondingly, the aggression and violence of public officials or civil servants towards journalists and their efforts to obtain certain type of information contains signs of crime and is unjustifiable.

Public Defender studied the case of interference with the media activities of journalists of news agency "Info 9", Lexo Aleksidze and Shota Chalatashvili. In particular, on July 4, 2012 the journalists were performing their professional activities in Gori. They were hampered by two individuals in civil clothes who tried to seize their camera and demanded to stop video shooting. As stated by local inhabitants, one of the persons trying to seize the camera was the employ of Interior Ministry, Samson Vanishvili.

Similar incident took place on May 11, 2012. The journalists of studio "GNS" Zurab Pataridze and Bela Zakaidze arrived in Dusheti Minucipality building with the aim to interview the governor. Zurab Pataridze tried to make a video shooting 20-30 meters far from of the building, which was followed with aggression on the part of security police. Zurab Pataridze was restricted to make video shooting, verbally assaulted and threatened with physical assault. The above is confirmed by the footage which shows the local police interfering with the professional activities of a journalist.

Facts of physical and verbal abuse of journalists

Public Defender was constantly addressed regarding the facts of physical and verbal abuse of media representatives. Examination of complaints throughout the reporting period revealed the facts of abuse and threats against the journalists.

In the context of media rights and freedom of expression it shall be mentioned that along with its negative obligation, the state has a positive obligation to ensure the freedom of expression.

The facts of violence against journalists threaten the principles of democracy. Impunity for the acts of physical offence against journalists points toward the ignorance of human rights. The lack of accountability encourages repetition of crimes as perpetrators feel free to commit further offences.[283]

As already noted above, Public Defender examined number of such cases throughout the reporting period.

On July 15, 2012 media outlets disseminated video footage which showed that the journalists of news agency "Info 9", Shorena Khabalashvili and Giorgi Khutsishvili were verbally assaulted by Giorgi Ianvarashvili, the governor of village Khandaki in Kaspi Municipality. Video recording clearly illustrates that the governor verbally insults the journalists and threatens the operator to break the camera.

On July 23, 2012 media outlets disseminated information about threats against the journalist of TV9, Nodar Chachua on Melikishvili street in Tbilisi. The strangers insulted him verbally, showed him the video describing his private life and told him that they would expose the video unless he fulfilled their demands. As the journalist pointed out, the strangers did not tell him their names; they only explained that they could create problems for him.

According to the journalist, the aforementioned persons met him again on July 26, 2012 at about 21:00 evening and demanded him to have sexual relationship with one of the male representatives of TV9.

According to our information, the investigation is carried out under the basis of the Article 151 of the Penal Code of Georgia.

Discriminatory treatment

Government officials shall not deny access for any journalist and/or media organization on discriminatory basis and demand or request favorable coverage. Availability of public officials, public speakers, events and activities shall not be subjected to discriminatory approach.[284]

In the reporting period Public Defender studied several cases which revealed that government officials created unequal/discriminatory conditions for some media representatives. In particular, a number of media representatives faced problems during reporting various public events, while other media outlets were granted opportunity to complete their professional duties without interruption. In several cases examined by Public Defender the journalists pointed out that despite preliminary agreement with relevant press service representatives, their access to the events was impeded.

283 Guidelines on Eradicating Impunity for Serious Human Rights Violations. 2011. Council of Europe
284 OSCE Safety of Journalists Guidebook. 2012

On May 3, 2012 during the visit of the President of Georgia to Poti, the journalist of "tspress.ge" Iza Salakaia was not allowed to make video shooting during the meeting which was held near the building of hospital. It shall be noted that several hours before the President's visit "tspress.ge" specified the details of attendance on the meeting with the head of President's press service, who explained to the journalist of "tspress.ge" Nino Tuntia that the problems will not occur. However, according to Iza Salakaia, while interviewing people gathered at the building of hospital in Poti, the President's security servant approached her and tried to get the camera off. According to her explanation, Iza Salakaia explained to the security servant that she was a journalist and presented appropriate documentation, though he impeded her movement and video recording. The journalist also stated that she was approached by individuals in civilian clothes, who forced her to leave the territory. Iza Salakaia additionally noted that later on she returned to the meeting and made photos of the people who forced her to leave the territory. Several persons (including Dimitri Shengelia, the Head of Poti Department of the Ministry of Interior) demanded her to delete the recorded material. Her camera was confiscated and later on returned to her, although the memory card was removed.

Similar facts took place in Kutaisi on May 2, 2012. In this regard Public Defender was addressed by the journalist of newspaper "P.S" Irakli Vachaberidze, the reporter of news agency "Pirveli" Nodar Jojua, the journalist of newspaper "Old Version" Tornike Khurtsidze and the journalist of "Mega TV" Aleko Gvetadze. According to their statement while performing their professional duties in connection with the Kutaisi Day on May 2, 2012, they were not permitted to access Lado Meskhishvili Theatre. In particular, notwithstanding the preliminary agreement with Natia Bandzeladze, the head of press service, servants of the Presiden's security service did not permit them to make video shooting of the event. According to Nodar Jojua he was restricted to enter Lado Meskhishvili Theatre even after presentation of his license. At the same time professional activities of the journalists of TV Channel "Rustavi 2", "Imedi" and "Public Broadcaster" were not restricted by the servants of President's security service.

Discriminatory treatment of journalists was revealed on May 6, 2012 in Gori during the police parade. In particular, Saba Tsitsikashvili - editor of "Shida Kartli Information Center", Ledi Okropiridze - head of information service of TV 'Trialeti" and Nodar Skhirtladze - journalist of TV "Channel 9" claimed about the fact of interference in their professional activities.

Interference with journalists professional activies by other media representatives

As already mentioned, the year 2012 was marked with unprecedented number of cases of interference in journalists' professional activities by other media representatives throughout the pre-election period.

Number of disseminated footages displayed the facts of disrespectful, hostile behavior and interference in professional activities of journalists by other media representatives. Typically similar actions were carried out by the representatives of newly created and unknown media agencies againts the journalists of "Info 9". Accordingly, it shall be presumed that the above news agencies were created with the aim to disrupt the activities of journalists.

Particularly significant is the case of pressure applied by the representatives of news agency "Media Group" toward Ekaterine Dugladze - journalist of "Info 9". Specifically, during the certain period of time Ekaterine Dugladze and her crew were followed by several journalists of "Media Group" who referred the journalists with the provocative questions and impeded performance of their professional duties. Ekaterine Dugladze applied to the law enforcement bodies, however no adequate measures were undertaken in response.

The case of interference in professional activities of Ekaterina Dugladze and Vasil Dabrundashvili - journalist of studio "GNS" TV show "Nana Lejava's Weekly Report" took place on July 11, 2012 in Zestaponi. In particular, during performance of their professional duties Ekaterine Dugladze and Vasil Dabrundashvili were approached by the representatives of the so called "Media Group", who hold video cameras and microphones, addressed the journalists with discourteous questions and impeded preparation of reportage. According to the information provided by the Interior Ministry of Georgia the criminal investigation of the above case is currently in progress.

Public Defender released the statement and called upon all media outlets, their representatives, and all persons engaged in similar activities to strictly observe the professional standards and norms of ethics and to refrain from actions that insult other colleagues, provoke conflict and create danger of confrontation.

Measures undertaken by investigative bodies

The adequate response of law enforcement bodies, rapid and effective investigation of facts against journalists and proper qualifications of the cases remained problematic over the years.

According to the Article 154 of the Penal Code of Georgia, illegally preventing a journalist from carrying out professional activities shall be punishable. It is to be welcomed that this article provides high standard of protection of journalists' rights in the country. However, during investigation of number of cases of interference with journalists activities relevant authorities avoided to exercise this provision.

Despite revealing the lack of effective response from the law enforcement bodies to violations against journalists throughout the reporting period, it shall be noted that the situation improved compared to previous years. In most cases the law enforcement bodies properly qualified the crime and implemented effective measures for investigation.

Public Defender examined incident of verbal and physical abuse of the journalists of "Info 9" in Zestaponi, on June 5, 2012. Military recruiting office of the municipality and the heads of fire department participated in the above incident. In particular, the individuals dressed in civilian clothes attempted to hamper professional activities of Iamze Marakvelidze and Paata Chkoidze who carried out video shooting on Ketevan Tsamebuli street, in Zestaponi. Paata Chkoidze was verbally and physically abused. Among the attackers the journalists identified Varlam Telia - head of Zestaponi Military Registration and Conscription Service and Avtandil Dardaganidze - head of the fire department.

As learned from the official response of Chief Prosecutor's Office of Georgia, Varlam Telia and Avtandil Dardaganidze were charged with the offence under Article 125 and Article 154 of the Penal Code of Georgia and were sentenced to non-custodial measure of restraint (bail).

Hopefully similar approach will be applied in future, since it enables the state to prevent interference in journalists' professional activities and the facts of verbal and physical abuse toward them.

THE FACTS OF INTERVERENCE IN THE RIGHT TO RESPECT FOR PRIVATE LIFE BY MEDIA

In Georgia the right to respect for private life is protected under the Article 20 of the Constitution.

Various international instruments, including Article 17 of UN International Covenant on Civil and Political Rights and the Article 8 of the European Convention on Human Rights also protect the above right.

It is one of the rights that may enclose certain limits on the freedom of expression. Despite the fact that freedom of expression is one of the most important rights, it may in specific cases, unlawfully interfere in individual's private life, ultimately leading to the violation. Specifically, according to the legislation in terms of interference in private life the person shall be protected by the state as well as different organizations and media. When it regards the media activities, determination of balance between private life and the right of freedom of expression is rather complicated. While restricting freedom of expression due to the private life, the extent of information disseminated by media shall be clarified in order to determine the scope of its importance for serving the public interest.

According to the Article 6 of the Code of Journalistic Ethics, a journalist must respect the private life of an individual and the social environment that he/she lives in. In case of public interest a journalist must be cautious not to violate the rights of other individuals.

Therefore the journalists shall be careful while describing any facts of offences. When describing cases of violation, it is not justifiable to give the names of victims, suspects and their relatives or publish the material which facilitates their identification.

Several facts of violation of the right to respect for private life by media were exposed in 2012.

On April 20, 2012 TV channel "Imedi" aired a program "100 Degrees Celsius" were the religious-psychological theme "Satanism" was discussed. The photos of several young persons were exposed too. As declared by these persons, their photos were taken from social network "facebook" without their permission. During the program they were named as "Satanists", which doesn't correspond the reality. As some of them stated, as a result of information spread by media, some of them were subjected to the attempts of health damage, as well as verbal and physical abuse.

According to the Article 52 of the Law of Georgia on Broadcasting "*General, specialized, public and community broadcasting license holders shall take all reasonable steps to ensure factual accuracy and correct mistakes in a timely manner."*

Subsequently, dissemination of information, photo/video recordings that may threat person's life or health is inadmissible. Particularly unacceptable is the intentional processing of photo/video materials and providing public with inaccurate information.

The fact of interference in private life by media was revealed on October 2, 2012. The newspaper "Asaval-Dasavali' published article "Identify the Executioners", which disclosed the names, birth dates, places of residence and addresses of people employed in penitentiary establishment N 8 in Gldani.

It has to be noted that the above information was published after so called prison scandal and it disclosed personal information which facilitated identification of individuals. Considering excitement of the society, the dissemination of such information could cause aggression toward those individuals, their family members and violation of their rights.

On January 14, 2013 Chief Prosecutor's Office disseminated information concerning investigation on the facts of misuse of power by ex seniors of the Department of Military Police under the Ministry of Defense of Georgia, including acts of violence and abuse of dignity of individuals.

At the same time, different media outlets disseminated secret video footage which exposed sexual life of persons involved in the case. Video footage was handed over to media by the Prosecutor's Office.

The video footage contained concealing means, however due to the its low quality, complete protection of identity was not secured. Video footage disclosed physical appearances, such as hair color and clothes, which enabled society to identify individuals. Consequently, the inviolability of their private life was threatened. The increased public interest regarding similar cases is reasonable, however, observance of this legitimate requirement shall not be based on violation of the right to respect the private life.

Regrettably, similar incident occurred as a result of the video footage concerning so called special operation of November 24, 2004. Video footage was released by TV station "Rustavi 2" and other media outlets.

Media and press outlets shall be particularly cautious while disseminating information which might threaten private life and/or encourage violence against individuals.

Reccomendations:

- **The Chief Prosecutor's Office shall carry out rapid and effective measures to investigate all facts related to the violation of journalists' rights;**
- **The Investigative Authorities shall qualify all cases of interference with journalists' professional activities according to relevant provisions of the Penal Code of Georgia.**
- **Media and press outlets shall carefully exercise dissemination of information which can lead to the violation of private life of a third party. They shall avoid dissemination of unchecked and degrading materials, which may support the replication of the concerned interests.**

Freedom of Information

Proper realization of the principle of freedom and accessibility of information considerably influences degree of democracy in the country. Freedom of expression necessarily entails the right of every citizen to seek, receive and impart information. It would be impossible to implement the voting right, reveal human right violations, corruption, incapability of government and etc. without the above right. The right to request information stored within the state institutions is based on the fact that the government stores these data not for its own purposes, but above all, in the interest of public and society. Therefore, relevant information shall be accessible to the society, except for the cases when such accessibility is limited with the intention to secure the interests of the society and state.

The essence of democratic governance requires that citizens shall be involved in the political decision-making. In modern states special means of such participation are operating, including various groups of social interest and different mechanisms of civil oversight.

The efficient functioning of social control mechanisms depends on collection of information and level of public awareness in general. For example participation in the elections is not limited to technical involvement in voting. The elections shall serve as a tool to ascertain that political will of citizens is the principle source of state power. Voter shall possess information in order to make his/her informed choice. Consequently, citizens will be unable to contribute to the implementation of the policy, unless they have access to information which serves as a basis for realization of certain policies in various fields.

In addition, democratic governance also envisages accountability of government toward the voters. Society has the right to carefully observe, examine and participate in the activities of government officials. It shall have opportunity to examine the above activities based on the accessibility to relevant information. Open and comprehensive discussions prove to be one of the most effective instrument for elimination of inefficient governance.

At the same time, apparently freedom of information is the efficient tool against corruption and violations. For example the investigative journalism and observer organizations prove to be sufficiently effective instruments against fraud and offences possessing the right to seek and receive pertinent information from government authorities.

Legislative process shall also be informative. In this regard the existence of public consideration mechanism of constitutional changes shall be perceived as a clear example. The legislative activities shall be carried out within the scope of public awareness and involvement of relevant society groups.

Along with the political aspects, freedom of information also features other important social goals. The right to receive information is particularly significant when it directly concerns the persons interested in receiving information or the environment in which they live.

In one of the cases the European Court of Human Rights found the breach of the convention and noted that the respondent state is under an obligation to take the necessary steps so that the applicants, who were living in a high-risk area, could "receive adequate information on issues concerning the protection of their environment".[285]

Realization of the right to receive information is also important for improvement of entrepreneurship. Therefore, it can be underscored that without freedom of information, it is unfeasible to maintain discussion and process of exchange of views peculiar to free society and freedom of thought. In order to elaborate an idea, it is essential to extract the information, and freedom of its dissemination makes it feasible to deliver the idea from an author to an addressee. In addition to its public value, freedom of information is of great importance for personal and intellectual advancement of individuals.[286]

It shall be taken into account that the right to receive information from relevant state institutions is mostly perceived as the freedom of information. However, it has to be noted that one of the key aspects of freedom of information is the liability of state authorities to publish essential information reflecting their activities, implementation of their policy, as well as publicize the procedures facilitating request for relevant information.

In Georgia the right to receive public information may also have added value particularly in the field of human rights. Unlike information already possessed by the state authorities, the latter complies certain positive liability of the state to ensure access to the additional information. In particular, state has the obligation to inquire, generate and publish information on the facts of human rights violation by various state institutions and authorities. This condition is especially important in respect to violations recently taking place in penitentiary system and property right.

Presumably, the disclosure of already existing information on certain violations will not be sufficient in that respect. The state authorities shall further seek, examine and publish all existing and upcoming cases. Importantly the information related to such cases shall be accessible for facilitation of assessment and drafting of conclusions.

Consequently, the state has certain positive obligation to seek, generate and publish information reflecting indeterminate facts of violations and offences that are interesting for the society.

Given the importance of public authorities' transparency in the democratic society, the principles of freedom of information and accessibility are declared by international[287] and national[288] acts. International human rights instruments along with normative acts in force in Georgia, impose the positive obligation on the state to impart the information kept in the state institutions.

Despite the fact that the principles of freedom of information and its accessibility were reflected in the normative acts of Georgia, Public Defender explored several instances of unlawful restriction by the authorized state officials of the right to access information.

The analyses of cases examined by Public Defender warrant the conclusion that in certain instances administrative bodies offend their liability to explain the grounded refusal on access to the information and the procedure of appeal toward such refusal. Additionally, in certain instances public institutions ignore legislative obligation to ensure handing of applications to the authorized administrative bodies.

As is known, from among the effective national legal acts the major guarantor of the principle of freedom of information and accessibility is the supreme Law of Georgia – Constitution.[289]

According to paragraph 1 of the Article 24 of the Constitution "everyone has the right to freely receive and impart information, to express and impart his/her opinion orally, in writing or in any other means".[290]

285 Guerra and others v. Italy (1998-I; Application No: 14967/89).
286 The judgment №2/3/406,408 of Constitutional Court of Georgia dated October 30, 2008.
287 United Nations Universal Declaration of Human Rights (December 10, 1948); United Nations International Covenant on Civil and Political Rights (December 16, 1966); Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms (November 4, 1950); United Nations Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters" (Aarhus) (June 25, 1998); etc.
288 The Constitution of Georgia of August 24, 1995; General Administrative Code of Georgia of June 25, 1999.
289 Articles 24, 27 and 41 of the Constitution of Georgia. August 24, 1995.
290 Paragraph 1 of the Article 24 of the Constitution of Georgia.

At the same time, according to the Constitution[291] "Every citizen of Georgia shall have the right to become acquainted, in accordance with a procedure prescribed by law, with the information about him/her stored in state institutions as well as official documents existing there unless they contain state, professional or commercial secret".

The Constitutional Court stated that "the general principle of access to public information which is regulated by the Constitution is specified in the legal regulation of the General Administrative Code, Chapter III "freedom of information".[292]

The mechanism set for the proper realization of the principles of freedom and accessibility of information guaranteed by the Constitution of Georgia was defined in Chapter III of the General Administrative Code of Georgia adopted on 25 June 1999, which unambiguously establishes that any information available to public agency shall be open, or accessible to everyone, unless it is classified as secret in the circumstances provided and envisaged by law.

In 2012 reporting period Public Defender examined numerous instances of violation by the public institutions of the principles of freedom and accessibility of information guaranteed by Georgian legislation. Several of such cases will be specified in subArticles to follow.

PROBLEMS RELATED TO TRANSFER OF THE APPLICATIONS TO THE COMPETENT ADMINISTRATIVE AUTHORITIES

A public agency is limited in its denial to furnish public information even in those cases when the requested document is not stored in the agency. Even in such circumstances the agency is required to act under the first part of the Article 80 of the General Administrative Code's imperative norm, in particular, it is obliged to refer the application to the authorized public institutions (where the requested information is stored) and notify the applicant about the issue that absolutely excludes any possibility of repudiation to address the appeal.[293]

Public Defender observed violation of the above mentioned imperative norm of the Code of Administrative Procedure in the case of the Centre for Initiation of Impeachment Procedures. In particular, on March 14, 2012 the director of the above centre addressed the Prime Minister of Georgia with the written statement and applied for public information. Particularly, the information concerning special means for dispersal of manifestations and other mass events by the Interior Ministry of Georgia was requested. In addition, following clarifications were applied for: the scope of possible threat of the above special means for human health, types of complications they might cause, the amount of financial sources needed for the purchase, list of the countries they were procured in and etc.

As explained by the State Chancellery of Georgia, the denial to access to the above information was based on the fact that the requested information does not fall under the category of public information enshrined in paragraph "m" of the Article 2 of Georgian General Administrative Code.[294] At the same time, further to the explanation provided to Public Defender by the head of administrative department of the State Chancellery, the information requested by the Centre for Initiation of Impeachment Procedures did not relate neither to information received, processed, created, or sent by a public servant or a public servant within official activities, nor the category of official documentation stored at the State Chancellery.

After discussing importance of the case circumstances, Public Defender concluded that the information requested by the Centre for Initiation of Impeachment constituted the public information.[295] However, since the above information did not relate neither to information received, processed, created, or sent by a public servant within official activities

291 Paragraph 1 of the Article 41 of the Constitution of Georgia. August 24, 1995.
292 The judgment №s-326-310(k-06) of Constitutional Court of Georgia dated March 16, 2007.
293 The judgment bs-1061-1012(k-06) of the Supreme Court of Georgia bs-1061-1012(k-06), dated June 5, 2007.
294 According to the paragraph "m" of the Article 2 of the General Administrative Code of Georgia dated June 25, 1999, the "Public information" means an official document (including chart, model, plan, diagram, photograph, electronic information, and video and audio records), i.e. information held by a public agency, or that received, processed, created, or sent by a public agency or a public servant in connection with official activities.
295 In this case, the public nature of information requested by the applicant, did not fall under the competence of Public Defender.

nor the category of official documentation stored at the State Chancellery, the public servant was responsible to provide access to public information and refer relevant application to the authorized administrative bodies according to relevant normative of the Article 80[296] of the General Administrative Code of Georgia.

At the same time, it has to be noted that the refusal of March 23, 2012 on provision with the information corresponded to the individual administrative-legal act[297] and didn't include any reference to applicable normative act or regulation which constitutes the ground for its issuance.[298]

Based on the above and within his authority Public Defender addressed the Head of Administration of the State Chancellery with the recommendation to examine the above issue, ensure the adoption of decision in correspondence with law and initiate disciplinary proceedings toward the State Chancellery's public servants in charge of accessibility to public information.

Violation of the Article 80 of the General Administrative Code of Georgia was detected in the case of JSC "Cartu Bank". In particular, on April 24, 2012 Nodar Javakhishvili - the director general of JSC "Bank Cartu" addressed Public Defender. According to the applicant, a joint-stock company "Bank Qartu" turned with a written appeal to the legal entity of the Service Center of the Ministry of Finance aiming at retrieving the identification data provided during the registration by the company having won the electronic auction at www.eauction.ge on December 19, 2011 as well as information related to allocation of funds paid by the organization in favor of Legal entity of the Ministry of Justice - National Bureau of Enforcement as a consequent of unpaid bid fee within the period prescribed by law. Public Defender was notified regarding above case by the Deputy Director General of the Service Agency of the Ministry of Finance, who explained that after the end of electronic trade the Service Agency was not aware on the flow of the amounts and dealings between organizers and participants of the auction, due to the fact that the National Bureau of Enforcement was organizer of the auction. At the same time, representative of "Cartu Bank" was verbally explained on the above and confirmed that he already addressed the possible beneficiary with the request to receive information.

As the result of examination of the circumstances, Public Defender concluded that the Service Agency was entitled to refer the application and all attached documents of "Cartu Bank" to the applicable administrative agency within five days and inform the applicant in writing about the reference of the application and attached documents to the relevant administrative agency with an appropriate justification within two days.[299]

Accordingly, Public Defender concluded that Service Agency violated the norms of the General Administrative Code of Georgia as well as the legitimate rights of the applicant. Public Defender addressed the Director General of the Service Agency to initiate disciplinary proceedings toward individuals responsible for such violations.

Thus, it can be assumed that on certain instances the administrative authorities neglect the legal requirements of the Administrative Code as regards forwarding of applications to the authorized administrative bodies.

VIOLATION OF THE RIGHT TO ACCESS PUBLIC INFORMATION

According to the Article 42 of General Administrative Code of Georgia the information on the results of audit or inspection of the activities of public agency may not be classified.[300]

The analyses of the cases examined by Public Defender in 2012 allows to conclude that in some instances public agencies are not providing access to the information which is not subject to classification according to administrative legislation.

296 According to paragraphs 1 and 3 of the Article 80 of the General Administrative Code of Georgia of June 25, 1999: If the issuance of the administrative decree stipulated in the application falls within the jurisdiction of another administrative agency, an administrative agency shall refer the application and all attached documents to the applicable administrative agency within five days. The applicant shall be informed in writing about the reference of the application and attached documents to the applicable administrative agency with an appropriate justification within two days.

297 Paragraph "d' of part 1 of the Article 2 of the General Administrative Code of Georgia, dated June 25, 1999.

298 Paragraphs 1 and 3 of the Article 52 of the General Administrative Code of Georgia, dated June 25, 1999.

299 Paragraphs 1 and 3 of the Article 80 of General Administrative Code of Georgia, dated June 25, 1999.

300 Paragraph "g" of the Article 42 of General Administrative Code of Georgia, dated June 25, 1999.

Public Defender examined the case of R.G. who formally addressed the Ministry of Education and Science of Georgia and requested the copies of the report drafted by General Inspection of the Ministry on the examination of public school #69. It has to be noted that the Ministry of Education and Science of Georgia did not respond to the above request.

As a result of application review and examination of essential circumstances Public Defender considered that citizen R. G. was legally authorized to look through the requested materials, since the list of documentation specified in subparagraph "g" of the Article 42 of General Administrative Code of Georgia refers to the type of materials required by R.G.

Consequently, for restoration of R.G.'s violated right, Public Defender addressed Ministry of Education and Science of Georgia with the recommendation to provide R.G. with the requested public information.

THE ANNUAL REPORTS TO BE SUBBMITTED ON DECEMBER 10 TO THE PRESIDENT AND PARLIAMENT OF GEORGIA

Annually, on December 10 the public agencies[301] shall submit the report to the Parliament and President of Georgia regarding completion of the regulations of Chapter III of the General Administrative Code of Georgia.[302]

Concerning the above issue and on the basis of the Organic Law of Georgia on Public Defender, the Office of Public Defender requested the administration of the President of Georgia and Parliament of Georgia to provide the following information: number of public institutions which provided report on December 10, 2012 in accordance with the Article 49 of the General Administrative Code of Georgia; reports submitted by 25 state institutions and 25 local self-governments.

With the letter of January 18, 2013 the head of Organizational and Human Resources Office of President's Administration informed Public Defender that currently, under the Article 49 of General Administrative Code of Georgia reports were submitted to the president by 1 586 public institutions.

With the letter of January 16, 2013 the head of Organizational Department of the Parliament of Georgia presented to Public Defender the copies of reports submitted to the Parliament by December 10, 2011. At the same time, Public Defender was informed that reports were submitted to the Parliament by 145 state institutions and local self-governments under the Article 49 of the General Administrative Code of Georgia. Reports were submitted to the Parliament by public schools as well.

According to the reports from the President's Administration and Parliament it can be stated that:

- Most of the public institutions do not comply with the requirement of the General Administrative Code of Georgia concerning submission of the report on the completion of regulations of Chapter III of the General Administrative Code of Georgia to the Parliament and President of Georgia annually, on December 10;
- In particular cases public institutions do not submit the report on December 10 - within the period defined by the General Administrative Code of Georgia;
- The reports submitted by public institutions fail to meet the requirements specified in the Article 49 of General Administrative Code of Georgia.[303] Most of the reports entail imperfect and disordered information

301 According to subparagraph "a" of the Article 27 of General Administrative Code of Georgia, dated June 25, 1999, "Public agency" means a state or self-government agency or institution, or the person who exercises statutory authority on behalf of a public agency pursuant to law or contract, or artificial person of Public Law or Private Law that receives funding from the State Budget

302 Article 49 of the General Administrative Code of Georgia, dated June 25, 1999.

303 On December 10 of every year a public agency shall report to the Parliament and President of Georgia regarding:
- the number of requests to provide or modify public information provided to the agency and the number of decisions,

or do not fully comply with the requirements of the Article 49 of General Administrative Code of Georgia;

- In certain instances public institutions are not well informed on the requirements of the Article 49 of General Administrative Code of Georgia and the principle of freedom and accessibility of information.

Based on the above and in order to sustain the practical significance of the report to the Parliament and President of Georgia under part III of the General Administrative Code of Georgia, the Parliament of Georgia shall take appropriate legislative changes.

Recomendations:

To the relevant authorities:

- **To take appropriate measures to initiate the procedures for ratification of Council of Europe's Convention on Access to Official Documents of June 18, 2009 due to which the implementation of the right to access to official information will acquire additional mandatory nature for public institutions.**

To the Parliament of Georgia:

- **To implement legislative changes which will oblige public institutions to submit annually, on December 10 to the President and Parliament of Georgia the report according to regulations set by part III of the General Administrative Code of Georgia;**
- **To implement appropriate activities, based on which the administrative liability will be defined for illegal refusal on access to the public information.**

- the number of decisions complying with or denying requests, the names of the public servants rendering those decisions and the decisions of corporate public agencies to close their sessions,
- the public databases and the collection, processing, storage, and furnishing of personal data by public agencies,
- the number of violations of this Code by public servants and the imposition of disciplinary penalties upon officials,
- the legislative acts that served as grounds for denying access to public information or closing a session of a corporate public agency,
- expenses relating to the processing and release of information and appeals from the decision to deny access to information or to close a session of a corporate public agency, including the payments made to adverse party.

Freedom of Religion and tolerant environment

Present chapter on freedom of religion and improvement of tolerance environment reflects the developments of the year 2012.

Despite the fact that compared to previous years the number of physical violence committed on the ground of religious intolerance decreased in 2012 (overall Public Defender observed only 3 facts of physical violence on the ground of religious intolerance), the cases of xenophobic rhetoric significantly increased.

It can be said that the religious intolerance, hate speech and xenophobia were major problems in the year 2012, which to some extent reflected in the restriction of freedom of religion. In particular the attempts to disrupt Muslim traditional prayer ceremony took place by the end of the year.

Level of coverage of problematic issues regarding religious minorities by media and intolerant attitude to different religious groups has not improved.

Restitution of property confiscated from religious associations in the soviet period still remains problematic.

Legal provisions on tax regime for religious minorities remain unchanged. Adherence to the provisions of Law of Georgia On General Education which explicitly prohibits proselytism, indoctrination and display of religious symbols on the territory of public schools for non-academic purposes still remains problematic.

Up to 40 cases of religious persecution and discrimination observed in 2009-2011 remained uninvestigated.

It has to be noted that the year 2012 revealed some positive trends which will be discussed in this chapter.

XENOPHOBIA

The year 2012 revealed that xenophobic rhetoric and hate speech are one of the most problematic areas in Georgia.

If in 2011 xenophobia primarily related to Armenophobia mostly due to the changes of registration regulations, throughout the reporting period the Islamophobia acquired particularly acute character.

The above trend emerged in the begging of 2012 in connection with discussions around restoration of the Sultan Aziz historic Mosque in Batumi.

Several protests were held against construction of the mosque. The exhilaration on restoration of the mosque launched escalation of anti-Islamic and anti-Turkish attitudes, which were further strengthened due to pre-election tension.

Anti-Islamic and anti-Turkish statements were made during several opposition rallies in Batumi. The inscriptions "Batumi without Turkish people", "Adzharia without mullahs" appeared in the streets of Batumi. Pre-election video message of one of the political parties focused on the limitation of Turkish and anti-orthodox components in Georgia. Several politicians and public officials appraised the debates on Sultan Aziz historic Mosque in Batumi as an attempt to expand Islamic geographical area.

Ultimately, anti-Islamic and anti-Turkish campaign achieved its result and the negotiations launched for several years regarding the Sultan Aziz historic Mosque and the restoration of Georgian architectural monuments on the territory of Turkey were not finalize in 2012.

RESTRICTION OF FREEDOM OF RELIGION

The actions undertaken against local Muslim population of the village Nigvziani in Lanchkhuti Municipality and the village Tsintskaro in Tetritskaro Municipality during December and November 2012 were certain response to pre election xenophobic attitudes.

Part of inhabitants of the village Nigvziani together with the local Orthodox priests protested the exercise of religious rite by the part of Muslim inhabitants.

On October 26 and November 2, 2012, they demanded the Muslim worshipers holding common prayers to bring to an end the exercise of religious rite (which was held in the house of a village inhabitant) in intolerable and offensive manner.

As stated by Muslim population of the village Nigvziani the orthodox inhabitants of the village stormed into their chapel and threatened to endanger them and burn the building if they did not obey the ultimatum. Facts of threats toward Muslim children were also observed. These actions contain the signs of crime under to the Article 155 - the illegal interference into performing religious rite and the Article 151 - threatening, of the Penal Code of Georgia.

The Mufti of Georgia, Jemal Paksadze and several Muslim prayers were not allowed to enter the building to pray.

No adequate measures were undertaken by law enforcement officials. In particular, they failed to provide the corridor for prayers and prevent tension on the ground. Despite the fact that at about 10 village inhabitants were interrogated by the police, the individuals involved in illegal activities were not punished.

Situation was alleviated after the meeting of Mufti of Georgia and representative of Georgian Patriarchy. The meeting for normalization of the situation was held in the Parliament of Georgia as well. As a result of this meeting, free movement and holding of common prayers was no longer limited.

In connection with this incident several public officials stated that the interests of both parties shall be considered and protected. They also noted that interference of law enforcement authorities would be appropriate after the Patriarchy of Georgia and Muslim representatives were given possibility to negotiate.

The attitude of state representatives can be assessed as certain evasion from liability imposed by law, as they facilitated the process of negotiations between parties rather than to undertake clear legal remedies instead.

Ultimately, to some extent, the inadequate response from the state and law enforcement officials caused similar problem in the village Tsintskaro.

In particular, on November and December 2012, the part of Orthodox inhabitants of the village Tsintskaro protested against the exercise of religious freedom by Muslim population.

The leader of local mosque and other local Muslims were verbally assaulted and threatened that unless they stopped the construction of a mosque, there houses would be burnt, they would be expelled from the village and killed. The threats were also addressed towards their family members.

Part of local inhabitants stated that the intolerant attitude of the Orthodox population was caused as a result of removal of the cross from the gates of a new cemetery.

On December 7, next Friday after the above incident, single Muslim from Tsintskaro appeared to exercise the religious prayer. He explained that the rest of Muslim population decided not to come due to the acts of threats and intimidation. Therefore, Mufti, who arrived from Tsalka and persons accompanying him carried out the traditional Friday prayer on behalf of local population.

Local Orthodox and Muslim inhabitants drafted the written agreement, according to which the Muslims shall return the cross to the cemetery gates, after which the examination of their religious rite shall be permitted. In addition, the Muslims from other regions shall not arrive to Tsintskaro for carrying out a prayer. The above agreement was stamped by the representative of governor of Tetritskaro municipality in the village Tsintskaro. Due to its discriminatory nature, the above agreement restricted the right of freedom of religion and freedom of movement which is guaranteed by the Constitution.

For solving the problem the representatives of the Patriarchy, Orthodox spirituals and the members of Parliament engaged in the process. Union of Georgian Muslims published the letter on December 11[304] and expressed their appreciation towards the state authorities involved in the above process.

It has to be noted that by the end of the reporting period local inhabitants were no longer disturbed from the exercise of their religious rite. On December 14 during Friday prayer Richard Norland, US Ambassador to Georgia, also arrived in Tsintskaro and met with the Muslims. He expressed solidarity to local Muslims and supported fundamental principle of freedom of religion. For alleviation of the tension, the statements were made by the President of Georgia, Mikheil Saakashvili and Prime Minister of Georgia, Bidzina Ivanishvili.

VIOLANT ACTS COMMITED ON THE GROUND OF RELIGION

Number of facts of persecution on the ground of religious intolerance and discrimination decreased in the reporting period compared to previous years. Two facts of such violations were brought to the attention of Public Defender. In both cases, the problems concerned attacks against the representatives of religious organization Jehovah's Witnesses.

In particular, on April 15, 2012 the representative of the religious organization Jehovah's Witnesses, M.I. was physically abused in Sagarejo. M.I complained to the police, however he was verbally abused and derided by the police officers because of his diverse religion.

The investigation of the case has been launched but was not completed within the reporting period.

On June 12 the representatives of religious organization Jehovah's Witnesses G.B and G.A were verbally and physically abused on their way to religious meeting at the Royal Hall. Investigation has been launched on the above case as well.

Like in the previous years, the response of law enforcement bodies to the attacks and facts of persecution on the grounds of religious intolerance against Jehovah's Witnesses remain inadequate. Typically, the investigations are delayed without any reasonable basis or completed with no results.

THE SO-CALLED DISPUTED RELIGIOUS BUILDINGS, ISSUE OF RESTITUTION AND OBSTRUCTION OF NEW CONSTRUCTIONS

The restitution of property confiscated from some religious associations (Armenian Apostolic Church, Catholic Church, Muslim Community, Jewish Community, Evangelic Lutheran Church) in the Soviet period still remains problematic. Eventually this property is destroyed or modified.

304 http://www.facebook.com/gmuslimsunion

On May, 2012 the bell tower of the so-called dysfunctional Armenian church, Surb Nshan, (which is included in the list of cultural heritage of Georgia) collapsed. At the end of summer the modification of facade of historic Catholic church located in the village Ude in Adigeni Municipality was initiated. The above church is also included in the list of cultural heritage of Georgia and presently belongs to the Orthodox church. Modification of the fence and the dome was initiated without prior agreement with the Ministry of Culture and Monument Protection of Georgia.

The process was suspended as a result of intervention by the Ministry of Culture and Monument Protection of Georgia and Public Defender. It has to be noted that Guram Odisharia, Minister of Culture and Monument Protection of Georgia expressed his will to create a special commission to examine the issues of restitution of historic property confiscated from various religious associations. However, during the reporting period the commission has not been established.

In the reporting period the representatives of Jehovah's Witnesses religious organization faced bureaucratic obstacles associated with the construction. According to them, the refusal of Khashuri and Surami Municipality concerning construction of Royal Hall was grounded on religious reasons.

RELIGION AND PUBLIC SCHOOLS

The issue of religious discrimination at public schools and adherence to the provisions of the Law of Georgia on General Education still remains problematic.

Over the years religious minorities complain about facts of handling the educational process for the purpose of religious indoctrination, proselytism or coercive assimilation, display of religious symbols on the territory of public schools for non-academic purposes, as well as persecution on religious grounds. Muslim inhabitants of the village Nigvziani also refer to the facts of religious discrimination.

Despite the fact that mostly the parents avoid to publicize the full facts of religious discrimination in the interest of their children, in 2012 the case of religious indoctrination still was examined by Public Defender. In particular, in Oni the local teacher of biology psychologically oppressed Jehovah Witness's 12 year old daughter N.G. and without having prior agreement of her mother took her to Orthodox church during the lesson, where the girl converted into Orthodoxy.

As noted by N.G.'s mother, biology teacher stated that the school director was also informed about the fact. Further to N.G.'s explanation, she did not make decision to convert into Orthodox religion and merely intended to talk with the spiritual representative. She also stated that the biology teacher expressed humiliating attitude toward Jehovah Witness and oppressed her during the lessons for a long time with the aim to convert her into Orthodoxy.

It shall be also noted that N.G herself was not Jehovah witness, as her parents decided that their daughter shall choose religion herself when she grows up. After converted to Orthodoxy N.G. had serious psychological trauma and twice attempted to commit suicide.

N.G.'s mother informed the lawyer of Jehovah Witness religious association on the above fact, who visited the public school to further clarify the situation. As a result of this visit, the negative attitudes of school administration and teachers were examined toward N.G. and her sister. N.G. has been also verbally assaulted by one of the teachers.

Criminal persecution on the above case was launched under the Article 142 of the Penal Code of Georgia which refers the violation of equality of humans base on their religious belonging. However the investigation was not completed during the reporting period.

INAQUALITY AND TAXES

Since January, 2011 a new Tax Code is in force in Georgia. The new Code, similarly to the previous one, does not qualify the activities of the religious associations as economic activities; therefore, they are exempt from a number of taxes. However, this rule does not apply equally to all religious organizations.

Tax regime has discriminatory nature toward the minority religious organizations, since unlike the Patriarchy they are liable to pay several taxes.

The practice of assignation of funds to the Patriarchy is also discriminatory. Over the years the state funding has been rendered only to the Patriarchy, however other religious associations and their members still are obliged to pay taxes.

In this regard by the end of 2012 the statement was made by the Georgian Diocese of Armenian Apostolic Church, which noted that along with the Orthodox church other religious associations, in particular Georgian Diocese of Armenian Apostolic Church should be financed by the state according to the share of their representation percentage.

David Berzenishvili, the representative of Georgian Republican Party and member of the Parliament also made the statement regarding the issue of funding of religious organizations. He noted that along with the Orthodox Church Patriarchy other religious organizations shall also be provided with funds.

The above funding shall be provided for Orthodox church as well as to other confessions in the form of compensation for the damage caused in the Soviet period and shall be determined according to certain financial amount and time frames.

RELIGIOUS DIVERSITY AND MEDIA

During the reporting period the hate and speech and xenophobia were disseminated by considerable part of media. Often media itself served as the source of expression of religious intolerance. However, it has to be mentioned that number of media organizations secured adequate and objective coverage of religious diversity. Religious intolerance frequently emerged on social networks as well, though on the other hand these spaces are open for the discussions on religious diversity issues.

Typically, TV and radio broadcasting were not interested in issues related to religious minorities (with the exception of Nigvziani and Tsintskaro cases) or their interest was limited with coverage of religious celebrations and feasts. As for the political talk shows of Public Broadcaster, they rarely referred to the issues of freedom of religious and religious diversity.

POSITIVE OUTCOMES

In recent years, Public Defender talked about discriminative practice taking place in penitentiary establishments, where clergy were not given access without prior permission of the Patriarchy. In 2010-2012 the concrete actions to overcome this problem were launched. Currently, the problem is already resolved, however religious minorities, especially the Muslim community calls for the allocation of appropriate place in penitentiary establishments for conducting religious rites.

On 21 December, 2011, Constitutional Court of Georgia announced its decision regarding the constitutional claim of Public Defender and recognized the right of an individual to conscientious objection to reserve military service. The claim was related to recognizing unconstitutional the Article 2 (Paragraph 2) of the Law on Reserve Service of Georgia as it establishes the duty of reserve military service for persons objecting to reserve military service due to the motive of the freedom of belief. Constitutional Court of Georgia satisfied the constitutional claim of Public Defender versus the Parliament of Georgia and recognized unconstitutional in relation to the Articles 14 and 19 (paragraphs 1 and 3) of

the Constitution the contents of the norm of the Law on Reserve Service establishing the duty of performing reserve military service by persons refusing it due to the motive of freedom of belief. Accordingly, discriminatory practice of previous years regarding induction into reserve military service has been changed.

Another legislative change implemented during the reporting period refers to Penal Code of Georgia. In particular, on March 27, 2012 the Parliament of Georgia approved the changes and amendments to the Penal Code of Georgia. According to new changes religious or other bias motives were considered as aggravating circumstance for a criminal conduct. Moreover, the amendment specifies that aggravating circumstances will apply to any offense motivated by race, color, language, gender, sexual orientation, age, religion, political and other views, disability, citizenship, national origin, ethnicity, social identity, property and other status, place of residence or other discriminatory grounds and intolerance.

The training on non-discrimination was conducted in 2012 on the basis of the Memorandum on Cooperation between the Ministry of Internal Affairs and Public Defender of Georgia. Police officers from all regions participated in the training. The project was based on recommendations of the European Commission against Racism and Intolerance (ECRI) prepared for Georgia. It was led by experts of the Office of Public Defender of Georgia, Centre for Tolerance and the Ministry of Justice.

The issue of ethnic minorities became more emphasized in the rhetoric and symbolic actions of state representatives in recent years. The President of Georgia, Prime Minister and other state representatives congratulated Muslim and Jewish communities with their religious feasts, visited Armenian, Catholic, Baptist, Lutheran and Pentecostals churches.

On the basis of amendments introduced in the Civil Code by the Parliament of Georgia in 2011, religious associations were given opportunity to select the preferable legal form of registration. Currently, 18 religious associations are registered as legal entities of public law.

Effective activities of the Council of Religions under Public Defender shall be also mentioned. In 2012, members of the Council of Religions completed work on the set of recommendations addressed to the number of state bodies, educational institutions and media organizations. In 2012 with the support of Public Defender the Council of Religions plans to commence the dialogue with relevant institutions with the aim to present these recommendations and ensure their follow-up. Consideration of these recommendations will significantly facilitate elimination of discrimination in the country, civil integration and improvement of tolerant environment.

Reccomendacions:

To The Ministry of Justice

- **To finalize the prolonged investigations which were launched in 2009-2012 and are related to the facts of treatment containing the signs of discrimination on religious ground and restricting freedom of religion;**
- **To carry out proper subsumption of all crimes committed on the ground of religious intolerance according to the relevant articles of the Criminal Code of Georgia.**

To The Ministry of Culture and Monument Protection of Georgia

- **To compose and enact within the reasonable time, the representative state commission which will verify the origins of disputed historical monuments**
- **To carry out inventory of monuments which are not subject of dispute, presently have no religious functions and the religious organizations claim to return them on the basis of their historical possession.**

To the Parliament and the Government of Georgia

- To commence discussions on the state funding of other religious organizations, taking into consideration international practice and different existing models. To ensure engagement of relevant field experts and representatives of religious organizations in this process.
- To eradicate unequal tax system, which establishes different taxation rules for other religious organizations.

To The Ministry of Education and Science of Georgia

- To develop systematic and effective monitoring and response mechanisms for elimination of discrimination on religious grounds at public schools and full implementation of the requirements set by the Law of Georgia on General Education.

Protection of Rights of National Minorities and Support to Civic Integration

The issues of civic integration and protection of national minority rights are the most essential issues for the state and society. Considerable number of programs oriented toward facilitation of civic integration and protection of national minority rights were carried out in recent years, leading to positive results and facilitating process of civic integration in the regions densely populated with ethnic minorities. However, numbers of problems which require timely solution still persist.

NATIONAL CONCEPT AND ACTION PLAN FOR TOLEARCNE AND CIVIC INTEGRATION

On 2009 the Government of Georgia adopted the National Concept and Action Plan for Tolerance and Civic Integration, which encompasses government's vision on the support the civic integration processes in Georgia. These documents unify the vision of the government and civil society on the most effective strategies for achieving civic integration of ethnic minorities in Georgian society and establishment of a tolerant environment in the country. Numerous programs and activities which are envisaged within these documents are carried out by various ministries and institutions.

Monitoring on implementation of National Concept and Action Plan is regularly performed by the Council of National Minorities under the auspices of Public Defender. Presently the Council of National Minorities consists of more than 100 representatives of minority organizations and community leaders.

Results of the monitoring are submitted to various state institutions for consideration.

Annex #1 of the report entails the Council's recommendations which were elaborated for the implementation of National Concept and Action Plan for Tolerance and Civic Integration.

EDUCATION OF THE STATE LANGUAGE IN THE REGIONS DENSELY POPULATED WITH NATIONAL MINORITIES

Improvement by national minorities of the knowledge of state language positively encourages their civic integration, involvement in the process of developments in the country, employment and increase of representation.

During the reporting period several programs for learning of state language were carried out in the regions populated with ethnic minorities. Georgian "Language Houses" operated in Bolnisi, Marneuli, Ninotsminda and all interested individuals could access intensive studies of the Georgian language.

Ministry of Education and Science of Georgia implemented special programs. In the framework of the above programs the considerable number of Georgian language teachers and university graduate students were sent to the regions populated with ethnic minorities in order to teach interested individuals.

As a result, the number of individuals already possessing Georgian language or interested to master it, increased in recent years in Samtskhe-Javakheti and Kvemo Kartli.

However, it has to be noted that the significant number of ethnic minorities in Samtskhe-Javakheti and Kvemo Kartli, as well as population of the villages densely populated with Azerbaijanians in Kakheti still do not possess state language which consequently impedes their civic integration.

PRESCHOOL EDUCATION IN THE REGIONS DENSELY POPULATED WITH NATIONAL MINORITIES

The effective work of pre-school education institutions is extremely important for the country and particularly in reference to the problems related to mastering the Georgian language in the regions densely populated with national minorities. The necessity is even greater in Kvemo-Kartli, since the large number of ethnic Azerbaijanian population take their children to Georgian schools. Significant number of the children does not possess communication skills in Georgian, therefore they face difficulties to study in Georgian schools. The pre-school education institutions should facilitate resolving of the existing problems through strengthening the pre-school education centers and improving language learning opportunities for non-Georgian speakers.

GERENAL EDUCATION IN REGIONS POPULATED WITH NATIONAL MINORITIES

Shortage of teachers at schools in the regions populated with ethnic minorities is observed. High education institutions do not provide relevant trainings of teachers for Azerbaijanian and Armenian schools. The students enrolling to the university on the basis of tests in general abilities in Armenian and Azerbaijanian languages prefer to specialize on more well-paid professions. If these trends remain maintained, the shortage of teachers at Armenian and Azerbaijanian schools will become significant impediment for the learning process.

Quality of translation of the school textbooks into Armenian and Azerbaijanian languages is one of the major problems. According to the teachers, it is problematic for them to ascertain the exact contents of the textbooks. The Council of National Minorities under the auspices of Public Defender applied for several times to the Ministry of Education and Science of Georgia for elimination of the above problem.

In 2012 the school teachers and members of the Council of National Minorities with the assistance of the United Nations Association and in collaboration with the representatives of Ministry implemented topical editing of textbooks translated into Armenian and Azerbaijanian languages and significantly eliminated existing errors.

Ministry of Education and Science of Georgia implements multilingual education program in national minority language public schools. The textbooks which are printed in two languages are applied during bilingual teaching. Not only pupils, but most of the teachers face difficulties in understanding the contents of those textbooks. Minor part of the teachers possess native and Georgian languages simultaneously to the extend required for teaching. According to the interviewed teachers, pupils, their parents and experts, the issues of availability of the qualified teachers, quality of textbooks and teaching methodology require urgent solution.

ACCESS TO HIGHER EDUCATION FOR NATIONAL MINORITIES

According to the amendments made in the Law of Georgia on Higher Education, the entrance examinations at the institutions of higher education are passed on the basis of tests composed in Abkhazian, Ossetian, Armenian or

Azerbaijanian languages. As a result of the above legislative amendments, large number of entrants was enrolled and successfully study in various institutions of higher education throughout Georgia. In 2012, 200 hundred entrants were enrolled in the institutions of higher education through passing the general ability tests elaborated in Armenian language, and 390 entrants - through passing the tests elaborated in Azerbaijanian language.

As regards statistics, the number of entrants from Samtskhe-Javakheti and Kvemo Kartli enrolling in the institutions of higher education of Georgia is annually increasing. Effective implementation of the above program will significantly eliminate the problem of lack of the state language knowledge in the public sector.

ACCESS TO HIGHER EDUCATION FOR OSETIAN SPEAKING ENTRANTS

According to the amendments made in the Law of Georgia on Higher Education in 2009, the entrance examinations in the institutions of higher education were based on the tests composed in Abkhazian, Ossetian, Armenian or Azerbaijanian languages. The above legislative provision is not still applied in respect to Ossetian speaking entrants due to the administrative practice. The examination tests in general abilities were not translated into Ossetian language for the past three years, consequently the national examinations in general abilities prescribed by the Georgian legislation were not provided in Ossetian language. Therefore, the entrants of Ossetian origin who do not possess Georgian language are unable to enjoy the benefits prescribed by legislation.

Recomendations:

- **To permit entrants of Ossetian origin to pass the test in general abilities in their native language, according to the amendments in the Law of Georgia On Higher Education in 2009;**
- **To ensure translation of the textbooks in general ability examination tests in Ossetian language to enable Ossetian speaking entrants exercise relevant benefits prescribed by Law of Georgia on Higher Education.**

ACCESS TO INFORMATION IN THE REGIONS DENSELY POPULATED WITH NATIONAL MINORITES

According to the legislation of Georgia, National Concept on Tolerance and Civic Integration and Action Plan, the Georgian Public Broadcaster (GPB) is obliged to provide national minorities residing in Georgia with the information on the developments occurring in the country.

Since 2010 GPB daily produces (except for the weekends) and transmits news programs in Abkhazian, Ossetian, Armenian and Azerbaijanian languages. The length of news programs is 10-12 minutes in each national minority language.

News programs were periodically transmitted by regional televisions which have Abkhazian, Ossetian, Azerbaijanian and Armenian coverage to ensure broadcast of "National News" (Moambe) in the regions densely populated with national minorities.

It is notable that daily programs in 2012 were not sufficient for providing with comprehensive information on the developments occurring in the country the areas densely populated by national minorities.

Typically, TV news programs in minority languages outline the worldwide and local developments in brief. The 10-12 minutes length news coverage produced by the GPB in minority languages do not provide with the comprehensive and pertinent information on the developments occurring in the country the population of Kvemo Kartli, Samtskhe-

Javakheti and South Ossetia. It is possible that the GPB might lack the opportunity to provide additional airtime for minority language programming, therefore alternative measures shall be undertaken in order to ensure access to the media for national minorities. Strengthening of regional TV stations in Samstkhe-Javakheti, Kvemo Kartli and Shida Kartli will significantly eradicate the problem.

Armenian, Azerbaijanian and Turkish televisions broadcast developments occurring in the country, however the information is limited to a single coverage daily. Large number of the national minorities receive information about developments worldwide and in Georgia from foreign media channels, however as noted above, such coverage is not comprehensive. Furthermore, the news channels do not have obligation to provide comprehensive broadcasting about development occurring in Georgia to the population of Samtskhe-Javakheti and Kvemo Kartli. The obligation to provide information to the regions populated with national minorities applies to the state and society.

THE GEORGIAN PUBLIC RADIO

The audio transmissions of the "National News" (Moambe) are provided on a daily basis in Abkhazian, Ossetian, Armenian and Azerbaijanian languages. However, the radio waves of the Public Radio do not cover most of the districts in Kvemo Kartli and Samtskhe-Javakheti. Consequently, the resources of public radio still remain unused in terms of provision of information to the local population.

Since 2006, the program "Our Georgia" was regularly broadcasted on the Georgian Public Radio. The program covered history, traditions, life, and activities of ethnic and religious groups residing in Georgia as well as their problems, and other related topics. Over several years the above interactive radio program operated on public broadcaster and served as a single source covering the topics pertinent to national and religious minorities.

However, since 2010 as a result of reorganization, the program was terminated due to financial reasons and only resumed with the funds obtained from donor organizations (Open Society Georgia Foundation and Eurasia Partnership Foundation) by the creative group of the program. Program was added to the air in a renewed format and operated throughout 18 months. Currently, the program is not broadcasted and the audience has no regular coverage of topics pertinent to national and religious minorities. It has to be noted that although the preparation of the above program was envisaged in the National Concept for Tolerance and Action Plan, it has not been transmitted since September 2012.

Overall, it shall be noted that the system of operation of the radio frequencies requires expansion in order to increase broadcasting on national minorities languages and promote civic integration in the regions populated with national minorities.

Consequently, in recent years the population of Kvemo Kartli and Samtskhe-Javakheti do not receive information about developments in the country in their own language. In this regard the activities of Public Broadcaster shall be positively encouraged, although the undertaken measures still are not sufficient for solving the problem. It is obvious, that the system for provision of information to the population of Kvemo Kartli and Samtskhe-Javakheti and extension of the scope of the radio coverage shall be improved.

PRINTED MEDIA

Newspaper "Gurjistan" published in Azerbaijanian language and newspaper "Vrastan" published in Armenian language provide the national minorities with information on current developments in the country. Due to the financial and other reasons, these publications do not sufficiently ensure provision of relevant information.

Several newspapers are published in Kvemo Kartli and Samtskhe-Javakheti with the support of commercial organizations. These newspapers do not provide full coverage of information as far as they are not published on a regular basis.

Recomendations:

- **To facilitate training of journalists representing national minorities;**
- **To ensure support to regional TV stations in order to facilitate provision of information in minority languages on the developments in the country to Kvemo Kartli, Samtskhe-Javakheti and South Ossetia;**
- **To ensure that GPB's national minorities' news programs enhance provision of the information regarding the life of national minorities and challenges faced by them;**
- **To promote increase of information and publication, circulation and distribution of national minority publications "Vrastan" and Gurjistan";**
- **To facilitate improvement of public awareness in national minority regions by means of public radio;**
- **To renew broadcasting of public radio program "Our Georgia" or ensure broadcasting of other programs of the same format and contents.**

EMPLOYMENT OF NATIONAL MINORITIES AND THEIR CIVIL AND POLITICAL ACTIVITIES

Despite the fact that former and current state officials promote the necessity of national minorities' active involvement in the processes occurring in the country, presence of national minorities in the state institutions is still limited.

In this regard it has to be positively assessed that unlike recent years, the situation is improved in the Parliament of Georgia, where three representatives of national minorities were elected as the deputy heads of the Parliamentary committees.

Active participation of national minorities in the state processes still remains problematic. The national minorities are involved in the discussions only concerning the ethnic stereotypes or other actual national issues. Number of national minority representatives and organizations participating in the discussions regarding the state issues is significantly limited.

In recent years participation of national minorities in social-political processes was considerably hampered by the political and administrative means operated in the regions populated with national minorities. Police as well as other law enforcement authorities were regularly interfering with the process of resolving the above issue. People were obliged to appear before the security authorities and forced to act according to the preferred scenario, otherwise they were threatened with imprisonment, dismissal and other forms of repression. These circumstances adversely affected activities of national minorities in public, political and civil fields.

Population of national minority regions regularly renews the issue of their involvement in local processes. Large number of Samtskhe-Javakheti population negatively assesses the absence of local personnel in various processes and activities. This issue goes beyond the competence of state institutions, since the activities are carried out by private companies. However the negative influences of the above problems on the process of civil integration and adverse assessment by national minorities of various programs in the region have to be considered.

SMALL NATIONAL MINORITY COMMUNITIES

In the recent years, along with the priority issues in terms of civil integration and promotion of minority rights the state and international organizations focus on integration of most numerous national minorities of Armenians and

Azerbaijanians in Georgia. However, in recent years, inadequate attention was rendered to small national minorities, in particular, their identity, language, culture, traditions and protection of other ethnic characteristics. The issue of protection of small national minorities is not envisaged in the National Concept on Civil Integration and Action Plan.

Effective implementation of appropriate programs shall be ensured to support civil integration of national minorities and promote their identity.

STUDY AND PRESERVATION OF NATIVE LANGUAGES BY SMALL NATIONAL MINORITY COMMUNITIES

Study and preservation of national languages are the most problematic issues for the major part of small minority communities, as they do not have opportunity to study native languages at schools. Problem is particularly pressing for national minorities of South Ossetians, Assyrians, Kurds, Udi, Chechen, Dagestanians (Avarians). During Soviet period and after gaining the independence, the language learning programs operated with the support of donor organizations and enthusiasts. However in the last few years' language learning programs are not implemented at schools due to various reasons (lack of teachers and textbooks, etc.).

According to the Ministry of Education and Science of Georgia one of the main reasons of the above problem examined in recent years is the lack of appropriate language teaching standards. In order to teach any subject at school, application of standards approved by the Ministry of Education and Science is essential. Currently, the standards for teaching Ossetian, Assyrian, Kurdish, Udi, Chechen, Dagestanian (Avarian) languages do not exist, due to which mastering of these languages in schools is not possible.

Above circumstances negatively affect the process of mastering Ossetian, Assyrian, Kurdish, Udi, Chechen, Dagestanian (Avarian) and other minority languages in Georgian schools.

Recomendations:

- **To facilitate elaboration of standards for teaching Ossetian, Assyrian, Kurdish, Udi, Chechen, Dagestanian (Avarian) languages;**
- **To ensure that the Ossetian, Assyrians, Kurdish, Udi, Chechen, Dagestanian (Avarian) and other minorities leaving in Georgia are provided with the possibility to master native languages in schools in their compact settlements.**

THE "DUKHOBORS" COMMUNITY

The Russians residing in Georgia are mainly Orthodox Christians, however in Russian community special attention is paid to the religious minorities, Dukhobors and Molokans. Dukhobors were exiled to Georgia in the period of Tsarist Russia. Several thousands of Dukhobors were mostly settled in two regions of Georgia - Ninotsminda and Dmanisi. The village Gorelovka in Ninotsminda municipality still retains the so called "Sirotskiy dom" - most important center of cultural and religious identification of the Dukhobor world.

Currently, at about 350 Dukhobors reside in Georgia. In recent years the resettlement of Russian compatriots in Russia was carried out within the framework of Russian President's program. Large part of Dukhobors moved to Russia, where they faced poor living conditions. As they did not resettle compactly and were losing their religious and cultural traditions, small part of Dukhobors returned to Georgia. Reportedly, large number of families plan to return back.

Recomendation:

- **To grant the status of museum to the orphanage "Sirotski Dom" which is situated in the village Gorelovka. To allocate appropriate resources for its preservation, repair and regular protection.**

THE "UDI" COMMUNITY

According to number of scientists, the Udis are one the most ancient ethnicities in Caucasus. The village Zinobiani in Kvareli district is the place in Georgia where the Udi people moved from Azerbaijan. They also reside in three villages on the territory of Azerbaijan. Currently, approximately 350 Udi people reside in Georgia. Mostly they are Orthodox Christians.

The Udi population speaks their native language. It is believed that Udi language belongs to Lezgian subgroup of Dagestan language group of the Iberian-Caucasian languages and has two main dialects-Vartash and Nijur. The Udi language has 13 vowels and 38 consonants. Part of researchers considers that Udi language is a modern version of Caucasian Albanian language.

Currently, the Udi ethnic culture is under threat of extinction. Knowledge and geographical application of the Udi language gradually declines. The museum of Udi culture is functioning in the school of the village Zinobiani where the Udi language is taught. However, it is not sufficient for preservation of this language. If such practice further continues the Udi language will gradually disappear.

State shall provide special attention to the above issue through appropriate means and with the involvement of relevant international donor organizations to facilitate preservation of ancient Udi language.

Reconedations:

- **To facilitate publishing of textbooks and dictionaries in Udi language with the aim of its preservation;**
- **Ministry of Education and Science of Georgia and the Ministry of Culture and Monument Protection of Georgia shall allocate appropriate resources to support involvement of international donor organizations in the process of preservation of Udi linguistic and cultural heritage.**

ROMA COMMUNITY

The Roma residing in Georgia are divided into two branches – Krim and Vlakh, which differ by cultural traditions, religious and linguistic features. The Krim branch is made of by the Muslim Roma coming from the Crimea, South Ukraine and South Russia; the Vlakh branch is made of the Christian Roma coming from the Ukraine and Russia.

Currently, approximately 1500 Roma reside in Georgia. The Roma settlements are found in different regions of Georgia - Kakheti, Tbilisi, Kobuleti, Kutaisi and Gardabani. Considering the extant of difficulties of Roma situation it is hard to identify a single particularly problematic area. Roma community encounters difficulties regarding education, health care, civil integration, human rights, preservation of cultural traditions, employment, and etc. Large part of the Roma residing in Georgia is illiterate and totally unaware of their rights.

Despite the fact that Roma are residing in extreme poverty, only a small part of them receives social allowance for those below the poverty line, mainly due to the lack of information concerning relevant documentation, rules and procedures for submitting appeal, address of the Human Services Agency. Due to the same reasons, most of Roma

population does not receive pensions and other social allowances. They use to apply to medical institutions rarely, in cases of extreme illnesses.

Because of the difficult social situation and the extreme poverty, major activities of Roma include petty trading, begging and fortune-telling. So far, Roma representatives have never been employed to work in any State institutions.

Large part of Roma children does not attend school. According to Roma population, they are willing to engage in the learning process; however they are not able to access education due to the difficult social conditions, lack of proper documentation and expensive textbooks.

Roma population distrusts the state authorities and avoids any contact with them. With the support of nongovernmental organizations a part of the Roma population received the identity cards and participated in 2012 elections for the first time, however the level of their civil integration still remains low.

The prevalence of negative attitudes and stereotypes toward Roma is also remarkable. Over the last years, systematic approach in support the Roma community has not been elaborated by the state, therefore the adequate programs were not yet implemented. Although, it has to be noted that the work carried out by various nongovernmental organizations with the aim to foster development of Roma community in previous years is positively assessed and facilitated by the state. Notwithstanding the measures already undertaken, it is obvious, that the existing assistance does not ensure effective solution of Roma issue. The Roma ethnic community still faces lots of difficulties in Georgia and requires elaboration of special approach.

Recomendation:

- **To ensure elaboration of special programs with the aim to increasing education, level of literacy, study of specialties, access to health care and social assistance, employment, preservation of cultural traditions and promotion of their popularization.**

Right to Property

"The state recognizes and protects universally recognized human rights and freedoms as eternal and supreme human values. While exercising authority, the people and the state shall be bound by these rights and freedoms as directly acting law." [305]

The abovementioned Article of the Constitution represents the primary legal guarantee for the protection of the right to property. The concrete guarantee for the protection of the right to property is given in Article 21 of the Constitution, according to which, the right to property and inheritance is recognized and guaranteed, it is impermissible to abrogate the universal right to acquire, alienate and inherit property. This right is not absolute as it foresees the interference in the right to property if the public interests so require. Consequently, any type of interference in right to property is only permissible within the limits of paragraphs 2 and 3 of Article 21 of the Constitution.

The right to property is also recognized by Article 1, Protocol One of the European Convention on Human Rights, which foresees the peaceful enjoyment of possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The protection of the right to property envisages both the positive and negative obligation of the state according to this article.

According to the 2012 World Economic Forum Global Competitiveness Report, Georgia has the lowest index related to the right to property as among 144 states, Georgia ranks 131st. Despite the obligatory nature of the above-sited regulations, during the 2012 reporting period Public Defender of Georgia received appeals by the citizens who considered that their right to property was violated. The analysis of the cases revealed three types of problems: recognition of the right to property, registration of the right to property and proportionality of restriction in criminal proceedings. Consequently, the chapter below will discuss the issues related to the mentioned problems.

In addition, it has to be mentioned that after the change of government Public Defender's Office still received the complaints concerning the voluntary transfer of private property for the benefit of state. The citizens declared that they signed the grant agreements under coercion of the law enforcement and government officials. This matter is currently under review of the Chief Prosecutor's Office of Georgia. According to the information of the prosecutor's office, they received approximately 9 000 appeals concerning the same problem. We expect the relevant authorities to conduct systematic examination of the said statements.

One additional issue, which is not reviewed in details in this sub-chapter, but is still actively discussed, relates to the legal effects of the expropriation of property from concrete persons for state benefit. Several large-scale projects were carried out over the years. Number of expropriations of private property took place through these projects. In addition, in some instances the Commission for the Recognition of Property Rights illegally invalidated the decisions related to

305 Article 7 of the Constitution of Georgia, 24 August 1995.

the property of concrete persons, which resulted in leaving the property to the state. A similar incident occurred in the municipality of Khelvachauri, where 271 citizens' right to property was violated. This case was discussed in details in Public Defender's annual report of 2011. Consequently, we consider it necessary to study the facts of the violations of the concrete person's rights in a detailed manner on similar occasions. Public Defender continues active work on that regard.

RECOGNITION OF THE RIGHT TO PROPERTY

In 2007 the Parliament of Georgia adopted the law "On the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons." Also, on September 15, 2007, Decree #525 issued by the President of Georgia approved "Procedures for the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and legal Persons."

The Law of Georgia "On the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal persons" envisages three possibilities for the recognition of property: legitimate land ownership, land use and arbitrary occupation of the land. [306] If one of the above legally endorsed conditions exists the title to land may be recognized in accordance with the rules approved by Decree #525 of the President of Georgia on September 15, 2007.

It is true, that the aim of the abovementioned regulations (The Law of Georgia and President's Decree) was the transfer of state-owned land and facilitation of land market development.[307] Nevertheless, as the cases reviewed in Public Defender's annual report of 2012 reporting period demonstrate, the relevant competent authorities[308] frequently disregarded the regulations enshrined in the abovementioned legal acts and refused to recognize the right to property for the stakeholders[309] without any reasoning.

It is noteworthy, that the Permanent Commissions for the Recognition of Property Rights are administrative agencies[310] and carry out public authority in accordance with the legislation of Georgia. [311] Consequently, the above-cited commissions, within its authority and in compliance with the rules established by the legislation, are entitled to render decisions, which constitute individual administrative-legal acts. [312]

According to the General Administrative Code of Georgia, written individual administrative -legal acts shall be substantiated. [313] In addition, according to the administrative law, the administrative agency is not authorized to base its decision

306 In the Judgment №BC1771-1726(K-10) of the Supreme Court of Georgia rendered on June 30 2011, the Court interpreted, that Georgian Law "On the Recognition of Property Rights Regarding Land in Possession (Usage) of Natural and Legal Persons" consists of three types of relationships, in particular, the relationship stemming from the legal ownership of land, usage of land and arbitrary occupation of land.

307 Article 1, Law of Georgia "On the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons" issued on July 11, 2007.

308 According to the paragraph 1 of Article 5 of the "Procedures for the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons" approved by Decree #525 of the President of Georgia on September 15, 2007, the recognition of property rights on arbitrarily occupied land is carried out by the authorized representative agency of the appropriate local self-government through a Standing Commission, while the authority for the recognition of property rights on land in legitimate possession (usage) lies with the Legal Entity of Public Law operating within the field of governance of the Ministry of Justice of Georgia – the National Agency of Public Registry.

309 According to sub-paragraph "e", paragraph 2 of the "On the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons" issued on July 11, 2007, the concept of stakeholder implies a natural person, as well as his/her successor or assignable; a Legal Entity of Private Law (according to Article 74 of this Law, from January 1, 2012, Legal Entities of Private Law lost the right for the recognition of property rights on land in legitimate possession (usage) or under arbitrary occupation, after the date mentioned, Legal Entities of Private Law may obtain property rights in accordance with general regulations established for the privatization of state property) or other organizational entity or its assignable provided for by law.

310 According to the sub-pparagraph "a", paragraph 1, Article 2 of the General Administrative Code of Georgia of June 25, 1999 "Administrative agency means any state or local self-government agency or institution, legal entity of public law (except political and religious unions), also any other person, which exercises public authority in accordance with Georgian legislation."

311 According to the paragraph 1, Article 5 of the General Administrative Code of Georgia of June 25, 1999 "Administrative agency may not perform any action that is against the law.

312 Paragraph 1, Article 10 of the "Procedures for the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons" approved by Decree #525 of the President of Georgia on September 15, 2007.

313 Article 53 of the General Administrative Code of Georgia of June 25, 1999.

on the circumstances, facts, evidence or arguments, which have not been examined and studied during administrative proceedings. [314] Thus, the Permanent Commission for the Recognition of Property Rights, during the review of a stakeholder's written statement and at the time of conducting formal administrative proceedings, is obliged to examine all circumstances of any significance to the case, and render an appropriate decision based on their evaluation and comparison.[315] In relation to the abovementioned, it is remarkable to cite the interpretation made by the Supreme Court of Georgia, according to which in determining the formal legality of the individual administrative-legal act it is necessary to take into account its reasoning. Even more so, the mentioned rule has an imperative character and prohibits adoption of the act without studying the facts and evidence having important relevance to the case.[316]

The concrete case cited below will demonstrate non-compliance of the decisions of the Permanent Commission for the Recognition of Property Rights with imperative requirements established by law.

In case of **M.B.,** the citizen lodged the application[317] on recognition of property rights on 225 sq.m land plot located in Tskneti Valley to the Tbilisi City Council Commission for the Recognition of Property Rights on land in possession (usage) of individuals and private law entities.

According to the decision rendered by the Tbilisi City Council Commission for the Recognition of Property Rights, citizen **M.B.** was refused to receive title to land on the basis of Commission's belief, that it was inexpedient to recognize the right to property on the land plot under review.

As a result of detailed examination of documentation, Public Defender concluded that the decision regarding the above-cited land plot, declining the right to property of the citizen **M.B.** was based on the grounds not envisaged by law. In addition, according to the Ombudsman's position, in the decision the Commission did not discuss the fact of arbitrary occupation of land by **M.B.** and compliance with the legal requirement to produce the relevant documentation. The decision of the Tbilisi City Council Commission for the Recognition of Property Rights on refusal to grant the property rights, i.e. individual administrative-legal act, did not fulfill the requirements established by law. Mainly:

1. Commission did not study and examine the case related relevant circumstances and rendered the decision on refusal to recognize property rights without any reasoning. (Formal legality requirement for the individual administrative-legal act is violated)

2. The decision on refusal to recognize property rights, which is an individual administrative-legal act, is inconsistent with the requirements established by the law. Thus, it does not comply with the grounds of refusal established by paragraph 7, Article 5^1 of the Law "On the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons" and paragraph 1, Article 16 of "Procedures for the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons" approved by Decree #525 of the President of Georgia on September 15, 2007.

Public Defender of Georgia concluded, that while rendering decision on refusal to recognize property rights of **M.B.**, i.e. preparing and issuing individual administrative-legal act – the Commission violated requirements established by law, which is the ground for invalidation of said legal act.[318] Consequently, Public Defender addressed Mr. Irakli Abesadze - Chairperson of the Tbilisi City Council Commission for the Recognition of Property Rights with the recommendation to restore the violated right.

On October 16, 2012 Public Defender of Georgia received written reply to the abovementioned recommendation from Mr. Irakli Abesadze, Chairperson of Tbilisi City Council Commission for the Recognition of Property Rights. According to the letter, Commission reviewed the case of **M.B.** on September 6, 2012. The applicant requested recognition of property rights on 225 sq.m land plot located in Tskneti Valley. Commission rendered decision categorizing the requested 225 sq.m land plot as arbitrarily occupied and recognized the requested property rights.

314 Paragraph 5, Article 53 of the General Administrative Code of Georgia of June 25, 1999.
315 Paragraph 1, Article 96 of the General Administrative Code of Georgia of June 25, 1999.
316 Judgment №BC-664-642(K-10) of the Supreme Court of Georgia rendered on November 3 2010.
317 Application included the cadastral survey drawing of the land plot, conclusion of the Levan Samkharauli Forensics National Bureau, notarized testimony of three witnesses.
318 Paragraph 1 and 2nd Sentence of Paragraph 2, Article 601 of the General Administrative Code of Georgia of June 25, 1999.

It is significant, that basing decision on so called "inexpedient" ground in case of **M.B.,** represents established practice of recognizing property rights by the permanent commissions, [319] which comes against the requirements of Georgian legislation.

According to the abovementioned, the analyze of cases in 2012 reporting period by Public Defender of Georgia reveals that in some instances Permanent Commissions for the Recognition of Property Rights refused to recognize the right to property without any substantiation, which leads to the violation of the lawful interests of individuals.

REGISTRATION OF PROPERTY RIGHTS

Throughout the year 2012 number of citizens applied to Public Defender of Georgia, complaining that the decisions of National Agency of Public Registry, the Legal Entity of Public Law under auspices of the Ministry of Justice violated the citizen's legal interests and right to property guaranteed by the international covenants and Georgian legislation.

Review of the mentioned appeals revealed the set of violations, part of which will be discussed in section below as an example.

The problems related to the protection of principle of legality by the National Agency of Public Registry (territorial Registry Services)

According to the General Administrative Code of Georgia, the freedom of any administrative agency is restricted by the principle of legality.[320] Paragraph one of the same Article, dictates, that the administrative agency does not have the right to perform any activity against the requirements of the law.

In accordance with the General Administrative Code of Georgia,[321] National Agency of Public Registry (territorial Registry Services) represents administrative agency, and decisions rendered by it – individual administrative-legal acts.[322] Consequently, administrative-legal acts prepared by the National Agency of Public Registry (territorial Registry Services) must comply with the General Administrative Code of Georgia and the rules enshrined in the "Law of Georgia on Public Registry" and existing legislation at the time of rendering concrete decisions.[323]

According to the General Administrative Code of Georgia, [324] due to the fact that the law does not foresee application of different administrative procedure, National Agency of Public Registry (territorial Registry Services), prepare individual administrative-legal acts through common administrative proceedings. If administrative-legal act may deteriorate the legal status of the party, an administrative agency shall inform an interested party about the commencement of an administrative proceeding, and shall ensure his/her participation in the proceeding.[325]

It is noteworthy, that the National Agency of Public Registry (territorial registry services), disregards requirements of the law in certain instances. Due to this fact, when decisions are rendered (e.g. when registering the right to property)

319 The 2010 Annual Report of Public Defender of Georgia on Situation of Human Rights and Freedoms in Georgia, Chapter "Right to Property," – Subchapter – "Recognition of the Right to Property," at 357-366.

320 Article 5 of the General Administrative Code of Georgia of June 25, 1999.

321 According to the sub-paragraph "a", Article 2 of the General Administrative Code of Georgia of June 25, 1999, "Administrative agency means any state or local self-government agency or institution, legal entity of public law (except political and religious unions), also any other person, which exercises public authority in accordance with Georgian legislation."

322 According to the sub-paragraph "d", paragraph 1, Article 2 of the General Administrative Code of Georgia of June 25, 1999 "Administrative act" means an individual act issued by an administrative agency pursuant to Administrative Law, which establishes, modifies, terminates or certifies rights and duties of a person or a limited group of persons.

323 The relevant normative acts nowadays are: Georgian Law on Public Registry of December 19, 2008, "Instruction on Public Registry" approved by the Decree #4 of the Minister of Justice of Georgia on June 15, 2010, "Rates, terms and service timeframes of the National Agency of Public Registry, Legal Entity of Public Law under the auspices of the Ministry of Justice of Georgia" approved by the Government's Decree #509 on December 29, 2011; " Charter of the National Agency of Public Registry – Legal Entity of Public Law" approved by the Decree #835 of the Minister of Justice of Georgia on July 19, 2004.

324 Paragraph 2, Article 72 of the General Administrative Code of Georgia of June 25, 1999.

325 Article 95 of the General Administrative Code of Georgia of June 25, 1999.

through adoption of administrative-legal act, material and formal requirements of the law are violated. In particular, National Agency of Public Registry (territorial registry services), does not investigate the factual circumstances of the case during administrative proceedings and does not ensure expression of opinion by the interested party. Discussed examples demonstrate the mentioned violations.

During 2012 reporting period Public Defender of Georgia studied cases related to alleged violation of property rights of citizens T. and M. Gh. and O. Gh.

Thorough examination of the case materials revealed, that according to the decision of Tbilisi City Court, T. and M. Gh. were recognized as the co-owners of real estate of O.Gh., located on Rustaveli Ave, Tbilisi. Thus, according to the decision of the Tbilisi registry service of the National Agency of Public Registry, the right to co-ownership of the mentioned real estate was officially registered. According to the extract from the public registry the following was registered as applicant's property – 25 sq.m of living space, bathroom/and toilet of - 5.60 sq.m – bathroom/toilet, balcony - 4.80 sq.m; basement – 12.00 sq.m; exit area – 3.88 sq.m; store-room – 2.25 sq.m. Importantly, according to the registration card of the flat/non-living area, the land (unspecified) located at mentioned address was 1490 sq.m.

Later, the applicant M.M. addressed Tbilisi registry service of National Agency of Public Registry and requested it to define the boundaries of land plot on Rustaveli avenue Tbilisi. Apart from the other documents, application included inventory plan, cadastral survey plan and electronic version thereto. Tbilisi registry service approved the request with the decision and defined the size of mentioned land plot as 1459 sq.m.

At the same time, representative of T. and M.GH. presented cadastral survey plan to his/her clients' community union with the aim to receive approval concerning delimitation of acquired property.

At the meeting of the community union, the applicant learnt, that the land, where the basement, bathroom, kitchen and store-room were located was placed in free space beyond the red lines, i.e. it was registered within the red lines of the contiguous land plot. Applicant addressed Tbilisi registry service regarding the above issue and requested adoption of amendments to registered rights on real estate located on Rustaveli Avenue, Tbilisi. According to the decision of Tbilisi registry service of National Agency for Public Registry, registration proceedings were stayed, since the registry agency decided, there was an interference envisaged by the instruction between the cadastral survey plans of the appealed property and real estate registered in public registry. In particular, according to the cadastral survey plan attached to the appeal, the land cadastre data was not consistent with the data from contiguous real property and land borders interfered in contiguous land.

After carefully reviewing the factual circumstances of the case, Public Defender of Georgia concluded that Tbilisi registry service of National Agency of Public Registry was obliged to involve T, M. and O.Gh. as interested parties in proceedings initiated on the basis of appeal of M.M. Besides, according to the normative act in force at the time in question,[326] registration authority should have made decision on staying registration proceedings, as cadastre plan survey presented by M.M was not certified by every co-owner. This, by itself led to GH's violation of right to property guaranteed by Article 21 of the Constitution in relation with the citizens T.M. and O. Gh.

Consequently, citizens' T.M. and O.Gh's constitutionally guaranteed rights have been violated. Public Defender of Georgia addressed the National Agency for Public Registry of Ministry of Justice with the recommendation to launch disciplinary proceedings against persons responsible for rendering the abovementioned decision at the Tbilisi registry service.

During 2012 reporting period, Public Defender revealed the fact of property rights violation by the territorial registry service of National Agency for Public Registry in case of citizen A.B.

According to the said application and presented documentation, Tbilisi City Court rendered decision to recognize the fact that citizen A.B., inherited the property from his deceased father S.B. It should be noted, that inheritance certificate

326 According to sub-paragraph 5, Article 48 of the "Instruction on registering rights to real estate", approved by the decree #800 of the Minister of Justice on December 13, 2006, cadastral survey plan shall be certified by legitimate owner of real estate, owner of contiguous real estate, signed by the attendants of cadastral survey (in case of their existence) and person authorized for cadastre, and if the authorized person is legal entity – signature shall be accompanied with the stamp of legal entity.

was issued in Tbilisi, 2625 sq.m on area of located in Okrokhana district. The citizen A.B. applied to Tbilisi registry service of National Agency for Public Registry and requested registration of inherited property.

By decision of Tbilisi registry service of National Agency for Public Registry, registration proceedings were stayed, as according to the cadastral plan survey, land plot cadastre was inconsistent with contiguous real estate cadastral data, in particular presented land plot borders interfered with the contiguous land plot borders.

It is noteworthy, that a year ago Tbilisi registry service rendered decision to register citizen L.K.s property rights on 600 sq.m non-agricultural land located in Okrokana district, Tbilisi. Citizen A.B. explained, that Tbilisi registry service of National Agency for Public Registry registered citizen L.K's property rights to the land plot, which was inherited property of A.B.

In order to establish important factual circumstances to the case, the Office of Public Defender of Georgia addressed the National Agency for Public Registry of the Ministry of Justice with the recommendation to provide information. Mainly, the information should concern the basis, on which 600 sq.m land plot in Okrokana district of Tbilisi was registered as the property of citizen L.K.

National Agency for Public Registry of Ministry of Justice sent written reply to the Office of Public Defender of Georgia, that according to the paragraph 6, Article 3 of the Law of Georgia on "Recognizing the private property rights to the non-agricultural land in possession of individuals and private entities," the land plot allotted for house-building may be transferred into ownership of the individuals and private entities free of charge, if the land has not been recognized as private property by the Civil Code of Georgia. Consequently, the land plots determined for the house-building and not recognized as private property by the Civil Code were recognized as the property of persons indicated in act of separation.

Material legality of individual administrative-legal act relates to the content of legal act. In other words, regulation of concrete relationship by administrative act should comply with the specific legal basis for its issuance and shall not be contrary to the applicable laws in the country. Mainly, the law on the basis of which the individual act was issued, should be in force at given time. In given case, the legal basis for the issuance of decision by the Tbilisi registry service of National Agency for Public Registry (recognizing right to property of citizen L.K. to the 600 sq.m land plot located in Okrokhana district in Tbilisi) was the law of Georgia on "Recognizing the private property rights to the non-agricultural land in possession of individuals and private entities," which was invalid by the time the decision was rendered.

In addition, it is worth mentioning, that authorized organ to issue decision on legality of ownership by November 2008 was the representative body of local-self government, which exercised authority through permanent commission.[327] According to the December 5, 2008 №614-IIs amendments to the Law of Georgia "On the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons" National Agency for Public Registry - LEPL of the Ministry of Justice became the agency responsible for recognizing right to property for the legal ownership (usage) of land. [328]

Stemming from all the above-mentioned, Public Defender concluded the following: according to the normative acts in force at the time Tbilisi registry service of the National Agency for Public Registry was not entitled to issue decision (recognizing right to property of citizen L.K. to the 600 sq.m land plot located in Okrokana district in Tbilisi). Thus, citizen L.K. should have submitted the decision of the Commission to Tbilisi registry service in order to lawfully obtain recognition of title to land. According to the written information received from the Tbilisi registry service of National Agency for Public Registry – citizen L.K. did not submit the decision of Commission recognizing the right to property.

327 Paragraph 1, Article 5 of the the"Procedures for the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons" approved by Decree #525 of the President of Georgia on September 15, 2007 and Paragraph 1, Article 4 of Georgian Law "On the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons" issued on July 11, 2007. November 2008 edition.

328 Paragraph 1, Article 41 of December 5, 2008 №614-IIs amendments to the Law of Georgia "On the Recognition of Property Rights regarding Land in Possession (Usage) of Natural and Legal Persons." According to the Article 15, amendments entered into force on 15th day after the publication.

Thus, Tbilisi registry service was obliged to stay proceedings, and if the documents proving the need to eliminate grounds for the suspension were not submitted – then registry service should have terminated proceedings. [329]

Since there were factual and legal signs, confirming that the Tbilisi registry service of National Agency for Public Registry violated legal requirements when rendering decision (recognizing right to property of citizen L.K. to the 600 sq.m land plot located in Okrokana district in Tbilisi), which by itself violated the right to property of citizen A.B., Public Defender of Georgia addressed the Chief of the Tbilisi registry service of National Agency for Public Registry with the recommendation and required it to study the given case and issue decision in accordance with law.

Listed cases demonstrate that in some instances territorial registry services of National Agency for Public Registry disregard the following legal obligations: 1) to carry out authority in accordance with law; 2) to render decisions after comparing and reviewing documentation presented for registration and documentation stored in registry service. 3) to perform legal obligation of ensuring conformity between the documentation stored in agencies and other documentation.

OVERLAP

Review of applications lodged in Public Defender's Office demonstrated systemic problem – cases of land plot overlap – i.e. cross-coverage of land plots. Citizens frequently apply to Public Defender of Georgia claiming that they were registered as owners of certain land plots, however later it was revealed that the other individuals or private entities fully or partially registered their titles to the same land plots.

The cases described above usually have three parties: owner, National Agency for Public Registry (territorial registry service) and new owner (the latter may represent the state, individual or private entity). In order to study the factual and legal grounds of the problem and find solutions, it is necessary to analyze the relevant legislative basis.

Study of decisions demonstrated that the so called "overlap" problem related to the introduction of electronic cadastral survey plans. In particular, before 2010 cadastral survey plans were prepared on paper. Since the year 2010 the public registry introduced electronic – so called UTM system. These two methods should not be mutually exclusive, though electronic system did not reflect cadastral survey plans made through the old system. Consequently, if the relevant electronic data does not exist, there is a chance that the property is registered on the object which already has the owner. Further, it is problematic to determine who is responsible for the overlap of registration, the old owner, the National Agency for Public Registry or the new owner.

Instruction of the National Agency for Public Registry sets out the rights and obligations during the registration proceedings. According to the instruction, the Registration Service is authorized to accept any type of document and to issue or publish documents both on paper and through automatic electronic management system. Consequently, the fact that the registration of right to property was undertaken based on cadastral survey plan on paper, does not conflict with the authenticity of registration. In addition, it is notable that electronic system is applied since 2012 only. The same instruction does not oblige the person to check, whether there is a title registered on the object in his/her interest. Accordingly, the National Agency for Public Registry (its territorial Registry Service) is obliged to prevent and to solve this problem. It is true, that instruction does not indicate the obligation of registration authority relating to concrete issue, however the abovementioned matter falls under the legal authority of the agency. In particular, according to the law on public registry, the staff of registry is obliged to ensure the compliance of the registered data with existing data in the registry. The mentioned obligation is also part of the proceedings which precedes the registration. According to the General Administrative Code, administrative agency is required to issue decision only after studying all circumstances relevant to the case.

329 According to the sub-paragraph "b", Article 63, of the "Instruction on registering rights to real estate", approved by the decree #800 of the Minister of Justice on December 13, 2006, if the documents or information proving the need to eliminate grounds for stay of proceedings are not presented during the stay of proceedings, registration authority makes decision on terminating proceedings.

Tbilisi Appeals Court paid particular attention to the obligation of public registry and indicated, that "when the precise cadastral data of land plot is not registered [...], the dispute should be solved on the basis of the confirmation, as to whether the registration authority could [...] identify inconclusive cadastre data from the conclusive data under impugned dispute."

Considering the disregard of mentioned function, Supreme Court concluded,[330] - "in this scenario the public registry loses its role – guaranteeing proper performance of lawful turnover." Supreme Court of Georgia underlined the obligations of the public registry according to the relevant instruction and the General Administrative Code of Georgia, which entails the obligation to render decisions after properly investigating all relevant circumstances.

The Court of Cassation excludes possible existence of different registered data and considers that the real state of property and the registered data should coincide. In case of overlap and parallel registration, Court of Cassation concludes, that the priority should be given to data which has better legal basis. In addition, the principle of order of registering the rights and registered rights shall be foreseen.

PROPERTY RIGHTS IN CRIMINAL PROCEEDINGS

Since the criminal justice process is often associated with the restriction of the rights of the accused, we deem it necessary to separately review the issues relating to confiscation of property and sequestration of property, envisaged by the Criminal Code and Criminal Procedure Code.

DIFFERENTIATING CONFISCATION OF PROPERTY AND SEQUESTRATION OF PROPERTY

According to the Article 52 of Criminal Code of Georgia: 1. Confiscation of property shall mean deprivation of an instrument and/or weapon of crime, or an object intended for the commission of crime and/or property acquired through criminal means in favor of the State and gratuitously.

2. Deprivation of an instrument and/or weapon of crime, or an object intended for the commission of crime shall mean deprivation of a suspect, an accused or a convict of a property he or she owns or possesses legally and which was used for or is aimed at committing an intentional crime, in favor of the State and gratuitously. Confiscation of an instrument or/and a weapon of crime as well as of an object intended for the commission of crime shall take place by court's decision for all intentional crimes prescribed by the present Code in case when a weapon of crime or an object aimed at committing a crime is discovered and its confiscation is necessary for the interests of the State and society, for the protection of the rights and liberties of individuals or for the prevention of future crimes.

3. Confiscation of property acquired through illegal means shall mean the confiscation of the property (any object or non-material goods, legal documents related to ownership of these objects) acquired through illegal means, as well as confiscation of any revenue collected from such property, or goods of equal value in favor of the State and gratuitously. Confiscation of the property acquired through illegal means shall be imposed by the court for all intentional crimes prescribed by the present Code if it is proved that the property is acquired through illegal means.

According to the paragraph 1 of this Article, the following objects may be confiscated:

- Instrument of crime;
- Weapon of crime;
- An object intended for the commission of crime and/or
- Property acquired through illegal means.

330 Judgment BC-593-588(K-11) of the Supreme Court of Georgia rendered on November 21, 2012.

The Criminal Code of Georgia establishes the common regulation, definition and standard for all three categories mentioned above. The measures are undertaken against the accused or convict and envisages confiscation their property, which was applied for commission of intentional crime or aimed for it. Confiscation of property (or revenue collected from such property, or goods of equal value) acquired through criminal means signifies confiscation in favor of state without compensation. The latter regulation (paragraph 3 of Article 52) does not create legal problems as in this case legality of the property acquired through criminal means does not exist.

The abovementioned represents one of the punishments envisaged by the Criminal Code of Georgia. However, Paragraph 1 of Article 81 of the Criminal Procedure Code foresees confiscation of the instrument and weapon of crime:

The court judgment, or a decision to terminate the criminal prosecution and/or investigation, shall establish the following regarding the material evidence:

a) If the weapon and the instrument of a crime have no value, they shall be destroyed, whereas if they have a certain value, they shall be procedurally confiscated;

Article 81, paragraph 1 of the Criminal Procedure Code of Georgia establishes the rule of procedural confiscation of the weapon or instrument of crime. Neither Georgian legislation, nor the court practice known to us, provides for the possibility to differentiate the above-cited article from the regulation enshrined in Article 52 of the Criminal Code. These two institutes have different substantial legal requirements and nature. Second sentence, second paragraph of Article 52 establishes the test, which should be the ground rule for each case of confiscating weapons and instruments of crime. The same rule is not applicable in the Code of Criminal Procedure. The mentioned regulation might be futile for the requirements of Article 52 as the same legal consequences may be attained by the state with less restrictive measures and the law does not provide the possibilities to differentiate these measures.

Consequently, it is necessary for the law clearly to establish the circumstances when the Criminal Code confiscation rules apply and circumstances when Article 81, Paragraph 1, subparagraph "a" applies instead. It is recommended, that the procedural regulation applies when the prosecution is terminated at the stage of investigation without rendering the decision (though the relevant guarantees shall be complied with, and will be discussed below) and when the guilty verdict is rendered without the sentence or imposing the sentence and releasing defendant from serving it. Otherwise, we might receive the dualist regulations, posing the threat to human rights.

THE PROBLEM OF REASONING OF ASSET FORFEITURE DECISIONS

According to Article 52, paragraph 2 of the Criminal Code of Georgia – instrumentalities of crime may be confiscated only by the Court for intentional crime predetermined by this Code, in case of existence of instrument of crime and the forfeiture should be conditional on state and public necessity or the protection of rights and freedoms of individuals, or serve the purpose of preventing new crime.

The practice of the Constitutional Court of Georgia has established that property rights protect only lawfully acquired property: [331]

The legality of the right to property is determined by the lawful acquisition of property. This is a crucial reason for the existence of legitimate property rights. The use by one person of an item, lawfully acquired by another person, as an instrument or weapon of crime does not negate the fact of its legitimate acquisition, and, accordingly, does not delegitimize the right to property.

The Constitutional Court of Georgia established the authoritative interpretation of the standard of property confiscation. According to the Constitutional Court interpretation, the following conditions should be met: [332]

331 Judgment of the Second Chamber Decision #1/2/384 of the Constitutional Court of Georgia rendered on July 2, 2007, II-7 „Citizens of Georgia – Davit Jimsheleishvili, Tariel Gvetadze and Neli Dalaqishvili against Parliament of Georgia"

332 Ibid, II, p. 22.

a) Existence of instrument, weapon or item to commit the crime[333]

Only the property used for commission of crime may fall under the above notion. Thus, one of the main justifications of asset forfeiture is the belief that certain item was or will be used to commit the crime. Consequently, the notion addresses the items, which are outside of lawful turnover – they contributed to commission of crime or their usage is aimed to commit the crime. This needs to be proven beyond reasonable doubt, which is the obligation for the court reviewing concrete case.

b) Confiscation of property must be conditional on state or public necessity or the interests of the protection of rights and freedoms of individuals, and/or serve the purpose of preventing a new crime.

With this regard, the Constitutional Court noted, that common court „...[S]hall thoroughly examine, whether the above conditions exist in reality. Following the examination of specific circumstances, the court shall determine whether the threat of infringement of the rights of others is real, whether the commission of a new crime using the property in question is inevitable, etc. The court shall urgently consider whether, through the non-forfeiture of such property, the state, society or specific individuals will incur damage, for the avoidance of which the norm is adopted; furthermore, the court shall very accurately foresee whether the specified objectives will indeed be achieved through the deprivation of property. The court shall examine factual bases of the case and substantiate its legal position in relation to the necessity of asset forfeiture. It shall not solely be limited to a formal examination, which, ultimately, leaves the issue open on whether, in specific cases, a legal authority to intervene exists. Compliance with the specified terms by the judges making decisions on the confiscation of property is mandatory in order to ensure that asset forfeiture does not become the purpose. The confiscation, as an additional penalty, of an instrument or a weapon of crime or an object intended for crime is justified when it is used as the most effective means to achieve the selected goal. For this purpose, the judge, in addition to meeting other requirements envisioned by the disputed norm, must be able to correctly evaluate the existence of pressing social need for each specific case. Otherwise, the achievement of social goals, as well as the legality of intervention in property rights will become suspicious.

Notwithstanding the abovementioned, Georgian common courts rarely apply criteria established by the Constitutional Court. Asset forfeiture (confiscation) takes place with simple indication on legal basis, without any substantiation. The cases studied by Public Defender lack explanations and have formal character only. Ignoring the standards established by the Constitutional Court create serious problems, which lead to the violation of Article 21 of the Constitution. Accordingly, we consider that the Parliament of Georgia must amend Article 52 of Criminal Code of Georgia in accordance with the interpretation of the Constitutional Court.

In addition, it is worth mentioning, that the Constitutional Court directly recommended the necessity of the abovementioned amendment in its July 2, 2007 decision, though, the Parliament of Georgia did not react to this part of the decision. The Constitutional Court stated that paragraph 2 of Article 52 is not fully foreseeable and there is the risk of violation of the property rights due to the vague and broad nature of the regulation. [334]

According to the impugned regulation, one of the necessary requirements to apply additional criminal punishment may be imposed if "state and public necessity" so require. This is a very general notion and there is no definition to interpret the norm in question. Even though, there is additional requirement of protecting interests of other individuals and preventing new crime, these two clauses cannot exhaust the essence of the regulation. In addition, as it was mentioned, these notions may acquire different content depending on the crime. It is natural, that exact legal definition and interpretation of the abovementioned terminology is impossible. The same holds true about listing the conditions that qualify for "state and public interests." However, at the same time subjective and arbitrary interpretation should be excluded. It is true, that review by court presents important guarantees in this regard, but the courts' function is limited to determination whether the legislator foresaw the state and public interests in a given case. The intent of the legislator is decisive for the court as it cannot determine the content of this notion according to its views and discretion.

333 Ibid.
334 Ibid, II, p. 26.

OWNER'S RIGHT TO A FAIR TRIAL DURING THE ASSET FORFEITURE

Article 52, paragraph 2 of the Criminal Code of Georgia envisages the confiscation of property of the owner or the possessor. The institute of confiscating the property from the owner was appealed in the Constitutional Court of Georgia, as it was deemed to be inconsistent with the right to property enshrined in Article 21 of the Constitution. On July 2, 2007 the Constitutional Court dismissed the appeal. In the same decision however, the Court in an obiter dictum expressed the opinion relating to the fair trial and access to defense guarantees.[335] In this case, the interpretation of the Constitutional Court does not represent obligatory direction for the parliament; however, in any case, compliance with the Court's dictum would ensure preventive constitutional control over the disputed regulation and therefore, guarantee the human rights protection. July 2, 2007 Decision of the Constitutional Court was limited by review of the constitutionality of criminal law provision in relation to the Article 21 of the Constitution.

According to the interpretation of the Constitutional Court - the Council of Europe November 8, 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime establishes the obligation of contracting states, to adopt such legislative and other measures as may be necessary to ensure, that the interested parties, affected by state interference shall have legal remedies in order to preserve their rights. (Article 5) Thus, in parallel with the adoption of laws for confiscation of the weapon or instrument of crime – the Convention obliges states to ensure effective legal remedies for third parties (including owners) to protect infringed rights. [336]

The Constitutional Court declared that asset forfeiture creates public law relationship between the state and the property owner. Accordingly, the Constitutional Court perceived, that the property owner should have the right to check the legality of measures undertaken by state.[337] On regard, the Constitutional Court paid particular attention to the standards of the European Court of Human Rights which perceives the property owner's legal remedies as the main guarantee for the property rights protection. According to the European Court standards, the owner should get the opportunity to appeal the decision of the court, dispute whether the public necessity justified confiscation and whether there was the link between the property owner and illegal act. The Constitutional Court paid particular attention to the above mentioned procedure which gives a possibility of civil liability of the owner, (In case of intentional guilt of the property owner, confiscation will be undertaken gratuitously, in case of recklessness – the compensation will be provided). For that reason the Constitutional Court concluded that complete and effective protection of right to property requires existence of adequate, comprehensive and detailed procedures, for enabling the property owner to appeal legality of the asset forfeiture. [338]

Nowadays material and procedural legislation does not include the regulation under which the property owner's interests would be protected and secured. Today the property owner is not able to receive any type of compensation from state or defend his/her interests in case of legal deficiency and does not have substantial legal remedies against the state. In these conditions it is impossible to appeal against the asset forfeiture decision through fair trial procedures and fully benefit from the rights guaranteed under the first and second paragraphs of Article 42 of the Constitution.

CONFISCATION OF THE TWOFOLD FUNCTION ITEMS

The item, subject to confiscation, might carry different functions. For example, if the cell-phone is confiscated, the Sim cards in phone may have additional value. The law does not differentiate on that regard and applies the same approach to all instances.

In relation with the mentioned problem convict Z.I. applied to Public Defender of Georgia complaining that his intellectual property rights have been violated by the decisions of Mtskheta City Court of July 8 2010 and Tbilisi Appeals Court of April 17 2011. In this case, the computer processor of the citizen was confiscated and transferred into the property of the state. According to the information from the applicant, his intellectual property, mainly several

335 Ibid, II, p. 24.
336 Ibid.
337 Ibid.
338 Ibid.

books remained in the hard drive of the computer. This intellectual property also became the state property, without any differentiation.

Due to the fact, that intellectual property forfeiture (in accordance with the specific nature of the right) represents considerably serious sanction, the state should bear the burden of proof to substantiate the usage of intellectual property as a tool or weapon to commit a crime. This would be possible when the book contains neo-Nazi and revisionism opinion, or it carries the information, which cannot be disseminated. In this case it is permissible to confiscate the intellectual property or prohibit the dissemination. These measures should be carried out in accordance with strict evaluation criteria.

Georgian legislation shall determine conditions when the item of crime bears twofold function. If it is possible to differentiate twofold function items, they should be transferred into the state property in a separated form. If it is impossible to detach the items, the least intrusive measures should apply instead of the full confiscation of property, apart from the cases, when forfeiture serves important state aims and it is impossible to attain them without the interference. In all other cases the property confiscation must not be carried out and the state must modify the item, so that it becomes impossible to use it for the commission of a crime. Otherwise, intellectual or other property will have nominal character and become accessory when transferring items into the state property. In addition, the courts should have the obligation to differentiate items, not only on the basis of the parties' motion but on a *sua sponte* basis. This regulation should also be applicable to the requirements of procedural legislation.

PROCEDURAL CONFISCATION

According to the paragraph "a" of Article 81 of the Criminal Procedure Code of Georgia, if the weapon and the instrument of a crime have no value, they shall be destroyed, whereas if they have a certain value, they shall be procedurally confiscated through the decision on termination of criminal prosecution or investigation. Termination of prosecution or investigation falls within the competence of the prosecutor and may only be appealed only once to the senior prosecutor (this excludes the cases, where termination of prosecution takes place through judicial decision). Thus, the property may be confiscated with the sole decision of the prosecutor without the supervision of the court.

Article 124.2 of February 20, 1998 Criminal Procedure Code of Georgia envisaged the following regulation:

After the termination criminal prosecution and/or pre-trial investigation at the pre-trial investigation stage, material evidence may only be seized, destroyed, confiscated and transferred on the basis of the court order. The court deliberates on this issue with the participation of all interested parties and on the basis of the evidence and other documents presented by the investigator.

The advantage of this provision was based on fact that the court was the author of the decision and balanced interests of all parties. The court determined whether the concrete property object was the instrument or the weapon of crime.

Legislation nowadays does not include the similar provision, which increases the risk of arbitrariness. It is unclear how shall the person proceed, when his/her property is attached to the case file as an evidence and later prosecutor regards it as an instrument of crime. In this case, the good faith presumption of the prosecutor is understandable. At the same time it should be noted that any type of judicial control aims at avoiding and preventing the illegality from the side of executive branch. Without the existence of judicial control the risk of exceeding the powers by executive branch increases and realization of fundamental rights becomes subject to executive's good will. In many cases the Constitutional Court of Georgia noted that a wide range of governmental authority may increase the risk of human rights violations and thus come into conflict with the Constitution.

According to the abovementioned, institutional participation of the judiciary in the process is inevitable. Any type of decision regarding the transfer of material evidence to the state property after termination of criminal prosecution or investigation should be subject to judicial control and rendered by the court. Additionally, it should be noted that right

to appeal to court should be ensured for all persons who are involved in property-related legal proceedings or have claims on property objects in any other manner.

SEIZURE

Seizure is the investigative action envisaged by the Criminal Procedure Code of Georgia and applied in circumstances, when there when the existing data confirms, that the property may be hidden or spent and/or was obtained through criminal means. Seizure is an effective measure in the hands of investigative bodies for upholding the interests of justice.

Seizure is one of the methods of restricting the right to property and is resorted to by state, when there is a need to guarantee the interests of justice. However in this case, it is necessary to comply with the specific standards, which entails restriction of property rights to such an extent that ensures the owners existence with dignity. The same position is shared by the Article 153 of Criminal Procedure Code of Georgia, which provides the minimum list of items, prohibited for seizure. The Constitutional Court has repeatedly noted about the close correlation between property rights and dignity.[339] In addition, it is noteworthy, that the right to property is to certain extent related to state obligations stemming from the social-and economic rights, which additionally underlines the constitutional-legal importance thereto. Social and economic rights are obligatory for the states to the extent of recognition of those rights in accordance with the state's available capacities. The main aim of social and economic rights is ensuring the persons' existence in dignified environment to maximum extent.

According to the bilateral contract between the JSC „Liberty Bank" and legal entity of public law – social service agency under the Ministry of Labor Health and Social Affairs, beneficiary receives personal bank account where the appropriate state expenses (pension) are discharged. Afterwards the parties continue relationship in accordance with the bank payment rules existing between the client and bank.

During the last reporting period Public Defender of Georgia received several complaints by citizens, who noted that their pension bank accounts have been seized in different time periods. These cases became more frequent in pre-election period. According to the documents presented to the Office of Public Defender of Georgia, as well as documents obtained by the Office considerable amount of cases revealed complete seizure of bank pension accounts. Apart from the fact, that decisions did not include substantiation of necessity to seize property, Public Defender revealed substantial violations. According to the Georgian Law on State Pension Article 19.1,: "seizure of pension may only be undertaken on the basis of competent organ or court decision." Paragraph 3 of the same Article dictates, that "court decision may approve seizure of no more than 50% of pension."

Accordingly, the Parliament of Georgia should establish explicit regulation in Article 153 of the Criminal Procedure Code of Georgia. The rules existing today may directly be applied by courts, however this issue may additionally be envisaged in the Criminal Procedure Code of Georgia for more clarity.

In addition, the Law of Georgia on Disciplinary Responsibility and Disciplinary Proceedings against the Judges of the Common Court of Georgia does not establish rules for responsibility of judges for gross violation of laws, which creates problems for reparation of violated rights and at the same time decreases the risk of preventing illegal actions by judges. In order to remedy the mentioned problem, it is recommended to restore old regulation, which envisaged disciplinary procedures against judges for gross violations of laws. Public Defender of Georgia expresses respect towards judiciary and considers it necessary to uphold judicial institutional and functional independence in the process of regulating the abovementioned issues.

339 Judgment of the Second Chamber of the Constitutional Court of Georgia of June 26, 2012 #3/1/512 2006 "Citizen of Denmark Heike Kronkvist v. the Parliament of Georgia" ; Judgment of the Second Chamber of the Constitutional Court of Georgia of July 2 2007 #1/2/384 „Citizens of Georgia – David Jimshelishvili, Tariel Gvetadze and Neli Dalakishvili v. Parliament of Georgia.

Recommendations:

Permanent Commissions for the Recognition of Property Rights

- Decision on the basis of the stakeholders applications (on recognition of property rights or refusal to recognize property rights) should be rendered in accordance with the law, after comprehensive examination of case circumstances.

National Agency of Public Registry of the Ministry of Justice (territorial Registry Services)

- Decisions as a result of reviewing stakeholder's applications shall be rendered in accordance with the law, after comprehensive examination of case circumstances and establishing the relevance of documents presented and stored in the agency.

Relevant organs

- Explore the legality of cases of transfer of property as a gift to the state by private and legal entities.

The Chief Prosecutor's Office of Georgia and the Ministry of Justice of Georgia

- Ensure the relevant systematic study of applications, which reveal the cases of donation of property to the state by coercion.

The parliament of Georgia

Legislative measures shall be undertaken in different areas in order to ensure adequate protection of property rights within the criminal justice:

- Drawing the clear line between the regulations in Article 52 of the Criminal Code of Georgia and sub-paragraph "a" of Article 81.1 of the Criminal Procedure Code of Georgia.
- Obligation to substantiate forfeiture of property on the basis of Article 52 of the Criminal Code of Georgia should be foreseen directly by law and precise and clear standards be established, based on which the property rights may be restricted in accordance with the Constitutional Court interpretation.
- Specify the second part of Article 52 of the Criminal Code of Georgia – "the state and public necessity" and determine more clear regulation, which will interpret state interests better and may be substantiated by judiciary.
- Procedural and substantive laws shall determine procedural guarantees to protect the interests of property owner, when applying the punishment envisaged in Article 52 of the Criminal Code of Georgia. In this case, the issue of guilt should be differentiated and the owner shall have right to receive compensation in case of negligence.
- The legislation should differentiate between twofold function items and the judge reviewing the case shall be obliged to dissociate these objects. Application of this regulation shall be extended

to procedural and substantive legislation and the relevant provisions shall determine all expected factual circumstances.

- All decisions rendered in the aftermath of terminating the criminal prosecution or investigation on transfer of material evidence in the property of state shall be subject to judicial control.
- Clear prohibition should be determined on seizing pension with the value of more than 50 % value and appropriate legal remedies for violation of mentioned requirement shall be regulated by law.

Public Defender hereby expresses readiness to participate in the process of elaborating the relevant legislative provisions, in order to assist state organs taking into consideration the comparative-legal practice and eradicating all threats to full enjoyment of property rights.

2012

Right to Adequate Housing

Like in previous years, securing vulnerable households with shelter constituted an acute issue during the last year's reporting period. In the second half of 2012 plenty of demonstrations were held by the socially vulnerable families claiming the right to adequate housing.[340] Intrusion of families into state ownership claiming the adequate housing has taken place.[341]

It can be noted that the existing situation in Georgia in relation to enjoying the right to adequate housing is not satisfactory. Despite the fact that Georgia has undertaken commitments foreseen by international documents and the domestic legislation also envisages certain obligations in this regard, the practical implementation of the above engagements is not carried out. The reports of Public Defender have been addressing the existing severe conditions and giving systematic recommendations throughout the years, however, unfortunately, the situation remains unchanged. Implementation of individual recommendations is also problematic. Nevertheless, the non-existence of the Government's unified policy constitutes the most acute problem in this field.

In 2012 the non-existence of the unified database of vulnerable households and housing funds, the lack of funds foreseen by the local government budget and social programmes involving homeless persons remains to be problematic. Since the above problems are discussed in the previous reports of Public Defender, this chapter will refrain from elaborating on this matter.[342] Moreover, the issued recommendations remain in force. It can be noted that the existing problems and the subject of the circumstances hindering realization of the right remains unchanged.[343]

In the reporting period of 2012 the citizens have been actively applying to Public Defender of Georgia requesting shelters. Based on the applications plenty of recommendations were issued for providing alternative accommodation (in most of the cases the representatives of Public Defender were examining the living conditions of the applicants on spot and forwarding the relevant information/photo material to the addressees), however, the standard response from the local government bodies was that the adequate housing could not be provided to the vulnerable households due to the lack of financial resources in the housing fund or/and the local budget.

In cases where the Tbilisi City Hall constituted the addressee of Public Defender of Georgia the administrative organ, by its standard template, was offering the beneficiary family to participate in the programme "Social Housing in Supportive

340 In October, November and December up to30 vulnerable households held a demonstration at the Ministry of Labour, Health and Social Affairs of Georgia, the Embassy of Switzerland and Tbilisi City Hall. http://news.ge/ge/news/story/38194-sotsialurad-dautsvelebi-jandatsvis-saministrostan-aghar-imyofebian http://live.ge/video-37982

341 In October 2012 up to 30 families intruded the building of the Railway hospital. http://news.ge/ge/news/story/40644-tbilisi-meria-rkinigzis-saavadmyofoshi-shechrilebs-eleqtroenergias-urtavs. In December 2012 24 families intruded the building of the former School #68 http://www.palitratv.ge/akhali-ambebi/sazogadoeba/26286-68-e-skolis-yofil-shenobashi-shetcrili-socialurad-daucvelebi-thavshesafars-ithkhoven.html.

342 Report of Public Defender of Georgia, Second half of 2009 "Right to Adequate Housing", p. 204.

343 Parliamentary Reports of Public Defender of Georgia of the Second Half of 2009, 2010 and 2011, "Right to Adequate Housing".

Environment". It can be stated that the Tbilisi City Hall considered the received applications and recommendations only within the above programme. This chapter will concentrate on the insufficiency of the events carried out within this programme.

THE NON-EXISTENCE OF THE UNIFIED DATABASE OF VULNERABLE HOUSEHOLDS

Despite the fact that in its Parliamentary Report for the second half of 2009 Public Defender of Georgia discussed in detail the non-existence of the unified database of vulnerable households the problem still remains to be an acute one. Therefore, it will be appropriate to concentrate on this topic again.

According to Article 17 (d) of the Law of Georgia on "Social Assistance" the "Agency (Social Service Agency) runs the unified database of the vulnerable households registered in the Local Government bodies."

Article 18 of the same law states that the local self-government bodies ensure the homeless families with shelter and the availability of the information regarding the registered homeless persons for the agency.

Despite the fact the self-government bodies locally collect the data of the homeless persons in the territorial units (as a rule, the above happens when the persons apply themselves) it is still not known how many persons are homeless in Georgia. The Agency does not have the unified registry of homeless persons and none of the self-government bodies have provided the Agency with this kind of information. Moreover, not a single sub-legal act determines how the self-government bodies should provide the Agency with the above information, what kind of data it should include and what procedure should be used to consider a family as homeless.

Due to the failure to comply with the above obligations it is not known how many persons are in need of a shelter in Georgia and this is directly connected to the planning of the effective policy. Namely, if the Government does not have the real picture of the existing needs in this particular sphere it will be difficult to calculate and direct the financial resources and to take correct steps for solving the problems and shortcomings.

THE PROGRAMME "SOCIAL HOUSING IN SUPPORTIVE ENVIRONMENT" FOR HOMELESS PERSONS

As it is already known the programme "Social Housing in Supportive Environment" is carried out with the support of the Swiss Agency for Development and Cooperation in different cities of Georgia, including Tbilisi. It aims at ensuring the homeless persons registered in Tbilisi with the adequate housing. In order to participate in the above programme the beneficiary has to satisfy the following criteria:

- The family should not own a residential property or land either in or outside Georgia;
- The rating score of the family in the poverty reduction programme should not exceed 57 000;
- At least one family member should be registered in Tbilisi.

The existence of the Tbilisi City Hall Programme on its hand supports the realization of the right to adequate housing, nevertheless, at the same time, it is necessary to eliminate the shortcomings typical for the progarmme. Two problems should be underlined in regards with the above programme. One of them is the insufficiency. Namely, according to the available official data, the last phase of the programme "Social Housing in Supportive Environment" was carried out in 2010 based on which 24 vulnerable households were satisfied in Tbilisi. The third phase of the programme will be implemented in 2013 and it is planned to provide 24 homeless families with the adequate housing (17 local and 7 internally displaced families). If we take into consideration the fact that the Tbilisi City Call considers the applications regarding the adequate housing only in connection to the above-mentioned programme it can be concluded that in

2011 and 2012 not a single request of the vulnerable households was satisfied on the territory of the self-governing unit. According to the data provided by the Tbilisi City Hall in 2012 7 657 families addressed the self-government body requesting the shelter. Although it is unknown at this point how many families are in fact homeless from the above number, the insufficiency of the aid provided to the homeless persons is obvious.

Yet another important shortcoming of the programme that has been repeatedly mentioned in Public Defender's Reports still remains to be an unresolved problem. In particular, the criterion according to which the beneficiary has to be involved in the poverty reduction programme and the rating score of the family should not exceed 57 000.

According to the existing legislation the homeless families that do not own the separate living space cannot get into the unified database of vulnerable households.[344] Hence, the rating score indicating the social-economic condition cannot be given to these families, which means that they automatically do not satisfy the obligatory criterion of the programme "Social Housing in Supportive Environment" and their candidacy is not even considered for the programme. As a result, the most vulnerable persons are left without assistance.[345]

The reason why the rating score was decided to be a criterion is clear. The unified data of the vulnerable households is unequivocally the most accurate one. However, we believe that the creation of the unified, centralized database of homeless persons in accordance with the Georian Law on "Social Welfare" would be a more concrete mechanism for this kind of projects.

I believe that one more important flow of the above-mentioned programme is its implementation period. In 2012 the estimated implementation period of the programme has changed several times that has slowed down the question of providing the beneficiary families with housing. Therefore, in order not to delay the step by step implementation of the programme the reasonable timeframe should be set during which the Tbilisi City Hall will ensure the timely and effective implementation of the programme.

Apart from the above-mentioned I consider the Tbilisi City Hall's practice unacceptable based on which the local self-government body considers received applications regarding the housing only within the programme "Social Housing in Supportive Environment". This practice contradicts the essence of the right to adequate housing. The mere fact that the family does not satisfy the criteria set by the programme does not mean that it does not belong to the vulnerable group. This assumption can be sustained by the fact that the programme cannot fully cover the marginalized families that are in need of the adequate housing.

SOCIAL ASSISTANCE FOR HOMELESS FAMILIES

As it was noted in the introduction, in 2012 vulnerable and homeless persons occupied different building. They also held several demonstrations. This condition is directly related to the fact that for years the Government has been taking ineffective measures to solve this problem. Due to the above-mentioned processes, in 2012 the executive Government has adopted a by-law establishing the programme for the assistance of the homeless families that are intruded in the state and private ownership. Namely, according to the Government decree №454 "On social security measures to be taken for certain categories of families" dated 28 November 2012 the vulnerable households who meet the requirements of the act, monthly receive 200 GEL as a social assistance for the period of 6 months.

Offering similar benefits for the homeless families by the Government should be assessed positively. It should also be noted that the mentioned social assistance gives the possibility to partially eliminate the problem in the short-term perspective; however, without a systematic approach the homeless families will face the same problem after 6 months. Hence, it is more appropriate to develop a long-term action plan for the effective management of public resources by localizing the problem of providing shelter for homeless families.

344 The Report of Public Defender of Georgia on the "Situation of Human Rights and Freedoms in Georgia" the Second Half of 2009, pp.204-209.

345 The Report of Public Defender of Georgia on the "Situation of Human Rights and Freedoms in Georgia, 2012, Chapter: "Right to Social Security".

The Office of Public Defender of Georgia requested the information regarding the quantity of those families that requested the assistance based on the Government Decree №454 of 28 November 2012 from the Ministry of Labour, Health and Social Affairs. Based on the provided data from November 2012 till the end of December 2012 2 303 families applied to the Ministry and 1 195 of them satisfied established conditions. Finally, 811 families were given the assistance based on their consent.

THE LACK OF HOUSING FUNDS AND RESOURCES

Like in previous years, Public Defender of Georgia has requested the information from 5 cities (Gori, Zugdidi, Kutaisi, Batumi, and Tbilisi) regarding the number of homeless persons on the administrative territory of the local government and the measures taken to provide them with assistance.

According to the data provided by the Tbilisi City Call, in 2012 7 657 families addressed the self-government body requesting the shelter. 1 100 applications were not accompanied by the document certifying that they were vulnerable households. It is clear from the received information that since the third phase of the programme "Social Security in Supportive Environment" could not be implemented, not a single family was satisfied with the housing in 2012.

Based on the data provided by the local government of Kutaisi, last year 447 applications were recorded requesting the housing. Given that the local self-government body does not possess a free housing fund, not a single family was satisfied in 2012. Moreover, in 2012 the relevant allocations were not foreseen in the local budget.

In 2012 up to 100 families addressed the Zugdidi Municipality requesting the accommodation. 32 homeless families were satisfied with the rent fee by 31 800 GEL allocated in the budget of the local self-government. In 2012 it is planned to provide about 40 homeless families with the rent fee.

Last year in Gori Municipality 154 applications were registered seeking the shelter. According to the information provided by the local self-government body, in 2012 not a single family was satisfied with the requested shelter due to the lack of the housing funds and financial resources.

Compared to the other regions the best condition is in Batumi. In particular, according to the official data, in 2012 866 applications were registered requesting the shelter. Based on the above-mentioned, the unified database of vulnerable households was created. We were also informed that it is planned to provide 140 families with shelter after the implementation of the project "Construction of the Social House."

The 2012 statistics demonstrate that the situation related to the right to adequate housing is not satisfactory. In this respect the resources of the local budgets are not enough and in some regions are no financial resources at all. For years the situation concerning the housing funds remains identical in every region. Namely, free housing funds do not exist and not measures are taken by the local government in order to locate free housing spaces.

It is noteworthy that the Government has a special responsibility towards the vulnerable groups since they are not able to ensure independently the social conditions for a decent life. In process of the effective realization of the right to adequate housing the involvement of the relevant bodies on legislative, administrative and financial level is necessary. The Government is obliged to ensure the maximum realization of this right even in case of apparent lack of resources. The lack of resources does not release the Government from the obligation to elaborate strategies and programmes for the implementation of the right. The local self-government bodies should take appropriate steps for attracting the financial resources in the budget and creating the housing funds. The Government should develop a common policy in regards with the above issue and ensure, through the establishment of the real standards, the complete access to the right to adequate housing for all layers of the society and the development of the housing strategy.

Unfortunately, the Government bodies are not sufficiently interested in studying the problems related to the right to adequate housing. The above is proved by the unchanged theme of the problems over the years. I express my hope that the interest of the relevant Government bodies will raise and the positive steps will be taken in connection to the right to adequate housing.

Recommendations:

- The Georgian Government shall ensure the development of special Governmental programmes and long-term actions plans for the adequate realization of the right to adequate housing;
- The local self-government bodies shall take relevant steps to register the homeless persons and provide the Social Service Agency with the above data according to the "Social Assistance" law;
- The events shall be planned that will give the possibility to calculate the approximate number of persons, who for different reasons live in the street or in temporary shelters;
- The self-government bodies shall take into consideration their responsibilities foreseen by the Georgian Law on "Social Assistance" and allocate relevant financial resources in process of forming the budget in order to create housing funds or/and for other alternative projects that will ensure providing shelter for the homeless;
- The amendments shall be made to the criteria set by the programme "Social Housing in the Supportive Environment" which will give the possibility of registering as beneficiaries to those homeless families that cannot be involved in the poverty reduction programme due to the absence of the place of residence;
- Relevant changes shall be made to the rules governing the social assistance so that the homeless persons have the factual right to enjoy the social aid.

Right to Social Security

For individuals without adequate resources the realization of the right to adequate housing is a precondition of social equality in the State. Social assistance for vulnerable groups should be considered as a right and not as the expression of the State's good will or "charity" since the adequacy of the social security system is of utmost importance for the appropriate protection of the population.[346]

Like in previous years the question of social assistance was still topical in 2012. Since the issues related to the assistance provided for vulnerable persons and specific referral programmes will be discussed in the following chapters, this chapter will concentrate on the main programme that runs in Georgia and its shortcomings, in particular, the social assistance programme for persons below the poverty line.

In 2012, like in previous years, citizens often addressed Public Defender of Georgia regarding the social assistance. Large part of the examined applications concerned the termination of social assistances to the families below the poverty line.

Despite the fact that Public Defender of Georgia discussed in the Parliamentary reports for years those main problematic issues that exist in the social security sphere, part of them still remains ongoing. Namely, the reports paid attention to the evaluation of the economic conditions of those families that temporarily live in the property of others and due to this reason are not involved in the State programme for persons below the poverty line. Herewith, the biggest shortcoming of the social security programme for vulnerable families that is related to enjoying the social benefits for homeless persons was also discussed. Hence, the part of the recommendations that was issued to eradicate the above-mentioned shortcomings has not been implemented so far. Since the above issues require regulation they will be discussed in the report of 2012 as well.

In regards with the right to social security Public Defender of Georgia in the Parliamentary repot of 2011 paid attention to one more important problem that is related to the termination of registration of the family in the database for 3 years due to providing incorrect (false) information by the family representative. The issue of sequestering 100% of the State pensions based on the Revenue Service collection orders was also discussed. The recommendations were issued in order to solve the problems.[347] In this regard it should be noted that during 2012, positive trends were observed with respect to the termination of registration. The Ministry of Finance Revenue Service is issuing collection orders based on the state pension and at this point, unfortunately, positive changes have not taken place, therefore, the above recommendation remains in force.

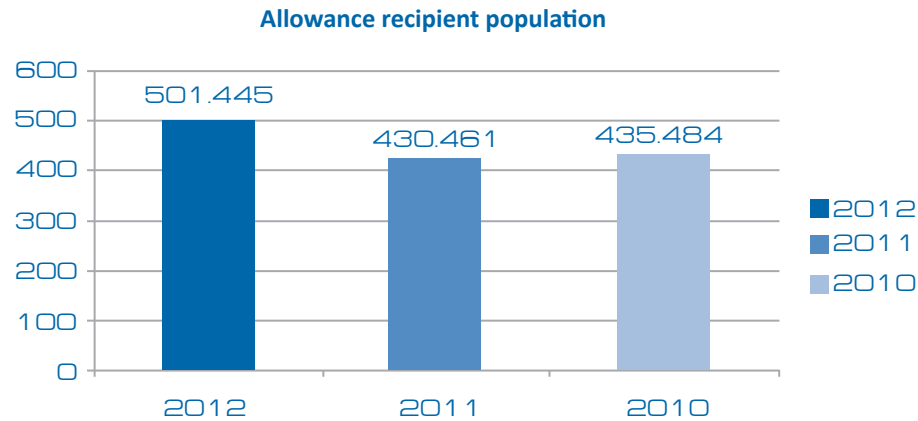
One more issue that has been mentioned even in Public Defender's Parliamentary report of 2008 and is still in need of attention concerns the social security of veterans of war and military forces.

346 Asbjørn Eide, Catarina Krause and Allan Rosas, Economic, Social, and Cultural Rights, "Right to Social Security", pp. -250-263.
347 The Parliamentary Report of Public Defender of Georgia on the "Situation of Human Rights and Freedoms in Georgia, 2011, Chapter: "Right to Social Security", pp. – 151-159.

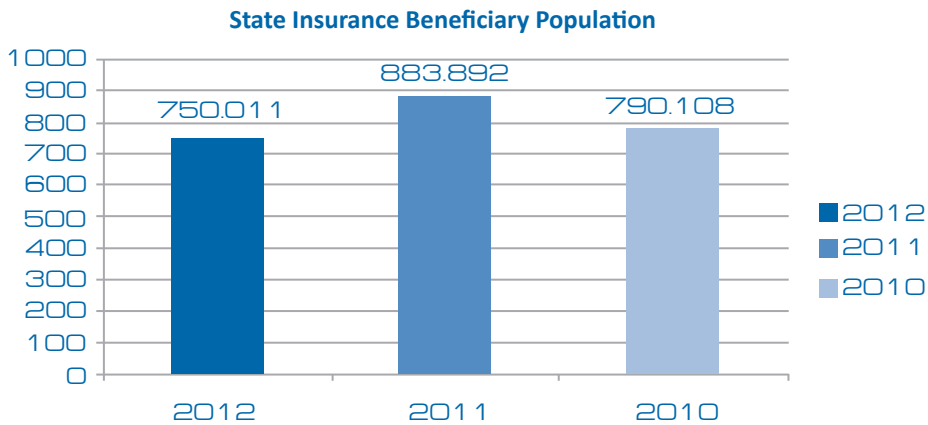
STATISTICAL DATA OF FAMILIES BELOW POVERTY LINE

In the field of social security among the social assistance mechanisms the social security programme for the families below poverty line is still the most large-scale one. This is proved by the number of programme's beneficiaries and its importance during receiving various social benefits. Therefore, Public Defender's Office of Georgia requested statistical data of 2010, 2011 and 2012 regarding the social security programme for vulnerable families from the Ministry of Labour, Health and Social Affairs.

Based on the information obtained from the Ministry and its LEPL – Social Service Agency's web page, in the database of 2012 the number of persons receiving the allowance (rating score less than 57 001) is considerably increased compared to the previous year.



Contrary to the increase of the number of persons receiving financial social assistance, the number of State insurance beneficiary population (rating score less than 70 000) reduced in 2012.



In case we combine and compare the allowance recipient population and the state insurance beneficiary population registered in the unified database during the previous years we will see that total number of persons receiving the social benefits is reduced. In 2010 their number was 1 225 592, in 2011 – 1 314 353, and in 2012 – 1 251 456 persons were receiving the above social assistance.

SUSPENSION OF REGISTRATION IN THE UNIFIED DATABASE

As it was noted above, in 2011 the problematic issue was the termination of registration in the unified database for 3 years due to providing incorrect (false) information by the family representative. In 2011 the quantity of termination

registration was sufficiently big based on which a lot of applications were directed to Public Defender's Office of Georgia. Public Defender's Report of 2011 discussed in details the questions and prerequisites in case of which the reduction of social assistance beneficiary population in the unified database could be considered lawful. The question of 3-year suspension of registration by Public Defender has been studied with regard to persons with disabilities and juveniles. Namely, since the 3 year suspension of social assistance for vulnerable households constitutes the most sever sanction due to its term, while prohibiting the registration in these form, we deemed it necessary to pay attention to the fact how fair it was to use the same limitation as with adults and capable persons, so with disabled persons and juveniles.

Stemming from the importance of the issue the statistical data of the registration suspension in this form was requested from the Ministry of Labour, Health and Social Affairs. According to the provided information, 20 015 families like this are registered in the database from which 2 448 families were removed from the 3 year restriction (282 families in 2011). It is important to note that compared to 2011, in 2012 the suspension of registration has not taken place base on the above reason (19 454 families were suspended registration in 2011).

Statistical information indicates that the situation with respect to the 3-year registration suspension has significantly improved. In addition, the process of registration recovery in the database of those families with which that registration restriction was utilized, has improved. The above was reflected in the number of persons applying to Public Defender of Georgia. In particular, there were almost no applications registered on this matter throughout the year. Overall, the existing situation should be evaluated positively. The above statistics indicate the right implementation of the existing tool in practice. We believe that this trend should continue in future and 3-year registration suspension should be used in only strictly limited conditions, in compliance with the requirements of law and base only on the reliable information resulting from the comprehensive study.

THE QUESTION OF ENJOYMENT OF SOCIAL ASSISTANCES BY HOMELESS FAMILIES AND FAMILIES LIVING IN THE PROPERTY OF OTHERS

One of the most important problems of the programme for the families below the poverty line constitutes the involvement in the unallocated/homeless persons. As it was already mentioned, despite the fact that this problem has been discussed for years the question remains problematic up to date. Namely, according to Article 4 (j) of the Georgian law on "Social Assistance" the social assistance system is financed, organized by the State or/and constitutes the complexity of events held under its supervision and the above is directed towards the improvement of the socio-economic conditions of vulnerable persons, poor families or homeless persons.

Despite this record, one of the categories being in special need – homeless persons, are left outside this law in practice. In particular, involvement of homeless persons in the programme is impossible since based on the law the family that wishes to become the beneficiary of the programme should be registered on the separated residence, hence, homeless persons who have no housing cannot become the part of the State social assistance programme for families below the poverty line.

Unfortunately, the existing legislation does not establish a different regulation for the families of that category. Therefore, those persons, who need the state assistance the most, cannot become the beneficiaries of the social assistance programme for families below the poverty line.

It is noteworthy, that a number of assistances foreseen by the Georgian legislation are related to the rating score given to the family within this system. Accordingly, those persons who are deprived of the opportunity to become the part of the programme not because of the economic condition, but due to the absence of specific schemes and programme, they cannot receive all the assistances that exclusively belong to the above programme. Special attention should be paid to the programme "Social Housing in Supportive Environment" that carried out with the support of the Swiss Agency for Development and Cooperation in different cities of Georgia, including, Tbilisi. The programme aims at accommodating homeless persons registered in Tbilisi. In this particular case problematic are the obligatory criteria of the programme based on which:

- The family should not own a residential property or land either in or outside Georgia;
- The rating score of the family in the poverty reduction programme should not exceed 57 000;
- At least one family member should be registered in Tbilisi.

Accordingly it is clear that the families who are not able to involved in the poverty reduction programme due to the discussed problems automatically cannot satisfy the necessary criteria and hence, there exists a risk that persons who are in special need of adequate housing will be left outside the programme. As it was already noted plenty of recommendations were issued in this regards, however the problem is still unsettled and needs special attention.

Another category that might be left outside the social assistance programme is the families that are living in temporary shelter in the relative's house or with a relative's family. In this case, the problem lies in the fact that under the current regulations the family, in order to register in the unified database of socially vulnerable families, is forced to indicate the address where the family is staying. The social agent goes on spot and alongside the other factors, checks the conditions in which the family lives. In such cases the agent checks the conditions of the so called host family and not the actual condition of the beneficiary family. Persons who are in severe economic conditions have been addressing Public Defender of Georgia for years. Similar cases are frequent in case of "private sector" IDPs.

It is clear that at this stage the involvement of groups of this category in already existing project for persons below the poverty line might be connected to the objective difficulties. Even more noteworthy is the factor that the family's social position estimation system in based on complex arithmetic formula, nevertheless, we believe that the above issue should be discussed by the relevant bodies so that in case of need the similar families can receive the adequate assistance and they are not left without an extremely important and necessary assistance.

To conclude it can be noted that in order to improve the social assistance programme for families below the poverty line it is necessary to take into account the existing problems and take relevant steps to solve them. The State should take care of the gradual and irreversible development of the situation existing in the social security sphere. On the other hand it is important to take into consideration the recommendations of Public Defender of Georgia in the above process.

SOCIAL SECURITY FOR THE VETERANS OF WAR AND GEORGIAN MILITARY FORCES

Another issue to which attention should be paid in the present chapter is the question of social security of the veterans of Georgian military forces, persons with disabilities as well as for persons retired from the various law enforcement bodies. It should be noted that before 2006 the relevant legislation provided certain benefits for persons in this category. In 2006 and subsequent years based on the amendments to the legislation the so called monetization of the benefits took place, however, in fact those benefits have been abolished that caused the deterioration of the already difficult social conditions.

Public Defender of Georgia has repeatedly studied the above issue and in the report of the first half of 2008 requested to analyze the problem and solve it in the best interest of the citizens.[348] Unfortunately, the problem remains to be problematic and needs attention.

In particular, it should be taken into account that the Georgian law on "Veterans of War and Armed Forces" provided different benefits[349] that constituted the part of the social security guarantees for persons in this category. These types of benefits have been constantly decreasing since 1996.

348 http://www.ombudsman.ge/files/downloads/ge/lnsbvpvbxtsfiiwbftam.pdf (p. 199, Social-Economic Rights);

349 Pension, allowances, free use of public transport, water, waste disposal and other household goods - Free access to utility services, use of the social security establishments, aid supplies and labor, education, training, and more.

On 29 December 2006 the Parliament of Georgia adopted the law on "Social Assistance" that entered into force from 1 January 2007. According to Article 2 of the above law it covers persons permanently living in Georgia on legal grounds, individuals being in need of special care, poor families and homeless persons, unless otherwise prescribed by the present law. It is noteworthy, that the veterans are not covered by the Georgian law on "Social Assistance" and hence, they can not apply for social assistance provided by this law. The only case when the "Social Assistance" law applies to the veterans is when a person is in need of special care, lives in a poor family or is homeless.

Based on Article 26 of Georgian law on "Social Assistance" the household-communal service benefits foreseen by Articles 14, 15, 16 and 17 of the Georgian law on "Veterans of War and Military Forces" have been rendered invalid. Namely: water, waste disposal, gas, electricity, telephone service exemption from taxation, as well as the use of public transport in the city (except taxi), rural - suburban and intercity transportation access.

Instead of the benefits provided by the Georgian law on "Social Assistance" the notion of household subsidies was introduced. According Article 8 (1) of the above law the household subsidy is a financial social assistance that is foreseen for the persons belonging to a special category based on Georgian legislation in order to compensate the household-communal service and other costs. The amount of the household subsidy, the circle of beneficiaries, the terms and conditions of its appointment, suspension and renewal as well as other relations related to its issuance are regulated by Government's Decree №4 of 11 January 2007 on "Monetization of Social Allowances." According to Article 4 of the above decree the following persons are eligible to receive the household subsidy with the following amount:

- Persons disabled in World War II, in the hostilities on the territories of other States and for the territorial integrity of Georgia, in the hostilities for freedom and independence – 44 GEL per month;
- Participants of the World War II – 44 GEL per month;
- Children of persons who died in the hostilities for the territorial integrity and independence of Georgia under the age of 18, children having the status of disable since childhood, despite the age, also a spouse who has not remarried and disabled parents (to each family) - 44 GEL per month;
- Persons who are equaled with the participants of the second world war – 22 GEL per month;
- Participants of the hostilities on the territories of other States and for territorial integrity of Georgia, and of the hostilities for freedom and independence – 22 GEL per month;
- Children under the age of 18, children having a disabled status from childhood, despite the age, a spouse who has not remarried and disabled parents of the persons deceased during the World War II, in the hostilities that took place on the territories of the other states or in the subsequent period (lost without trace, deceased), also after the hostilities for the territorial integrity and independence (lost without trace, deceased) – 22 GEL per month;
- Persons disabled in the process of liquidation of the consequences of emergency situations of Chernobyl's nuclear facilities – 7 GEL per month;
- Participants of the process of liquidation of the consequences of emergency situations of Chernobyl's nuclear facilities – 7 GEL per month.

Noteworthy is the circumstance that this monetized amount was supposed to be distributed by the beneficiary of the household subsidy between the electricity, gas, utilities and transport service, i.e. among all those benefits that were planned and financed by the previous law separately. It was obvious that 44 GEL per month could not be adequate to the abolished benefits while the State, according to the applicable law at that time, was spending 60 GEL on one veteran for this service.

In 2008 Public Defender's Office of Georgia has addressed an independent expert – David Narmania (Candidate of Economic Sciences, Professor of Tbilisi State University) on this matter whose report[350] states that the adoption of the

350 The Parliamentary Report of Public Defender of Georgia on the "Situation of Human Rights and Freedoms in Georgia, First half of 2008.

Georgian law on "Social Assistance" and therefore, Government's Decree №4 of 11 January 2007 on "Monetization of Social Allowances" clearly worsened the social conditions of the veterans.

Two invited experts explained the deterioration of veterans' social conditions by two following factors:

1. The previous legislation in the sphere of grace, except electricity, was covering other communal services as well;[351] however, due to the amendments the veterans receive only the monetized amount for the electricity subsidy;

2. Each and every veteran was receiving more allowances in the framework of the pre-existing legislation that after the amendments.

Also important is the fact that Article 2 (4) of the Georgian law on "Veterans of War and Military Forces" of 17 October 1995 which states that it is forbidden to annul or worsen the pre-existing benefits, privileges, rights and allowances if other equal Acts are not adopted, was later cancelled by the Georgian law №2458 of 23 December 2005 on "Changes and Amendments to the Georgian Law on Veterans of War and Military Forces." This fact allows us to conclude that the legislative changes were aiming at abolishing those Articles and paragraphs that enshrined benefits on the household-communal services for the war veterans.

Therefore, in the discussed circumstances benefits for the veterans of war were abolished and their social conditions have deteriorated therefore it contradicts the content and objectives of international obligations.

Apart from the above-mentioned, noteworthy is the resolution №61 of the Government of Georgia dated 13 March 2008 (on changes in №4 Resolution of the Georgian Government of 11 January 2007 on "Monetization of Social Allowances") according to which to the Resolution #4 of the Government of Georgian dated 11 January 2007 on the "Monetization of Social Allowances" was added Article 41 with the following wording: "If the persons foreseen by Article 4 of these rules and principles has more than one status and according to the current legislation he/she has the right to benefit from the household subsidy based on more than one basis, a person can receive the household subsidy based only on one ground, by his/her own choice."

Thus, it was determined that in case of having various simultaneous statuses a person will receive a household subsidy only on one basis, by his/her own choice.

Accordingly, if we look through the legislative changes chronologically, it is crystal clear that Government have not taken effective measures for the gradual, full implementation of veterans' social security rights.. Moreover, social conditions of the veterans has deteriorated by the legislative changes while Georgia has undertaken a positive obligation through International treaties, based on which it should take concrete steps to protect economic and social rights for the effective realization of social security right of persons under its jurisdiction.

It is noteworthy that the legislative changes have also addressed the Georgian law on "Social protection of families of those fallen for territorial integrity, freedom and independence, trace - lost, deceased as a result of wounds." The Law provided different social security guarantees for family members of veterans.

Before introducing the changes in the above-mentioned act, if the benefits were covering the parents, despite their age, spouses who have not remarried, minors and student children and other disabled family members, after the amendments the following benefits only apply to disable spouses, parents and children and to minor children before the age of 18.

It should be noted that any State pays great attention to the creation of solid guarantees for the protection of veterans' right to social security. States take relevant and necessary steps, including legal measures, to realize the social security right of persons belonging to this category. However, it should be taken into account that the means to achieve the goal (protection of the right to social security) should be appropriate and necessary: the means are appropriate if they ensure or support the achievement of the set goal; it is necessary when the legislator could not choose any other equally

351 Water, waste, gas, electricity, telephone service exemption from taxation, as well as in the city – use of the urban transport (except taxi), in rural areas - suburban and intercity transportation access.

effective means that would not limit or would limit less the basic rights. Restriction of the rights of disabled persons and the caused damage should be reasonably proportionate to the public interest. As a result of legislative changes in Georgia abolition of privileges provided by normative acts to the veterans at the time when the funding of certain spheres (e.g. defense) from the state budget was growing, is clearly disproportionate. That is why it is necessary that the "life costs"[352] change the "deadly costs" in Georgia which will solve plenty of problems on international as well as domestic level that seem to be irresolvable due to the lack of resources.

According to the all above-mentioned we believe the State should examine the issue further and solve the problem of social security by taking into account the interests of persons belonging to this category to the maximum possible extent.

Recommendations

To the Ministry of Labour, Health and Social Affairs of Georgia

- **Shall elaborate and submit to the Government of Georgia the draft of changes and amendments to the evaluation methodology of the family's socio-economic condition, that will enable the vulnerable households and those families that live in the houses of the others, receive the assistance in case of need.**
- **To the LEPL of the Ministry of Labour, Health and Social Affairs of Georgia – the Social Service Agency – shall elaborate a special protection standard in certain circumstances for minors and persons with disabilities whose registration is suspended for 3 years in the unified database of families;**

To the Parliament of Georgia

- **It should be ensured that the amendments were introduced in Georgian legislation that excludes the sequestration of 100 % of pension and leaving the citizens without the necessary living means.**
- **In cooperation with the Government of Georgia, shall discuss the implementation of relevant measures for the appropriate realization of the social security right of veterans of war and military forces of Georgia.**

352 The Parliamentary Report of Public Defender of Georgia on the "Situation of Human Rights and Freedoms in Georgia, First half of 2008.

Right to Work in Public Service

Individual's labor right is enshrined in the basic law of Georgia – the Constitution.[353] At the same time, the Constitution of Georgia imposes to the State a positive obligation to protect its citizens regardless of their place of residence[354] and to protect their labor rights.[355]

Special regulatory norms related the labor rights[356] in Georgia are enshrined in various normative acts[357] including those governing labor relations in all the international agreements[358] to which Georgia is a Contracting Party and regulations of which are binding for Georgia.

Despite the fact in Georgia the rights and guarantees[359] for public servants[360] has legislative basis (in this case of a public servant[361]), in some cases bodies exercising public authority[362] are disregarding these regulations[363] and therefore, violating public servants' the labor rights that are guaranteed by the Georgian legislation.

Validity of the above conclusion is proved by the number of statements made by Public Defender of Georgia in the reporting period of 2012. The above statements related to the assessment of lawfulness of the dismissal of former public officials. The assessment demonstrated that the dismissal of the above persons from the positions constituted the violations of the labor rights protected by legislation.

353 Constitution of Georgia, 24 August 1995, Article 30.
354 Constitution of Georgia, 24 August 1995, Article 13.
355 Constitution of Georgia, 24 August 1995, Article 30 (3).
356 "The right to work is often perceived as one concrete right of the recognized human rights, while it is in fact a normative unity (freedom from slavery and similar practice, from forced or compulsory labor, freedom of labor, right to be employed, employment protection right, right to be protected from unemployment and etc) and not only one legal concept "The Right to Work and Rights in Work", [in] A. Eide, C. Krause and A. Rosas (eds), Economic, Social and Cultural Rights. A Textbook, 2nd Edition, The Hague-London-Boston: Kluwer Law International, 2001.
357 Organic Law of Georgia "The Labor Code of Georgia dated 17 December 2010; Georgian Law on "Public Service" dated 31 October 1997; Georgian Law on "General Education" dated 8 April 2005 and etc.
358 Organic Law of Georgia "The Labor Code of Georgia dated 17 December 2010; Georgian Law on "Public Service" dated 31 October 1997; Georgian Law on "General Education" dated 8 April 2005 and etc.
359 Georgian Law on "Public Service", 31 October 1997;
360 Georgian Law on "Public Service", 31 October 1997, Article 4 (1): "public servant is a citizen of Georgia, who by the regulations determined by the given law and pursuant to the held position carries out remunerated work in the state or local self-government agency."
361 Georgian Law on "Public Service", 31 October 1997, Article 6 (1): "public servant is a person, who is appointed or is elected to hold an allocated (allocated by the human resources) position in the government agency."
362 Georgian Law on "Public Service", 31 October 1997, Article 1 (1): "public service is activity carried out in the state and local self-government (budgetary) agencies –bodies of public authority.
363 "The public servant may be discharged from his position legally if there exists at least one criteria set by Chapter X of the law on "Public Service" by a person or a body authorized to exercise public authority. Bodies exercising public authority - the state and local fiscal (budgetary) organizations, where the activity is considered to be a public service, are considered to be administrative bodies' and are bound by the regulations of administrative law. Consequently, the Government body or a person authorized of public service makes a decision on releasing a public servant from the position in the form of an individual administrative legal act issued according to administrative legislation. See. Public Defender's Annual Report of 2011 on the "Situation of Human Rights and Freedoms in Georgia", Chapter - "The right to work in public service," 207-209.

The analysis of cases studied by Public Defender of Georgia in the reporting period of 2012 reveals that with respect to public servants mainly one component of the labor right – the right to employment protection is being violated.[364]

Therefore, I believe that the present chapter should focus on cases that clearly demonstrate the tendencies of violating the right of employment of public servants by the bodies or persons exercising the public authority.

As a result of studying the cases of dismissals of public servants of public bodies Public Defender's Office of Georgia in the reporting period of 2012 it was obvious that in the process of dismissing concrete public servants from their positions the persons exercising the public authority[365] were making decisions without legal substantiations of evaluations of the factual circumstances.[366]

Bodies/individuals exercising public authority were dismissing public servants (unlawfully, without reasoning) from their positions based on the following grounds:

- **Releasing public servants from their positions based on reduction of employees due to reorganization**

In recent years the practice of dismissing public servants without reasoning, based on reduction of employees due to reorganization, revealed that it clearly caused violation of the right of employment of public servants.

Unfortunately, the facts of dismissing public servants based on the above ground were observed in the reporting period of 2012. It is noteworthy that while releasing public servants the public bodies disregard the obligation imposed on them by the Georgian legislation – to evaluate objectively the compliance with the positions of public servants with their professional skills, qualifications, abilities and personal qualities, and only then make a reasoned decision about releasing them from their positions.

In this regard the Supreme Court of Georgia has made an important interpretation according to which the Georgian law on "Public Service", in case of decreasing the staff, grants the administration the discretion to make an adequate, objective evaluation of the employees' professional skills, qualification, work discipline and make a relevant reasoned decision since it is important not only for a concrete public servant but also for the whole public service.[367]

We should also mention the negative practice that is established in public service. Namely, there are many instances when before the reorganization the authorized persons of public institutions request public servants to resign from their positions by their own initiatives that in most cases become the formal basis of their release. According to the position of Public Defender of Georgia similar actions of public authorities, bodies or persons authorized by law clearly violate public servants' right to employment guaranteed by the Georgian legislation and international instruments. Thus, Public Defender of Georgia calls upon the bodies/persons exercising public authority to act in accordance with the principle of legality and ensure sufficient realization of public servants' labor right.

- **Release of the public servant due to incompatibility with the position based on the results of certification**

From the complaints examined by Public Defender of Georgia in the reporting period of 2012 it is revealed that during the certification period in most of the cases not a single entry is made related to the main content of the public servants' statements in the records of the certification commissions meetings. This very fact makes it impossible to ascertain the

364 "The essence of the right of employment protection - not to be arbitrarily or unfairly dismissed,, labor relations and other aspects of determining the stability and security". In this regard, see. Krzhizhshtop Drzhevitski "labor rights and labor rights," the right to employment, The Right to Work and Rights in Work", [in] A. Eide, C. Krause and A. Rosas (eds), Economic, Social and Cultural Rights. A Textbook, 2nd Edition, The Hague-London-Boston: Kluwer Law International, 2001.

365 General Administrative Code of Georgia, 25 June 1999; Article 2 (a): "An Administrative Body includes all agencies or institutions of the State and Local Government, Legal Entities of Public Law (except political and religious units), also any other person who exercises public authority base on Georgian Legislation."

366 The Supreme Court of Georgia in its Decision made on the case #BS-1148-1095 (k-09) dated 26 January 2010 interpreted that the obligation to substantiate the lawfulness of an individual administrative legal act is conditioned by the circumstance that an administrative body should be bound by law and be under self-control, since the decision-making should be based on the evaluation of concrete facts and circumstances which will guide the administrative body to the decision."

367 Decision of the Supreme Court of Georgia, Case #BS-1148-1095 (k-09), 26 January 2010.

details of the oral interview with the persons subjected to certification. In particular, how the commission assessed each employee and therefore, those circumstances that later became the ground for the dismissal. According to the position of Public Defender of Georgia, although the assessment of the public servant based on the certification constitutes discretion of the commission, this authority does not relieve the certification commission from the obligation of assessing the public servants objectively, based on pre-determined criteria. It is noteworthy that in certain cases it is absolutely impossible to determine the criteria according to which the public servants were assessed since these criteria are not reflected in the meeting records. Hence, we believe that in these cases administrative legal acts (dismissal orders) issued to release the public servants are in violation of formal lawfulness requirements.[368]

According to the above-mentioned it can be concluded that in certain cases, the relevant bodies/respective officials exercising public authority decide upon releasing public servants from office in violation of law that clearly leads to violating one of the components of the labor rights guaranteed by legislation – the right to be employed.

Recommendations:

To the State and Local Self-Government Bodies or Establishments:

- **While deciding upon the dismissal of a certain public servant the essential circumstances shall be examined in a detailed manner and when reflecting them in the respective documents those legal and factual grounds that constitute the basis of the decision should be pointed out.**

To the Civil Service Bureau:

- **Shall renew the work on the draft code on "Public Service" which will provide a detailed regulation of the mechanisms that will ensure sufficient protection of public servants' rights.**

To the Parliament of Georgia:

- **Shall start implementing relevant procedures to ensure one of the components related to the right to work - protection of the right to be employed with the aim of ratifying the Convention #158 on "Termination of Employment" adopted on 2 June 1982 on the 68th session of International Labour Organization's conference.**

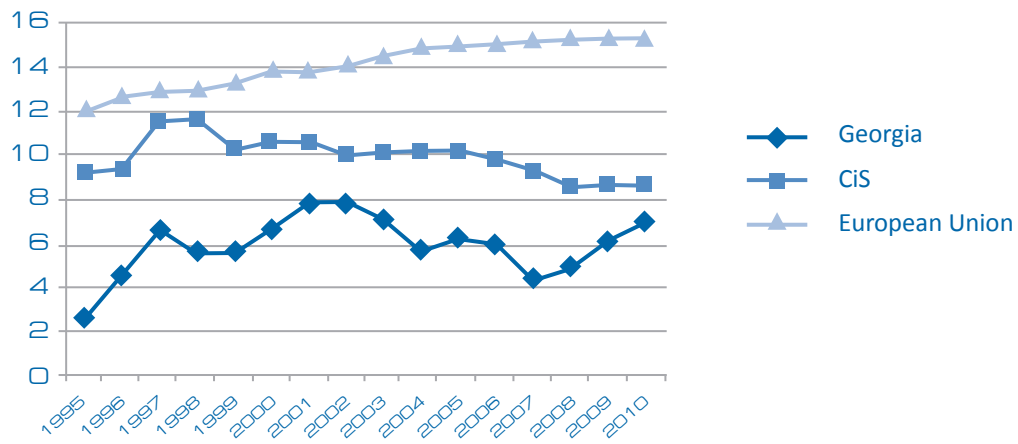
368 According to the interpretation of the Supreme Court of Georgia made in the case #BS-664-642(k-10) dated 3 November 2010 in the process of determining the formal lawfulness of the individual administrative-legal act it is necessary to pay attention to its reasoning, moreover, the stated norm is of imperative nature and considers it inadmissible to issue an act without examining facts and evidences important for the case.

Everyone has the right to health of the highest standard which will secure decent living conditions.[369] The effective healthcare system should ensure the equal possibility of realizing the highest possible standard of health.

Obligations undertaken for securing the right to health are universal. There is a strong correlation between the realization of the right to health and the level of state's economic development which, in most cases, would mean the State's generosity with respect to this right.

One of the key indicators of the prioritization of health for a country is the total expenditure on health. According to the data of the World Health Organization Georgia is on one of the last places among European and CIS countries. However, according to Article 15 of the Georgian law on "State Budget" of 2013 the healthcare budget has significantly increased that will have a positive impact on this concrete indicator.

Graph 1: Share of the budget allocated to healthcare in total Government spending, WHO, HFA Database, Updated in January 2013.



Based on the report on healthcare system effectiveness out of four functions of healthcare system one is an equal distribution of financial burden and protection from financial risks which leads to the better health condition of the population and access to quality medical service. Despite the significant increase in public expenditure on health in

369 The UN General Comment №14 (22th Session, 2000), UN doc. E/C. 12/2000/4.

absolute numbers, its share compared to the GDP (in 2010 - 2.4%) and the State budget (in 2010 - 6.5%) is relatively low and equals the rates of the poorest countries. The burden of health care costs is still on the population and the share of costs from total healthcare expenditure paid out of pocket exceeds 70%. Therefore, it is necessary to increase the State's share of public expenditures on healthcare as with respect to the State budget so with the GDP. The effective expenditure and valid allocation (output and quality-oriented) of the above funds should be guaranteed.[370]

The present chapter like previous Reports analyzes the problems existent in terms of protection of the right to health in the reporting period, also the extent to which the State complies with its obligations with respect to the above right.

According to the recommendations of 2011 of Public Defender of Georgia due to moving the Georgian healthcare system to the private insurance system Public Defender of Georgia considered it appropriate to review the Georgian healthcare legislation in accordance with the current reforms. During 2012 several bylaws were developed in this regard, including Georgian Government's №177 Decree of 14 May 2012 on "Approving the rules of providing medical insurance services within the State insurance programmes" which should regulate the relations among the subjects involved in State insurance programmes funded from the State budget. However, problems still exist in terms of improvement of legal framework and harmonization with international standards.

In the reporting period of 2012 for managing the financial risks related to the deterioration of health the Georgian Government has chosen the purchase of insurance instead of purchasing medical services. Imposing a positive obligation of socio-economic rights on a private sector is not an easy task (e.g. implementation of universal access to health services). Nevertheless, the private sector has to have at least a negative obligation that is imposed on them based on this right. In order to secure effective mechanisms to prevent violations of the right to health by private sector the right to health should be considered in the context of anti-discrimination and equal treatment. At the end of the reporting period of 2012 the Government's approach on the structure of the system has changed again and creation of the non-profit unified State Fund has become the part of the agenda. The Fund will be responsible for managing the public finances and its source of funding is expected to become the central budget transfer. At the same time, the State Fund should become the main gateway for allocation of healthcare resources.

ACCESS TO HEALTHCARE

Health Insurance

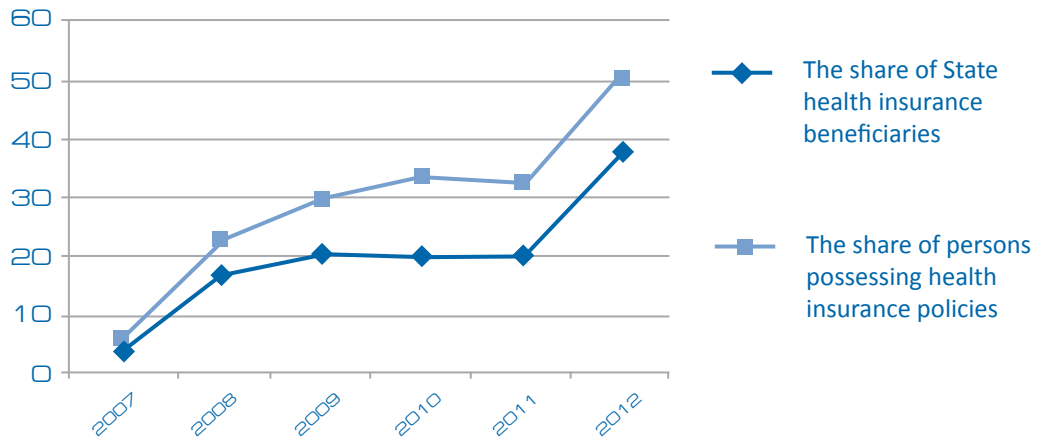
From the point of view of healthcare availability it should be noted that in 2012 the new State insurance programme[371] was launched beneficiaries of which are children of age from 0 to 6, women above 60 years and men above – 65, students, disabled children and persons with clear disabilities. The enactment of the programme has contributed to the growth of the number of population enjoying the insurance as one of the means of availability. In the reporting period of 2012 only 50.8% of the Georgian population was insured with any type of insurance, including 37.9% of the State insurance beneficiaries.[372] (See graph 1)

370 Assessment Report on the Healthcare System Effectiveness, Ministry of Labour, Health and Social Affairs of Georgia, 2013, p. 7.

371 The Georgian Government's Decree №165 of 7 May 2012 on "Determining the measures to be taken in order to provide insurance to the children of age from 0 to 6, women above 60 years and men above – 65 (population of retirement age), students, disabled children and persons with clear disabilities within the health insurance State programmes and on determining the conditions of insurance vouchers."

372 Assessment Report on the Healthcare System Effectiveness, Ministry of Labour, Health and Social Affairs of Georgia, 2013, p. 59.

Graph 2: Percentage of population with health insurance coverage in Georgia, Assessment Report on the Healthcare System Effectiveness.



While working on the present report the Georgian Government's Decree №36 of 21 February 2013 on "Certain measures to move to the universal healthcare" entered into force. Base on this Decree "the Unified State Healthcare Programme for 2013" was approved. According to the programme from February 28, 2013 Georgian population not having a health insurance will receive the availability of the main emergency medical services, the utilization of the primary healthcare circle will be strengthened, which will improve the health status of the population and reduce health-related financial risks. Hence, the entire Georgian population will have basic health insurance, and what is very important, the access to the emergency services with the annual limit of 15 000 GEL.

It was also noted in the previous report of Public Defender of Georgia that the medical insurance programme for population below the poverty line in terms of covering the medicine costs has slightly improved. We believe that the existing assistance, taking into account the rise of medicines' prices is lower than the minimum standard. Although the poor people were given the possibility to address the first-aid and have access to the general healthcare establishments, they won't have a positive health outcome due to the lack of access to medicines. Costs for treatment means that are steadily increasing for the past ten years and constitute almost half of the total expenditure incurred by the population for healthcare is a heavy burden for them. The high cost of medicines is a result of irrational pharmacotherapy, less use of generics/prescription, recipe mechanisms shortcomings/lack of use, self-treatment by patients, lack of financial limit of medication in State healthcare programmes, aggressive marketing of pharmaceutical industry.[373]

We believe that the Ministry of Labour, Health and Social Affairs of Georgia should expand its list of approved medicines. Government Decree № 218 of 9 December 2009 offers the State insurance beneficiaries 50% co-financing on those medicines total cost of which is 50 GEL that are in the approved list of the Ministry of Labour, Health and Social Affairs of Georgia which means 25 GEL discount.[374] The annual insurance limit for the same category population of retirement age constitutes 200 GEL including a 50% co-financing which means a 100 GEL discount.

The problem of financial accessibility is directly reflected in the applications of the citizens addressed to Public Defender of Georgia. The overall analysis of the applications revealed that the citizens that cannot get in any of the insurance schemes, in case of healthcare service need, fall in a heavy condition. However, in 2013, a new insurance program will significantly change the reality.

Public Defender's Office of Georgia has reviewed the N.Ch. -'s case. The citizen is unemployed, disabled of the second group, left without a bread-winner. He/she was subjected to the surgical treatment in one of the clinics. Since he/she does not have insurance, their only source of income is pension and health care costs are significantly higher than their

373 Assessment Report on the Healthcare System Effectiveness, Ministry of Labour, Health and Social Affairs of Georgia, 2013, p. 62.

374 Health Insurance in Georgia, Transparency International – Georgia, 2012, p. 10.

financial capabilities, surgery expenses were covered with the loan from the relatives. The citizen has applied to the Ministry of Labour, Health and Social Affairs of Georgia in order to receive financial aid. Although N.Ch. belongs to the vulnerable category, he/she was not granted the funding. This case is an example of the lack of access to healthcare during the reporting period of 2012, and highlights the existence of this problem even in case of disabled persons due to differentiation based on categories. Despite the fact that according to the universal State healthcare program of 2013 persons belonging to this category will be insured by the Government, planned inpatient services won't be covered for disabled persons belonging to this category.

The case of a citizen Ph. G. whose daughter – Sh. G. is a single mother and does not possess her own housing, addresses the same problem. Namely, due to a car accident the patient was placed in the intensive care unit of a hospital after which she continued a treatment in the neurosurgical unit of the clinic. She was in need of a surgical treatment and expensive medicines which was considerably higher than her financial capabilities. Within the "State Referral Program" – "medical assistance component for the population affected by natural disasters, catastrophes, emergencies, citizens affected in the conflict regions and other specific cases determined by the Ministry of Labour, Health and Social Affairs of Georgia" certain amount of money was allocated for the citizen at the request of Public Defender of Georgia.

In certain cases the outcome is fatal in the part of the population for whom the healthcare is not accessible, due to the long-term procedure for responding to the appeal by the Ministry Labour, Health and Social Affairs of Georgia and/or before receiving the financial aid.

In the reporting period of 2012 Public Defender's Office of Georgia reviewed the cases of the citizens M.G. and M.A. that were related to funding of their children's treatment. In both cases the patients deceased before any kind of response from the Ministry.

One of the problems identified in the reporting period is the lack of information. Namely, the cases studied in 2012 often concerned the question of public awareness on State funded health insurance. Certain part of the population is not informed at all about their involvement in the State insurance programme or the services provided by the above programme.

In 2012 Public Defender of Georgia examined the case of a citizen E.L. who was requesting the funding of the treatment from the local self-government. As a result of studying the case it was revealed that he/she is socially vulnerable and has a health insurance policy. Hence, E.L. was consulted on the use of the insurance policy.

The research also confirms the lack of information in this regard. In particular, the social survey has demonstrated that 50% of respondents that were state insurance program beneficiaries were aware of their rights as well as the types of services they could receive by the policy and 40% - were not.[375]

At the same time, the medical information submitted by the Medical Mediation Service reveals that 80% of the applications submitted to the institution are of informative nature. These results confirm the fact that many measures should be taken for awareness raising for the population, as well as for the state insurance program beneficiaries.

The research "Health Insurance in Georgia" carried out in 2012 by the "Transparency International – Georgia" addresses the same problem.

I believe that the Government Decrees №218 and №165 of 9 December 2009 and of 12 May 2012 respectively and the insurance contracts/policies should address in detail the rights of the State insurance beneficiaries that will give them the possibility to enjoy their own insurance opportunities to the fullest extent. For example, it is not written in the State insurance contracts that the beneficiaries can request to receive the medical service of their own choice; however, the beneficiaries can ask their insurers to provide them with the referral to the non-provider medical establishment if the provider establishment does not have enough experience of treatment the disease.[376]

375 Health Insurance in Georgia, Transparency International – Georgia, 2012, p.13.
376 Health Insurance in Georgia, Transparency International – Georgia, 2012, p.10.

STATE HEALTHCARE PROGRAMMES

State healthcare programmes encompass up to 30 programmes besides the state-subsidized insurance, and provide for the (co)financing of equal, but specific health service packages for the entire population of Georgia. Their majority is provided for certain target groups and, with a few exceptions, is not intended for the entire population. Only several programmes are foreseen for everyone. The programmes are planned and implemented by the Ministry of Labour, Health, and Social Affairs of Georgia. Certain cases reveal the necessity of expanding the State programmes to cover the entire population.

From the cases studied in the reporting period noteworthy is the case of G.M. that addressed his/her involvement in the "Tuberculosis (TB) Management" programme. G.M. did not possess the nationality of any country or the status of a person permanently residing in Georgia. Due to the fact that program's beneficiaries may only be Georgian citizens and stateless persons permanently residing in Georgia, services provided by the programme were not available for him.

Since G.M. was at the same time socially vulnerable and his financial capabilities could not ensure inpatient and medical treatment of tuberculosis, Public Defender of Georgia addressed the Ministry of Labour, Health and Social Affairs of Georgia requesting his involvement in the programme. At the same time, an identical request was sent to the "National Center for Tuberculosis and Lung Diseases."

On 16 July 2012 based on Public Defender's reasonable request to the Ministry of Labour, Health and Social Affairs of Georgia and as a result of active cooperation with the Civil Registry Agency of Georgia G.M. was placed "at the National Center for Tuberculosis and Lung Diseases," and was involved in the State programme for "TB Control".

The same problem existed in the case of a citizen M.K. whose father, Sh.V. was a citizen of the Russian Federation. In October 2012 Sh. V.'s requests for citizenship was rejected. He also did not possess a status of a person permanently residing in Georgia. The patient was suffering from oncologic disease (4th stage of the disease) and needed to be treated with narcotic analgetics. The patient Sh.V. not only was not involved in the "Palliative Treatment for Incurable Patients" programme but because of the existing legislation he could not even buy the needed medicines.

These cases are indicative of a systemic problem. Taking into account the specificity of threat of nosology and due to the risk of infection to third parties "TB management" State programme should be available to everyone regardless of their citizenship. TB is important in terms of public health which encompasses the compliance of the State with certain obligations for the protection of the population from contagious and non-contagious diseases. Also the "Palliative Treatment for Incurable Patients" programme should not be limited based on citizenship and residence statuses. Most of the oncologic diseases are connected to intense pain and leaving the patients with the above diseases without the drug treatment could be assessed as inhuman treatment.

In the programmes implemented during the reporting period children's health care programs are presented both separately and in combination. Children under the age of 6 are covered by the general outpatient healthcare programmes. The above State programmes include diseases not-so-common for children;[377] therefore, the coverage is not high. In terms of coverage noteworthy is the emergency and inpatient assistance for children under the age of 5.

Particularly heavy financial burden is imposed on parents when a child cannot be involved any of the programmes and the planned surgical treatment is required. According to the applications reviewed in Public Defender's Office of Georgia the issue of access to healthcare for children is particularly acute. The 2013 Universal Healthcare State programme has covered the urgent assistance for children under age 18; however, a planned surgery is not foreseen by this programme.

According to the Convention on the Rights of the Child, a child is defined as "every human being below the age of eighteen years unless under the law applicable to the child, it is attained afterwards."[378] Accordingly, every right, which is guaranteed by international and domestic law, should equally cover every child. All State benefits for the population under 18 years should also be equal. Children's differentiation in this regard puts essentially equal individuals in unequal

377 http://www.ncdc.ge/pages/p_520_ge.htm
378 Convention on the Rights of the Child, Article 1.

situation. All children under 18 should enjoy equal rights, including the right to healthcare and all benefits provided by the State implied under this right.

THE QUALITY OF HEALTHCARE SERVICES

Recommendations on the need to use, in the process of medical services, protocols and guidelines approved by the Ministry of Labour, Health, and Social Affairs of Georgia, as some of the principal components of quality control were developed in the Parliamentary report of 2011. At present, only 124 protocols and guidelines are available on the web page of the Ministry of Labour, Health, and Social Affairs of Georgia, which is quantitatively a very small number in contrast with international standards.

The process of developing guidelines and protocols is going fragmentally and, more importantly, there exists no system of their promotion and constant renewal. Ultimately, the current practice is variable and even a minimum level of quality is not provided.[379]

In the reporting period, in terms of quality control of medical services the Office of Public Defender of Georgia maintained active communication with the LEPL - State Regulation Agency for Medical Activities. Citizens' applications submitted to Public Defender in connection with the low quality of medical service were reviewed by the Regulation Agency and, by decision of the Professional Development Council several doctors were subject to sanctions applicable under current legislation. Frequently, the case concerned improper management of medical services and professional indifference. There are many applications in which the main demand concerns the duration of case study and decision-making by the State Regulatory Agency.

During the reporting period, Public Defender's Office has reviewed the case of a citizen L.P. which revealed that in a mental hospital there are two different outpatient cards open for one person. In one card L.P.'s date of birth was hand-corrected, while in the other document, which is issued by the main doctor of Psycho-Neurological Dispensary and is directed to the head of the Administrative Police of the Internal Affairs Division L.P.'s date of birth is different.

In the case there is another outpatient medical card which is open for the same person in 2008, and it also has an inaccuracy, in particular, the patient's place of residence is indicated by mistake. It is also noted that the patient is accompanied by their child to the visits. The applicant denies this fact and states that he/she does not have children and has never been married.

Two certificates issued in 1992 and 1997 by the head of the consultation-diagnostic policlinic department of M. Asatiani Psychiatry Institute are attached to the case. In a card issued in 1992 it is stated that from a mental point of view L.P. has no signs of deviation from the norms and in a card of 1997 it is noted that the patient has no pathological changes in regards with his psychics.

Citizen L.P. notes in his/her application that putting him/her on record in the Psycho-Neurological Dispensary tool place against his/her will and in violation of law.

The case was studied by the LEPL - Agency for State Regulation of Medical Activities, which has also found violations, nevertheless, the issue has not been discussed in the Professional Development Council yet.

The case of V.M. addresses the inadequate duration of studying the issues raised before the Professional Development Council. Violations were also found while studying the medical service case of V.M.'s child. The Professional Development Council discussed V.M.'s case on 25 May 2012, but no final decision has been made until now.

In addition, during 2012 LEPL - Agency for State Regulation of Medical Activities has examined 191 establishments. In 2012 on the sessions of Professional Development Council the question of professional liability of 228 doctors

379 Assessment Report on the Healthcare System Effectiveness, Ministry of Labour, Health and Social Affairs of Georgia, 2013, p. 69.

was examined. 193 doctors were given "written warnings", state certificate was suspended to 35 doctors for different durations, among them: for 1 month to 12 doctors, for 2 months to 7 doctors, for 3 months to 4 doctors and for 6 months to 12 doctors. The Council has considered separately the issues of medical-social expertise studied in 2010-2011. The Council raised the issue of professional liability of 130 doctors. According to the Council's decision the term of validity of state certificate was suspended to 37 doctors for different durations. 93 doctors were given written warnings.[380]

The policy of the pharmaceutical sector and oligopolic situation of the pharmaceutical market adversely affects the quality of medical services for the population. Several companies (mainly Aversi and PSP) occupy an important part of the pharmaceutical market. Pharmaceutical companies possess insurance companies, as well as the clinics. This fact, on the one hand, puts all units of medical service in one profit-driven hand. On the other hand, it allows the monopolistic situation of the pharmaceutical companies to make secret deals and to significantly increase drug prices, which ultimately causes damages to the patients and customers (especially vulnerable population) and seriously reduces access to medicines. It should be noted that the State has abolished the anti-monopoly service, which is considered to be unacceptable in terms of liberal economic reform. But the fact is that the market is not able to resolve all the issues, and in many cases the State intervention is necessary. This is especially important in the sphere of healthcare, where there is a clear asymmetry between a service provider and a recipient (the patient), and where the mistake negatively affects the patient's life and health. According to the study,[381] "Vertical integration is most clearly seen in pharmaceutical companies that have a strong position in every sector of healthcare which creates a conflict of interest in terms of drugs subscription." The fact that the major supplier of medicines prescribed at the hospital is the hospital owner puts the quality of medical service under a risk.

SEVERAL INDICATORS OF HEALTH PROTECTION

Healthcare indicators allow us to assess whether the healthcare rights are protected. The use of indicators, in the legal sense, is a methodology for assessing the progressive realization of the right. Indicators may be structural, of the process and of the outcome. The outcome indicators are particularly interesting, since it measures the programmes, activities and interventions to influence health status and other related issues. Sometimes there is a correlation between structural indicators (is there a strategic plan to reduce maternal mortality), process indicators (share of births taking place under supervision of qualified medical personnel), and outcome indicators (maternal mortality), however, the result indicator reflects many relating factors and it is difficult to establish a strong causal connection between them.

Infant and child mortality is considered one of the universally recognized indicators for the assessment of the effectiveness of the health system. Infant mortality is affected by the following factors: lifestyle of the population, suitability of food products, a system of support for pregnant women, the level of qualification of obstetriciangynaecologists and resuscitators, perinatal service functionality, and many others. Therefore, this indicator is "collective" and points to the quality of medical service. According to this indicator, Georgia is significantly behind the EU-member states. In keeping with the most recent data provided by the World Health Organization (WHO), the indicator of infant mortality in Georgia equals 11.2 (per 1,000 live births), and the mortality of children under 5 years of age is 12.98 (per 1,000 live births)[382]; however, according to data provided by the National Statistics Office of Georgia and the National Centre for Disease Control,[383] the mortality rate for children under 5 years of age constitutes 16.4. These indicators are very high in contrast with the indicators exhibited by European countries.

As for the maternal mortality indicator, according to the preliminary data obtained from the National Centre for Disease Control, it constitutes 27.6[384] per 100,000 live births, which is a significantly high figure compared to the indicators of other European countries.

380 Letter #02/7588 of the Ministry of Labour, Health and Social Affairs of Georgia, 4 February 2013.
381 Georgian Hospital Sector, "Transparency International – Georgia", p.22.
382 http://apps.who.int/ghodata/?vid=9100&theme=country
383 http://www.ncdc.ge/uploads/statistics/cnobari/cnobari_2011.pdf
384 http://www.ncdc.ge/uploads/statistics/cnobari/cnobari_2011.pdf

With respect to these indicators, significant progress has been noted since 2000. However, the indicators are still higher than the target indicators set by the Millennium Development Goals for 2015.[385] Rate is still higher than the set target indicators for the Millennium Development Goals by 2015. Accordingly, I believe that the Ministry of Labour, Health and Social Affairs of Georgia should intensify work in this regard.

HIV INFECTION/AIDS

The prevalence rate of HIV infection/AIDS in Georgia is not high, however, the rising tendency of its spread is observed and therefore, this disease requires special control of public healthcare. In this regard noteworthy is the efforts of the Georgian Government and international donors, which is expressed in implementation of the HIV / AIDS programme based on which the primary screening and consultation is free of charge for persons belonging to risk groups and in case of need and positive status the treatment with antiretroviral medicines is for free.

At the same time, according to Article 6 (1) of the Georgian law on "HIV / AIDS" "everyone has the right to take a voluntary counseling and testing for HIV, including anonymously and confidentially. Based on Article 9 of the Decree №01–1/N of the Ministry of Labour, Health and Social Affairs of Georgia dated 7 March 2011 the program provider shall ensure implementation of the accounting documentation in printed and electronic form. The list of the accounting documentation includes information, including user name, personal ID number and date of birth. Accordingly, the citizen, if he/she belongs to the risk – group and has symptoms specific to HIV / AIDS, should submit an identity card for conducting a free test, and if he/she wants to protect anonymity, he/she should pay for that.

This restriction was imposed in order to monitor the expenditure of the State budget to control receipt of State-funded services by the beneficiaries.

According to the UN General Assembly's political declaration on "HIV/AIDS – Intensifying our efforts to eliminate HIV/AIDS" of 2011 the UN member states reaffirm that the full realization of all human rights and fundamental freedoms is a global response in the fight against HIV/AIDS, including in the areas of prevention, treatment and care. It is also recognized that addressing stigma and discrimination is also a critical element in combating the global HIV epidemic and abruptly reduces the infection risk. In fact, stigma and discrimination prevent infected people to undergo a voluntary counseling and testing which is crucial to HIV/AIDS prevention. Anonymity is an effective way to overcome the stigma.

In accordance with Article 6 of Georgian law on "HIV / AIDS" the citizens of Georgia, as well as any person permanently or temporarily residing or staying in Georgia, foreign citizens and stateless persons have the right to undergo voluntary counseling and testing for HIV, including anonymously and confidentially. The law contains reservations and restrictions on various issues, including those on mandatory testing in some cases, on the need for testing the newborns without parental consent in case of reasonable suspicion, on the exceptions related to confidentiality and others. However, the Georgian law on "HIV / AIDS" does not envisage any reservation on anonymity or restriction of anonymity based on the source of funding. The right cannot be subjected to any restriction that is not provided by law, is necessary for national security and public order, public health or morals or for the protection of the rights of others. Restrictions must serve a legitimate purpose and there should be a reasonable proportionality between the imposed restriction and a goal.

State budget monitoring programs can be assessed positively, but I believe that the existing measure is not proportionate and inevitable. Therefore, it is necessary to introduce an alternative monitoring system that does not restrict a person's right to get voluntary counseling and testing anonymously and confidentially.

385 Assessment Report on the Healthcare System Effectiveness, Ministry of Labour, Health and Social Affairs of Georgia, 2013, p. 126.

Recommendations:

- **State-subsidized healthcare programmes shall be improved in terms of medicine coverage;**
- **The Universal Healthcare Protection State Programme of 2013 to certain extent covered medical assistance for children below 18 years, however, it radically differs from medical insurance package for children of age 0-5 (including). The State Insurance Programme shall be reviewed in order to expand the medical service insurance package for persons of 6-18 years;**
- **It should be eliminated unequal treatment during the health insurance of persons in essentially equal positions. Persons with disabilities shall be insured with the same insurance conditions, regardless of the assigned category;**
- **For improving the service quality shall review and amend terms of examining the case by the LEPL - State Regulation Agency for Medical Activities and bringing up the case before the Professional Development Council;**
- **In the part of the population where healthcare is not accessible, in order to avoid an outcome/a negative outcome due to the long procedure of addressing and receiving a response from the Ministry of Labour, Health and Social Affairs of Georgia shall review and make relevant amendments to the Georgian Government's Decree №331 of 3 November 2010 on "Creating a commission for deciding upon the relevant medical assistance within the "referral service" and determining the rules of its activity" with the aim of establishing the deadlines;**
- **Due to the specifics of the treat of nosology and a high risk of infecting third parties the State programme on "TB Management" shall be available to everyone regardless of their citizenship. The question of tuberculosis is pressing in terms of public health while public health foresees compliance with certain obligations for the protection of the population by the State, so that they are protected from the contagious and non-contagious diseases;**
- **Relevant amendment shall be made to the Decree №01–1/N of the Ministry of Labour, Health and Social Affairs of Georgia dated 7 March 2011 in order to make anonymous counseling and testing possible, as provided by law, since, a late solution of HIV/AIDS is not reliable, stigmatization causes the marginalization of the persons and provides a threat to his/her life and health, as well as his/her surroundings.**

Human Rights Conditions of the Internally Displaced Persons

Studying and protecting human rights conditions of the internally displaced persons ('IDPs) is one of the major priorities of Public Defender's Office ('PDO') in Georgia. The number of applications submitted at the PDO by the IDPs has been rather high in 2011 and remains to be so in 2012 as well. Throughout the year the PDO and a project related to it[386] were actively involved in the monitoring process covering entire Georgia. Accordingly, this Report reflects the facts as revealed during the monitoring process, the applications filed at the PDO and the analyses of the general conditions as such. Monitoring and individual applications reveal that despite some progress and steps forward, the conditions of the IDPs remain to be bad. Government of Georgia on a number of occasions declared the readiness to solve the IDP's problem on the long term basis. According to the existing international documents, long-term solutions can be achieved when the IDPs no longer have to apply for special measures and assistance related to the change of place.[387] Unfortunately, Georgia has been unable to solve the IDPs problems on the long term bases. Most of the IDPs are still waiting for the adequate housing. Despite the fact that a number of collective objects have been privatized throughout 2012 and new livelihoods for IDPs have been finalized (cities: Poti, Tskaltubo, Batumi), it is still not feasible to timely provide durable housing for the majority of the IDPs. Despite a number of Public Defender's recommendations IDPs have still not been transferred from the majority of the collapsing objects. This very fact was also mentioned in the Council of Europe Parliamentary Assembly Resolution where it was underlined that the Georgian government should continue resorting to all the efforts in order to provide durable solution for the IDPs housing, which on its own implies „durable housing solutions, in particular covering the needs of persons in private accommodation, rehabilitating or closing some of the collective centers, privatizing new settlements once construction defects have been dealt with and providing monetary compensation in lieu of housing where appropriate."[388] Regrettably, state has not taken any step forward towards providing housing for the IDPs living at the private accommodations.

Other issues which were identified in the 2011 PDO's Report and still remain problematic are the gaps during the privatization process. This is, by itself caused due to the lack of information. A number of IDPs sign privatization document so that they are not informed about rehabilitation standards, housing measurements according to the standards and other possible alternatives. This topic will be addressed thoroughly in the report. However, there are many other issues apart from privatization that are connected to the durable solution of the IDP's issues. More precisely: employment, activities that bring profit, access to health etc.[389] Majority of the IDPs are still unemployed and the major source of their income is the monetary assistance provided for the IDPs. This is particularly noticeable in the households which are far from administrative centers. Until now, no large-scale projects have been implemented that would support IDP employment.

386 Project "PDO support for the IDPs rights" financed by the United Nations High Commissioner on Human Rights Project.
387 IASC Framework on Durable Solutions for Internally Displaced Persons, The Brookings Institution- University of Bern, April 2010, p.5
388 Georgia and Russia: the humanitarian situation in the conflict and war –affected areas, Parliamentary Assembly, Council of Europe, Resolution 1926 (2013), 23 January 2013, para.9.1.
389 Georgia: Partial progress towards durable solutions for IDPs, IDMC/NRC, 21 March 2012, p.1.

Another current issue was the incidents of trespassing to different properties, occupying some parts of them, which were qualified illegal by the Ministry of Georgia of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees.

PDO, with the partner organizations, monitored all the objects and the outcome is presented in the report. It needs to be stressed that certain novelties are noticeable in the context of the State Politics with regard to the IDPs. The Ministry established two new Commissions which aim to revise Georgian legislation addressing IDPs and to plan activities regarding the IDPs living at the private accommodations.

Public Defender of Georgia welcomes the commencement of such type of work, moreover in 2010-2011 the PDO's Reports have been repeatedly calling upon the Ministry of Georgia of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees to carry out these activities.

The report will also present the conditions of the people living at the so called border villages. PDO related project monitored the following border villages form the Gori municipality: Ditsi, Ergneti, Mereti, Koshka, Gugutiantkari, Karbi and Tortiza. It needs to be stressed that the conditions in these villages have not been improved and there still exist a number of issues that need to be solved.

Conditions of the "IDP status seekers" have not been drastically changed throughout 2012. In this context we are referring to the IDPs from the border villages of the conflict region (Zardiantkari, Disevi, Akhali Khurvaleti, and Zemo Nikozi) who still continue to live in the Gori kindergarten buildings. Despite the fact that Georgia managed to retain its control over the village Zardiantkari from the Gori Municipality which was prior considered to be a buffer zone, only a small amount of the IDPs managed to return to their homes (only 7 families out of 38). The rationale behind this is the unbearable living conditions and the security concerns. The infrastructure within the village was completely destroyed throughout the August 2008 war, water is not supplied to the villages, the returnees found their household totally destroyed and their reconstruction has not occurred yet. As the IDPs note, there are also no security guarantees, which is why they manage to visit the villages only during the daytime and return back to the kindergartens at night.

NEW POLICY DIRECTIONS TOWARDS THE IDPs

By the end of 2012 Ministry of Georgia of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees initiated several activities where the PDO's representatives got actively involved.

Firstly, it needs to be stressed that the working group was created addressing the "Other issues regarding the Competence of the Ministry with regard to the IDPs" in order to revise the existing legislation. Major aim of the working group/ Commission is the systematic revision and the analyses of the IDP related legislation, also harmonization of the existing legislation with international standards. Apart from the representatives of the Ministry, the Commission is composed of the representatives of the international and non-international organizations, PDO was also asked to participate in the process.

One needs to positively assess the work that has been started at the Law of the IDPs. The gaps in the current law were thoroughly addressed by the PDO Parliamentary report in 2011. As known, several amendments to the "Law of Georgia on the Forcefully Displaced People from the Occupied Territories of Georgia _IDPs" have been negatively assessed by Public Defender. Special emphases were drawn to the definition of the IDP. Present definition of the IDP is in contradiction with the international standards. Accordingly, the idea of drafting a new law is to be welcomed, specifically due to the fact that the new law fails to meet the current reality.

Also, Minister of Georgia of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees issued a Decree establishing a temporary Commission on studying the issues of the IDPs living in the private accommodations. The Commission is composed by the staff members of the Ministry, donor international and non-governmental organizations working on the IDP issues and Public Defender's representative. The aims of the Commission are as follows: studying the issues of the IDPs, registered at the private accommodations and preparing

proper recommendations, also elaborating fair and transparent recommendations on the long term housing in order to efficiently implement the measures needed. At this stage it is identified exactly what type of recommendation the commission will prepare, however the fact that there are certain steps towards the private sector IDPs' needs, it has to be assessed positively. Public Defender issued recommendations on a number of occasions regarding the need for starting the action plan's activities on IDPs living in the private accommodations.[390]

HOUSING PROCEEDING IN THE CITIES OF POTI, TSKHALTUBO AND BATUMI

PDO Parliamentary Report of 2011 addressed constructing block type accommodations for the IDPs in the following cities: Poti,[391] (The IDP housing in Poti started in July-August 2011 and was finalized in November), Tskhaltubo[392] (Housing process started in December 2011 and was finalized in the beginning of January 2012), Batumi (housing process started on January 13, 2012 and was finalized on February 3, 2012). As we have been informed, construction activities are planned to commence duly and be finalized by summer 2013.

As declared, State Policy priorities still include providing accommodation and promotion of social-economic integration for the IDPs before their return. This, on its own implies providing IDPs with long-term accommodation. All the three block type accommodations were built based on the agreement between Georgia and European Union.

PDO monitored the accommodation process of the IDPs stationed in all three neighborhoods. Since the process in Batumi and Tskhaltubo occurred by the beginning of 2012, its outcome was not reflected in the PDO Parliamentary Report of 2011, accordingly the outcome of the monitoring mission will be thoroughly addressed in this report.

THE HOUSING PROCESS IN POTI

New 32 blocks of 1168 flats were built for the IDPs in the "New District" of Poti.[393]

The housing process in the newly built Poti district started in July 2011 and was finalized in November.

For the purpose of providing durable accommodation, the IDPs were transported from Ureki, Tskaltubo, Ambrolauri, Tkibuli, Zugdidi and Poti compact neighborhoods (from 29 objects at the compact neighborhoods at Imereti, Racha-Lechkhumi and Qvemo Svaneti regions and Samegrelo from 52 objects at Zemo Svaneti region).[394] As of the information provided by the Ministry, 959 IDP families were stationed at the new neighborhood in the "New District" of Poti. As the Ministry notes, the housing process was conducted in accordance with the "Guidelines, criteria and procedures for providing IDPs' durable accommodation". Accordingly, only the IDPs who were in a real need of the housing and had extremely bad living conditions qualified for the new housing.

The monitoring process revealed that the housing procedure in Poti was voluntary, however occurred with several shortcomings. One of them is the reasonable time granted in order to make a decision. The representatives of the Ministry required the IDPs to make a decision on re-accommodation urgently. It also needs to be stressed that in the majority of the cases, the IDPs were informed about the upcoming housing shortly before the actual moving procedure would commence. For instance, the IDPs living in Tskaltubo were informed about the exact date of moving the day before, in the evening.

390 Technical working group needs to be created working on the issues of the IDPs living at the private accommodation areas. The working group needs to prescribe in details the measures that are to be implemented; re-registration of the private property for the IDPs in accelerated timeline and categorizes IDPs in cooperation with the Public Registry National Agency and the local municipalities: PDO Report, 2010, at 427-28.

391 32 block of flats are planned to be constructed in Poti, which will be comprised by 1168 flats;

392 10 houses will be built in Tskhaltubo, comprising 352 flats;

393 Ministry of Georgia of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees, Digest N 1, October 2011, at 2.

394 The letter of the Ministry of Georgia of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees N 05/02-12/10376, 30/12/2011.

The monitoring also revealed that the list of housing objects were changing very frequently, which made it significantly hard to observe the housing procedure itself.

On the first stage, the housing process in Poti was organized by the IDP's Department of the Georgia of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees. The staff members of the divisions from Achara and Samegrelo-Zemo Svaneti, Imereti, Guria, Racha-Lechkhumi and Kvemo Svaneti were also involved in this process, whilst the allocation process was headed by the heads of the territorial units.

Monitoring also revealed that the housing process was finalized in an accelerated speed despite the fact that the construction work at the apartments and the area attached had not been finalized yet. The roads to the block of flats also needed to be repaired.

The monitoring also revealed that the housing process in Poti was also conducted in a chaotic and non-organized manner. During the housing process, the organizers transported more IDPs to Poti than the accommodation were there to be allocated. This was caused by the number of IDPs which outnumbered the number of flats. It all gave ground to the conflict on spot.

More precisely, on the first day of housing, 70 families were transported instead of 40. Unfortunately, the preparatory works have not been planned beforehand.

One of the significant issues that need to be mentioned with regard to the housing process in Poti is related to the accommodating criteria. More precisely, Ministry of Georgia of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees was directing these process based on the "Guidelines, criteria and procedures for providing IDPs' durable accommodation" as adopted by the Monitoring Council. According to the criteria, priority should be granted to those collective centers, which are in specifically hard conditions. Based on this principle, it is unclear why Tskhaltubo accommodation was qualified for re-housing while there are many other centers in Georgia about to collapse or with very bad living conditions. A list of such centers has been forwarded by Public Defender to the Ministry of Georgia of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees on a number of occasions. Moreover, PDO's Parliamentary Reports also included such a list.

It needs to be taken into account that new blocks were being built in Tskaltubo in parallel with the Poti construction works. Hence, it is logical that the IDPs living in Tskaltubo should have been firstly transferred to the Tskaltubo newly built accommodation and then to Poti.

'New District" of Poti

Regrettably, the newly built block was not adaptable to the needs of the persons with disabilities. More precisely, only the entrance of the block with 5 stairs contained special entrance fit for such people. No difference has been identified between the construction of the rooms, bathrooms and generally flats as compared to the other blocks of flats. This is in contradiction with the Law of Georgia on the Protection of the Persons with Disabilities which notes that "It is prohibited to construct such neighborhoods which are not adoptable to the needs of the persons with disabilities".[395] PDO reports have been repeatedly stressing this problem. Unfortunately, according to the Parliamentary Report of 2010 no physical environment in any region of Georgia meets the requirements to be adoptable for the persons with disabilities.

Buildings, public transport, pedestrian paths and streets are not adaptable either and there are no concrete measures planned in this direction.[396]

Regrettably, despite the obligations undertaken by the 2010-2012 Governmental Action Plan to include the demands on the persons with disabilities in all the public calls and building projects, government has failed to implement it in practice.[397] This was further approved by the existing reality at the recently constructed neighborhoods (Poti, Tskaltubo, Batumi) destined for the durable accommodation of the IDPs.

The abovementioned indicates that State has failed to implement international and national obligations to carry out appropriate measures to create accessible environment for the people with disabilities. It also needs to be stressed that United Nations Human Rights Council calls upon States to take into account special needs of the Persons with Disabilities, more precisely providing equal access to different services and protection mechanisms.[398]

Another significant issue regarding the Poti "New Region" district is the problem of heating. Unfortunately, the central heating system installation had not been finalized in Poti by the time the IDPs entered the building and the process had not reached its end by winter as well. Accordingly, major source of heating for the IDPs was the electric oven, which by itself raises the tax amount for the electricity. As for the wood oven, IDPs were informed that they would have been fined in case if they'd used it. The heating with gas was finalized only in April 2012.

THE HOUSING PROCEDURE IN TSKALTUBO

10 Blocks with 352 flats have been built in Tskaltubo for the IDPs.[399] The housing process started by the end of December and was finalized in the beginning of January 2012. For the purpose of proving durable accommodation, the IDPs were transferred from the following collective centers: "Tsiskari", "Shakhtioti", "Iveria", "Pansionati Tskaltubo", "Ushishroeba", "Savane" and "Medea".

395 Law of Georgia on the Protection of the Persons with Disabilities, Article 8.
396 PDO's Report on the Conditions of Human Rights and Freedoms, 2010, at 511. [http://ombudsman.ge/files/downloads/ge/ktifezlljkytwmwbpggc.pdf]
397 Decree of the Government of Georgia of December 15, 2009 No 978, on the "Approval of the 2010-2012 State Action Plan on the Social Integration of the Persons with Disabilities"'.
398 Human Rights Council, 20th session, A/HRC/20/L.14, Human Rights of Internally Displaced Persons, 29 June, 2012, para.18.
399 Digest of the Ministry of Georgia of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees. http://mra.gov.ge/UploadedFiles/Digest/9/January-February%20Ge%20_GEO.pdf>

New Housing in Tskaltubo

According to the information provided by the Ministry representatives, special inquiry was conducted, as a result of which, only the IDPs in most need for the accommodation received the right to move to the new housing. One of the significant issues regarding the housing in Tskaltubo, as well as in Poti is linked to the housing criteria. In Tskaltubo there are a number of collapsing houses. More precisely, the building called "Ushishroebis Sanatoriumi", "Sanatoriumi Megobroba", "Sanatoriumi Imereti". It needs to be positively assessed that the IDPs living in the "Ushishroeba" were provided with the durable accommodation at the newly built Tskaltubo center. Unfortunately, the same did not occur with regard to other IDPs living in other collective centers in wrecking condition. Hence, it is still unclear what the criteria the Ministry applies when choosing housing centers for the IDPs.

The "Ushisroeba" sanatorium building in Tskaltubo from which the IDPs were transferred.

Sanatorium "Megobroba" in Tskaltubo from which the IDPs have not been transferred.

Tskaltubo "Sanatorium Imereti". The building is wrecked. Transfer of IDPs had not occurred.

The monitoring revealed several loopholes in the housing process in Tskaltubo. More precisely, prior to the housing the IDPs living in Tskaltubo were not informed about the time and living space in the new accommodation centers.

It also needs to be stressed that the Ministry started the housing process by the time when the new accommodation had not been finalized yet. It somehow disturbed the flat allocation process. For instance, there were cases when the IDPs were provided with unfinished accommodations (entrances were not finalized, bathroom ceilings were to be finished etc) on which they expressed a fair protest. It is unclear why the IDPs housing did not occur after finalizing the construction works, when the path to the block would have been fully repaired, outer infrastructure refurbished etc.

Unfortunately, the Ministry did not have a unified approach in the housing process of the IDPs and the Ministry did not take into account the standards and criteria which usually apply in these cases.

In the "Criteria for providing durable housing for the IDPs" there are criteria listed and prioritized which are to be granted special scores. These scores are accumulated and each IDP family gets accommodation accordingly. Despite existing standard, the Ministry did not have a unified practice when allocating accommodations. There were occasions when the families with two members were stationed in 1 room flat, whilst in other cases such families got 2 rooms flat.

Problems arose with regard to the IDPs who were married at non IDPs. In such cases, these women were not granted the durable accommodation. "Guiding Principles on providing durable accommodation to the IDPs in Georgia" notes that if the IDP registered at the collective accommodation is married and lives at the non IDP's property, only he/she will receive the durable accommodation in accordance with the place of registration. Such an IDP will be entitled to receive the accommodation in the same place where other IDPs with the same registration number are located. In such case, the family will receive the accommodation, where the space for the married IDP will also be included". [400]

IDPs were also dissatisfied with the fact that the newly built accommodation consisted of 1 or 2 rooms flats, hence those families, which qualified for the three rooms flat had to either accept the less rooms flat or split the family into two blocks which automatically went against the family unity principle.

The monitoring also revealed the facts when the IDPs were not satisfied with the refurbishment works carried out in the newly received accommodation. The IDPs indicated on the damaged floor, unevenly fixed walls, falling paint, improperly installed tap etc.

Problems are also created by the damaged water pipes which cause floods within the blocks. Unfortunately, the water had not been removed and the drawback on pipes has not been fixed up until now by the building company.

400 "Guiding Principles on providing durable accommodation to the IDPs in Georgia", at 10, chart No 4

Needs of the Persons with Disabilities has not been taken into account in Tskaltubo as well. In some cases the Ministry suggested first floor flats for the people with disabilities. However, even in such cases only the ramp had been installed. It is shown on the picture that ramp can be found only in some blocks, whilst the infrastructure of the building does not provide the opportunity for people with disabilities to move around alone (for example, the persons with disabilities living on the second and fourth floor move around only though others' assistance, only in cases of emergency).

Ramp for the Persons with Disabilities at the entrance of the Tskaltubo accommodation.

THE PROCEEDING OF THE HOUSING IN BATUMI

The housing process in Batumi to a newly built accommodation was commenced on January 13, 2012 and was finalized on February 3, 2012. As of the official statistics of the Ministry,[401] 22 blocks of flats were built in the Tamara district for 3 000 IDPs.

It was majorly planned to allocate the accommodation amongst the IDPs living in the compact areas of Imereti and Samegrelo_the IDPs living in the Upper Svaneti region compact areas, also the so called "private sector IDPs" living in the rented flats in Adjara region. The families transported from Imereti were mostly the ones living in the Tskaltubo compact neighborhoods.

Staff members of the Ministry's territorial units were selecting the IDPs from Samegrelo-Upper Svaneti and Imereti region based on their applications. As a rule, the families were informed about the upcoming transfer a day prior to the process. Like in Tskaltubo and Poti, the criteria for transferring IDP families were as follows: mainly the IDPs whose apartments were in extremely bad conditions were to be transferred to the newly built accommodations. One of the significant factors was that the IDP should not have owned any property other then the compact neighborhood as indicated in the registration card. The newly built 22 blocks of flats contained 608 flats. The allocation of the flats occurred based on the number of family members though a ballot.

401 Ministry of Georgia of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees, Digest No 3, January-February 2012, 2 <http://mra.gov.ge/UploadedFiles/Digest/9/January-February%20Ge%20_GEO.pdf>

The IDP family relocated to the new housing place was being checked once again via the IDP's property search database. After confirming that the IDP had no other property in their possession, they were granted the right to enter the newly built house. There were some occasions when a family was rejected to be granted the new accommodation since the family member possessed another property.

There was no unified approach when counting the family members. In some cases, the family member being abroad was taken into account when allocating accommodations whilst in other cases foreign presence was ignored.

In general the accommodation allocation process was processing under pressure. Like Poti and Tskaltubo housing process, in Batumi it remained problematic to provide accommodation to the IDP who was married to the non IDP. More precisely, the IDP who was married to the non IDP was rejected the right to be granted the accommodation. Because of this, most of the IDPs pretended to be divorced or unmarried.

PRIVATE SECTOR

The issue of private sector IDP housing was being considered before starting the housing procedure. However, unfortunately, none of the private sector families living in Tskaltubo have been granted new housing. As for the Poti and Batumi private sector IDP families, only several of them were granted such an accommodation. These were the IDPs living in the collective centers from which relocation of other IDPs' occurred (referring to the IDPs form the private sector factually living in the collective center).

One needs to welcome the fact that the newly built accommodations in Batumi, Tamari district were granted to the so called private sector IDPs. In the Adjara Region the applications on the housing were filed at the Ministry of Health and Social Affairs of the Adjara Autonomous Republic. Initially, approximately 300 applications were filed. They were discussed by the IDP Department of the Ministry of Georgia of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees before transferring to the Commission. The Commission on several occasions notified the IDPs on whether they'd be granted housing or not on spot. There were occasions when the rejection on granting housing was made orally. Information on allocating the accommodations was actively covered by the media. Before allocating the accommodation the IDP families in Batumi were checked on whether they possessed any other private property, how many members were in the family etc. The information was double checked at the IDP database.

Batumi newly built accommodation was also granted to the private property of IDP families living in Tbilisi. The criteria for selecting these specific families are not known for the PDO.

The issue that was raised when allocating accommodation in Batumi was the imprecise number of 1 room flats. This is why, several IDPs who qualified for this accommodation failed to receive any. Mostly, these were such vulnerable groups as: old people and the disabled persons living on their own. There were no clear criteria based on which the 1 room flats were allocated on certain groups only.

According to the Guidelines on Providing Durable Accommodation for the IDPs, the allocation process should have drawn major attention to the vulnerable groups, such as: old people and persons lacking the legal capacity; however this principle failed to apply in practice.[402]

It needs to be stressed that the housing process in Batumi was processing on the background of the demonstrations. The IDPs who received compensation instead of the housing were demanding newly built accommodations from the Commission. Ministry on its own rejected to hear the complaints. On several occasions, it became impossible to proceed without the interference of a police.

The conditions of the so called compensated IDPs in the Adjara Region have often been underlined in the PDO's Reports. As known, collective re-housing process occurred in 2006 in the Adjara region, since the privatization process of the collective centers started. The IDPs were granted 7 000 US Dollars compensation however due to the increasing price at the market and a small amount of the compensation; most of the families were not able to find any accommodation. Accordingly, parts of the IDP families are left without accommodation.

It needs to be stressed that Public Defender is often referred to by the IDPs with such a problem. The response of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees is mostly attached to their applications noting that as an exception, they might consider improving the extremely bad living conditions of the IDPs after finalizing the housing process to the newly built accommodations.

According to the Decree No 403 of the Government of Georgia of May 28, 2009 on the "Approval of the 2009-2012 State strategy Action Plan with regard to the IDPs", paragraph 2.2.3. (d), the "IDPs who consider that the compensation process was not voluntary or the amount of the compensation was unfair are entitled to appeal the decision. The Ministry will fully study the complaint and will react accordingly unless the claim is ungrounded". It also needs to be noted that the Action plan of 2012-2014 no longer contains such an article and refers to only such persons who are registered at the private property, have no accommodation and are under extremely bad conditions.[403]

PDO requested following information from the Ministry:

1. How many complaints addressing the lack of the monetary compensation have been addressed to the Ministry and how many of them were considered to be well founded?

2. What are the criteria that the IDP complaint needs to meet in order to be considered as well founded?

3. If the IDP's complaint was considered to be well-grounded, what measures were exactly taken as a "proper response"?[404]

According to the response from the Ministry, the IDP is provided a proper accommodation or a monetary compensation only once and cannot claim the same repeatedly unless there are grounds as provided by the Georgian legislation or transmitting the immovable property to the private property or for the purpose of using the property, by virtue of his/her IDP status.[405] Accordingly, the Ministry's position is rather vague with regard to the questions posed.

402 "Guidelines, criteria and procedures when providing durable accommodation for the IDPs", at 3.
403 2012-2014 State Action Plan with regard to the IDPs', paragraph 2.1.3
404 PDO letter of December 28, 2011, No 1246/04-11
405 Letter of the Ministry of Georgia of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees, 7 February, 2012, No 02/01-11/1223

However, the attitude with regard to this very condition is not unified either. For instance, there were several IDP families as transferred from the Adjara region Hotel "Kobuleti" to the newly built accommodation who had already received compensation before. Hence, it is unclear what criteria are used when rejecting the claims of the so called "private sector IDPs". It is required to form a unified approach which will avoid the formation of the scattered practice.

Overall, the housing process was proceeding with the voluntary consent of the IDPs and there was no closure of the compact neighborhoods without providing alternative housing for the IDPs living there. However, there was a problem of not informing the IDPs about the upcoming housing in all the three regions of Poti, Batumi and Tskaltubo. The IDPs were specifically uninformed about the criteria, guidelines of housing and the possibility of offering alternative offers. Accordingly, they were deprived of the possibility to make a decision.

The Guidelines grant the IDPs the right to select the accommodation. The IDPs during the housing process had no opportunity to make such a choice. For example, the IDPs in Batumi were not granted such a right.

As for the compliance of the accommodation with the standards as set by the Monitoring Council, the picture is uneven. The living conditions in the accommodation built in Batumi meet the set criteria, the apartments are provided with the central heating system, individual gas oven, water heater and kitchen oven. Unfortunately, the same cannot be concluded with regard to the Poti "New Region" and the Tskaltubo newly built blocks of flats. The apartments were not supplied with any of the abovementioned facilities.

As already mentioned, another problem is ignoring the needs of the Persons with Disabilities. Unfortunately, none of the newly built blocks are adjusted to the needs of such people except for several blocks with special equipment in the entrance.

Besides this, the most serious problem was created due to the accelerated processing of the housing procedure without a procedure prescribed beforehand. In Tskaltubo and Poti the Ministry started the housing procedure when the building of the new blocks had not been finalized yet. This happened in Tskaltubo and in Poti. In Batumi the newly accommodated IDPs had no access to gas and electricity. In order to reach a long term solution of a problem and avoid systematic assistance from the State towards the IDPs it is necessary to support employment of the IDPS, provide agricultural land so that they manage to provide own earnings.

Hence, it is recommended to:

- Process the housing procedure based on the strictly prescribed principles which encompass legal acts focusing on the durable accommodation;
- Carry out different types of projects at the IDP districts to assist them in gaining profit;
- Draw agreements with the building companies in order to take into account the needs of the persons with disabilities;
- Form a unified approach with regard to the so called "private sector IDPs".

THE PROCESSING OF THE PRIVATIZATION OF LIVING AREAS

One of the major items at the action plan on durable accommodation is the privatization process of the apartments where the IDPs are living in the compact regions. This process started on 2009 (by virtue of the President's decree No 62) and IDPs were granted such property from the State with a symbolic fee - 1 GEL. The process was voluntary and only after obtaining consent the State granted the IDP with the privatized property. PDO frequently indicated about the process to be slow, failing to follow the action plan.

In 2012 the monitoring mission monitored about 235 compact neighborhoods for IDPs in Georgia.[406]

406 Letter of the Ministry No 05.01-14/3204, 11 July, 2012

The major problem was the lack of information. As IDPs noted, they were not informed about the criteria, standards of housing. Also the family member calculation process seemed to have shortcomings.

Serious problem remains to be the rehabilitation process of the accommodations. State Strategy Action Plan (paragraph 2.2.3.) indicates rehabilitation, reconstruction and building standards as one of the major points when providing durable accommodation for the IDPs.

Refurbishment works have not been carried out in most of the privatized objects. As for the newly built ones, the quality is indicated to be poor. One of such problematic object is the building at the airport area "Airport's previous Hotel" where the sewerage system, roof, wall need to be fixed, windows are missing. The building is not provided with the gas. Same problems exist in "Kindzmarauli No 37 "Energomshenkonstrukcia" building. It has not been rehabilitated despite the fact that the privatization process has almost come to an end (more precisely, measurements had been conducted, however the Public Registry Agency authorization has not been sent out yet).

Problematic objects are the Nucubudze 4th district "Tbilbinrmsheni" and "Previous Taxopark" buildings.

Nutsubidze fourth district "Tbilbinremsheni"

The buildings were flooded on a number of occasions which made it impossible to reach the buildings without using the boats.

It needs to be positively assessed that the Ministry offered an alternative housing to the IDPs living in this area, however they rejected the offer. Currently the privatization process is ongoing despite the fact that the building in extremely bad conditions.

Another fact that deserves a positive assessment is providing new housing for the IDPs from Khazbegi No 36 and Tsinandali No 9 (previous "Aramiantsi") in Tbilisi. IDPs from the first building were transferred to Tbilisi, Kairo street No 26 rehabilitated building. As for the IDPs living in the second area, the Ministry transferred them to Varketili previous building for school No 185.

Besides, the creation of the Partnership in the compact regions needs to be positively assessed in compliance with the law of Georgia on the "Partnership of the property owners", 2009.

Shida Kartli - The privatization process has already started in most of the collective centers; however the living conditions are unsatisfactory and not in compliance with the standards set. The problem of the lack of information was revealed at the Shida Kartli, the IDPs were not informed of their duties and rights as well as the living standards.

Cottage type neighborhoods - the housing process started in 2009 and the refurbishment works were carried out in 2010-2011. For this purpose, the walls were painted, roofs and floors fixed, however the quality of the refurbishment was not high and as the IDPs indicate the walls got damp and damaged soon afterwards. The IDPs often complain about the building material being of a low quality.

Problems of the rehabilitated houses are linked to their location. For example, the accommodations in the villages Skra and Aklalsopeli were built on the marshland which is why there is a constant dampness and the walls are damaged. Except for the bad living conditions, this creates health related problems for the IDPs (as the IDPs note, inhalant diseases are frequent).

There is a problem about the water supply. None of the IDP accommodations have the water at the apartments: taps are installed in the yards. In summer the water supply problem becomes more evident since it is additionally used for watering the areas (Skra, Khurvaleti, Berbuki, Saqasheti).

Despite this, the IDPs have no individual bathrooms in any of the cottage type villages. Common bathrooms were installed; however it has been a long time since they are out of order.

The privatization process is ongoing and the IDPs are willing to privatize the cottages despite the hard living conditions. The reason for this is the fear that they might lose everything if they do not proceed with this cottage. They did not receive the answer whether they will be provided with alternative housing.

The accommodations for the IDPs are mainly located at the administrative or school buildings and most of them are old. Only several of them were rehabilitated in 2009-2010 however majority of them are in the same conditions as they were 50-60 years ago.

However, neither rehabilitated buildings are providing proper conditions. For example, the rehabilitation of Gori accommodation started in winter 2011 and the walls did not dry out properly due to the winter weather. This caused dampness, the rehabilitated floors and roofs were damaged. Extremely hard conditions are at the previous hospital building in Gori: no individual bathrooms, no water supply system, the outer facade of the building is under the threat to be collapsed which creates threat to the lives and health of the IDPs.

IDPs also complain about the rehabilitation of a low quality in the village Variani.

Significant problem is the lack of living space. Families with members of 5-6 are granted 2 rooms. For example: Gori's previous dormitory, previous musical school, which was initially destined for the families of 2-3 members; previous hospital building. Despite the continuous referrals of the IDPs their condition has not changed.

Despite the abovementioned, the monitoring showed certain objects that have not been in any way reconstructed up until now. Despite extremely hard living conditions the privatization procedure has already started. The IDPs have not been informed about the flat, neither have their rights been notified.

The Imereti Region - In April 2012 the Ministry in Kutaisi started the measurement works in order to facilitate the privatization process. PDO monitoring revealed that most of the buildings which were planned to be privatized were reconstructed years ago. Out of 85 collective centers in Kutaisi only 12 are mentioned in the list provided by the Ministry. It is unclear when the rest of the buildings' privatization will start.

Besides, the Ministry privatized only certain number of collective centers. In April 2012 measurement work was carried out in the kindergarten building, however the IDPs still are not informed when the privatization is due to start. Same applies for the previous physics-mathematics school and the sanatorium.

Also, there are cases when the privatization process started partially, for instance at the Khoni military district. It also needs to be stressed that most of the buildings were old and need rehabilitation for example, the military commissariat building in Batumi. Despite the fact that the accommodation is privatized, the need for the rehabilitation cost is obvious.

Military Commissariat, Kutaisi

One needs to welcome the fact that in Imereti the Ministry representatives prepared informative leaflets for the IDP s and this must be regarded as a step forward form the Ministry.

Besides, as the local department announces, the hotel rehabilitation of Vani, Zestaponi, Bagdati, Terjola and Tsaltubo will be soon finalized which will provide accommodation for the IDPs still without the property.

Currently the musical school-internet and the cottage 1 are being reconstructed in Kutaisi.

Adjara - It has been 2 years since all the collective center reconstruction has been finalized. The privatization process got protracted, like in other parts of Georgia. It has been a year since the measurements were made. In June and July 2013 the Minister of Occupation and regional staff members of the Ministry looked around the furbished houses. They gave out leaflets and some IDPs signed the contract, whilst others considered it as an informative note. The Ministry of Health and Social Affairs in Batumi found out that the Ministry of Economics received the IDPs lists with accommodations and the privatization would be finalized in the nearest future in Adjara.

Most of the IDPs welcome the idea of privatization whilst others complain about the density. Specifically the IDPs living in the former drug abuse healing center and the sailors' dormitory complain about the heavy economic conditions. It needs to be stressed that in the latter building despite the fact that the measurements occurred before rehabilitation, several families occupy more than it is set in relevant standards.

During Adjara monitoring the IDPs expressed complaints about the quality of the reconstruction works. 4 pipelines out of 10 collective centers have serious problems about the sewerage: the pipes are not linked to the central system and the water is directly oozed to the cellar.

The previous "Sanebpidsadguri" building in Kobuleti

It needs to be stressed that the IDPs in Adjara have full access to information on privatization; hence there was no lack of information problem.

The lack of information is a serious problem in Samegrelo. Most of the IDPs possess no information on the voluntary nature of the process and the alternatives in cases when they say no to the suggested housing. Also, problems remain in the non unified system of criteria when allocating accommodations.

In the objects where the privatization process is ongoing the rehabilitation works are finalized; however like other regions, the quality of the rehabilitation works is very low. For example, IDPs complain about the roofs in the Zugdidi Municipality village October (previous professional institute), specifically after the rain when the water is inside and damages walls, floor, sewer pipes, which causes insanitariness specifically in summer.

The conditions are bad at the territory of the Zugdidi Municipality village Rukhi, previous area of the hippodrome blocks No 1 and 2. It has been more than a year since the rehabilitation works have been carried out, however the roof, floor, walls, the sewer system and water supply are all damaged. Problems exist with the Akhali Abastumani (previous iron-concrete factory) collective housing. Part of the IDPs living in this area signed the agreement on privatizing the area while other refused it since the building had problems.

The conditions are hard at the Zeda Etseri housing in the Zugdidi municipality. The IDPs are living in the previous tea factory. The rehabilitation works were of a bad quality. Floor is damaged almost everywhere and the windows are not being closed. The sewer pipes are not linked to the central system which is why it runs through the territory of the blocks of flats and creates a serious threat of insanitariness. The IDPs referred to the Ministry on this problem on a number of occasions; however no response has been received.

Same problems exist in the village Zeda Etseri, Chkhorotsku municipality village Zumi Lesichini Tea factory, Tsalenkikha municipality village Dabajvari Senaki professional institute, Mshvidoba No 105 carpet building etc.

It needs to be positively assessed that the local municipalities pay attention to fixing the roads, yards and lighting up the entrances of block of flats. Such works have not been carries out in other regions and as usually outer infrastructure is not being fixed when carrying out the rehabilitation process. However, the abovementioned works are done on surface and have not been finalized yet.

The privatization process in Potskho-Etseri started despite the fact that the PDO repeatedly reported about the bad living conditions there. Part of the IDPs does not want to privatize the area. Except for the rehabilitation process drawbacks, the area has many other problems major of which is the accessibility of the main services necessary for life (dispensary which works only formally, transportation is problematic and the profit gaining programs do not exist).[407]

OBJECTS WITH EXTREMELY BAD CONDITIONS AS DISCOVERED DURING THE MONITORING

Hotel Tbilisi

407 PDO Report on the Conditions of human rights and freedoms, at 198

In the Vani Municipality: Argo cottages, Tourist Centre "Argo", professional Institute.

Tourist Centre "Argo"

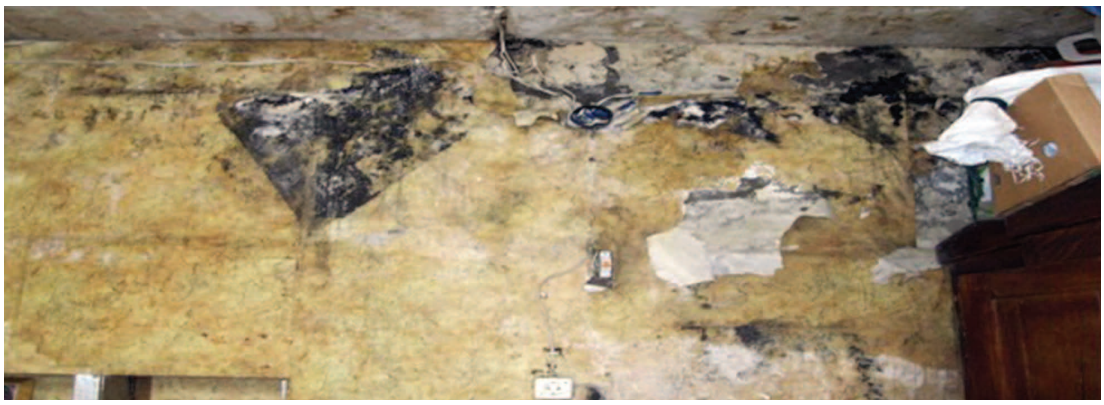
In the Shida Kartli Region: "Wooden Tourist Centre" in Gori, Sanatorium "Mziuri" in Daba Surami and Sanatorium "Pholadi", which is under critical condition and the families living therein require urgent relocation; Building of a polyclinic where the IDPs are in extremely bad conditions and require relocation urgently.

Gori Tourist Base

Several collective centers require urgent rehabilitation in Senaki. More precisely, the multibranch professional institution, railway kindergarten, 3rd school building.

Railway kindergarten

Also, very hard conditions are at the Zugdidi "kitchen" building and the regional hospital building on the Kostava street.



Zugdidi the "kitchen" building

Zugdidi regional hospital building.

Taking into account the existing practice, the Ministry of Georgia of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees as well as other agencies involved in the privatization process shall carry out following activities:

- Promptly define a status of the already rehabilitated accommodations and provide the IDPs with the property confirmation documentation;
- Promptly transfer the IDPs from the places which can no longer be rehabilitated;
- Enable IDPs to make a choice voluntarily about the housing process;
- Allocate the housing in accordance with the existing standards and avoid scattered criteria.

IDPs ILLEGALLY OCCUPYING VARIOUS BUILDINGS

On February 1 2012 after the Parliamentary elections, IDPs massively started occupying various buildings in Tbilisi starting from 2-3 October. Despite the fact that the Ministry was trying to stop this process the law enforcement agencies failed to react promptly. Public Defender called upon the IDPs to avoid such chaotic acts and to remain within

the scope of the law.[408] Same was reiterated by the United Nations High Commissioner on the Refugees; however most of the IDPs did not react upon it.

Due to this processes the Ministry held a meeting of the Monitoring Council and reached the conclusion to carry out Special Operational Procedures.

The major aim of the profiling was to collect detailed information about the IDPs currently occupying empty buildings. Another objective was the identification of the vulnerable groups to provide proper guarantees for their welfare. The profiling was finalized on November 5 2012. 5 buildings and 1981 families were visited (approximately 6000 people). Out of the 53 objects occupied, 50 are located in Tbilisi, 2 in Zugdidi and 1 in Rustavi. 23 of the belong to the Ministry of Economy and Sustainable Development, 8 to the Tbilisi City Hall, 7 are private property and the status of other 15 buildings are still unclear.

The monitoring revealed that different categories of the IDPs were present at these objects:

- Most of them are the private sector IDPs (54%)
- Those IDPs whose property has not been privatized (29%);
- IDPs who have privatized property however require additional space (7%);
- The IDPs from the 2008 conflict who should have received compensation for the cottages however the Ministry has not done so yet;
- Other compensated IDPs who received 7 000$, but failed to get property at this cost (4%).[409]

Monitoring also showed that the IDPs were joined by the socially incapable people at such buildings. Monitoring also showed that some IDPs left regions and occupied space in Tbilisi since there was no access to medical needs in their regions.

Living conditions in such buildings are very bad; the IDPs have no desire to stay there. However they refuse to leave the building until the Ministry provides either alternative housing or a compensation. Most of the IDPs demand housing in Tbilisi, few of them would accept regions as well.

Public Defender in his parliamentary reports used to stress this problem repeatedly noting that the 2009-2012 action plans on durable housing for the IDPs was progressing at a low speed. It was also noted that the privatization process for the private sector IDPs has not started yet. This is the reason of a present condition. It is unclear what is the policy of the Ministry with regard to the illegally occupied buildings.

CONDITIONS AT THE SO CALLED BORDER VILLAGES

In August 2008 as a result of the Russia-Georgia war approximately 100 000 people had to leave their homes. Later on, approximately 34 000 of them were entitled to return and live at the border villages.[410] As the international organizations indicate in their reports, conditions at such villages are grave: problems exist about security, freedom of movement, adequate housing, unemployment, low level of education.[411] United Nations General Assembly also referred to this problem in its 2012 report noting that the return process in hindered by the hard economic conditions, nonexistent irrigation systems and lack of access to the agricultural lands.[412]

408 http://www.ombudsman.ge/index.php?page=1001&lang=0&id=1598
409 The information is based on the presentation by the Ministry which was made on November 14 2012 at the meeting of the Monitoring Council based on the profiling results.
410 Status of internally displaced persons and refugees from Abkhazia, Georgia and the Tskhinvali region/South Ossetia, Georgia, Report of the Secretary General, 22 May 2012, A/66/813, para.12.
411 Partial progress towards durable solutions for IDPs, IDMC, 21 March 2012, p.6.
412 Supra note 19

In order to study the conditions properly, the project planned and carries out several visits. Following border villages were visited in 2012: Ditsi, Ergneti, Mereti, Koshka, Gugutiantkari, Karbi, Tortiza.

Despite the fact that most of the IDPs returned voluntarily the security concerns still exist and the IDPs living there are in constant readiness of a possible escape whenever needed.[413] Citizens of Georgia are frequently detained for illegally crossing the border by the administration in South Ossetia.[414] The families of the captivated people also refer to the PDO.[415] Such cases are referred to the Ministry of Internal Affairs and are also discussed during the Geneva discussions.

The social-economic condition of the families living in the border villages is very hard, as a rule. The unemployment rate is rather high and the state has failed to undertake any measures in order to support the employment. There were only several projects implemented by international organizations and their rate is declining recently. Major income of the families is the land cultivation and state assistance for socially incapable people. Most of the families have no access to the agricultural lands since they are controlled by the Ossetian side. In the villages of Koshki and Gugutaantkari the families have to work under extreme security concerns. One significant issue for such villages after the 2008 war has become the irrigation water.[416]

As known, most of the houses were heavily damaged during the 2008 August war. The rehabilitation process started in 2009-2010 however as the people indicate only a small part of the buildings has been fully repaired. For example, as the Ergneti inhabitants note, 120 houses were fully destroyed, only 10 families managed to fully repair the burnt down house, mostly on their own expenses. The picture is the same in the villages Tortiza and Karbi - all the rehabilitation work stopped in winter and the process has not been finalized yet.

Except for the houses, the roads and other infrastructure were also heavily damaged during the war. The road was specifically damaged in the villages: Karbi, Gugutiantkari, Koshki, which is why the population have problems when moving around. As the inhabitants note, it is only possible to walk on foot since the road is heavily damaged.

Another problem is access to health protection. The dispensaries are not functioning in these villages and people have to visit Tkviani and Gori hospitals, thousands of kilometers away whenever needed.

As the inhabitants note, due to such heavy conditions, people are leaving the village massively. For example, there are approximately 70 families left in the village Ergneti whilst the number used to reach 300 before the August war. There is a real threat of emptying villages if the process progresses. In order to create adequate conditions for the returnees, Georgian government shall carry out following activities:

- Provide alternative land property to the so called borderline village inhabitants to compensate the lost lands, not being controlled by Georgia currently;
- Rehabilitate the irrigational system;
- Support the profit-bringing projects.

CONCLUSION

It can be concluded that despite some positive steps which were made for providing durable solutions there still remain some problems that are linked to financial resources and their proper allocation. Also, it is important that proper governmental agencies guarantee the involvement of the IDPs in the housing process. The major priority of the action plan has to be the problems of the IDPs and their needs.

413 "Returned IDPs still under the process of reintegration", UN High Commissioner on Refugees, August 2012, at 9.
414 http://qartli.ge/web/8894>; <http://qartli.ge/web/7368>; <http://qartli.ge/web/9405.
415 Only one such an application was files in 2012
416 IDMS Report p. 8

Existing issues require big amount of financial resources. State needs to duly carry out the activities as prescribed by the action plan.

With regard to the housing process:

- **Process the housing procedure based on the strictly prescribed principles which encompass legal acts focusing on the durable accommodation;**
- **Carry out different types of projects at the IDP districts to assist them in gaining profit;**
- **Draw agreements with the building companies in order to take into account the needs of the persons with disabilities;**
- **Form a unified approach with regard to the so called "private sector IDPs".**

With regard to the privatization process:

- **Promptly define a status of the already rehabilitated accommodations and provide the IDPs with the property confirmation documentation;**
- **Promptly transfer the IDPs from the places which can no longer be rehabilitated;**
- **Enable IDPs to make a choice voluntarily about the housing process;**
- **Allocate the accommodations in accordance with the existing standards and avoid scattered criteria.**

With regard to the so called "borderline villages:"

- **Provide alternative land property to the so called borderline village inhabitants to compensate the lost lands, currently not being controlled by Georgia;**
- **Rehabilitate the irrigational system;**
- **Support the profit-bringing projects;**
- **Duly decide the issues of granting the IDP status to the population who are forcefully relocated from the non-controlled/conflict region borderline villages.**

The Rights of Eco-migrants/Persons Affected and Displaced by Natural Disasters

Plenty of Parliamentary reports of Public Defender of Georgia reflected the issue of persons affected by natural disasters and eco-migrants, the legal gap in this area and the practical problems. Natural disasters are frequent in Georgia, thus the above issues remain to be acute. It is proved by many natural disasters that occurred throughout the country and affected hundreds of people in 2012.

Since Public Defender's Office has prepared a special report on the persons affected and displaced by natural disasters and eco-migrants and the situation in 2012 has not changed compared to the previous years, the report will not address this issue in detail.

As already noted on numerous occasions human rights violations in this sphere are not of individual and one-time nature. As a rule, they are systematic. In most cases individual violations are caused by the non-existence of relevant standards. The respective legal basis that would regulate the rights of the persons affected by natural disasters still does not exist in the State, relevant guiding principles or procedural rules having a normative power that will create a legal framework for the processes in this sphere are not elaborated. Inconsistent approach and lack of financial resources is noticed that creates additional problems.

Unfortunately, no legislative changes were made in this regard throughout the year. Public Defender of Georgia has been pointing out the need of filling the legislative gap and the necessity of establishing unified practice in relation to persons affected by natural disasters and eco-migrants. In order to ensure the legal protection system of eco-migrants the legal status of persons belonging to this category should be determined on a legislative level where it will be clearly stated what category will be covered by the definition. In addition, for the creation of effective legal system it is necessary to determine mechanisms and procedures for the creation of temporary or permanent accommodation on a legislative level, further adapt-integrate and secure social conditions, which does not exist at this stage.

Significant changes have not been made on practical level either. There are positive tendencies in the Autonomous Republic of Adjara where last year, according to our information, amendment has been made in the budget of Autonomous Republic of Adjara and 9 million GEL has been allocated for the construction of the so called "Social Houses" for eco-migrants. Reconstructing the buildings of former hospitals in borough Shuakhevi and Keda is examined. Public Defender of Georgia actively monitors the process.

The single most important document on state obligations related to the protection of internally displaced persons affected by natural disasters is the Government Decree № 34 of 22 February 2008 on "Approving the Statute of the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees." The document enshrines the obligation of the executive Government in the sphere of social and legal protection of persons displaced due to natural disasters, migration control and accommodation. According to Article 2 (b) of the above Decree, considering country's political, socio-economic and demographic conditions, the functions of the Ministry of Internally

Displaced Persons from Occupied Territories, Accommodation and Refugees include the regulation of migration flow caused by emergency situations (natural disasters, epidemics and etc), organization of their temporary or permanent accommodations, creation of conditions for their adaptation-integration and social protection.

The Government takes the measures of financial assistance and resettlement for internally displaced families on an individual basis depending on each particular case. According to the established practice the Government of Georgia, based on the Decrees, provides the families left homeless due to natural disasters with financial assistance,[417] and in most cases, ensures them with alternative housing (resettlement).[418] When it comes to disaster-affected people, who are not in need of resettlement, as a rule, they will receive one-time assistance in the form of money. Unfortunately, the Government does not have a unified approach even in this case. There exists no strategy either on legislative or on practical level as to in which case is the financial assistance relevant and in which case - resettlement. As a rule, similar decisions are made based on individual cases. There is no system that could regulate the amount to be provided in case of financial assistance. No document describes which family category will get the financial amount based on the degree of damage to the house and what are the criteria according to which the financial assistance is provided. I believe that in this case individual damage assessment by an expert it necessary in order to determine a relevant amount for the compensation of the incurred damage.

It is obvious that without the appropriate budgetary funds it is impossible to effectively solve the problems existing in this area. It should be noted that funds for both the prevention of natural disasters and elimination of their consequences (such as victim assistance and resettlement), reaches a large amount, but it is necessary to plan a coherent policy in this regard by the State, which will make the effective elimination of pre-existing problems possible.

Recommendations:

- **A definition of eco-migrants shall be developed at the national legislative level, and a range of persons shall be defined to whom the legal status will apply;**
- **For the purpose of protection of the rights of persons affected and displaced by natural disasters, a unified state approach shall be developed, which, primarily, involves the regulation of the issue at the legislative level. It is essential to develop mechanisms and procedures for the resettlement of persons displaced as a result of natural disasters and their provision with adequate social conditions;**
- **The procedural regulations/guiding principles for the resettlement of persons affected by natural disasters shall be defined by the Ministry. Namely, the regulations for the allocation of housing, the transfer of said housing into the ownership of the eco-migrant residents, etc.**
- **A post-resettlement adaptation-integration strategy for eco-migrants shall be developed at the legislative level and its effective implementation in practice shall be ensured;**
- **The obligation of local authorities to provide information on eco-migrants/persons affected and displaced as a result of natural disasters to the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia shall be defined at the legislative level;**
- **The Ministry, in cooperation with local authorities, shall ensure the development of an electronic database for eco-migrants – persons affected by and displaced as a result of natural disasters;**
- **The obligation of local authorities to provide information on granting financial satisfaction/ assistance to eco-migrants/persons affected and displaced as a result of natural disasters to the**

417 Decree №627 of the Government of Georgia, 24 October 2007.
418 Decree №111 of the Government of Georgia, 7 July 2005.

Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia shall be defined at the legislative level;

- Shall define the State's obligation on covering expenses necessary for resettlement of eco-migrants and ensure allocation of relevant funds for its implementation;
- The Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, in coordination with relevant agencies, shall develop unified standards and procedures that will define the circumstances and regulations under which housing can be transferred into the ownership of eco-migrants;
- The Government of Georgia shall ensure the calculation of funds necessary for the provision of adequate housing to eco-migrants and their gradual allocation in the state budget;
- The case of Sachkhere shall be studied by the commission and the problem shall be solved effectively;
- In each case of financial assistance it shall be provided only based on the relevant conclusion that this approach will ensure a long-term solution of the problem.

The Rights of the Child

THE MAIN TRENDS FOR 2012

The Government of Georgia approved the 2012-2015 national action plan on child welfare and protection by decree № 762 of April 24, 2012[419], which is a very important document and determines the child rights protection policy throughout the following 4 years. The action plan comprises of the measures of child's protection from violence, prevention of abandonment, development of alternative services and other significant dimensions. It is unfortunate that this action plan, as well as many other action plans, is not supported with the detailed budget and measurable indicators. This casts doubt over the comprehensive implementation and supervision of action plan. It is also regrettable, that elaboration of the mentioned action plan was not preceded by the assessment of shortcomings in the implementation of 2008-2011 national action plan on child welfare[420] by competent state authorities and necessary needs assessment for preparing the new action plan. However, the mentioned gap was to some extent filled by the study prepared by the NGO "SOS Children's Village,"[421] which partially replaced the inaction of the governmental authorities in this regard.

According to the above-mentioned study:

- Notwithstanding the fact, that social workers as well as other persons engaged in child welfare are motivated to provide the best services to children without parental care, disproportionate limited amount of social services does not meet the child care need in the country;
- Interagency cooperation in vertical dimension has improved between various organs involved in child care system; however lack of coordination and flaws still persist in horizontal dimension. There is a lack of coordination between the resources directed towards the same aim;
- Despite the ongoing reform in the field of protection of children from violence, serious problems remain in schools and child care facilities. At the same time, doubts have arisen about statistical data on violence against children, because virtually none of the incidents have been exposed on violence against sexual minorities and violence against children with disabilities, although both groups are highly vulnerable in other countries.

Elaboration of "National Youth Policy Document" [422] by the Government of Georgia in 2012 is assessed as a positive step. The document concerns education, employment protection of health and other issues related to children and

419 April 24, 2012 Decree №762 of the Government of Georgia on "Child welfare and protection action plan of 2012-2015."
420 December 10, 2008 Decree №869 of the Government of Georgia on "Child welfare and protection action plan of 2008-2011."
421 SOS Children Village (2013), Child rights situational analysis of children of loosing parental care and children who have lost parental care.
422 Decree №1608 on August 17, 2012 of the Government of Georgia, approving Georgian National Youth Policy Document.

youth above the age of 18. It is noteworthy, that implementation of mentioned plan foresees all flaws related to the governmental plans in latest period, mainly, ensuring the exact financial accounts, measurable indicators and comprehensive monitoring.

Public Defender of Georgia positively evaluates creation of national strategy and policy documents in the sphere of child's rights protection, which are in compliance with the international legal rules of protection of rights of child and at the same time addresses the government with the following recommendation:

- **Ensure that the mentioned plans of action have realistic character from the moment of their development. Elaboration of certain plans shall take place on the basis of the necessary needs assessment and based on firm evidence; the plans shall be accompanied with the detailed budget and measurable indicators; in addition, it is recommended to carry out regular evaluation and monitoring of all activities undertaken under the action plan.**

CHILD POVERTY

Poverty and economic inequality for all the children may be decisive in terms of irreversible violation of children's rights. In the age of childhood poverty is the main reason why children in different countries of the world have restricted minimum standards of development. Other rights of the child are equally violated due to the same reason. In line with the global crisis and economic reforms in Georgia, it is important to pay particular attention to studies of child poverty and taking into account this very issue in state reform process. Large percentage of appeals during the reporting period concerned the child's rights violation interrelated with the child poverty.

Significant initiative of analysing child's rights protection situation was carried out by UNICEF, by publishing study on Child Poverty in Georgia in July 2012.[423] According to the mentioned study, child poverty decreased in Georgia in 2009-2011, however notwithstanding this change, in 2012 the number of children living in poor households in Georgia are still much higher compared to other groups: according to UNICEF as of 2012, 77 000 children are in a state of extreme poverty, which means that only 2 GEL in a day is spent for the needs of these children.

There are no child specific social assistance (financial) benefits in the country aside from the reintegration package for children living in institutional care. The two main tools that are used to mitigate poverty risks are pensions and Targeted Social Assistance. Although, as it was mentioned above, these mechanisms do not protect 30% of children in Georgia, majority of whom live in relative poverty and 9% - in extreme poverty.

Consequently, through the publication, UNICEF presented the Government of Georgia with 3 scenarios of amendments to develop social welfare system for better protection of child's rights. Amount of targeted social assistance in 2012 was 30 GEL per member of the family and 24 Gel for additional family members. The government devoted 11 million GEL to targeted social assistance.

In the first scenario, the cash benefit amounts will raise to 45 GEL for the first family member and 36 GEL for each additional family member. Extreme child poverty under this scenario is estimated to go down from 9.4% to 8% and relative child poverty from 25% to 23%. This increase will cost the government approximately 5.5 million GEL more per month.

According to second scenario, the level of the targeted social assistance increases by 100% to 60 GEL for the first family member and 48 GEL for each additional family member. This increase would decrease relative child poverty by 5 percentage points (from 25%-to 20%). and every fifth child would be lifted out of extreme poverty. This increase would cost the government approximately 11 million GEL per month more, bringing the total monthly cost of targeted social assistance to 22 million GEL.

423 UNICEF (2012) Georgia: Reducing Child Poverty, discussion paper. http://unicef.ge/uploads/UNICEF_Child_PovertyGEO_web_with_names.pdf

In the third scenario, if the cut-off score of targeted social assistance is increased to 100,000 (which is now 57 001), without the change of monetary cash assistance, this will cause increase of targeted social assistance beneficiaries by 140 %. This increase would cost the government approximately an additional 18.5 million GEL per month, bringing the total monthly cost of targeted social assistance to 29.5 million GEL. Holding everything else constant, this increase would reduce child poverty to 7.1% and relative poverty to 21 %.

It is very important that the Government of Georgia takes into consideration one of the proposed scenarios in nearest future and creates the model consistent with Georgian reality, which will devote specific attention and efforts to decrease the relative and extreme child poverty in Georgia.

Public Defender of Georgia addresses the government with recommendation:

- **Decreasing the child poverty and child's rights violation related to poverty should receive particular attention through proper consideration of the problem during the ongoing reforms in Georgia.**

PROCESS OF CHILD DEINSTITUTIONALIZATION IN GEORGIA

The process of closing down the children's homes and deinstitutionalization was regularly subject of Public Defender's attention and conducted under its supervision in the past few years. The objective of deinstitutionalization, which should be positively appraised, must be planned and carried out with the aim to protecting child's rights so that no child is discriminated in course of the said reform. As of 2013, 153 children remain in children's homes out of 5200 children placed in 2004. As a result of deinstitutionalization process, other children returned to their biologic families or moved to alternative child care institutions, such as foster care and small family-type homes. Activism of civil society in the area of monitoring deinstitutionalization process was strengthened in 2012. Public Defender positively evaluates this fact and considers that civil society monitoring is the best tool for increasing the transparency and effectiveness of state reforms.

In 2012, the NGO Every Child published the report[424] which to aimed to identifying the gaps in alternative child care services (foster care, small family-type homes, day care centers) and to elaborate recommendations, in accordance with the results of the study.

In relation with the foster care: the service provided by foster parents is satisfactory. This is also confirmed by the positive attitude of the majority of children in foster care towards their foster families, however, it should be also noted, that there are some foster families where the children's needs are not duly met because of the reasons/difficulties beyond foster families' control. There are also cases when foster parents do not make relevant efforts and ignore the children's needs. From this standpoint children with disabilities are more disadvantaged, as many of them are isolated from the society, and their educational and other needs are not duly met.

The report outlines the facts of violence against the children under foster care: Both adequate and inadequate strategies are applied by foster parents for managing behavior of children in their care. It should be pointed out, that a small group of interviewed children, reported incidents of fighting and physical abuse (spanking, pulling ears or hair) by members of foster families for behavior management purpose.

According to the study, although social workers play an active role in transferring children to foster families, there are also cases of their substandard performance: when they do not provide comprehensive information about the child to the families, do not address the needs identified by the foster parent with due diligence, do not make monitoring visits according to the set schedule, do not provide substantial information to children etc.

424 NGO „EveryChild"(2012) Needs Assessment on the alternative child care services, advocacy for participation to protect children's rights project. http://www.everychild.ge/assets/Reports/FINAL-EvC-CoG-Needs-Assessment-GEO-post-EU.pdf

The following issues emerged during the evaluation of services in **small family-type children's homes**: Health problems of children living in small family-type children's homes are mostly addressed through the health insurance of beneficiaries, but the insurance package does not cover a range of real needs, such as: therapeutic dental treatment, psychologist's service, etc.

From the challenges identified in the functioning of the small family-type children's homes, financial problems are especially noteworthy. Voucher-based funding received from the State does not cover all service needs and the donor organizations provide co-funding. Limited financial resources are reflected on staff salaries, as well as on the diversity and quality of provided services: small family-type children's homes cannot enroll children in the after-school classes of their choice, purchase of some of the needed items, employ additional staff members and so on.

The following needs emerged in examining the **Day Care Centers**: The capacity of currently operating the Day Care Centers does not fully meet the needs existing in the country. To get enrolled in the Day Care Centers, beneficiaries need to submit a list of documents such as the proof of social vulnerability and/or disability status, health certificate, recommendation of the social worker, and so on. There are cases when a child cannot receive the Day Care Centers services because of problems related to collecting the required documents.

Before starting to work at the Day Care Centers, the staff undergoes selection process and trainings. However, there is a need to conduct additional trainings after their employment commences. Caregivers/teachers often face challenges in coping with the difficult behavior and learning difficulties of children, as many of them do not have the knowledge of child's rights. There are also difficulties in dealing with the parents of beneficiaries. Some Day Care Centers caregivers/teachers use inadequate behavior management strategies: various punishment methods, including hair pulling and so on.

In relation with all the above mentioned needs, the NGO Every Child issued recommendations towards the representatives of Georgian government.

The NGO "Children of Georgia" published the report of the same character, which studied foster care services of children with disabilities.[425]

The report outlined problems on placement of children with disabilities in alternative service – foster care:

- During preparatory activities more than half of foster parents (56%) paid special attention to prior preparation of environment (arranging physical environment, purchase of goods) and little attention has been given to better acquaintance with the child and establishment of emotional connection. 37% of foster caregivers did not undergo any type of prior preparation.
- Notwithstanding the fact, that all foster family beneficiary had health insurance, only half of the foster family mentioned, that insurance covered solely necessary medical service. In other cases, health insurance package for the child did not fully satisfy medical needs and the payment of additional money was necessary.
- There were some instances, when the care in foster family was limited by satisfying the basic needs of the child and other needs - educational, development, emotional and social - have not been fully fulfilled. In some cases, this was caused due to the lack of information on needs or ignoring them. However, study revealed category of foster parents, who consider, that children with disability are not able to engage in any activity and as a result deprive the children of this possibility. These children have to spend much of their time isolated, in their beds in passive conditions. All this impairs the child's development and contributes to establishment of complicated behavior.
- The vast majority of children with disabilities in foster families did not benefit from educational services and/or day care service.
- Inclusion of foster families in special database for persons below the poverty line and prohibition of double funding for one beneficiary (either through foster family alternative care service or rehabilitation service) halts the process of psycho-social rehabilitation of child.

425 NGO Children of Georgia 2011 report on foster care services for children with disabilities.

- Study also revealed, that some foster families selected those children, who due to their disability are attached to bed throughout the day and foster families consider that these children may only be limited with satisfaction of physiological needs. As far as in some instances, the placement of child in foster family is determined by the financial interest, probably some foster families choose to care for the above-mentioned type of children as it represents easy way of receiving extra income. This fact holds true especially when several children are placed in the same family. This position was considered as inacceptable by the Child and Women's Rights Center of Public Defender, as according to the Convention on the Rights of the Child, satisfaction of physiological needs does not represent the sole requirement for fulfillment of child's needs.

Both researches indicate that it is necessary to increase state efforts in monitoring, development and improvement of alternative services to enable protection of child's rights under state welfare through various types of services.

Public Defender addresses the Ministry of Labor, Health and Social Assistance with the recommendation:

- **Ensure monitoring of child care alternative services. The results of the monitoring, together with studies and monitoring performed by NGOs should determine the direction and quality of the said services.**

RIGHTS OF CHILDREN LIVING AND WORKING ON THE STREET

The issue of children living/working on the street remained problematic in 2012 and has not yet been solved in terms of ensuring rights protected under the Convention on the Rights of the Child. Similarly as in 2011, children living and working on the street had limited access to medical service, were deprived of the right to education and lived in conditions of a systematic violence. The problems reflected in 2009 and 2011 reports of Public Defender have not been solved. However, the positive change was made by launching of the project supported by EU and UNICEF "Care for all socially vulnerable children, children living and working on the street" implemented by inclusion of the Ministry of Labor, Health and Social Assistance, other state institutions and NGOs.

Development of 3 types of service was launched by said project in 2012: mobile groups, day/crisis engagement centers, 24 transit centers. In 2012 the project supported establishment of the advisory council, which focused on elaborating action plan and inter-agency cooperation strategy. The following topics were determined as the content of the work of the advisory council:

- Problem of documentation of children living/working on the street;
- Determining the service specificities;
- Processing financial effective financial assurance issues for the service;
- Preparing necessary legislative amendments;
- Public awareness rising.

Public Defender of Georgia positively evaluates the mentioned initiative and appraises the joint efforts of government structures, civil society and donor organizations to solve the problem of children working/living on the street. At the same time, Public Defender expresses the hope that experience of 2009 will not be repeated, when the similar initiative ended up without result due to the influence of different factors. In particular, as it was mentioned in the annual report of second half of 2009: in the year 2009 NGOs applied to Public Defender concerning the amendments made by Ministry of Labor, Health and Social Assistance to the state program which caused factual discrimination of children living on the street.[426] Mainly, as it was described in the report: the Order (of Ministry) basically undermines work of

426 Order #118 of March 23 2009 on "Approval of the state program Child Care for the year 2009 " adopted by the Ministry of Labour, Health and social assistance.

several years when four day care centers were established with foreign donor assistance, oriented towards the needs of children living on the street. The NGOs were implementing their activities within the framework of the state program on child care, but as a result of amendments of 2009 the children living on the street cannot benefit from these services any more, as majority of the families of these children have not acquired the status of households under the poverty line. Reason for such exclusion are: lack of proper organization of the process, as well as the fact that these families did not possess housing, which is the barrier to be included into the unified database of socially vulnerable, thus, excludes participation in the social programme.

Public Defender of Georgia addresses the government with the recommendation:

- **To strengthen inter-agency work to protect the rights of children living/working in the street and pay particular attention to the obligation of proper healthcare, ensuring the conditions for self-development, education and protection from work exploitation.**

CHILD LABOR

As early as on June 6, 2008, based on the Article 44 of the UN Convention on the Rights of the Child, during review of presented reports of contracting countries at the 48th session, the Committee expressed the following view regarding labor and economic exploitation of children in Georgia:

The committee is aware of government's position, that there is no problem of child labor in Georgia, however it is shocked by the fact, that according to the state department study of 2004, more than 21.5% children in contracting states were involved in economic activities, and 10.56% of children performed their work in conditions that violated their rights and impaired their development.

The International Labor Organization also reviewed this issue in 2010 commentary on minimal age, where the gaps in Georgian legislation related to child labor and economic exploitation are outlined. In particular, committee relies and agrees with the opinion of Georgian professional union, that labor code should specify the notions of holidays and day-breaks for juveniles. Organization calls upon the state to determine the notion of "light work", as the labor code indicates only maximum amount of working hours and prohibition for night work for juveniles. In same commentary, International Labor Organization gives special regard to spheres beyond the mentioned regulations, presenting potential juvenile labor exploitation sources.

Public Defender of Georgia addresses the Parliament of Georgia with the recommendation to pay particular attention to ensuring juvenile protection mechanisms, taking into consideration views expressed by the International Labor Organization and the UN Committee for the Rights on the Child in process of review of the Labor Code.

THE PROBLEM OF EXECUTION OF JUDGMENTS

Article 3 of the Convention for the Rights of the Child, recognizes the primary obligation to protect the best interests of the child and establishes obligation that best interests of child shall be taken into consideration in performing actions concerning children. This obligation extends to all organs, undertaking any action related to children and covers state obligation – to ensure proper protection and undertake relevant legislative and administrative measures to realize the best interests of the child.

In 2012, most of the applications addressed to Public Defender of Georgia on protection of child's rights were related to the issue of execution of judgments on the rights of the child. In particular, appeals related to the decisions rendered

after the judicial disputes of parents, which related to protection and further realization of child's rights. Throughout the reporting period, common courts of Georgia rendered number of civil cases on rules of relationship with the child, determining the place of residence and awarding custody to a parent. According to the statistics of the LEPL Social Service Agency,[427] through last two years they participated in 1825 juvenile cases by the initiative of the court, 1054 of which related to family disputes. In course of review of materials, the following main problematic areas can be outlined:

Deficiencies in executing court judgments related to determination of child's place of residence

According to the December 15, 2010 amendments[428] to the Law of Georgia on Enforcement Proceedings and of April 18, 2011 decree#01/16/n of the Ministry of Labor, Health and Social Assistance,[429] the LEPL Social Service Agency was determined as the responsible agency for enforcement of decisions relating to transfer of children and/or rights to exercise relationship of the second parent or other family member with a child.

Instead of Enforcement Bureau, Guardianship and Care division was determined as the competent organ to enforce cases related to child transfer and/or relationship with the second parent or other family member with a child. 2010 Parliamentary Report of Public Defender of Georgia evaluated this reform as a step forward and addressed the LEPL Social Service Agency of the Ministry of Labor, Health and Social Assistance with the recommendation to foresee the best interests of the child in enforcement process.

Notwithstanding the mentioned positive legal amendments, the Social Service Agency has not yet elaborated the sophisticated mechanism for the execution of judgments, which will ensure effective defence of child's rights in execution process and will conduct the process in accordance with the best interests of the child.

G.N's case

On March 15, 2012 the citizen G.N filed the application[430] with Public Defender's Office indicating that he is divorced with wife M.A, and the court judgment determined the place of residence of their three juvenile children with mother M.A. The Applicant indicated, that his youngest child lived with mother, while two older ones refused to move to live with mother, thus it was impossible to enforce the court ruling. The applicant also noted the possible negligence of M.A. towards the youngest child.

Public Defender's Centre for the Rights of Women and Children referred this case for study to LEPL Social Service Agency Telavi district division, which replied with information, that juveniles TS.N. and Q.N. refused to move to mother's place for living.[431] M.A. was the victim of psychological violence from former husband and his family members. According to the conclusion by social worker in process of executing judicial decision, children were considered to be the victims of emotional violence as they witnessed domestic conflicts for long time-frame. LEPL Social Service Agency Telavi district division social worker identified the necessity that juveniles received psychological assistance; however children were prevented from receiving this service due to resistance by father and his family members.

T.J.'s Case

On April 18, 2012 the citizen T.J. filed the application with Public Defender's Office reporting that the court judgment determined the place of residence of her juvenile children A.K. and M.K with the applicant, however children still lived with father, V.K. and the court judgment was not therefore enforced.

427 The letter of December 7, 2012 N04/76890 of LEPL Social Service Agency.
428 Article 2, paragraph 2, of the December 15, 2010 Law of Georgia N4073 on amendments to the Law of Georgia on Enforcement Procedures.
429 Decree N01–16/n of April 18, 2011 approved by the Ministry of Labour, Health and Social Assistance on "Rules Governing Enforcement of Cases related to Transfer of Child and/or Rights to Exercise Relationship of the Second Parent or other Family Member with a Child".
430 Application N0432–12.
431 April 27, 2012 letter N04–10–01/495 of the LEPL Social Service Agency Telavi district division.

Public Defender's Centre for the Rights of Women and Children referred this case for study to LEPL Social Service Agency Lagodekhi District Division. According to written reply,[432] LEPL Social Service Agency Lagodekhi District Division was the third person involved in trial on determining A.K. and M.K.'s place of residence. The LEPL Social Service Agency Lagodekhi District Division addressed the court with the recommendation, that taking into account desire of children, two juveniles should have stayed with father V.K. However, the court did not take into account position of the LEPL Social Service Agency Lagodekhi District Division and determined the place of residence of children with their mother T.J. According to the information received from the agency, it is impossible to enforce the judgment, as children refuse to live with their mother, and it is necessary to seek assistance of psychologist to improve emotional state of children. LEPL Social Service Agency Lagodekhi District Division cannot provide the services of psychologist for the children because of the lack of relevant staff resources.

It should be outlined, that T.J. physically abused A.K. In particular, LEPL Social Service Agency Lagodekhi District Division [433] notified Public Defender's Office, that T.J. tried to use force to put A.K. in the car. After hearing the screaming of child, school teachers succeeded to separate the child from mother. With regards to the mentioned fact of violence, the LEPL Social Service Agency Lagodekhi district division did not consider it necessary to perform further follow-up and to inform law enforcement authorities.

The analysis of the above cases reveals, that in process of enforcing to transfer of child and/or rights to exercise relationship of the second parent or other family member with a child the LEPL Social Service Agency does not undertake necessary measures to protect and ensure the best interests of the child. In particular, the LEPL Social Service Agency:

- When necessity arises, Agency cannot always guarantee involvement of a qualified psychologist and delivery of necessary service for children in order to ensure enforcement of decisions in accordance with best interests of child, without inflicting psycho-emotional stress over them;
- The LEPL Social Service Agency cannot identify and properly react to the psychological/physical violence exhibited by parents or other family members over children in execution process, obligation enshrined in joint decree N152/n-N496-N45/n of May 31 2010 on "Approval of procedures on child protection referral" of the Ministry of Labour, Health and Social Assistance, Ministry of Interior and Ministry of Education and Science.
- In cases when, despite the decision rendered by court, refusal to live with one of the parents represents the best interests of the child, the LEPL Social Service Agency, as Guardianship and Care Division, does not use authority to appeal to the court for re-opening the case, postponing enforcement or amending the manner of enforcement, in accordance with the paragraph 2 Article 1198[1] of the Civil Code of Georgia, and paragraph 6 Article 81 and paragraph 1 of Article 263 of the Civil Procedure Code of Georgia.

The role of the social service in determining the best interests of the child

The UN Committee for the Rights of the Child "Basic Guiding Principles for Contracting States on Form and Content for Periodic reports"[434] requires Convention contracting states, to submit information on types of legislative or administrative mechanisms existing in their countries for protection of the best interests of the child and to respect opinion of the child, when the case concerns separation of child from parents.

The UN High Commissioner for Refugees paid particular attention to determining the best interests of the child and issued special guidelines in 2008. [435] According to the mentioned guidelines, child welfare officer bears important

432 May 11, 2012 letter N04–10–07/1180 of the LEPL Social Service Agency Lagodekhi district division.
433 October 17, 2012 letter N04–10–07/23320 of the LEPL Social Service Agency Lagodekhi district.
434 UN Committee for the Rights of the Child "Basic Guiding Principles for Contracting States on Form and Content of Periodic reports in accordance with sub-paragraph "b", paragraph 1 of Article 44 of the Convention", November 29, 2005 (CRC/C/58/Rev.1); part V, article 28.
435 UN Refugee Council, "Guidelines determining the best interests of the child", 2008;

funciton in determining the best interest of the child. The officer is responsible for collecting and analyzing information, according to which the best interest of the child should be established. The child welfare officer position entails the competent person performing abovementioned function and not the special authority. Guideline foresees necessary qualification for the child welfare officer to perform deduction of best interests of the child such as: familiarity with age-specific interviewing techniques; ability to assess age and maturity; understanding of child rights; gender-sensitivity; expertise in psycho-social counselling involving an understanding of mental and physical development of children, ability to recognize signs of distress.[436] In process of determining best interests of the child the mentioned guidelines establish the obligatory component of taking into consideration opinion of child through obtaining information from child by direct contact of child welfare officer.

E.V's case

On August 9 2012, citizen E.V.submitted an application to Public Defender's Office.[437] Applicant claimed that Tbilisi City Court rendered decision determining the rules of relationship of her juvenile child G.M. with his father. According to Ms. E.V., the court decision on rules of relationship between G.M. and his father was based on conclusion drafted by the LEPL Social Service Agency Vake-Saburtalo Social Service Center social worker G.N. As applicant claimed, conclusion was prepared without meeting the child and properly investigating his psycho-emotional state of mind. In particular, the level of child's attachment towards the father was determined based on photo and video materials and father's testimony, without the interview with the child.

Public Defender's Centre for Women's and Children's Rights referred a request[438] to the LEPL Social Service Agency and asked for information, which methodology did the social worker apply in investigating psycho-emotional state of the child, N.G. in order to determine the best interest of the child.

The written correspondence[439] received from the LEPL Social Service Agency confirmed the gaps described by the applicant in determining the best interests of the child. It is noteworthy, that in General Comment on Article 12 of the Convention the Committee on the Rights of the Child encourages States Parties to take all appropriate measures to ensure that the concept of the child as rights holder with freedom to express views and the right to be consulted, in matters that affect him or her, is implemented from the earliest stage.[440]

On November 20, 2012 Public Defender of Georgia addressed the Social Service Agency with the recommendation to undertake necessary measures with the aim to ensure to the citizen G.M the rights guaranteed under Article 12 of the Convention on the Rights of the Child. In particular, the opportunity to be heard and to respect the child's views in accordance with the best interests of the child as enshrined in Article 3.

Recommendations:

To LEPL Social Service Agency of the Ministry of Labor, Health and Social Assistance

- Create effective mechanism of execution of decisions related to child transfer and/or exercising the right of relationship between the child and another parent or other member of the family, in order to fully protect the best interests of the child in the enforcement process;
- Provide trainings for persons responsible for execution of judgments, in order to ensure identification and proper response on cases of psychological/physical violence by parents or other members of family towards children in execution process as it is enshrined in joint decree N152/n-N496-N45/n of May 31

436 UN Refugee Council, "Guidelines determining the best interests of the child", 2008 at 52.
437 The letter # N1425–12
438 The letter of October 16, 2012 N4510/08–2/1425–12
439 The letter of LEPL Social Service Agency of November 8, 2012 N04/69702
440 Implementation Handbook for the Convention for the Rights on the Child, at 154.

2010 on "Approval of procedures on child protection referral" of the Ministry of Labour, Health and Social Assistance, Ministry of Interior and Ministry of Education and Science

- Ensure involvement of qualified psychologist in the enforcement process and provision of necessary services for children in order to enforce decisions in accordance with the best interests of the child and without inflicting psycho-emotional stress over children.

- To implement the principle of taking into consideration the views of the child in taking any decision, as enshrined in Article 12 of the Convention on the Rights of the Child.

RIGHT TO RECEIVE EDUCATION IN MOTHER TONGUE

2011 annual report of Public Defender devoted separate chapter to the violation of the right to the education of the child, which was caused by the legal and enforcement gaps related to disciplinary procedures in the public schools. In particular, according to the appeals received throughout the reporting period, the cases of restricting schoolchildren's right to education due to the inconsistent implementation of disciplinary prosecution were revealed.

Throughout the year, 2012, the problem of ineffective functioning of public school self-governments and their limited involvement in the decision-making process important for school was still persistent. The mentioned problem will be reviewed in details in a chapter below:

The 2011 Annual Report of Public Defender designed special chapter to the Rights of the National Minorities and support to the civic integration and positively appraised increase of the credit hours for learning Georgian Language in non-Georgian schools as well as incorporation of bilingual education in concrete public schools; also, raising motivation to learn state language in regions settled with minorities. Notwithstanding the mentioned positive change, as a result of examining cases throughout the reporting period the Center for Women's and Child's Rights revealed the tendency of violating nationally and internationally guaranteed right of the child to apply and receive education in their mother language. This chapter provides analysis of the outlined problem:

Article 35 of the Constitution recognizes the right to receive education and the right to free choice of the form of education. According to Article 9 of the Law of Georgia on Basic Education,[441] everyone has the equal right to receive full basic education, elementary and basic education is compulsory. Article 4 of the same law regulates the issue of learning language in basic education institutions. Mainly, paragraph 1, Article 4 of the Law of Georgia on Basic Education, the language of education in basic education institutions is Georgian, and in autonomous republic of Abkhazia – Abkhazian and Georgian. According to the law, those citizens of Georgia, whose mother language is not Georgian have right to receive basic education in their mother language, in accordance with the national education plan, and relevant legislation. [442] The international conventions binding on Georgia related to education of national minorities are:

- The European Framework Convention for the Protection of National Minorities[443] ;

- The International Covenant on Economic, Social and Cultural Rights;[444]

- The Convention on the Rights of the Child.

441 Paragraph 1, Article 9 of the Law of Georgia on General Education.
442 Paragraph 3, Article 4 of the Law of Georgia on General Education.
443 Ratified by the resolution of the Parliament of Georgia N1938–IIs of October 13, 2005, binding for Georgia since April 1, 2006.
444 Binding for Georgia since August 3, 1994.

EXISTING PRACTICE

On 20 August 2012, citizen N.Z. appealed to Public Defender of Georgia with joint application by parents.[445] According to the applicant, 12 children were denied admission in Russian sector of LEPL - Kobuleti #2 Public School in 2012-2013. The appeal was accompanied by correspondence from the Ministry of Education, Culture and Sport of Adjara autonomic republic, [446] as well as the Kobuleti resource-center of the Ministry of Education, Culture and Sport of Adjara autonomic republic.[447] Official letters explained that in 2012-2013 education years, registration of school children in grade one of Russian sector of the LEPL - Kobuleti #2 Public School was not carried out due to the lack of necessary material-technical base. With the aim to examining the case, Public Defender's Centre for Women's and Children's Rights addressed[448] the Ministry of Education and Science Division of education and development.

The Legal Department of the Ministry of Education and Science notified the Center, that the Article 2^1, Annex 9 of September 15, 2005 decree #448 on "Establishment of general education Institutions as Legal Entities of Public Law and Adoption of Public School Charters" determined those general education institutions who conduct education in foreign language. Mentioned decree considers functioning of Russian sector in the LEPL - Kobuleti #2 Public School; however it is the sole discretion of the school to decide upon functioning of the said sector.

According to the information received from the LEPL - Kobuleti #2 Public School: [449] In April 2012, Minister of Education and Science, Mr. Dimitri Shashkin held a meeting with school principles, where Minister issued direction, that none of the public school directors should conduct registration of first graders in Russian sector for education year 2012-2013. The letter additionally notes that the Ministry did not provide computers for children studying in Russian sector. Also, no school books and educational literature was printed in Russian language.

LEPL - Kobuleti #2 Public School director N.B. transferred the abovementioned information to the school board for the relevant decision. On April 22, 2012 the school board issued decision, that no registration of first graders would be performed in Russian sector through education year 2012-2013.

The Center of Child's and Women's Rights of Public Defender of Georgia sent the case to the internal audit department of the Ministry of Education and Science. According to the information received from the Ministry of Education, Culture and Sport of Adjara Autonomous Republic[450], if the relevant needs arise, the Ministry of Education, Culture and Sport of Adjara autonomic republic will support functioning of Russian sector in LEPL - Kobuleti #2 Public School for education years 2013-2014.

LEGAL ANALYSIS

Given case demonstrates, that the right to receive education in mother language was violated both on national and international level towards children willing to study at the Russian sector of the LEPL - Kobuleti #2 Public School.

The European framework convention for the protection of national minorities pays particular attention to the right of education. Mainly, Article 12 of the Convention obliges the parties, where appropriate to take measures in the fields of education and research to foster knowledge of language of their national minorities. [451] At the same time *inter alia* contracting parties are under the obligation to provide adequate opportunities for training of teachers and access to textbooks[452] and to promote equal opportunities for access to education at all levels for persons belonging to national minorities. [453]

445 Appeal N1465–12.
446 The letter N02–20/1540 of the Ministry of Education, Culture and Sport of Adjara autonomic republic, July 10 2012.
447 The letter N01–17/227of the Resource Center of Ministry of Education, Culture and Sport of Adjara autonomic republic, July 10 2012.
448 Letter N3478/08/1465–12 of August 31, 2012.
449 The letter N01–12/159 of LEPL - Kobuleti #2 Public School, November 2, 2012.
450 The letter N01–16/3359 of the Ministry of Education, Culture and Sport of Adjara autonomic republic, July 4, 2012.
451 Paragraph 1, Article 12 of the European framework convention for the protection of national minorities.
452 Paragraph 2, Article 12the European framework convention for the protection of national minorities.
453 Paragraph 3, Article 12 the European framework convention for the protection of national minorities.

Article 30 of the UN Convention on the Rights of the Child grants the right to the child belonging to national minority to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language. On special session of the UN General Assembly, dedicated to the rights of the child, the assembly called upon the states to take the necessary measures to ensure that children, who represent national minorities or indigenous population, have equal access to education. Education process should be conducted in a way that enables children representing national minorities and indigenous peoples, to develop their cultural identity and such important aspects, as language and values. [454]

The UN Committee on the Rights of the Child devoted particular attention to the abovementioned rights of the child and issued special recommendation to the states on the right to education. The committee calls upon the Convention signatories to ensure the rights of the indigenous population children to carry out education on their own language, or in language primarily used by child's community. The contracting states should undertake obligation to teach the official state language.[455]

Given analysis confirms, that the state has an obligation to ensure equal access to the right to education to children representing national minorities in their own language, in parallel with implementing state education and active support of the civic integration.

Recommendation to the Ministry of Education and Science:

- **Undertake necessary measures to ensure the education for the national minorities in their own language in frame of the common educational plan in public schools through support of the foreign language sectors and bi-lingual education system.**

CHILD'S RIGHT TO PARTICIPATION – PUPIL SELF-GOVERNMENT BODIES

The UN Convention on the Rights of the Child recognizes the right of the child to freedom of expression and obliges the state parties to ensure that child forms his or her own views on all aspects related to him/her; in addition the views of the child being given due weight in deciding any issue related to the child. [456]

In concluding observation[457] on Georgia UN Committee on the Rights of the Child positively evaluates the efforts undertaken by state to ensure freedom of expression of the child and child's active participation in community. However, the Committee expresses concern that forums which contribute to the abovementioned process, such as Child's Forum and Child Parliaments are not supported by the state anymore. Committee also indicates, that traditional attitude in society may impair the realization of expression of views by child family, school and in society in general. The committee recommended to Georgia, to continue facilitation of the child's right to expression and full participation in accordance with the Article 12 of the Convention and to implement this obligation in practice on the level of family, school and the society, regarding the issues related to the child; the state was also given recommendation to continue supporting child forums and youth parliament.[458]

It is noteworthy, that in 2012 with the support from the UNICEF project "Support to the Center for Child's and Women's Rights of Public Defender to strengthen Child's Rights Protection, popularization and Monitoring", the Center for Child's and Women's Rights of Public Defender of Georgia carried out small-scale study to strengthening

454 Report of the UN General Assembly, 2002 paragraph 17 (A/S-27/19/Rev.1, P. 17)
455 34th session report of the UN Committee on the Rights of the Child, 2003 September/October, paragraph 19 (CRC/C/133).
456 Paragraph 1, Article 12 of the UN Convention on the Rights of the Child.
457 48th session of the UN Committee on the Rights of the Child, review of the reports submitted by the Convention contracting parties, final concluding observations relating to Georgia, June 23, 2008 (CRC/C/GEO/CO/3), chapter II, paragraph 25.
458 48th session of the UN Committee on the Rights of the Child, review of the reports submitted by the Convention contracting parties, final concluding observations relating to Georgia, June 23, 2008. (CRC/C/GEO/CO/3), chapter II, paragraph 26.

increasing the child participation in Georgia. The aim of the study was strengthened functioning of one of the child participation means – school self-government.

Article 12 of the Convention on the Rights of the Child envisages the child's right to express the views freely in all matters affecting the child. The same article obliges the states to give views of the child due weight in accordance with the age and maturity of the child.

General Comment N12 (the right of the child to be heard) of the Committee on the Rights of the Child underlines importance of implementation of mentioned article in state's education system. The Committee notes with concern continuing authoritarianism, discrimination, disrespect and violence which characterize the reality of many schools and classrooms. Such environment does not contribute to the expression of children's views and provision of due weight to given opinions.

The Committee recommends that States parties take action to build opportunities for children to express their views and for those views to be given due weight.

„Beyond the school, States parties should consult children at the local and national levels on all aspects of education policy, including, *inter alia*, the strengthening of the child-friendly character of the educational system, informal and non-formal facilities of learning, which give children a "second chance", school curricula, teaching methods, school structures, standards, budgeting and child-protection systems. The Committee encourages States parties to support the development of independent student organizations, which can assist children in competently performing their participatory roles in the education system." [459]

According to the General Comment N1 (2001) (Article 29(1), the aims of education), "Education must be provided in a way that […] enables the child to express his or her views freely in accordance with article 12 (1) and to participate in school life. […]The participation of children in school life, the creation of school communities and student councils, peer education and peer counseling, and the involvement of children in school disciplinary proceedings should be promoted as part of the process of learning and experiencing the realization of rights. [460]

In addition, Article 13 of the Convention on the Rights of the Child envisages the right of the child to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice. Article 15 recognizes the rights of the child to freedom of association and to freedom of peaceful assembly.

Abovementioned rights guaranteed by the Convention are reflected in the Law of Georgia on General Education, which strengthens pupils' rights and freedoms. The law guarantees participation of pupils in governing the school, right to have their views heard in deciding issues related to school and participating in discussions directly or through the representative (Article 11). The law additionally guarantees the right to freedom of expression, and the right to freedom of association and to freedom of peaceful assembly.

In addition, the Law on General Education and September 15, 2005 decree #448 on "Establishment of general education institutions as legal entities of public law and adoption of public school charters" of the Ministry of Education and Science notified the Center to regulate establishment of pupil self-government bodies and the rules of conduct. According to the law, pupil self-government is the part of the general education institution structure and primary and secondary level pupils shall have the right to participate in elections. Pupils elect their representatives on the equal basis, through secret ballot, in accordance with representation from different grades and with the protection of equal representation principle.

Legislation sets out the terms and procedures for the conduct of elections and defines its basic functions. In particular, pupil's self-government develops recommendations about school internal regulations, may submit proposals to the school board on important issues, including the management of grants, creates school clubs through the initiative of one-fifth of the members, and elects a representative to the disciplinary committees on middle level.

459 CRC-C-GC-12 General Comment NO 12 (2009) The right of the Child to be heard (para. 105-114)
460 CRC/GC/2001/1 General Comment NO 1(2001) Article 29 (1) THE AIMS OF EDUCATION (para. 8)

EXISTING PRACTICE

In order to obtain information about the self-government function in Tbilisi public schools, the Center for Child's and Women's Rights of Public Defender of Georgia addressed five District Education Resource Centers of the Ministry of Education and Science located in Tbilisi in March and again in May 2012.

After requesting the information for the second time, Isani-Samgori education resource center and Tbilisi 55th public school administration sent the information to Public Defender of Georgia.

The Center for Child's and Women's Rights of Public Defender of Georgia requested the information from the general and professional education department of the Ministry of Education and Science of Georgia related to the creation of pupil self-government bodies by the Ministry throughout the last five years and activities undertaken with the aim to develop these bodies.

Analysis of the received information reveals the following:

- Isani-Samgori 48th Public School has the pupil self-government body; the latest elections in 46 schools were conducted in Autumn 2011, and in 2 schools in March 2011 and June 2012;
- The school budget has the specifically allocated resources for financing school self-government; If pupils self-government addresses the school, the funds are allocated from the school budget to finance organized activities, also to purchase gifts for pupils who won competitions and providing funds necessary for the encouragement of active members;
- In most cases there are no rooms devoted for the meetings and work of the pupil self-government body; instead, pupil self-government works in the school library, assembly hall and art room;
- Majority of self-government does not have the action plan; self-government action plan is mostly restricted with the cognitive/entertainment/sports/charity events to be organized throughout the year or projects offered by the school administration;
- Majority of school self-government does not have specifically elaborated charter/structure; in some instances their work is regulated by school internal regulations;
- School self-government almost never applied to school governing body with the recommendations on important issues related to school; Only several applications have been carried out related to organizing different activities, also concerning the excellence awards to the pupils; pupil self-governments have not issued recommendations concerning the school internal regulations;
- Received documents do not confirm participation of school self-government in governing received grants;
- 23 school self-governments have their representative in school governing body. Information received from 25 schools does not include information concerning this issue;
- Pupil self-governments in 9 schools created school clubs (the amount of school clubs varies between one and five). Documentation received from 39 schools does not include information on this issue.
- Activities undertaken by school self-governments are: intellectual, musical, sport competitions, cognitive competitions, charity and environmental activities;
- The source of funding of projects initiated by school self-gvernments is school budget, also small grants received by school.

Analysis of Isani-Samgori district school self-government activities and documents of self-government participation in governing the school and taking into account reviewing of national and international practices (example of self government in Ireland), identified the following issues:

- Even though there are self-government bodies in the schools, created according to the Law on General Education, they do not carry out functions determined by law, such as elaborating recommendations concerning the school internal regulations[461] and addressing the school governing body with the recommendations on important issues related to school;[462] this casts the doubt over the functions of pupils' self-government representative in the governing body and quality of his/her actual participation in the work of the governing body;
- Analysis does not reveal participation of school self-government in governing the grants;[463]
- Activities of self-government are limited to organizing various activities and charity events and their participation in important decision making in school is not revealed;
- School self-government bodies have no action plan, which would have been oriented towards solving the problematic issues of school and pupils;
- Lack of functional division between the members of self-government;
- Lack of financial support;
- Non-existence of special working room, which is possibly the reason for exclusion of organizing concrete meetings and may be regarded as one of the factors impairing effective functioning of school self-government;
- Lack of support of pupils from the side of teachers/governing bodies, which is evidenced through non-provision of information on school-governments and limited assistance on functioning process;
- Absence of training module for teachers and pupils on functioning of self-governments and its effective cooperation;
- Lack of support activities from the Ministry of Education and Science for the creation and development of pupils' self-government bodies.[464]

According to the abovementioned, the conclusion may be drawn that the school self-government in public schools do exist only on a legislative level and their legally granted rights and functions are not used in practice.

It is important to note, that the UN Committee on the Rights of the Child addressed Latvia with the recommendation in relation with implementing Article 12 of the Convention, to strengthen its efforts to ensure that children have the right to express their views freely in all matters affecting them and to have those views be given due weight in schools and other educational institutions, as well as in the family; develop community-based skills-training programmes for parents, teachers and other professionals working with and for children, to encourage children to express their informed views and opinions by providing them with proper information and guidance. [465]

Committee pays particular attention to the issue of improving qualification of teachers and calls upon the states to ensure training of teachers in the participatory learning methodology.[466]

461 Paragraph "a", Article 45 of the Law of Georgia on General Education.
462 Paragraph "b", Article 47 of the Law of Georgia on General Education
463 Paragraph "d", Article 47 of the Law of Georgia on General Education
464 According to the correspondence from the Ministry of Education and Science Department on national education plans and general education, the letter (N14–1–19/25386) of July 3, 2012 the Ministry does not implement additional measures related to activities of school self-governments.
465 Latvia, CRC/C/LVA/CO/2, paragraph 25.
466 Committee on the Rights of the Child, 43th session report, September 2006, recommendations paragraph 17-19.

Importantly, implementation of main principles of the Convention on the Rights of the Child, which also encompasses Article 12, should not be dependent on the lack of resources on behalf of the state. Article 4 of the Convention indicates, with regard to economic, social and cultural rights, that States Parties should undertake such measures to the maximum possible extent under their available resources and, where needed, within the framework of international co-operation.

Recommendations to the Ministry of Education and Science:

- **Undertake necessary material technical support of the self-government bodies existing in school in order to fully implement the rights guaranteed in Article 12 and Article 15 of the Convention on the Rights of the Child on giving the views of the child due weight and right to freedom of association;**
- **Implement the relevant programme and conduct the awareness raising trainings for pupils and teachers on the topic of functioning and effective cooperation of self-government bodies ;**
- **Ensure training of public school teachers and personnel in the participatory learning methodology, to conduct the work of the school self-government bodies with the support of qualified personnel and ensure direct assistance in its functioning process.**

The Rights of Women

WOMEN'S POLITICAL PARTICIPATION

One of the main challenges in present society is attaining gender equality in political life of the country. Since the 2012 parliamentary elections, the number of female members of parliament in representative organ raised from 6% to 10,8%. Despite the progress, this data remains as low indicator of engaging women in decision making as confirmed by the Global Gender Gap Index of 2012.[467] The Global Gender Gap Index examines the gap between men and women in four fundamental categories (sub-indexes): economic participation and opportunity, educational attainment, health and survival and political empowerment. According to the report, in 2012 Georgia was ranked 109 out of data of 133 countries in relation with the political participation.

The Resolution of the Parliament of Georgia of 27 December 2011 no. 5622 approved the 2012-2015 National Action Plan on Women, Peace and Security for the Implementation of the United Nations Security Council Resolutions Nos.1325, 1820,1888,1889, and 1960, execution of which was carried out in 2012. Among other activities, # no. 577 decree of the Minister of Defence of June 30, 2012 should be outlined. Decree planned different activities in this area, such as:

- Georgian armed force Joint Staff was instructed to re-evaluate existing physical standards and in case of need undertake necessary amendments with the aim to stimulate women participation in armed force and peacekeeping contingent.

- Joint Staff National Guard Department of Georgian Armed Force was instructed to cooperate with the Gender Equality Council, the Ministry of Education and Science and local self government organs with the aim to inform population on occupied territories on impeding risks and threats, taking into account specific needs of women and children, as well as ensuring civil defence and safety education for the same group.

- The L.E.P.L. State Military Scientific-Technical Centre "Delta" was ordered to relay information to women living in the adjacent territories to occupied regions regarding the clearance works to remove the explosive remnants of war and the reports prepared in accordance with the UN obligations.

The Public Defender's Centre for Women's and Children's Rights will monitor implementation of the mentioned procedures.

In terms of women's participation in political processes particular importance was given to the strengthening women's participation in the in Geneva talks in 2012. Among 2012 Georgian delegation 4 representatives were women, which is the highest level of women inclusion up to this date. However, on the basis of the December 7, 2012 Decree #1594

467 The Global Gender Gap Index, 2012, Hausmann, R., Tyson D.L., Zahidi,S. http://www3.weforum.org/docs/WEF_GenderGap_Report_2012.pdf

approved by the Prime Minister[468] women participation in Geneva talks was decreased by two female members, which, unfortunately, weakens women's participation in political processes.

In this area, important initiative was proposed by the Prime Minister of Georgia Mr. Bidzina Ivanishvili to appoint the advisor on gender equality issues in the Apparatus of the Prime Minister. On 6 February 2013, Decree #32 of the Prime Minister of Georgia created new position in the list of staff of Apparatus of the Prime Minister: Assistant to the Prime Minister of Georgia on Human Rights and Gender Equality issues. This step was positively appraised by Public Defender. However, taking into account the large-scale work in human rights area, it is important to foresee expansion of the abovementioned function in the Apparatus through creation of inter-agency coordination mechanism on governmental level. The latter will ensure effective protection of gender equality principle via coordination of decision makers in governmental institutions.

Increase of civil society inclusion played significant role in strengthening women's political participation. On 16 March 2012 NGOs consultancy workshop took place at Women's Information Center. With the aim to implement the UN Security Council peace and security resolutions #1325, #1820, #1888, #1889 and # 1960 the Civil society representatives prepared recommendations addressed to government for 29 March 2012 Geneva Talks meeting:

1. Ensure the possibility for visiting the graves in occupied territories (especially, during the days for commemoration of the dead)
2. Providing Health Care - Emergency Medical Access (Tskhinvali region).
3. Promotion of joint economic activities, especially with women's participation (trade, exchange).
4. Cooperation in agricultural activities – knowledge and experience sharing in bio-farming, contributing to the the exchange of information.
5. Solving the problem of American butterflies in Abkhazia and Samegrelo regions.
6. Providing information on threats, undertaking marking of provisional administrative borders.

Notwithstanding the mentioned activities, engagement of women in political decision making is still minimal, which leads to the necessary performance of the fifth objective of "2011-2013 Action Plan to Ensure Gender Equality" approved by 2011 resolution №4672–Is of the Parliament of Georgia.

The Public Defender of Georgia addresses the Parliament of Georgia, Government and Local Self-Government Representatives with the recommendation:

- **Undertake sustainable activities to increase women's political participation and ensure gender equality through concrete and measurable results;**
- **Ensure functioning of the Gender Equality Coordination Council on governmental level;**
- **Create special programs on local level in order to reveal leader women (among them, women in rural areas and representatives of national minorities) with the aim to strengthen their skills and capacities**
- **Perform analysis to reveal employment of women on state-political positions, ministries and other governmental agencies as well as local-self governments. If need arises, elaborate recommendations to strengthen area of women employment.**

468 7 December 2012 Decree #1594 approved by the Prime Minister of Georgia on the participation of Governmental Delegation in Geneva negotiations.

FIGHT AGAINST DOMESTIC VIOLENCE

Implementation of Presidential Decree# 27/04/02 of April 27, 2011 "On the Approval of the Action Plan for 2011-2012 on the Measures to be Implemented for the Elimination of Domestic Violence and Protection and Assistance to the Victims of Domestic Violence" represented one of the serious challenges of current year.

In June 2012 domestic violence was criminalized by decision of the Parliament of Georgia. On this basis domestic violence was recognized as a criminal offense. In particular, Articles 11^1 and 126^1 were incorporated in Criminal Code of Georgia in order to determine domestic violence as criminal offence and define the responsibility measures.

Methods to identify cases of domestic violence were strengthened in 2012. This is confirmed by receipt of reports from victims. According to the information sought from the Ministry of Internal Affairs,[469] 257 restraining orders were issued in 2011, the number was increased to 307 by the end of 2012.

According to the information received from the Supreme Court of Georgia[470], the data from the year 2011 and 9 months from 2012 reveal that 105 cases were reviewed for the issuance of protective order, and out of them 90 appeals were satisfied and protection orders issued. As for judicial adoption of restraining order: 503 cases were reviewed by court, and 489 satisfied. It should be noted, that the gender evaluation of the data was not possible as judiciary does not process statistical data by indication of gender.

In 2012 construction of the third domestic violence shelter was launched in Kutaisi. The plan is to finish construction and begin exploitation of shelter in 2013. Strengthening of the shelters through establishment of quality management instrument, as well as construction of the new shelter is carried out with continuing support of the UN Women organization.

According to the Presidential Order #1143 adopted on 30 December 2012[471] on amendments to the charter of the L.E.P.L. State Fund for Trafficking Victims Protection and Assistance, the functions of the Fund increased so as to incorporate obligation of rehabilitation and assistance to victims of sexual violence. The mentioned foundation is the main state organ undertaking assistance to victims of domestic violence since 2006. The Fund for Trafficking Victims Protection and Assistance effectively ensures performance of state obligations within its powers in mentioned area.

The role of civil society sector in assisting victims of domestic violence was traditionally very important; in 2012 women consultation service "House" elaborated "Model for functioning of the crisis centre for domestic violence victims;" various organizations carried out number of activities for domestic violence prevention and awareness rising of victim protection in centre and in regions.

Particular attention should be given to ratification preparation work undertaken in 2012 for the Council of Europe Convention on the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) of 2011. In particular, with the initiative of Inter-Agency Council on combating domestic violence and support from the UN Women, ratification preparation working group was created for the Council of Europe Convention on the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

The working group analyzed Georgian legislation in terms of compatibility and harmonization with the convention and prepared the relevant legislative amendments, in particular: to the Law of Georgia on Elimination of Domestic Violence, Protection of and Support to Domestic Violence Victims"; to the Administrative Procedure Code of Georgia; to the Criminal Procedure Code of Georgia; to the Criminal Code of Georgia; to the Law of Georgia on Legal Status of Foreigners; to the Law of Georgia on Refugee and Humanitarian status."

In addition, the study was conducted on compatibility of Georgian service to victims of domestic violence with the requirements of the Convention.

On 28 January 2013 at the inter-agency council meeting the representatives from the Ministry of Interior, Ministry of Justice and Ministry of Labor, Health and Social Assistance expressed agreement about signing the Convention.

469 Letter #43338
470 Letter #818-12
471 The Presidential Order #1143 adopted on 30 December 2012 on amendments to the charter of the L.E.P.L. State Fund for Trafficking Victims Protection and Assistance, adopted by the order #437 of the President of Georgia on 18 July 2006.

Despite achieved results, analysis of Action Plan for 2011-2012 on the Measures to be implemented for the Elimination of Domestic Violence and Protection and Assistance to the Victims of Domestic Violence reveals, that many issues foreseen by the action plan still require immediate implementation. Non-existence of detailed report implementing of the said plan is considerable omission.

With the evidence based directions and exact statistic or qualitative data, the report could present means of elaborating future plans.

The Public Defender of Georgia addresses the government of Georgia with the recommendation to fulfil objectives of the 2011-2012 action plan on domestic violence which have not been implemented yet:

- **Enhance and systematize unified statistical data on domestic violence. (paragraph 1.3);**
- **Integration of elaborated Guidelines on protection and assistance of domestic violence victims in national referral mechanism for the healthcare system staff (primary healthcare system, gynaecology, reproductive health, emergency medical assistance, traumatology);**
- **Determination of the specific measures within the national referral system for the victims of domestic violence with special needs.**

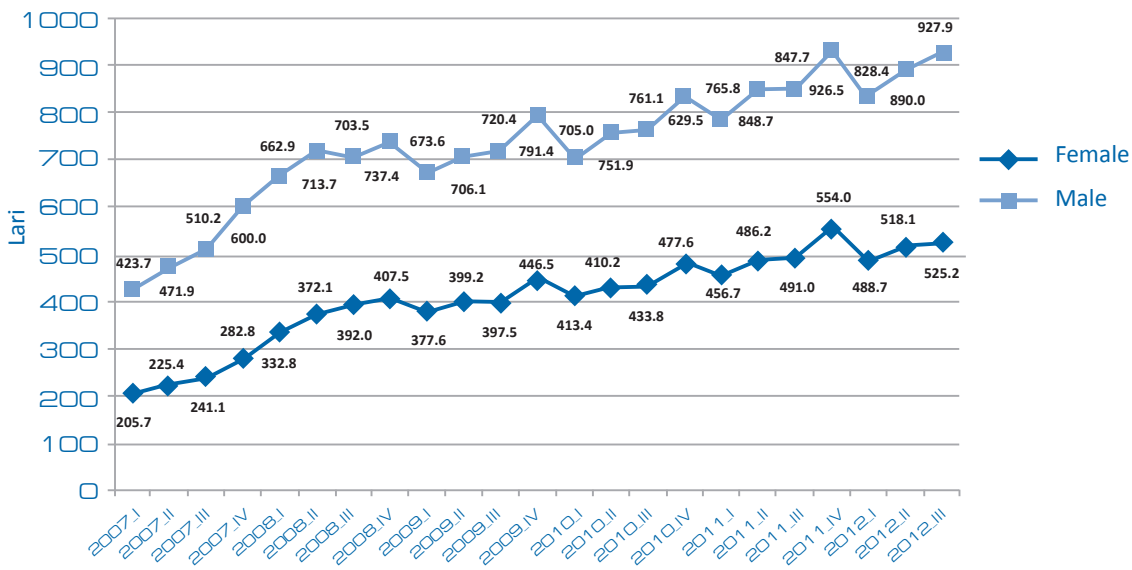
The Public Defender of Georgia addresses the Parliament of Georgia:

- **To ratify 2011 the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) in the nearest future.**

LABOR RIGHTS FOR WOMEN

Gender segregation on job market still persists in the country. According to the Geostat, there is a significant difference by gender indicator according to average monthly nominal salary employees. The difference is reflected in diagram below: [472]

Average Monthly Nominal Salary of Employees by Gender (by 2007-2012 quarters)



472 Official data of Geostat http://www.geostat.ge/?action=page&p_id=148&lang=geo

Despite the qualification and education, women dominate in non-commercial spheres, where labor remuneration is rather low. It is important to foresee, that women still have triple workload – they undertake professional work, household work and take care of children. Situation is harder for those who take care of person with disability and who have not legal or social support from the state. In 2012, with the aim to consider gender issues in labor code – governmental representatives started working to carry out amendments on issues such as – maternity leave for women, women employment conditions, issues regarding dismissal of pregnant women and etc.

Reimbursement of maternity leave for women in private sector remains as one of the serious challenges. Ensuring necessary career conditions for women during pregnancy period (before and after childbirth) bears utmost importance taking into account harsh socio-economic situation in the country. The chief essence of the problem is the following: reimbursement of maternity leave for women in private sector does not depend on employee's salary and financial assistance is 600 Gel, which may frequently be the reason for improper exercise for the right to motherhood, fundamental right of women.

Public Defender of Georgia positively evaluates initiation of amendments to the Labor Code of Georgia and expresses hope, that amendments will foresee protection of women's labor rights from gender discrimination.

Public Defender of Georgia addresses the Government of Georgia with the recommendation to:

- **Launch relevant procedures to ratify International Labor Organization 18th Maternity Protection Convention and ensure maximum participation of all interested parties in the related review process;**
- **Create the working group oriented on harmonization of legislation with the main function to conduct gender based review and analysis of amendments to the Labour Code, in accordance with the women labour and employment standards enshrined in international treaties.**

GENDER SENSITIVE SOCIAL ASSISTANCE SYSTEM

Deficiencies in Georgian social protection and social assistance system in terms of disregarding gender aspects, gradually became more observable in recent years. Incorporating gender equality principles is necessary in all spheres if state policy. Analytical study conducted by the Public Defender's Centre for the Rights of Women and Children revealed, that not foreseeing gender aspect may become direct source of discriminating against women, which is prohibited by the Constitution and other legislative acts.

Social assistance issues are regulated by Governmental resolution #145 of 28 July 2006 on Social Protection, which determines – subsistence allowance may be granted to families, who are registered in the united database for socially vulnerable families in accordance with the regulations and whose ranking score is lower than average score established by the government of Georgia. For the aim of receiving subsistence allowance, family members placed in state institutional establishments and receiving state assistance will not be considered as family members.[473]

It is noteworthy, that subsistence allowance assigned to the families may be revised if there are changes in family composition; e.g, if one member of family leaves the household, moves to different place for living. [474] The same rule applies in cases, where the person receiving subsistence allowance moves to shelter to avoid domestic violence. In this scenario the victim of domestic violence (as well as juvenile, if he/she moves to live in shelter with parent) does not receive social assistance anymore.

473 Order #225 of 22 August 2006 of the Ministry of Labor, Health and Social Assistance adopting the Rules of Assinging and Providing Subsistence Allowance.

474 Order #225 of 22 August 2006 of the Ministry of Labor, Health and Social Assistance adopting the Rules of Assinging and Providing Subsistence Allowance.

Throughout the reporting year the Office of the Public Defender received number of appeals from NGOs working on women's rights regarding termination of social assistance to women victims of domestic violence from state, due to the fact that they were moved to state domestic violence shelters.

On 3 February 2012, Public Defender of Georgia received appeal from citizen Kh.Ch.R,[475] who requested protection from physical, emotional and economic violence. Mrs. Kh. Ch.R and her juvenile child L.R., are disabled (lack of hearing) were victims of domestic violence (the status is not legally defined). In particular, they sustained permanent violence from former husband, mother in law and other members of the family. Due to this fact, Kh.Ch.R. and her child were forced to leave home in June 2012 and live on the street.

From February 2012 till August 2012 number of efforts were undertaken by the Public Defender's Centre for the Rights of Women and Children in order to transfer Kh.Ch.R. and her child in domestic violence shelter; however Kh.Ch.R refused to accept this option, because of threat to lose subsistence allowance – the only source of financial assistance.

After systemic analysis of problem the Public Defender's Centre for the Rights of Women and Children revealed, that losing subsistence allowance after placement in domestic violence shelters represents widespread and common practice: according to the data from the NGO Anti-Violence network of Georgia[476] - in last period 4 socially vulnerable victims of violence stopped receiving subsistence allowance because of placement in shelter. Unfortunately, this factor represents the reason for refusal of victims of domestic violence to move to shelters, which places the victims under threat.

Though during the period of placement in shelters, which varies from three to six months, victims are provided with minimal conditions for existence (housing, food, medical assistance), existing legislation does not foresee provision of financial assistance because of victim status, which could have been applied for satisfying basic needs of the victim (transportation of child to school, purchase of books etc). As it was noted, this factor frequently represents the reason why female victims of violence refuse to move to shelters.

INTERNATIONAL STANDARD

According to the paragraph 23 of General Recommendation no.19 of the UN Committee on the Elimination of Discrimination against Women, Family violence is one of the most insidious forms of violence against women. Lack of economic independence forces many women to stay in violent relationships. This is why, States parties should ensure appropriate protective and support services victims. (paragraph 24 "b")

On 15 August 2006 the UN Committee on the Elimination of Discrimination against Women issued the following recommendation during review of Georgia's second and third periodic reports: "Committee requests the State party to ensure that all poverty alleviation programs and strategies are gender-sensitive and take into account the needs of particularly vulnerable groups, including rural women, elderly women, and women-headed households." Committee called upon Georgia, to undertake relevant measures for improving economic conditions for particularly vulnerable groups.

It is notable that state has the primary responsibility for identification and introduction of effective prevention system to combat domestic violence. State is obliged to create strong legal guarantees to protect and assist victims of domestic violence. With this regard, state obligation entails establishment of effective social assistance system for victims of domestic violence. At this stage, existence of effective legal mechanism to ensure social-economic rights for victims of domestic violence bears utmost importance.

Analysis of situation at hand revealed, that social assistance system existing nowadays does not satisfy the needs of victims of domestic violence, especially socially vulnerable women and children. The system creates dilemma for socially vulnerable victim – whether to ensure personal safety and safety for children and flee from oppressor or to

475 Due to the sensitivity of the issue and for the reason to protect confidentiality, the name of the applicant is concealed.
476 Letter №04/249, 2 August 2012.

keep the social assistance as the only source of income, but refuse to protect personal rights and safety, thus risking the life. Given conditions often represent one of the obstacles for the victim to evade the violence and make use of state or various NGO shelters and therefore protect the right – to live in environment without violence.

According to all the abovementioned, Public Defender of Georgia addresses the government of Georgia with the recommendation:

- **Considering importance of combating domestic violence, revise legislative norms regulating social assistance system in order to avoid concealment/disregard of gender based violence facts by victims of domestic violence who aim to preserve social assistance. Strengthen social protection guarantees for victims of domestic violence;**
- **Create effective system for information exchange between the Social Service Agency and State Fund for Trafficking Victims Protection and Assistance as well as shelters existing in civil society sector, in order to avoid overlap between the measures protecting safety and life of victims and social protection measures for the victim and victim's children.**

EARLY AGE MARRIAGE

Discussions related to early age marriage of girls underwent behind the closed doors for long period of time. On one hand, people preferred not to discuss social stereotypes related to early marriage and on the other hand – did not violate the comfort of silence. Neither the state institutions, nor the child or his/her legal representatives talked about this issue.

In the sphere of girl's rights protection, child marriage represents one of the unresolved issues not only in Georgia, but in many other countries in the world.

INTERNATIONAL EXPERIENCE

The right to marriage, based on the persons free and full consent, is protected by international human rights instruments, such as: Article 16 of the Universal Declaration of Human Rights, Article 12 of the European Convention on Human Rights, Article 10 of the International Covenant on Economic, Social and Cultural Rights and Article 23 of the International Covenant on Civil and Political Rights.

The right of juveniles to get married with the consent of parents before attaining the adult age remains as an important issue. From a rights-perspective a number of serious concerns accompany child marriage for girls, such as: denial of childhood and adolescence; limits to personal freedom and development; reduced educational opportunities; as well as limitations to her right to health, including reproductive health and psychological well-being. According to the study of the World Health Organization, [477] due to gender inequalities, young girls who get married at early age are more likely to be forced into sexual intercourse, less likely to negotiate safe sex, and more likely to experience domestic violence. They are also less likely to take action against domestic violence. [478] Data from the 2000-2009 research show[479] that early marriage data of Georgia (17%) was considered to be quite high in the region: (Moldova – 19%, Turkey – 14 %, Tajikistan – 13 %). However, as research conducted by the Public Defender's Centre for the Rights of Women and

477 European Magazine for Sexual and Reproductive Health (2012) Child Marrage, World Health Organization, regional office for Europe #76 http://www.euro.who.int/__data/assets/pdf_file/0007/178531/Entre-Nous-76-Eng-v2.pdf

478 Brown, D and Bogaarts Y. (2012) Child marriage: a violation of human rights, Marriage des enfants: une violation des droits humains The Free Library. (2007). Retrieved November 22, 2012, http://www.thefreelibrary.com/

479 Christiansen, C. (2012), Early marrages and global research priorities on adolescent sexual and reproductive health, The European Magazine for Sexual and Reproductive Health, WHO.

Children confirms, many instances of early marriage stay behind statistics, as they are often related to systemic and irreversible violation of girls rights, which necessitates public awareness raising.

The UN Committee on the Elimination of Discrimination against Women obliges the states to ensure equal protection of the right to education for women and men. For implementation of this obligation, Committee calls upon the states to apply all measures to eradicate child marriage.[480]

In General Comment no. 4[481] of 2003 the Committee on the Rights of the Child pays particular attention to the results of child early marriage, such as restriction of development and right to education of the child. Children who marry, especially girls, are often obliged to leave the education system and are marginalized from social activities.

According to the Convention on the Rights of the Child[482], secondary education is obligatory. Consequently, states shall take appropriate measures to ensure that no child is left without the secondary education.

In its General Recommendation no. 19, the Committee on the Elimination of Discrimination against Women underlines the issue of forced marriage, and calls upon the states to take into account Articles 2, 5 and 10 of the Convention on Elimination of Discrimination against Women and to recognize, that traditional views, stereotype roles and forced marriage based on them is violence against women. States shall undertake all relevant measures to change mentioned traditions and stereotypes. Committee calls upon the states to construe the definition of domestic violence so as to interpret harmful traditions and forced marriage as violence against women.

In one of its recommendations[483] on equality in marriage and family relations, the Committee on the Elimination of Discrimination against Women noted that minimum age for marriage should be determined the age of 18.

The UN Committee on the Rights of the Child expressed concerns that in some states parties married children are legally considered adults, even if they are under 18, depriving them of all the special protection measures they are entitled under the Convention. The Committee strongly recommends that States parties review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys. [484]

In accordance with the Article 16 (2) of the Convention, the Committee on the Elimination of Discrimination against Women interprets that states are obliged to perform registration of child-girls marriage in accordance with the law and this should be the obligatory pre-requisite for marriage.

International practice shows, that early marriage is not a private arrangement and affects the public at large. Thus, it is necessary that state pays particular attention to this matter.[485]

LEGAL REGULATION

According to the Article 1108 of the Civil Code of Georgia, "the marriage is allowed from 18 years of age. In exceptional cases marriage is allowed from the age of sixteen years, subject to the preliminary consent of the parents or other statutory representatives. In case of refusal of consent by the parents or other statutory representatives, a court, on the petition of the prospective spouses, may grant the permission to marry provided there are legitimate reasons therefore."

Article 140 of the Criminal Code of Georgia declares punishable adult's sexual intercourse with person under sixteen years with the previous knowledge of the offender. This crime is punishable by restriction of freedom for the term up to three years or by deprivation of liberty for the term extending from one to three years.

480 The UN Committee on the Elimination of Discrimination against Women CEDAW/C/SR. 606, 607. 2002; CEDAW/C/SR. 569, 570, 2002.
481 Mentioned commentary relates to juvenile health and development in the contect of the Convention on the Rights of the Child.
482 The Convention on the Rights of the Child, Article 28.
483 General Comment №21, 1994
484 General Comment №4 , Committee on the Rights of the Child, Paragraph 20, 2003.
485 Child Marriage and the Law, Unicef 2008 at 36.

Georgian Law on Civil Acts[486] sets out logical prerequisites for civil marriage registration, according to which the *age and consent* of persons who are getting married must be taken into consideration.

Despite the fact that legal regulation of early marriage in Georgia is consistent with international standards, there is different situation according to existing practice.

LOCAL PRACTICE

On 1 June 2012 with the assistance of project – "Support to the Public Defender's Centre for the Rights of Women and Children, popularization of child right's protection and strengthening monitoring"[487] the Public Defender's Centre for the Rights of Women and Children conducted awareness raising campaign on child's rights in Kvemo Kartli region. According to the information obtained by various school teachers, lately five juvenile girls terminated education due to early marriage.[488].

M.B.'s case

According to the information from Marneuli Municipality territorial unit of Social Service Agency, juvenile M.B. got married and terminated school education on the second level of studies, in 8th grade (approximately 13 years old). The girl is 6 months pregnant and is not willing to continue education.

T.B.'s case

M.B.'s sister T.B. also got married in 8th grade (approximately 13 years old), and terminated school education on the second level of studies. As teachers say, both children lived in harsh social-economic conditions before the marriage. As the teachers noted, "now they (girls) will at least have food."

Z.B.'s case

According to the information from Marneuli Municipality territorial unit of Social Service Agency, juvenile Z.B. terminated education on the first level of studies in 6th grade due to the early marriage. She does not want to continue studies.

L.P.'s case

According to the information from Marneuli Municipality territorial unit of Social Service Agency, juvenile L.P. got married and terminated school education on the second level of studies in 9th grade. She is not planning to continue studies.

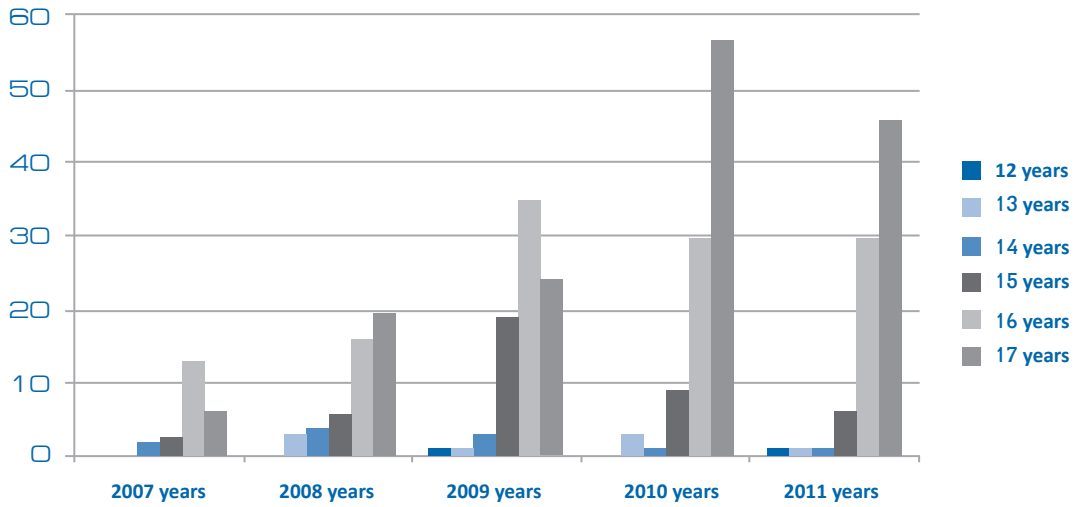
Teachers explain, that they had no information that early marriage of girls violated the law, thus they did not lodge notifications in police. They underlined the fact, that parents of the girls expressed consent regarding marriage. Consequently, teachers shifted main responsibility over parents, who accepted said actions and considered, that it was the best option for their daughters. It should be noted, that neither the Guardianship and Care Division nor the Social Service Agency expressed interest in the abovementioned cases (juvenile health protection, right to education etc)

486 Article 50
487 Was organized with the support of UNICEF.
488 The names of girls are not disclosed in order to protect confidentiality.

STATISTICAL INFORMATION

The Public Defender's Centre for Women's and Children's Rights requested and analysed statistical data on termination of secondary education. According to the information received from the Ministry of Education and Science in Georgian public/private schools 7367 girls terminated education before the end of basic level[489] (7-9 grades.)

On 3 April 2012 the Public Defender's Centre for Women's and Children's Rights requested[490] the information from the Marneuli education resource center of the Ministry of Education and Science. The request was formulated as follows: last five year's data about the pupils' age of termination of education with the aim to get married in Marneuli territory public schools. Data obtained in response to the request present alarming information:



In total 341 cases.

Presented practice demonstrates that state institutions possessed information on early marriage, which caused abandonment of education system by children. Despite this fact, state organs failed to bring the issue forward and perform active work to combat the problem.

It is notable, that according to the Article 172 of Code of Administrative Offences of Georgia:

"1. Persistent evasion of responsibilities of parents and their substitutes towards raising and educating their children, Consumption of narcotic substances by minors without a doctor's prescription or commission of legal offence by juveniles (being drunk in public spaces, consumption of alcoholic beverages) – will lead to official warning or fine up to 200 GEL for parents or their substitutes.

„3. Non-notification of facts listed in parapgraph 1 of this Article by the Guardianship and Care Division will be fined for 150 Gel."

According to the Article 209 of the abovementioned law, if conditions set out in 172 exist, the organs of the Ministry of Internal affairs administrative offence cases. However, it is notable, that this Article is rarely applied in practice, which might be one of the reasons why the professionals, who ensure legal guarantees of child protection do not carry out their obligations related to the facts of early marriage: to eradicate and reduce threats and risks caused by child marriage.

Analysis of given problem confirms the need of active inclusion of various state agencies as the issue is equally important and thematic for various ministries.

489 Article 2 (n) of the Law on General Education of Georgia.
490 Letter 338/08. 3 April 2012.

It is important that society directs discussion towards necessity to change firmly established religious, social and traditional beliefs in order to equally consider best interests of all girls and recognize early marriage as violence against women.

The Public Defender of Georgia addresses the Ministry of Education and Science with the Recommendation:

- **Ensure obligatory education for all children in accordance with the legal requirements;**
- **Ensure provision of information on child early marriage by all educational institutions to the relevant state structures;**
- **Conduct relevant activities for awareness raising of teachers, children and parents**

The Public Defender of Georgia addresses the Ministry of Labor, Health and Social Assistance with the Recommendation to ensure:

- **Juvenile protection from abuse of rights by parents and other legal representatives and application of legal sanctions to eradicate violation of rights of the child;**
- **Conduct relevant activities for awareness raising of teachers, children and parents.**

The Public Defender of Georgia addresses the Ministry Internal Affairs with the Recommendation to ensure:

- **Juvenile protection from abuse of rights by parents and other legal representatives and application of legal sanctions to eradicate violation of rights of the child;**
- **Conduct relevant activities for awareness raising of teachers, children and parents to assist eradication of early marriage practice.**

DISCRIMINATION AGAINST FEMALE DRUG ADDICTS

According to the International Harm Reduction Association, in 51 European and Central Asian countries 112500 women serve the sentence in penitentiary establishments. Out of said number, 28% - 31400 are incarcerated for drug offences. This number demonstrates that drug offence presents important factor determining women incarceration. [491] According to the same report and data from the International Harm Reduction Association, Georgian reality has the highest indicator in the region:

Country	Number of women in prisons	Number of women in prison for drug offences	Percentage of female prisoners serving sentences for drugs	Female population in the country
Albania	73	9	12,3	1 597 981
Andorra	6	–	-	40 753
Armenia	196	28	14	1 645 985
Austria	165	18	11	4 285 367

491 Iakobishvili, E. (2012) „Cause for alarm: The incarceration of Women for Drug Offences in Europe and Central Asia, and the Need for Legislative and Sentencing Reform". International Harm Reductive Association/Harm Redaction international, London

Azerbaijan	347	103	30	4 515 456
Belorussia	3000	210	7	5 154 164
Belgium	471	142	30.1	5 432 623
Bosnia-Herzogovina	52	7	13.4	1 954 241
Bulgaria	300	40	14	3 896 823
Croatia	177	42	23,7	2 288 572
Cyprus	45	4	8.8	446 895
Czech Republic	1493	168	13.4	5 280 608
Denmark	136	18	14	2 758 756
Estonia	136	62	46	722 266
Finland	216	35	17	2 715 370
France	2200	308	14	32 030 798
Georgia	1169	386	34	2 256 415
Germany	3318	511	16	41 880 940
Greece	526	230	43.7	5 628 221
Hungary	1 253	62	4.9	5 249 210
Island	7	4	57.1	157 449
Ireland	138	32	23.1	2 254 301
Italy	2 913	1 252	42.9	30 744 127
Kazakhstan	4 237	1 080	25.4	8 189 953
Kyrgistan	300	100	33.3	2 777 222
Latvia	278	191	68.7	1 212 656
Lichtenstein	0	-	-	18 254
Lithuania	421	88	20.9	1 748 624
Luxemburg	39	8	20,5	245 017
Macedonia	52	-	-	1 022 501
Malta	39	-	-	205 154
Monaco	4	-	-	16 891
Montenegro	30	7	23.3	317 411
The Netherlands	627	197	31.4	8 368 118
Norway	206	67	32.5	2 419 969
Poland	2 604	82	3.1	19 709 069
Portugal	682	325	47.6	5 522 407
Moldova	303	15	4,9	1 891 895
Romania	1 370	177	12,9	10 932 250
Russia	59 000	19 628	33.1	75 777 199
San Marino	0	-	-	15 777
Serbia	300	-	-	4 976 678
Slovakia	477	131	27.4	2 783 408
Slovenia	68	16	23.5	1 033 426
Spain	6 461	2935	45.5	22 763 627
Sweden	289	119	41	4 659 255
Switzerland	347	35	9.9	3 871 429
Tajikistan	600	420	70	3 519 960
Turkey	4 728	739	15.6	37 236 294
Ukraine	6 108	610	10	24631 770
United Kingdom	4 668	759	16-18	31 363 239
Total	112 575	31 400	27.8	440 166 774

2012

Even the superficial analysis of the above table reveals that every fourth woman throughout Europe is incarcerated for non-violence drug offence, which is the sufficient reason for concern for both international and national human rights defenders. The female prison population is increasing across the region, and it is apparent that drug offences are a major

driver of that phenomenon. Yet studies have shown that there is no correlation between repressive or punitive national drug laws and rates of drug use.[492] As noted by the Global Commission on Drug Policy in its 2011 report: many countries that have enacted harsh laws and implemented widespread arrest and imprisonment of drug users and low-level dealers have higher levels of drug use and related problems than countries with more tolerant approaches. Similarly, countries that have introduced decriminalization, or other forms of reduction in arrest or punishment, have not seen the rises in drug use or dependence rates that had been feared.

VIOLENCE AGAINST FEMALE DRUG ADDICTS

The international community has long been united against all forms of violence. This is evident by agreements between states, recognizing human rights as highest values and expressing readiness for protection of human rights in all aspects.

It is notable, that international treaties provide both negative and positive obligations, non-compliance of leads to irreversible violation of human rights. The role of the state is especially important in protecting rights of representatives of vulnerable groups.

During the reporting period the Office of the Public Defender of Georgia studied human rights conditions of drug addicted women.

According to the discussion document of the International Harm Reduction Association,[493] women who use drugs are outcasts of society, their families and suffer violence from police. These women frequently become victims of sexual, physical and emotional violence from their own partner males or drug dealers. Manipulation of drug addict women with the issue of child becomes easier if women are mothers. Most of the women using drugs try not to appear in health-care institutions in order to avoid aggression from men and society, judgmental attitude, discrimination and fear that confidentiality will not be upheld.

Drug addicted women, as representatives of one of the marginalized group have less state protection to avoid violence. This is evident by the lack of state programmes and services, despite the fact that state has obligation to equally combat violence against women, amongst them drug addicted women.

HUMAN RIGHTS CONDITION OF DRUG ADDICTED WOMEN IN PENITENTIARY ESTABLISHMENTS

Certain amount of women at semi-open and closed type women's penitentiary establishment No. 5 are drug addicted.

According to the discussion document of the International Harm Reduction Association [494] as of 2012, the women penitentiary establishments do not employ replacement therapy program; thus, women who are drug addicted do not receive the relevant treatment and even more so - their right for healthcare with this regard is refused on policy level.

492 Degenhardt L, Chiu WT, Sampson N, Kessler RC, Anthony JC, Angermeyer M, Bruffaerts R, de Girolamo G, Gureje O, Huang Y, Karam A, Kostyuchenko S, Lepine JP, Mora ME, Neumark Y, Ormel JH, Pinto-Meza A, Posada-Villa J, Stein DJ, Takeshima T, Wells JE (2008), oward a global view of alcohol, tobacco, cannabis, and cocaine use: findings from the WHO World Mental Health Surveys. (7):e141.

493 Eka Iakobishvili, Irma Kirtadze, Tsira Chanturia (2013), Discussion topic: Drug addicted women, narco-politics and human rights.

494 Eka Iakobishvili, Irma Kirtadze, Tsira Chanturia (2013), Discussion topic: Drug addicted women, narco-politics and human rights.

According to the 2011 annual report of the Public Defender, Chief Doctor of Establishment for Women No.5 stated "they did not need the Methadone Program as drug addict persons do not cause disturbances."

This interpretation once again reflects disregard of drug addicted women's rights in penitentiary establishments.

One of the reports of special Rapporteur on Torture and Other Cruel, inhuman or Degrading Treatment or Punishment explains, that withdrawal symptoms can cause severe pain and suffering if not alleviated by appropriate medical treatment, [495] refusal to provide relevant treatment or inexistence of such treatment in custodial places may amount to torture, inhuman or degrading treatment and punishment, which is prohibited by international human rights law.[496] Special rapporteur underlined, that state organs must initiate special harm reduction programs for drug addict prisoners, which will include replacement medical therapy and syringe exchange programs in places of deprivation of liberty.[497]

ACCESS TO SHELTER FOR DRUG ADDICT VICTIMS OF DOMESTIC VIOLENCE

There is a complex link between the use of drugs and violence against women in families. Though it is impossible to prove that there is a causal link between these two issues. Several surveys conducted in Italy demonstrated that 50% of young women who use drugs exhibit anti-social behavior and were victims of sexual violence in childhood.

Violence and negligence in childhood is common for drug addicted women, who found the better way of resorting to drugs or resolving their problems.[498]

In many countries around the world, drug addicted women are victims of domestic violence at the same time and there are no shelters providing for relevant service for drug addicted victims.

The same problem persists in Georgia. There are 6 shelters for victims of domestic violence throughout territory of Georgia: 2 shelters are state owned and 4- exist within the NGOs. Despite the multitude of shelters, none of them is available for women who are drug-addicted or use drugs. This restriction does not stem from legal or other type of prohibition, but from concealing the information by victims themselves. The victims choose not to report about the violence against them to law enforcement organs as this information might become the reason for their criminal prosecution for drug abuse. Consequently, women prefer to suffer domestic violence rather than go to jail.

According to the Council of Europe statement on minimum standards and services to protect women from violence, it is recommended to create special shelters to provide services to women with mental health problems or women who were/are drug addicted.[499]

According to all the abovementioned, Public Defender of Georgia addresses the Ministry of Labor, Health and Social Assistance with the recommendation to ensure:

- **Social services directed towards social and psychological assistance for drug addicted women and their children;**
- **Identify and protect female (drug addicted) victims of domestic violence.**

495 UN Human Rights Council, Report of special Rapporteur on Torture and Other Cruel, inhuman or Degrading Treatment or Punishment, Manfred Nowak, 14 January 2009, a/HRC/10/44, para. 57.
496 UN Human Rights Council, Report of special Rapporteur on Torture and Other Cruel, inhuman or Degrading Treatment or Punishment, Manfred Nowak, 14 January 2009, a/HRC/10/44, para. 71
497 UN Human Rights Council, Report of special Rapporteur on Torture and Other Cruel, inhuman or Degrading Treatment or Punishment, Manfred Nowak Mission to Kazakhstan, 16 December 2009; A/HRC/13/39/Add.3; para. 85(b)
498 EMCDDA (Europian Monitoring Center for Drugs and Drug Addiction). (2009). The state of drugs problems in Europe . Annual Report. Luxembourg: Publications Office of European Union, 2009-ISBN 978-92-9168-384-0
499 Combating violence against women: minimum standards for support services, Directorate General of Human Rights and Legal Affairs, Council of Europe , Strasbourg, September 2008

Public Defender of Georgia addresses the Ministry of Corrections and Legal Assistance with the recommendation to ensure:

- **Introduction of harm reduction programs in all penitentiary establishments;**
- **Eradicate discrimination towards women prisoners, which is revealed in access to methadone program in women's prison;**
- **Introduction of gender specific health care programs in penitentiary establishments;**
- **Introduction of international standards related to drug addicted prisoners in penitentiary establishments.**

Public Defender of Georgia addresses the Ministry of Internal Affairs with the recommendation to ensure:

- **Protect drug addicted and drug user women from domestic violence and assist them promote application of all available state services for them.**

INSTITUTIONALIZATION OF VIOLENCE AGAINST ELDERLY WOMEN

The human rights defense of elderly women became an acute issue during monitoring conducted by National Preventive Mechanism of Public Defender in 2012. Monitoring revealed not only tolerance of state towards violence against elderly women but institutionalization of violence for receipt of social benefits.

As of now there two large state owned residential shelters function for placement elderly persons, who have no decent living conditions after retirement.

The main function of elderly boarding houses located in Tbilisi and Kutaisi are as follows:[500]

1. Creating family type environment for beneficiary;
2. Care for beneficiaries: maintenance, nutrition, primary health services and ensuring medical - rehabilitation activities;
3. Psycho-social rehabilitation of beneficiaries;
4. Undertaking activities for social integration of beneficiaries, creating appropriate conditions for entertainment and recreation.

Due to the harsh social-economic conditions in the country, mentioned boarding houses did not respond to growing demand for serving elderly without shelter. The so called "live queue" was created in response to the application for admission of applicants. The possibility to admit new elderly in shelter would be present if elderly, already residing in the shelter would pass away. This created ethical problems.

The legal mechanism for admission of elderly in boarding houses is the order no. 52/n of 26 February 2010 issued by the Minister of Labor, Health and Social Assistance on "Placement of persons in specialized institutions and rules and conditions approving their transfer."

2012 monitoring by Public Defender revealed new basis for admission of elderly women in boarding houses. As it turned out new methodology could be an effective way to avoid legal criteria of sequence and admission.

500 Order no. 1/231 of 7 May 2010 issued by the L.E.P.L. Service Agency for Disabled, Elderly and Orphans under the Ministry of Labor, Health and Social Assistance – on approval of Charter "Kutaisi Boarding House for Elderly Persons."

As the directors of Tbilisi and Kutaisi Boarding Houses for Elderly note, recently admission of elderly women became more based on their appeals about violence. In particular, there were many instances, when family members who wanted to avoid providing care - perpetrated physical, economic or emotional violence against elderly, even in cases envisaged by Article 1218 of Civil Code of Georgia, which obliges children to take care of their parents. As personnel of the boarding houses observed, violence against parents probably became the shorter way of placing them in boarding houses, so that responsibility for violence does not arise. In most cases and as a rule, social workers whose conclusions are necessary for admission to boarding house, do not apply to law enforcement agencies to fulfill their obligations in mentioned situation:

E.M.'s Case

78 years old E.M. lives next to her son and his wife who have conflict with E.M. according to social worker's conclusion. The daughter in law physically abused E.M. Social worker evaluated E.M. as very old person who cannot take care of herself. According to social worker "family members did not cooperate with social worker and did not express their opinion concerning placement of E.M. in boarding house for elderly. According to all abovementioned, we provide positive recommendation for E.M. for admission to Kutaisi Boarding House for Elderly."

M.Dz's Case

According to the conclusion of social worker, 64 years old M.Dz. lives with G.Sh. in one of the villages of Khashuri municipality in unregistered marriage. Neighbours reported that applicant and G.Sh. had conflicted relationship. M.Dz claims that she is often the victim of emotional violence from G.Sh. In this case, by decision of social worker, M.Dz. was placed in boarding house for elderly without investigation of domestic violence issues.

Mentioned cases give rise to assumption to existence of violations envisaged in Law of Georgia on Elimination of Domestic Violence, Protection and Support to Domestic Violence Victims. However, as it is evident from case review, social worker did not report alleged violence to law enforcement authorities. Even more so, mentioned actionby alleged oppressors were positively approved by admission to boarding houses. As personnel of boarding houses explain – admission is initial aim of violence. All the abovementioned creates questions whether violence against elderly women became measure for family members to get rid of them and placement in boarding houses; whether violence is institutionalized in this case.

Public Defender of Georgia addresses the Ministry of Labor, Health and Social Assistance with the recommendation to ensure

- **Ensure observance of gender violence by the authorized social workers of L.E.P.L Social Service Agency, through inclusion of relevant state agencies and reporting of alleged offences;**
- **Conduct advancement of criteria for admission to boarding houses to elderly, which will prevent domestic violence as a non-formal mechanism for institutionalization.**

2012

Rights of Persons with Disabilities

INTRODUCTION

Rights of persons with disabilities were affirmed in 2006 when the United Nations adopted the Convention on the Rights of Persons with Disabilities and its Optional Protocol. The Convention is the first special and comprehensive international treaty adopted in the XXI century, which specifies obligation of states to respect, protect and implement rights of persons with disabilities.

The Optional Protocol's entry into force in 2008 challenged the stereotypical views established within the society before the adoption of these documents. The Convention requires cardinal changes regarding the existing situation in terms of protection of rights of persons with disabilities. It no longer emphasizes the "malfunctioning" of the person due to different types of health disorders but regards the problem as a "societal pathology" or the inability of the society to include everyone without exceptions, regardless of individual differences. It is necessary to change the society and not an individual person. The Convention constitutes a so called "guide map" for such changes.[501]

Based on the data from 2012, 155 countries have signed the 2006 UN Convention on the Rights of Persons with Disabilities and 90 have signed the Optional Protocol; 127 countries have ratified the Convention and 76 have done so in respect of the Optional Protocol.[502]

Despite the fact that Georgia signed the Convention and the Optional Protocol already on July 10, 2009, the question of ratifying this important international treaty remains as a legal gap in the legislation.

During 2012, as well as in the previous years, non-governmental organizations and other actors of the civil society working on the rights of the persons with disabilities in Georgia were holding various events supporting ratification of the Convention.

On 30 November 2012, government representatives participating in the conference dedicated to the International Day of People with Disability expressed full readiness of the state to ensure proper protection and equal opportunities for persons with disabilities.

On 26 December 2012, a meeting dedicated to the situation of persons with disabilities in Georgia was held in the Georgian Parliament's Human Rights and Civil Integration Committee. Staff members of the Ombudsman's Office attended the meeting together with the representatives of the civic sector. Chairperson of the Committee expressed full support regarding ratification of the UN Convention on the Rights of Persons with Disabilities and stated that the Committee will be one of the main lobbyists and participants in the process concerning the ratification of the Convention.

501 http://www.ohchr.org/Documents/Publications/Disabilities_training_17RU.pdfp. 5.
502 http://www.un.org/russian/disabilities/countries.asp?navid=22&pid=612

At the end of the reporting period, the Prime Minister convened a council working on the issues concerning the persons with disabilities. Deputy Public Defender participated in the session of the council.

At the session, information was received regarding ratification of the 13 December 2006 UN Convention on the Rights of Persons with Disabilities. It was decided that in order to ensure effective implementation of the procedures for the ratification, final conclusions would be prepared by the relevant agencies by the end of January.

At the same session, information was received regarding the declaration of the year of 2013 as a year of protecting the rights of persons with disabilities and on 4th of March of the current year, relevant Presidential decree was adopted. This is indisputably a positive step forward and gives us the hope that the UN Convention on the Right of Disabilities will be ratified this year.

A limited list of problems which are directly connected to the full integration of persons with disabilities in the Georgian society comprises of following: ensuring equal opportunities for persons with disabilities in Georgia, perceptions of the society, education and social protection, healthcare mechanisms tailored to the needs of persons with disabilities, freedom and accessibility of information, infrastructural barriers, and the role of government/self-government institutions in protecting the rights of persons with disabilities. Integration of persons with disabilities in the society means rejection of the discriminatory policy and removal of every barrier that we often encounter nowadays.

During the reporting period, Public Defender reviewed 96 applications concerning the violations of rights of persons with disabilities; 5 recommendations were prepared regarding specific violations addressing both local and executive government authorities.

Monitoring related to the protection of rights of persons with disabilities was implemented within the framework of the project "Capacity Building of Public Defender's Office" supported by the UNDP (for details regarding the problems identified as a result of the monitoring, please, see below); A small-scale research was carried out regarding the freedom and accessibility of information based on Article 21 (Freedom of expression and opinion, and access to information) of the 2006 UN Convention on the Rights of Persons with Disabilities.

As part of the public awareness raising campaign regarding the rights of persons with disabilities, seminars were held for students of higher education institutions of Georgian regions on the issues related to the rights of persons with disabilities.

PROBLEM OF PROVIDING INFORMATION TO PERSONS WITH HEARING AND SPEECH IMPAIRMENT WHEN CALLING THE EMERGENCY AID SERVICES (EMERGENCY MEDICAL AID, FIRE AND RESCUE, PATROL POLICE, ETC)

On November 2, 2012, during the workshop on the question of freedom and accessibility of information for persons with disabilities organized by the Center for Disability Rights of Public Defender's Office, a problem was identified regarding the provision of information to persons with hearing and speech impairment when calling the emergency aid services (emergency medical aid, fire and rescue, patrol police, etc). Public Defender's Office started examining this problem.

Public Defender's Office prepared the relevant letter addressed to the Legal Entity of Public Law ("LEPL") - Emergency and Urgent Situations Management Agency. It enquired about how many persons with hearing impairment had applied to and used the services provided under the Emergency and Urgent Situations Management Agency (emergency medical aid, fire service, rescue service) during 2012 and what means were employed to call the services of the Agency.

As of today, the mentioned Agency has not reacted on the request of Public Defender's Office and has failed to provide the required information.

The existing situation remains unchanged. There is no mechanism for providing information to persons with hearing and speech impairments while calling the emergency services (emergency medical, fire and rescue, patrol police, etc.).

HEALTHCARE

Right to health is one of the fundamental rights amongst the social rights of a person. Article 37 of the Constitution of Georgia stipulates that everyone has a right to enjoy health insurance as a means of accessible medical aid. Based on the procedure prescribed by law, under certain conditions, free medical aid is provided.

According to Article 12 of the United Nations International Covenant on Economic, Social and Cultural Rights, states parties to the Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

According to Article 14 of the Law of Georgia on "2012 State Budget of Georgia," healthcare and social guarantees of the population are the priority for the state. This foresees different activities that should ensure improvement of the quality of healthcare services provided to the population and offering social guarantees based on the needs of relevant beneficiaries.[503]

State healthcare programs have been approved by Decree №92 of the Government of Georgia of 15 March 2012[504] adopted in line with the Law of Georgia on "2012 State Budget of Georgia". The programs aim at creating financial guarantees for accessibility of medical services for targeted groups within the population and fulfilment of the tasks faced by the public healthcare system.

Decree №165 of the Government of Georgia dated May 7, 2012 determines the activities to be undertaken and insurance voucher conditions aimed at providing health insurance within the framework of the state health insurance programs for children aged 0-5 (including 5), women aged 60 and above, men aged 65 and above (population reaching pension age), students, children with disabilities and adults with manifest disabilities.[505] Before this decree entered into force, the main possibility of providing state health insurance for persons with disabilities used to be their inclusion in "the unified database of socially vulnerable families."[506] Nevertheless, according to 2011 Parliamentary Report of Public Defender of Georgia, several times the latter program served as a ground for discrimination on the basis of disability since minimum medical services were not accessible for the persons with disabilities.[507]

Therefore, creation of new medical insurance opportunities for persons with disabilities by the Georgian Government based on the Government's Decree №165 of May 7, 2012 should be considered as a positive trend. Nevertheless, according to the same Decree, the group of recipients of medical insurance includes only **persons with manifest disabilities.** That immediately creates a doubt as to the discriminative selectivity exercised by the state and based on the Council of Europe Resolution №78/ EC of 2000 the state is obliged to prove the opposite.[508]

Based on the government's Decree №218 of 2012, medical insurance financed by the insurance voucher includes:

1. Emergency medical service and medical transportation;

2. Outpatient service;

503 Law of Georgia on "2012 State Budget of Georgia," Article 14, priorities and programs of the Georgian state budget. https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=1533022

504 Decree №92 of the Government of Georgia of 15 March 2012 "on approving state healthcare programs for the year of 2012" http://www.moh.gov.ge/files/01_GEO/jann_sistema/programebi/11.04.12.pdf

505 Decree №165 of the Government of Georgia of 7 May 2012 "on determining the activities to be undertaken and insurance voucher conditions aimed at providing health insurance within the framework of the state health insurance programs for children aged 0-5 (including 5), women aged 60 and above, men aged 65 and above (population reaching pension age), students, children with disabilities and adults with manifest disabilities" https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=1650266

506 Decree №218 of the Government of Georgia of 9 December 2009 "on determining the activities to be undertaken and insurance voucher conditions aimed at providing health insurance for the population within the framework of the state programs" https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=4372

507 2011 Parliamentary Report of Public Defender of Georgia, p. 264; http://www.ombudsman.ge/files/downloads/ge/dzympimgpvvrngdlhnno.pdf

508 Office of the United Nations High Commissioner on Human Rights (2008), From Exclusion to Equality: Realizing the Rights of Persons with Disabilities, Handbook for Parliamentarians, Geneva.

3. Compensation of the in-patient service expenses;

4. Expenses for the means of treatment.

Based on the information received within the framework of the monitoring from LEPL Social Service Agency of the Ministry of Labour, Health and Social Affairs, 8452 children with disabilities and 21282 persons with manifest disabilities have insurance in Georgia.[509]

Notwithstanding the fact that at first the list of funded services provided by the insurance vouchers seems impressive, country-wide monitoring within 5 municipalities (Marneuli, Akhalkalaki, Telavi, Zestaponi, and Samtredia) has revealed that it does not take into consideration the very needs and demands of persons with disabilities and thus have nominal nature. In particular, while analysing the practice, the monitoring group discovered several facts when persons with disabilities could not or did not use services provided by the insurance vouchers.

Gaps in the implementation of the program:

Persons with disabilities living in the regions have a lack of clear information regarding the health insurance. Program beneficiaries and their family members have poor information as to the services included in the insurance package; many of them do not know whether or not they are eligible for the insurance; as a rule, persons with disabilities and their family members perceive the insurance policy as a benefit connected to the state pension and have an expectation that issuance of the insurance or management of problems related thereto should be carried out by the Pension Unit of the LEPL Social Service Agency; accordingly, in instances when applications concerning the insurance policy are lodged with an unauthorized body (e.g. regarding updating of the policy, clarification of its substance), they do not receive necessary information from the mentioned entities; they were also not provided with coordinating services that would aid in rapid overcoming of administrative or bureaucratic barriers; amongst the persons interviewed, in fact not a single person had applied to the insurance mediation service in order to receive some clarification concerning the insurance conditions; persons with disabilities finally refuse to use the medical services available for them based on the insurance policy due to non accessible environment for them as it is difficult to move around; as a result, they are left without medical services or apply to private medical services the cost of which is not reimbursed within the framework of the state funding.

Use of services included in the insurance is especially problematic for national minorities (Marneuli, Akhalkalaki) considering that as a rule, they are unable to present their needs to the personnel of the administrative or medical establishments due to the language barrier. Many instances were observed where due to the language barrier, parents of children with disabilities living in Akhalkalaki were regularly taking the children to Erevan in order to receive medical services or children were left without necessary medical aid.

The monitoring process identified the issue of adapting the environment as an especially acute problem that frequently hinders provision of medical services to persons with disabilities. According to persons with disabilities, for them it is virtually impossible to receive necessary medical services due to the problem of accessibility: physical barriers are preventing them from accessing the medical points as well as from moving within those medical points. Restriction in the provision of emergency medical service was identified in Telavi municipality due to the significant damage of the road surfaces.

G.D.'s case, right of a person with disabilities to have equal access to public roads and medical services [510]

Within the framework of a roundtable concerning the rights of persons with disabilities held in Telavi on October 2012, representatives of Public Defender of Georgia became aware of the possible violation of rights of a person with disabilities living in village Akura of Telavi municipality.[511]

509 LEPL – Social Service Agency letter N04/65739–19.10.12.
510 Recommendation of Public Defender of Georgia№4603/08/2353–12–19.10.12.
511 Case№2353–12.

Representatives of Public Defender's Office contacted the person in question on the same day and based on the mutual agreement, carried out a visit in the latter's apartment.

During the meeting with G.D., representatives of Public Defender's Office were informed that the person in question has a manifest disability and uses a wheelchair to move around.

During the last couple of months, G.D.'s health condition has sharply worsened (complicated bedsore).[512] Considering the seriousness of this condition, this person needs to be provided with regular medical services – surgical treatment of the damaged tissue in order to avoid further worsening of the condition. Based on stories of G.D. and members of his/her family, despite having a medical insurance policy, he/she cannot use proper medical services because the road leading to his/her apartment is significantly damaged. This was also confirmed on the spot during the visit of the representatives of Public Defender's Office; due to the damage to the only road leading to G.D.'s house, the latter has to use adjacent gardens owned by neighbours in order to move around. Due to this problem, medical personnel is unable to carry out regular visits and accordingly, G.D. is restricted from accessing necessary medical services – which due to his/her medical problem requires two necessary medical interventions per week.

G.D. asked the representatives of the local self-government who visited him during the pre-election campaign period to repair the road as early as 3 years ago, but the matter remains unresolved up until today.

Representatives of Public Defender assessed G.D.'s situation as a grave one. Without receiving adequate medical services it is possible that the health condition of the person with disabilities deteriorates considerably and grave consequences might occur given that the bedsore and infectious processes have developed; based on international medical evidence, it represents one of the biggest risks for health and life of persons with disabilities; as a result of deterioration of bedsore a person may lose the ability to move independently, a surgical intervention might become necessary and life-threatening condition might develop. According to the statistics, mortality rate based on bedsore is 7-8% worldwide.[513]

While analysing this case from the perspective of human rights, violation of rights guaranteed by the national legislation and international human rights documents is deduced. Based on the Constitution of Georgia, every citizen has a right to use health insurance as a means of accessible medical aid.

Law of Georgia "on Social Protection of Persons with Disabilities" aims at ensuring that rights of persons with disabilities are realized equally compared to other persons and that favourable conditions are created for them in order to lead a normal life.

Based on Article 5 of the Law of Georgia "On the Rights of Patients", "every citizen of Georgia has a right to receive medical service from every provider of medical services that is in line with the professional and service standards recognized and introduced in the country". According to Article 12 of the same law, "the state protects the right of the patient to medical services, non-implementation of which will cause death, disability or serious deterioration of health unavoidable".

According to Article 12 of the United Nations International Covenant on Economic, Social and Cultural Rights, everyone has a right to enjoy the highest attainable standard of physical and mental health; the state is obliged to create conditions which in case of illness will ensure medical assistance and care.

Requirements set by the abovementioned legal documents are ignored in relation to G.D. Person with disability in unable to receive necessary medical service due to absence of the road.

According to Article 16, paragraph 2, sub-paragraph "r" of the Organic Law of Georgia "on the Local Self-Government", "only the self-governing body is authorized to decide upon matters which concern maintenance, building and development of roads of local importance".

512 Bedsore –Dystrophic-necrotic ulcer of the skin or mucous membrane, is developed in lying, weak patients in areas which are subject to prolonged mechanical pressure (e.g. bed linen folds or bony protuberances).

513 Krause JS. (1998) Skin sores after spinal cord injury: relationship to life adjustment. Spinal Cord ;36:51-56.

Based on all the aforementioned, on October, 19 2012 Public Defender of Georgia applied to the Governor of Telavi municipality with a recommendation that the latter should repair the damaged part of the road in village Akura of Telavi municipality so that similarly to other persons, the right of the person with disabilities to have equal access to public road and medical services is protected.

According to persons with disabilities, the abovementioned insurance policy does not take into account their special needs. In particular, the policy does not cover services which are the most important for persons with disabilities. Socio-medical rehabilitation, which is necessary for a person with disabilities and rehabilitation of mental abilities, is not covered by the policy. As it is known, the mentioned socio-medical rehabilitation is not a single act to be implemented; it involves complex, joint, long-term work of numerous specialists (physical therapist, psychologist, social worker and so on); also, regular, repeated examinations in order to avoid deterioration of any of the bodily functions, exhaustion, regress; necessary cycle of physical exercises, training by using different adaptive means (e.g. use of auxiliary furniture, the "white stick", adaptation of the wheelchair, etc.) and so on. None of these is covered by either the health insurance policy or any of the state programs.

M.B.'s case, restriction of socio-medical rehabilitation service

During a visit within Telavi municipality as part of the monitoring process, group of Public Defender's Office became aware about M.B. – a person with disabilities living in village Busheti who became disabled as a result of an accident; despite his/her desire and urgent need, he/she has been unable to undertake a rehabilitation course during the last 20 years. During the last 10 years he/she has also been unable to visit a doctor and accordingly, has not received medical services; despite owning an insurance policy, his/her right to receive socio-medical rehabilitation service is restricted given that the state has not initiated any state programs concerning socio-medical rehabilitation services for adult persons with disabilities during the last 20 years. Children and Women's Rights Center of Public Defender's Office addressed the Deputy Minister of Labour, Health and Social Affairs on November 5, 2012 with a request to examine the individual case of M.B.'s rights violations and consider, if necessary, provision of socio-medical rehabilitation by a private medical institution within the framework of the medical program on services by referral.[514]

According to persons with disabilities, health insurance policy does not cover purchasing of medications; despite the fact that health insurance policies include 100 GEL for purchasing medications (50% co-payment), in the opinion of beneficiaries, this sum has only a symbolic meaning and cannot provide for real needs as to the medication, thus they are left in a hopeless situation; the monitoring group has documented a situation where persons with mental health problems were unable to purchase the necessary medication (Zestaponi).

An important shortcoming regarding the use of the health insurance policy is the lack of medical specialists of different profiles in the regions. Akhalkalaki district monitoring team met with dozens of parents of children with disabilities who reported that due to the nonexistence of specialists in psychiatric field in the mentioned region, children with mental health problems were not receiving adequate medical services: diagnostics, therapy, etc. Due to this problem, an absolute majority of such children also have not been granted a status of a child with disability, what restricts their opportunity to receive monetary or other social assistance prescribed by law.

Especially grave violations of human rights were revealed in those regions where the persons with disabilities were completely denied adequate medical services; nobody advocates for satisfying the need for emergency medical aid for persons with limited communication skills and mental health problems. Family members - often due to a lack of information, or in some cases, perhaps, because of indifference - do not consider it necessary to provide them with emergency medical aid which may be qualified as ill-treatment. As regards the responsible state agencies, they in most cases do not comprehend their duty– to implement protective measures prescribed by law in cases of family negligence and violence in respect of a person with disabilities.

514 Case№4971/08–3/2456–12, 5 November 2012.

M.H.'s case, prevention of ill-treatment and negligence of medical needs of a person with disabilities

On 11 September 2012 within the framework of the roundtable on the rights of persons with disabilities held in the town of Akhalkalaki, representatives of Public Defender became aware of an alleged violation of rights of a person with mental health problems living in village Patara S. of Akhalkalaki municipality.

Based on the source of the information, a woman of this village has been placed in the so called "cage" for 20 years and has been isolated from the rest of the society by her family due to her mental disorder.

Public Defender's representatives visited the place immediately in order to verify the information provided to them; they visited 46 year-old M.H. herself in village S. as well as interviewed her child – 19 year-old A.A., her sister and 3 neighbours. Based on the information compiled by Public Defender's representative, it is established that: M.H., 46 years old, has signs of a severe form of mental disorder accompanied by an aggressive behaviour since 1992. According to her family members, they are not aware of her diagnosis as M.H.'s condition has never been assessed by a psychiatrist. Until March 2012, M.H.'s parents lived together with M.H. and her child and were against having a qualified medical aid given to M.H. as having a mentally ill daughter was a shame for them. That is why they have placed M.H. in an isolated room since 1992 and prohibited to have any communication with the outside environment.

During the visit of the representatives, M.H. stayed in a dark room with only one window which was sealed with bed wires and non-transparent plastic. One could feel the smell of human faeces and other decayed products as M.H. had not used a toilet during the last couple of months and was satisfying her physiological needs on the spot. The only piece of furniture in the room was a metal bed with 5 wooden boards on it. There was no linen or mattress on the bed. During the visit, M.H. herself was sitting on the floor in a naked condition whereby instead of clothes she had a bed cloth and other soiled cloths wrapped around her. According to family members and as confirmed during the on-site visit, M.H. can no longer perform active movements – stand up from the floor, move around. According to these persons, M.H. has not received any food during the last couple of days and the last hygienic procedure (washing) was carried out 6 months ago; as to the necessary medication concerning the deterioration of symptoms of mental disorder, she has not received them now or during the past 20 years. M.H. has neither the status of a person with disabilities nor receives any monetary benefit, social package or medical insurance from the state relating to that status.

M.H.'s situation was assessed on the spot by the representatives of Public Defender as extremely grave; while conditions – as inhuman and degrading.

The meeting of representatives of Public Defender with local representatives of LEPL Social Service Agency of the Ministry of Labour, Health and Social Services held on 12 September 2012[515] revealed that as a public agency, they were informed about the situation of M.H. since 10 October 2009[516] because this is the date of registration of M.H.'s family in the database of the socially vulnerable persons. According to the representatives of the Akhalkalaki district unit of the LEPL Social Service Agency, despite the fact that they have had information regarding M.H. for 2 years, they have not reacted for the following reasons: they did not consider M.H.'s condition as a human rights violation; they did not have an official request for assistance by means of an official application lodged by M.H.'s family members. Local unit of the LEPL Social Service Agency which carried out a visit to M.H.'s house in 2009 with an aim of granting social aid took a photo of M.H. for the production of an ID card on the spot for the reason that this person was already isolated from the society.

While analysing this case from the perspective of human rights, violation of M.H.'s rights guaranteed by national legislation and international human rights documents is identified.

The person in question was subject to domestic violence by her parents for years; according to Article 3 of the Law of Georgia on "Elimination of Domestic violence, Protection of and Support to its Victims", "domestic violence implies a violation of constitutional rights and freedoms of one family member by the other, in conjunction with physical, psychological, economic or sexual violence and coercion". This includes among others "beating, torture, damage to

515 The meeting is documented by means of an audio recording.
516 The copy from the unified database of the socially vulnerable families, as of September 12, 2012.

health, illegal restriction of liberty or any other action that causes physical pain or suffering, also failure to meet requirements concerning his/her health that causes harm to the health of the member of the family or leads to death".

According to Article 12 of the United Nations International Covenant on Economic, Social and Cultural Rights, everyone has a right to enjoy the highest attainable standard of physical and mental health; the state is obliged to create conditions which in case of illness will ensure medical assistance and care.

According to Article 5 of the Law of Georgia "on Psychiatric Aid":

"A Patient has a right to:

a) Be treated humanely which excludes any action violating his/her dignity;

b) Be provided with relevant treatment based on the necessary medical evidence, minimal restriction of conditions and by methods which are approved by the Ministry of Labour, Health and Social Affairs."

M.H.'s condition clearly indicates that during the last 20 years she has not been enjoying her rights guaranteed under Article 5 of the Law of Georgia "on Psychiatric Aid." She was and up to date is deprived of adequate medical care and humane treatment.

Based on Article 12 of the Law of Georgia "on Patients' Rights," "the state protects the right of a patient to medical services the non-implementation of which will render death, disability, or serious deterioration of health unavoidable".

M.H.'s condition indicates that not receiving the adequate medical assistance due to her isolation from the society and refusal to receive adequate psychiatric aid by her parents, created the need on the part of the state agencies to carry out necessary and emergency medical aid for M.H.

Responsibility of LEPL Social Service Agency to protect M.H.'s rights stemmed from Article 1275 of the Civil Code of Georgia according to which, "custody and care are established for the protection of personal and property rights and interests of an adult who may not exercise his/her rights and fulfil the duties independently due to his/her health conditions". According to Article 1282 of the same Code, "a custodian or a guardian shall be appointed not later than one month from the time when the Guardianship and Care agency becomes aware of the need to appoint a custodian or a guardian".

According to Article 2, paragraph "V[1]" of Order №190/N of the Ministry of Labour, Health and Social Services dated June 27, 2007 and concerning "the Approval of Regulations of LEPL Social Service Agency", Social Service Agency is obliged to "perform the functions of the central and local Guardianship and Care Agency on the territory of Georgia as prescribed by the legislation."

As to Article 322 of the Civil Procedure Code of Georgia, it provides that "a case concerning declaration of a citizen as incapable may be brought before the court by family members, legal representatives, agencies of guardianship and care."

Based on all the aforementioned, protection of M.H.'s rights guaranteed by the Constitution of Georgia and international human rights agreements, was a duty of LEPL Social Service Agency since the moment the information was received regarding their violation, including the application to the court in order to declare the person incapable for the purpose of protecting her rights.

Failure to fulfil this duty may be assessed as the failure of a governmental agency to carry out its duty prescribed by law.

Public Defender of Georgia applied to the Minister of Labour, Health and Social Affairs with a recommendation on September 17, 2012 to provide M.H. with adequate medical aid immediately, also to have her Constitutional Rights guaranteed by the LEPL Social Service Agency.

VILLAGE DOCTOR

The aim of providing the "village doctor" services within the framework of the state healthcare programs approved by Decree №92 of the Georgian Government dated March, 15 2012 is to increase the geographic and financial availability of primary health care services for the rural population.

Provision of primary healthcare services within this program includes:

1. Visits to a doctor/nurse;
2. Immunization according to the national calendar of immunization and adequate coverage of the target population.
3. Checking health conditions of healthy persons and new patients in line with the guidelines approved in the country.
4. Supervision of development of children and youth in line with the guidelines approved in the country.
5. On-site visit by a doctor or nurse for children below the age of 3 in line with the guidelines approved in the country.
6. On-site visit by a doctor or nurse 4 times a year for permanent bed-patients (persons unable to walk).
7. On-site visit for incurable patients as necessary.
8. In case of chronic and acute diseases: a) diagnostics based on clinical symptom-complex and necessary minimal instrumental and laboratory research; b) management and referral according to need.
9. Ensuring treatment of patients infected with tuberculosis with under direct supervision (DOT) by a nurse.
10. Providing medical aid during an emergency.
11. On an outpatient basis, based on the medical need, management of medical documentation, issuance of certificates and prescriptions.
12. Providing the patient with necessary medications and medical items for emergency outpatient services from the so called "doctor's bag" approved by the relevant act of the Minister of Labour, Healthcare and Social Affairs.

Based on the information received from LEPL Social Service Agency of the Ministry of Labour, Healthcare and Social Affairs: "Annex N14 – the "village doctor" program approved by Decree N92 of the Government of Georgia on March 15, 2012 – does not contain any special measures for the persons with disabilities". As regards the statistics regarding services provided to persons with disabilities, based on the same correspondence, "neither the village doctor nor the LEPL Social Service Agency as a body implementing the "village doctor" program has an obligation regarding statistical documentation[517]".

Monitoring of the municipalities revealed the following gaps in the implementation process of the "village doctor" program:

Gaps in the implementation of the program

Persons with disabilities and their family members participating in Marneuli municipality roundtable informed the monitoring group that population of villages within Marneuli municipality are not informed regarding the state

517 LEPL – Social Service Agency letter N04/65739–19.10.12.

program of "village doctor" and they also do not have information regarding on-site visits by a doctor for patients with disabilities.

According to parents of a person with disabilities (using a wheelchair) R.Ch. living in village Kizilajlo of Marneuli municipality, their child has never received doctor's services.

Based on the information provided by citizens living in village Ianeti of Samtredia municipality, the village has no out-patient clinic at all.

Village doctor has never visited M.B. who is a person with manifest disabilities (using a wheelchair) living in village Busheti of Telavi municipality.

A person with disabilities living in village Akura of Telavi municipality, G.D., also indicates that despite an extremely complicated health condition, village doctor has not visited him/her.

A person with manifest disabilities living in village Tskhratskaro of Zestaponi municipality – Q.F. who has been in a comatose condition during a year and two months has also not been served by a village doctor.

I.B.'s case, restriction of medical services for a person with disability with haemophilia

On September 7, 2012 representatives of Public Defender's Office were in the village Kizilajlo of Marneuli municipality where they met with citizen I.B. who has a status of a person with disabilities. He has a diagnosis of haemophilia and accordingly needs to receive a medication for preserving his health continuously (by means of an injection). He/she can receive this medication only in Tbilisi. At the same time, according to I.B., village doctor is avoiding to provide consultation and to carry out intravenous infusion to the latter because, as I.B. states, the doctor does not possess enough competence as to what type of intervention to carry out in case of sudden complication due to haemophilia.

Based on Article 12 of the Law of Georgia "On Public Defender of Georgia", Georgian Public Defender started examining this case on December 20, 2012. On October 22, 2012 the Center for Disability Rights of Public Defender's Office addressed (correspondence #4669/08–3/1686–12) to the district unit of the LEPL Social Service Agency concerning the provision of timely and qualified medical aid to I.B.

According to correspondence (030422940744912) received on 30 October 2012, Head of Marneuli unit of the LEPL Social Service Agency confirms, that citizen I.B. has not applied to local medical personnel because the latter "no longer trusts the doctors". At the same time, it is noted in the letter that for I.B. "it only costs 5 (five) GEL to travel to Tbilisi (with an aim to receive the medication) which does not pose any problems for the latter".

The mentioned correspondence proves that citizen I.B. indeed does not receive services from the local medical personnel but it is noteworthy that LEPL Social Service Agency is not interested in the reason behind losing trust while qualifying this fact as an act of choosing medical service based on a free choice. Nonetheless, the information provided by Public Defender clearly underlined that I.B.'s refusal to receive local medical services was conditioned by lack of specific qualifications on the part of the medical personnel. Social Service Agency also limited itself to a superficial answer while commenting regarding I.B.'s need to receive necessary medications in Tbilisi. In particular, in the opinion of the Agency, according to I.B., he only spends 5 GEL to travel to Tbilisi which "does not pose any problems for him/her". Defects of both explanations provided by the Social Service Agency are aggravated also by the fact that according to the same correspondence, I.B.'s family "has filed an application [to the Agency] to be included in the unified database of socially vulnerable families which will be assessed during 10 working days". This information raises doubt as to whether there exists certain psychological pressure on citizen I.B.

Georgian Public Defender also applied to Georgian Association of Haemophilia and Donors regarding this matter which analyzed the issue of I.B.'s accessibility of medical aid in a general manner, in relation to every person with disability with haemophilia in the country:

Based on the data of Georgian Haemophilia Association:

By December 2012 there are 313 patients diagnosed and registered in the Center for Haemophilia with hereditary haemorrhage disease, including haemophilia (forms A and B), Von Willebrand disease and other rare coagulopathy, in particular:

Haemophilia with form A – 227 persons, haemophilia with form B – 41persons;

With other coagulopathy – 45persons;

The disease is characterized with intense bleedings from mucosa, e.g. from nose, gums, also in case of a grave form of the disease, spontaneous haemorrhage often takes place into large joints or muscles. In some cases a life-threatening bleeding may occur in the head and spinal brain, gastro-intestinal tract, in the abdominal cavity.

The main treatment is a Factor F.VIII deficiency concentrate (during haemophilia A) and F.IX deficiency concentrates (during haemophilia B). The drug is administered as an intravenous infusion, it is recommended to start the treatment after the first 2 hours of bleeding or haemorrhage in order to stop bleeding in a timely manner, to prevent joint and muscle damage. Thus, the patient's chance of becoming disabled depends on receiving the medication timely. In some cases – even preserving one's life is dependent upon this. For this purpose, in addition to Tbilisi, haemophilia centers were opened in Kutaisi and Batumi, but a large number of patients live in the regions, in villages far from haemophilia centers while often the injections need to be administered during night time.

Patients who live in cities and villages distant from haemophilia centers, apply to the nearest out-patient centers or clinics to have the infusion administered but they note that the medical personnel often refuses to carry the infusion out. Thus the patient is left without medical aid or is forced to seek a person outside the medical institution who will agree to carry out the infusion for a certain fee. Such instances have been documented in many districts. Most of the patients are persons with disabilities; many are unemployed and thus cannot afford paying for the injection.

In order to solve the abovementioned problems Georgian Haemophilia and Donors Center considers it necessary:

To instruct medical personnel of district hospitals and out-patient clinics as well as emergency aid to carry out the injection to the patients having bleeding diseases when necessary by means of factor deficiency concentrates in the possession of the patient which will aid in avoiding further complications caused by late infusions (this medications are issued to registered patients by medical personnel of haemophilia centers as part of their home treatment);it is necessary to conduct informational trainings for the medical personnel of district hospitals and out-patient clinics as well as emergency aid on the topic: haemophilia and other bleeding pathologies, first aid for these patients in cases of acute (in some cases life-threatening) bleeding.

I.B.'s case studied by Public Defender as well as the information provided by the Georgian Haemophilia and Donors Association reveals that the right to healthcare of persons with disabilities with haemophilia living in the regions of Georgia is frequently violated due to the lack of qualification of local medical service providers including village doctors and lack of instructions regarding the services to be provided to persons having haemophilia. It is important to improve this situation without delay by carrying out of adequate measures by the Ministry of Labour, Health and Social Affairs.

VOCATIONAL EDUCATION

Constitutional right to education is directly connected to the constitutional principles of equality and protection against discrimination. Article 35 of the Constitution of Georgia starts by the term "everyone" which in itself legally encompasses every person's equality in enjoying the constitutional right to education regardless of race, skin colour, language, sex, religion, etc. Giving everyone an equal chance on the ground of the constitutional right to education

also implies creation of adequate socio-economic conditions by the state in order to guarantee the right to receive education[518].

Vocational education represents one of the types of education provided for in paragraph 3 of Article 35 of the Constitution of Georgia and accordingly, it is fully covered by the abovementioned principle of protection against discrimination in relation to persons with disabilities.

Order №342 issued by the Prime Minister of Georgia on November 24, 2009 approved vocational education reform strategy (vocational education and training mid-term strategy and action plan for the years of 2009-2012). European Union program on "Support to the Vocational Education and Training Sector" was prepared based on the mentioned strategy action plan. Activities of 2010 of the Ministry of Education and Science in relation to vocational education and training were conducted in accordance with this particular document.

Order №356 of the Prime Minister of Georgia dated August 2, 2011 amended the abovementioned "vocational education and training mid-term strategy and action plan for the years of 2009-2012" and accordingly, the process of implementing these amendments into reality started with the active help of international organizations.

Before carrying out the field works within this research the Ministry of Education and Science analysed reports relating to the implementation of the vocational training reform in detail, including: "Vocational Training Strategy Implementation Report of 2011[519]". Despite the fact that chapter 2 of the mentioned report concerns priority direction 1.3 of the vocational reform strategy – increasing accessibility for internally displaced persons, inmates, ethnic minorities, socially vulnerable persons and persons with disabilities – the entire substance of the report does not contain a remark regarding the increase of accessibility of inclusive vocational education for persons with disabilities. This clearly indicates that in 2011 no inclusive vocational education and training was carried out in accordance with aims of the order №342 of 2009 issued by the Minister of Education and Science of Georgia.

In December 2012 Georgian Ministry of Education and Science presented a Report "Study into the Research of Georgian Vocational Education Institutions in order to Introduce Inclusive Education, 2012" carried out by an NGO "International Institute for Education Policy, Planning and Management". According to the mentioned research, in 17 public vocational education institutions there are 5708 students in total, amongst them only 22 students are with disabilities which represents 0.4% of the total number. According to this research:

- The main impediment for implementing the idea of inclusion on a professional level is considered by all parties involved in the research to be the problem of adapting internal and external infrastructure;
- Implementation of the inclusion idea is also obstructed by the uncertainty as to the conditions of acquiring the right by persons with disabilities of vocational education (which professions are eligible for enrolment; what are the opportunities for vocational education and training for persons with disabilities who do not possess high school diploma);
- Despite the fact that there are re-trained teachers in almost every professional college, increasing the competence of teachers still represents one of the main priorities for introducing inclusive education, because it is revealed during the learning process a wrong methodology is applied, there are no individual plans and positive discrimination occurs.
- Planning of the educational process in vocational institutions is also slowed down by the lack of specific instructions regarding different procedural issues. Funding of inclusive programs is also problematic.

Results of the mentioned report were confirmed by field works carried out within the framework of the research according to which, state reform of inclusive education, as it is today, in fact, does not take into account the needs of adults and young people with disabilities.

518 L. Izoria, K. Korkelia, K. Kublashvili and G. Khubua (2005), Commentary to the Constitution of Georgia, Basic Human Rights and Freedoms, "Meridiani" publishing.

519 Ministry of Education and Science of Georgia(2011), 2011 Report on the Vocational Education and Training System Reform Strategy, http://www.mes.gov.ge/uploads/angarishi%20-%202011.pdf

According to persons with disabilities from 5 different municipalities interviewed within the framework of this study, an adapted institution for inclusive vocational education and training exists only in Telavi municipality. As for providing persons with disabilities with work places, unless exceptional cases, remains an unsolved problem up until today.

ENVIRONMENT ACCESSIBILITY

According to Articles 7 and 8 of the Law of Georgia "on the Social Protection of Persons with Disabilities": "State agencies, enterprises, institutions and organizations create conditions for the disabled for free use of residential, public and industrial buildings, transport and transport communications, communication and means of information, for their free orientation and movement.

Designing and developing residential areas, forming residential districts, adopting decisions regarding design, constructing and reconstructing of buildings and structures, including objects for educational-training, cultural-sightseeing and sports-recreational purposes, as well as airports, railway stations, sea and river transport complexes, creation and equipment of communication and information facilities is not permissible, if these objects and facilities will not be adapted to the needs and requirements of persons with disabilities."[520].

According to the "2010-2012 governmental action plan for the social integration of persons with disabilities" approved by the Decree N978 of the Government of Georgia dated December 15, 2009, one of the tasks is to ensure accessibility of public institutions and other buildings-structures of public use, ensuring strict implementation of existing norms and standards.

Visit carried out as part of the monitoring to 5 municipalities of the country revealed that except for few exceptions, requirements set by the legislation regarding accessibility of the environment are harshly violated.

There is no medical institution adapted to the persons with disabilities within Akhalkalaki municipality.

In Samtredia municipality most of the institutions of public purpose (city council and local government building, local unit of the social service agency, schools, kindergartens, etc.) are not accessible.

It should be assessed positively that in city of Marneuli functions a newly constructed medical center "Geohospitals" and the building's external and internal infrastructure is in line with minimum standards of accessibility, even though they do not have a gesture language specialist to provide full service for persons without a hearing. Manager of the hospital expressed a wish to participate in a seminar together with the employees where they will receive information and share experience regarding standards of relations with patients with different forms of disability.

According to a person with disability, M.B. living in village Busheti of Telavi municipality, medical institutions in Telaviare not adapted for movement of persons with disabilities. Due to this reason the latter is frequently forced to refuse necessary medical service. As M.B. noted during the conversation with monitoring group members, in 2011 he/she was unable to receive dental service despite an acute inflammatory process and a complicated case of caries. According to this person, the only possibility to enter and move around in the building of the medical institution is if a third person carries the person in question with the own hands what creates a significant discomfort.

During a conversation with a person with disability Q.Ch. during the monitoring in Kutaisi municipality, the latter noted that during October of the current year he/she applied to Kutaisi No.5 polyclinic in order to receive medical service. He/she encountered problems while entering the building and moving around therein. The building is not adapted for needs of persons with disabilities. The existing ramp does not satisfy the standard and is high. The elevator in the building that would enable a person with disabilities to move is out of order.

One of the interviewed persons encountered a problem while visiting a branch of JSC "Liberty Bank". In September of the current year he/she applied to a branch located in auto-factory settlement in Kutaisi with a request to receive

520 Law of Georgia „on the Social Protection of Persons with Disabilities", Articles 7 and 8.

pension loan, however could not enter the bank because the building is not adapted to the needs of persons with disabilities. It does not have a ramp.

The following systemic and individual types of violations of rights of persons with disabilities have been revealed as a result of the monitoring in all five targeted municipalities:

Buildings of both, old and renewed public institutions and private objects of public service are partially or fully inaccessible for persons with different types of disabilities in terms of access into the building as well as the use the internal infrastructure;

The renovated road infrastructure is also inaccessible (auto parking, side-walks, traffic signs and devices), public places – parks and waiting stations for public transport; public transport is not accessible.

Minimum standards of accessibility are not satisfied by medical or social, emergency, information, patrol and urgent situation services in order to provide equal service for persons without hearing and/or persons with speech impairments.

Means of receiving information – local TV and radio broadcasting, electronic media and press remain inaccessible.

According to an NGO "The Center for Integration of Disabled People of Kakheti Region" which works on the rights of persons with disabilities, their work carried out regarding the constructions carried out by Telavi rehabilitation project after the natural disasters of summer 2012 revealed that out of 300 objects in the city only 3-4 are adapted for persons with disabilities.

Results of environment monitoring carried out by "The Center for Integration of Persons with Disabilities"

Monitoring period: 11-20 September 2012.

Monitoring objects:

LEPLs – public schools and multifunctional medical centers (clinics) in Kakheti region, 37 objects in total.

LEPL–public schools:

1. LEPL – Public school of village Bogdanovka of Sagarejo municipality
2. LEPL – academician Vasil Gulisashvili public school of village Giorgitsminda of Sagarejo municipality
3. LEPL – public school of village Tokhliauri of Sagarejo municipality
4. LEPL – Giorgi Leonidze public school of village Patardzeuli of Sagarejo municipality http://catalog.edu.ge/index.php?module=school_info&page=detals&school_id=1934
5. LEPL – public school of village Tskarostavi of Sagarejo municipality http://catalog.edu.ge/index.php?module=school_info&page=detals&school_id=1133
6. LEPL – №1 public school of Sagarejo city
7. LEPL – №3 public school of Lagodekhi city
8. LEPL – public school of village Karajala of Lagodekhi municipality
9. LEPL – public school of village Areshperani of Lagodekhi municipality
10. LEPL – public school of village Akhalsheni of Gurjaani municipality

11. LEPL – public school of village Melaani of Gurjaani municipality

12. LEPL – №2 public school of Gurjaani city

13. LEPL – public school of village Mtisdziri of Kvareli municipality

14. LEPL – public school of village Tchikaani of Kvareli municipality

15. LEPL – №2 public school of village Akhalsopeli of Kvareli municipality

16. LEPL – public school of village Saruso of Kvareli municipality

17. LEPL – public school of village Tivi of Kvareli municipality

18. LEPL – №2 public school of Kvareli city

19. LEPL – public school of village Gavazi of Kvareli municipality

20. LEPL – public school of village Chantliskuri of Kvareli municipality

21. LEPL – Sandro Shanshiashvili public school of village Jugaani of Sighnaghi municipality

22. LEPL – public school of village Bodbiskhevi of Sighnaghi municipality

23. LEPL – №1 public school of Tsnori city of Sighnaghi municipality

24. LEPL – public school of village Anaga of Sighnaghi municipality

25. LEPL – №1 public school of Dedoplistskaro city

26. LEPL – public school of village Birkiani of Akhmeta municipality

27. LEPL – №2 public school of Akhmeta city

28. LEPL – №3 public school of Akhmeta city

29. LEPL – public school of village Omalo of Akhmeta municipality

30. LEPL – public school of village Jokolo of Akhmeta municipality

31. Non-profit (non-commercial) Legal Entity–Union of Akhmeta musical schools

Multifunctional medical centers (clinics):

1. LLC "Archimedes clinic" Lagodekhi

2. LLC "Archimedes clinic" Sighnaghi

3. LLC "UnimedKakheti" Kvareli

4. LLC "UnimedKakheti" Akhmeta

5. LLC "Geo Hospitals" Sagarejo

6. LLC "Geo Hospitals" Gurjaani

As a result of monitoring in LEPL public schools and multifunctional medical centers the following essential tendencies of violations have been revealed:

Exclusive physical environment which limits the opportunities of persons with disabilities to independently use the infrastructure and services of the mentioned institutions.

6 public schools out of the mentioned institutions: LEPL – public school of village Akhasheni of Gurjaani municipality, LEPL - №2 public school of Gurjaani city, LEPL – public school of Bodbiskhevi village of Sighnaghi municipality, LEPL – public school of village Anaga of Sighnaghi municipality, LEPL - №1 public school of Dedoplistskaro city, and LEPL - №2 public school of Akhmeta city, have the status of inclusive schools,[521] however monitoring of the environment reveals that in reality these schools cannot ensure inclusion of students with disabilities in the learning process: most of them have toilets in the yard without seated toilet, wheelchair paths are constructed in a harsh violation of norms, none of them is equipped with an elevator, etc.

The evaluation established that 23 out of 31 schools fully of partially satisfy established norms of construction standards when it comes to schools' surrounding areas, yard entrances and arrangement[522].

When it comes to accessibility of buildings, only 8 schools satisfy the established norms partially. The remaining 23 buildings mostly do not have central entrances equipped with wheelchair paths or have them in harsh violation of norms, have high stairs without railings which creates dangerous, uncomfortable and/or inaccessible environment for persons with any kind of mobility level.

Only public school of village Gavazi is equipped with an elevator in Kvareli municipality while in other schools students with disabilities may make a full use of only the first floor. In this school the situation regarding moving around is better as the halls are wide and there is enough room for moving.

As regards the accessibility of classrooms for students, the renovated interior and equipment there is a relatively good situation in 7 schools. Majority of the rest of the schools have outdated interior and worn-out equipment in the classrooms.

Sanitary spots (toilets and showers): 13 examined schools have toilets without seated toilets and those are mostly situated outside the building, in the yard. Only 9 schools have WCs which can be used by students with disabilities independently and even in those cases most of them are not equipped with auxiliary railings, toilets do not have toilet seats and/or rooms do not have enough space for manoeuvring with a wheelchair. The remaining 9 schools have insufficient width of either the WCs or their doors or there are stairs leading towards the toilet seats and/or they are located on higher platforms.

Only 6 out of the assessed school buildings have cafeterias which are equipped to be accessible for students with disabilities.

Based on interviews with the personnel it was also revealed that in 19 of the schools no students with disabilities and/or their parents have applied. In the remaining 12 schools there are students with different types of disabilities.

It is noteworthy that none of the schools has taken into account the needs for visually impaired students (wall railings, raised tiles, etc.) and have no specialist of gesture language to interact with students without hearing.

As regards the assessed multifunctional medical centers (clinics) in Kakheti region: 4 of them are fully accessible for beneficiaries who have limited mobility and use wheelchairs. The exception is LLC "UnimediKakheti" (Akhmeta) which is not equipped with an elevator and accordingly, persons with disabilities may only use of the first floor of the

521 Website of the electronic catalogue (eCatalog) of educational institutions created by the Ministry of Education and Science of Georgia - http://catalog.edu.ge

522 Order №1 of the Ministry of Urbanization and Construction dated 3 February 2003 "on norms relating to living environment for the disabled, norms of planning elements" and "public buildings-structures for the disabled, norms of planning elements".

building while the administration of LLC "UnimediKakheti" (Kvareli) did not let the monitors in on its territory to assess the situation.

None of the clinics take into account the needs of the blind and hearing-impaired beneficiaries.

COURT ACCESSIBILITY

Court accessibility covers not only the possibility of a person to apply to the court in order to start proceedings regarding a claim but also territorial and physical accessibility of the court.

In 2011 Parliamentary Report Public Defender of Georgia raised about a problem connected to accessibility of the courts for persons with disabilities who use a wheelchair and the relevant recommendation was addressed to the common courts of Georgia.

According to Article 13 paragraph 1 of the United Nations "Convention on the Rights of Persons with Disabilities" dated 13 December 2006 (UN CRPD), "States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages."

On January 10, 2013 representatives of the Center for Disability Rights of Public Defender's Office were in Tbilisi City Court with an aim to attend the court session regarding the complaint lodged by Mr.Koba Nadiradze, person with disabilities and an Executive Director of an NGO "Youth Centre for Independent Life" working on issues related to persons with disabilities.

During a visit in the court, representatives of Public Defender of Georgia were informed about the violation of rights of Citizen Koba Nadiradze and other persons with disabilities willing to attend the court hearing.

In particular, Koba Nadiradze and other persons with disabilities were unable to move around on the 6th floor of the court building with an aim to attend the court hearing because the court building is not fully adapted to the needs of persons with disabilities.

Despite the fact that it is possible to move through the floors of the court building by means of an elevator, in order to access the courtroom it is necessary to use an extra staircase. It is impossible for persons with mobility restrictions to independently move around over this particular section.

According to Article 42 of the Constitution of Georgia "Everyone has the right to apply to a court for the protection of his/her rights and freedoms." This provision implies in itself an obligation of the state to implement every necessary measure in order to make the court accessible for every interested person.

Recommendations:

To the Parliament of Georgia:

- **In order to protect and implement the rights of persons with disabilities in the country, the United Nations Convention on the Protection of the Rights of Persons with Disabilities of December 13, 2006 should to be ratified in the nearest future.**

To the Government of Georgia:

- **The group of beneficiaries of medical insurance needs to be widened to cover persons with disabilities and benefits of the insurance should be adapted to the needs of persons with disabilities;**

- The "village doctor" sub-program of the state healthcare programs should reflect the special needs of persons with disabilities;
- Special needs of persons with disabilities should be taken into account while working on the new insurance package planned by the government within the framework of the universal insurance scheme.

To the Georgian Ministry of Labour, Health and Social Affairs:

- In order to implement the right to health of persons with disabilities it should ensure that a special norm is envisaged in every state healthcare program and state insurance which will be sensitive towards the needs of these persons and will fully provide them with medical services;
- It should carry out adequate measures with an aim to provide persons with disabilities with medical service on the spot by means of raising qualifications and awareness of "village doctors";
- It should ensure that seminars are conducted for the staff of medical institutions regarding standards of relations with patients with disabilities of different needs;
- It should ensure that means and methods related to applying to emergency (urgent) services by persons without hearing and/or with speech impairments, widely used in foreign countries, are studied and introduced (application by an sms, use of telecommunication devices by persons without hearing, etc.);
- It should provide sign language interpreter service to emergency aid crews and hospitals in order to ensure full communication with patients without hearing and/or with speech impairments.

To the Ministry of Education and Science of Georgia:

- It should implement all the measures that will ensure involvement of persons with disabilities in vocational education and training processes so that problems such as adapting the internal and external infrastructure, use of incorrect methodology in the teaching process, nonexistence of individual plans, positive discrimination and nonexistence of inclusive programs are eradicated;
- It should ensure maximum involvement of students with disabilities in public schools having inclusive status, adaptation of internal and external infrastructure.

To the Ministry of Regional Development and Infrastructure of Georgia:

- While implementing projects of regional development which are connected to infrastructural services of the regions and improvement of institutional capacities, it should take into account special needs of persons with disabilities in terms of both, accessing the buildings as well as using the internal and external infrastructure;
- While renovating road infrastructure (side-walks, auto parking, traffic signs and devices) it should take the special needs of persons with disabilities into account.

To the Common Courts:

- They should ensure implementation of adequate measures so that the court (including, court rooms) are physically accessible for persons with disabilities. Before solution of this problem, the abovementioned situation should be taken into account while conducting court hearings and sessions should be held in halls where attendance of persons with disabilities (parties) will be possible.

Annex 1

RECOMMENDATIONS IN SUPPORT OF IMPLEMENTATION OF THE NATIONAL CONCEPT AND ACTION PLAN ON TOLERANCE AND CIVIL INTEGRATION

The Council of National Minorities under the Public Defender of Georgia carried out the monitoring of implementation of the National Concept and Action Plan on Tolerance and Civil Integration with the aim to assess state programs in support of civil integration and to elaborate recommendations for addressing existing challenges.

During the monitoring process, meetings and in-depth interviews were organized with representatives of central and local government, non-governmental organizations, community leaders and other target groups in various cities and regions of Georgia, among them: Tbilisi, Kutaisi, Akhaltsikhe, Akhalkalaki, Ninotsminda, Bolnisi, Dmanisi, Gardabani, Tsalka, Marneuli, Rustavi, Telavi, Sagarejo, Akhmeta (Pankisi Gorge), Kvareli, Lagodekhi. In total, monitoring group conducted more than 120 meetings.

The Council of National Minorities under the Public Defender of Georgia conducted the monitoring of implementation of the National Concept and Action Plan on Tolerance and Civil Integration with the support of European Center for Minority Issues (ECMI), United Nations Development Programme (UNDP) and United States Agency for international Development (USAID) funded Advancing National Integration (ANI) Project of the United Nations Association of Georgia (UNAG).

RECOMMENDATIONS

Rule of Law; Political Integration and Civil Participation; social and regional integration

PROFESSIONAL DEVELOPMENT AND PROMOTION OF EMPLOYMENT OF NATIONAL MINORITIES

- Strengthen public administration component in Zurab Zhvania School of Public Administration;
- Develop new public administration curriculum for Zurab Zhvania School of Public Administration in line with the needs of the region;
- Increase autonomy of management at Zurab Zhvania School of Public Administration, establish Board of Trustees and ensure representation and participation of national minorities;
- Ensure better coordination with local self-governments during the selection of attendees for Zurab Zhvania School of Public Administration in order to consider local needs to a greater extent;

- Grant autonomy (reasonable way) to Zurab Zhvania School of Public Administration. At this point, school managers cannot make any independent decisions and even minor issues are agreed with the Ministry of Education and Science of Georgia. This situation has hampering effect on the overall functioning of the School.

- Provide opportunities for internship at state institutions for national minority students, enrolled in 4+1 programme.

POLITICAL INTEGRATION AND CIVIL PARTICIPATION

- Georgian political parties are recommended to enhance their activities in the regions densely populated by the national minorities; further, give due regard and include the issues of tolerance and civil integration in the political agendas and election statutes;

- Encourage involvement of national minorities in the political party-lists, thus promoting overall political activism of national minorities in Georgia;

- Civil sector is recommended to foster and initiate additional programmes and efforts in order to promote development of civil society and community mobilization in the regions densely populated by national minorities;

- Foster initiation of the state programmes, which will promote employment of national minorities at public sector;

- In addition to existing CEC resource centers, establish other centers in each municipality settled by national minorities and equip them with adequate material-technical facilities; identify election districts and precincts settled by national minorities and translate election ballots into minority languages;

- Put integration of minorities and issue of raising their awareness high on the agenda within CEC's Grant Programme;

- Establish legal support center for national minorities (or for existing centers, recruit staff who can communicate in minority languages).

SOCIAL AND REGIONAL INTEGRATION

- In the framework of regional and social integration policy, the state has to consider the problems of such regions as Kakheti, Shida Kartli and Adjara, where national minorities feel ignored and disregarded from the Government as well as from the side of NGOs and international organizations;

- The state agencies working on civil integration of national minorities, are recommended to consider in the National Concept on Tolerance and Civil Integration Action Plan the problems of small ethnic groups, such as Udis, Avars, Lezghins, Ossetians, Abkhazians, Kurds, Roma people and Assyrians;

- The state agencies working on civil integration of national minorities are recommended to actively cooperate with local governments (where the staff is comprised of national minorities) during the implementation of regional activities and programs, so that local municipalities and state agencies do not feel disregarded and distrusted by the central government;

- The scarcity of qualified local resources is a permanent problem during the implementation of infrastructure projects. The respective agencies should provide preparation of human resources, when needed (for instance, in such important fields of the regions as railway system, agriculture, rehabilitation of roads, etc.);

- 4 Access to agricultural projects should be boosted and retraining of human resources has to be provided;
- Interregional economic interaction should be enhanced; Agri tours should be organized among farmers from the regions densely populated by the national minorities and the rest of the country;
- Irrigation system has to be rehabilitated in the regions densely populated by national minorities (this problem is particularly severe in the village Kanda of Mtskheta District, where ethnic Assyrians are residing);
- Better coordination between the Ministry of Regional Development and Infrastructure and local municipalities should be ensured. Representatives of local municipalities and NGO sector should take part in designing regional development strategy. Regional Development Councils under the auspices of the Governor's Offices should start actual functioning and their role. Finally, it is important that the effectiveness of these Councils is increased.

STATE LANGUAGE AND EDUCATION

Preschool Education

- The initiatives of the Ministry of Education and Science of Georgia toward the establishment of preschool centers are very important for fostering access to early childhood education. It is advisable to continue making efforts toward this direction so that the Programme covers all non-Georgian schools, especially in remote villages where preschool education institutions are not functioning;
- It is significant to translate into minority languages Early Childhood Development Standards developed by the Ministry of Education and Science of Georgia and UNICEF and make it available for preschool institutions located in the regions densely settled with national minorities;
- It is important to provide preschool institutions located in the regions densely settled with national minorities with trainings in Early Childhood Development Standards developed by the Ministry of Education and Science of Georgia and UNICEF;
- It is advisable to translate into minority languages those supplementary materials in early childhood care that have been developed by the National Curriculum and Assessment Center and make them available for preschool institutions located in the regions densely settled with national minorities.

National Curriculum and Textbooks

- It is crucial to restore consideration of diversity issues as one of the criteria for the assessment and approval of textbooks. Submitted textbooks for approval should be strictly assessed according to this criterion, i.e. if a certain textbook envisages the issues of diversity;
- It is advisable that National Curriculum and Assessment center conducts additional meetings with publishing houses and groups of authors so that promoting more reflection of diversity and multicultural issues and encourage publishing of textbooks with ethno-relative perspective;
- It is crucial to integrate native languages of national minorities as a part of the National curriculum and Georgian legislation, approval and adoption of the curriculum of national minorities' native languages and launching of textbooks development;
- It is necessary to extend the deadline of instructing social sciences (including History and Geography) in Georgian at least until 2016 and apply regulation only at secondary level of general education. This

means that teaching social sciences in Georgian at secondary education level will become the target of non-Georgian schools at elementary and basic levels and the schools will plan and adopt school strategies accordingly so that to meet the final target;

- It is advisable to create cross-cutting curriculum of intercultural relations that will promote reflection of diversity of Georgia in the new national curriculum and textbooks and also foster development of intercultural dialogue among schoolchildren of Georgian and non-Georgian schools;
- It is crucial to improve quality of translation of textbooks into minority languages and timely provision of non-Georgian schools with translated textbooks;
- It is vital to provide trainings for teachers of non-Georgian schools so that they can introduce new national curriculum at non-Georgian schools;
- It is vital that a subject added to the national curriculum in 2010 – "World Culture" reflects cultures of national minorities living in Georgia and also their role in the world as well as in Georgian cultures;
- It is significant to increase hours of teaching of Georgian as a Second Language and modify lessons in line with the bilingual education programme of a certain school. In addition, it is decisive to teach Georgian as a Second Language so that schools have more choice and flexibility in terms of distribution and reshuffle of academic hours.
- It is necessary to revisit the issue of publishing bilingual textbooks. In this direction, a special mechanism should be developed as a result of which the textbooks will promote state language acquisition as well as effective learning of the contents of a certain subject area;
- National Center for Educational Quality Enhancement under the Ministry of Education and Science of Georgia during the authorization process of schools should include extra-curriculum activities as one of the criteria for assessment for school curriculum. The extra-curriculum activities must be targeted to the promotion of diversity and respect to each other as well as to the building of tolerance;
- Requirement for the awareness of diversity management and intercultural education should be included in Standards for School Principals;
- Diversity management strategies and intercultural awareness of a future school principal should be evaluated through the certification exams for the principals (both during testing and face-to-face interview).

Teacher's Certification, Professional Development and Pre-service Training of Future Teachers

a) Teacher's Professional Development

- It is important to develop teacher's professional development programmes for teachers of non-Georgian schools and provision of professional and subject area trainings in minority languages;
- It is vital to include Armenian and Azeri languages as native languages into the statute of Teacher's Certification so that teachers of Armenian and Azeri languages have also an opportunity to obtain right for teaching and respective social grants. At the same time, higher education institutions should prepare future teachers of Armenian and Azeri as native languages for minority schoolchildren;
- It is crucial to develop professional development standards for bilingual teachers, their certification and professional training;

- It is necessary to provide incentive mechanisms for bilingual education teachers (for example, additional monetary incentives for bilingual teachers), so that teachers are motivated for professional development and obtaining the status of bilingual teachers;

- State language teaching to teachers of non-Georgian schools so that after 2014 teachers can renew their status through the involvement of teacher's professional development programmes provided in Georgian and by taking teacher's certification exams. This recommendation is important for the implementation of bilingual programmes, especially at 7-12 grades.

b) Pre-service Training

- To promote refinement of educational programme of Georgian as a Second Language at higher education institutions;

- To introduce programmes at higher education institutions for the preparation of bilingual teachers. This should be based on bilingual teacher's professional standards developed by Teacher's Professional Development Center;

- To prepare teachers of minority languages at higher education institutions. This should be based on teacher's professional standards for Armenian and Azeri languages as native languages developed by Teacher's Professional Development Center;

- To introduce some additional "preferential" mechanisms at unified admission exams, funding of Bachelor's and Master's programmes for the graduates of non-Georgian schools and for the entrants who pursue they study at Education Department;

- To regulate specialties for those entrants who are admitted to higher education institutions through quota system and make more focus on students studying pedagogy. This will foster development and preparation of necessary human resources for non-Georgian schools;

- To introduce contractual mechanisms for those students who will be admitted to the Department of Education through quota system or/and provide payment by the state to cover their tuition fee (at both Bachelor's and Master's levels). Because of contractual mechanisms and provided support, a graduate can be responsible to teach in Samtskhe-Javakheti or Kvemo Kartli region during a certain period of time;

- To include intercultural education course as obligatory in each Teacher's Professional Development programmes functioning in Georgia;

- To reflect intercultural relations and issues in teachers professional development manuals at higher education institutions and each subject areas of the curriculum;

- To organize study visit for students in diverse and culturally different environment.

School Leaving Exams

- It is decisive that school leaving exams implies optimal and feasible threshold of competence for minority schoolchildren considering the problems of introducing new national curriculum and textbooks at non-Georgian schools. Otherwise, minority schoolchildren can face a greater challenge of obtaining a certificate of general education completion.

Bilingual Education

- In case of submersion (when non-Georgian schoolchildren are placed in Georgian schools), schools and teachers have to ensure development of individual curriculum for such pupils. Therefore, it is important to train teachers on development of individual curriculum for schoolchildren, when needed.
- It is advisable that these programmes will include intensive supplementary courses in Georgian language so that children involved in bilingual education can acquire Georgian in shortest time. This will decrease the chances for poor academic performance among minority children caused by language barriers;
- It is crucial to inform parents about language competence of a child as well as on the possible negative impact of submersion in terms of cognitive and social development;
- It is significant to make more emphasis on the so-called "strong" programmes of bilingual education despite the challenges regarding its administration and implementation;
- It is vital to provide schools with methodological, human and financial resources for the introduction and implementation of "strong" bilingual programmes. Consequently, it is necessary to increase funding substantially for schools, which implement bilingual programmes;
- It is important to raise awareness of parents and community about the benefits and effectiveness of bilingual education;
- It is crucial to ensure development of necessary mechanisms for the promotion of parents and community engagement in bilingual education;
- It is necessary that National Curriculum and Assessment Center develops samples of bilingual programmes for schools so that to make easier for schools to develop their own models of bilingual programme;
- It is crucial to ensure pre-assessment of language competence and academic performance of school children in pilot bilingual schools;
- It is significant to determine and define assessment mechanisms of the effectiveness of bilingual education programmes.

Unified Admission Exams

- It is important to raise awareness of the population about existing quota system, especially in Kvemo Kartli and Samtskhe-Javakheti regions so that school graduates from these regions will use quota system to a maximum extent and utilize available places for national minority entrants at higher education institutions;
- It is advisable to develop some contractual mechanism for those students who are admitted to higher education institutions through quota system. This will promote maintenance and employability of the students in the regions densely settled with national minorities.
- It is desirable that higher education institutions implement educational, entertaining, cultural and academic programmes that will foster civil and social integration of students admitted through quota system;
- National Center for Educational Quality Enhancement under the Ministry of Education and Science of Georgia during the accreditation process of one-year Georgian language preparatory programme, should make more emphasis and give due regard if the programme promotes academic, social and civil integration of enrolled students.

Adult Education

- It is vital to expand the scope of listeners and attendees of "Language Houses" and engage more people in the study process;
- It is advisable to expand functions of Language Houses so that they have the same functions that they had been assigned at the beginning of their establishment;
- It is crucial to organize professional development courses for adults so that the residents of the regions densely settled with national minorities can be employed in ongoing projects that are being implemented in the regions.

CULTURE AND IDENTITY PRESERVATIONS

Promotion of civic consciousness

- The number of educational projects as well as beneficiaries should be increased. More new extracurricular activities should be planned: workshops, roundtable discussions, educational competitions, summer schools, competitions;
- The Ministry of Sports and Youth Affairs should participate into the implementation of the National Concept and Action Plan. Interregional projects should be implemented. Since, sports, common cultural, exchange programs have greater impact on integration of the people, the number of such programs should be increased.
- TV and Radio programs should be created aiming at increasing civic consciousness for public TV as well as regional channels.

SUPPORT PRESERVATION OF THE CULTURAL IDENTITY OF NATIONAL MINORITIES

Museums

- For proper operation and preservation of LEPL David Baazovi Historical and Ethnographic Museum of the Jews of Georgia, the dome of the museum should be repaired at first, so that the deterioration of the conditions would not happen. Next, state as well as additional donor funding should be secured for total rehabilitation of the museum. The building design and financial plan of the reconstruction works of the museum are already in place;
- A responsible agency for the museum reconstruction works should be determined. Due to legislative and structural amendments it is not clear who is the body in charge of the museum (Ministry of Culture, Mayer's Office of Tbilisi or both of them) The issue hinders final resolution of the fate of the museum;
- The Action Plan should include ethnographic and historic museums in every region so that their rich resources are used and exhibitions arranged; Museum projects dealing with study and preservation of the minority culture should be supported (Kutaisi Ethnographic and Historic Museum possesses rich collection of artifacts of history of the life of Jewish community in the city as well as life and work of Georgian Catholics in Kutaisi and Akhaltsikhe);
- More attention should be given to Iv. Javakhishvili Historic Museum of Akhaltsikhe, as an educational and cultural center. Its establishment and rich collection is a good example of interreligious dialogue;

- Gardabani Regional Museum should be allocated a relevant space or be still placed within the old building. Nowadays the museum does not have adequate space to show all the exhibits (exemplifying Georgian, Azeri and other cultures);
- In the future not only collection of artifacts of ethno-culture should be targeted, but also the craftsman that practice the trade, so that the unique trade is protected and preserved;
- Preservation of the unique cultural microcosm, created in Javakheti by the Doghobors, should be sought. The Ministry of Culture and local municipality should agree to establish Dughabor Ethnographic Museum and allocate the relevant financing in Ninotsminda annual budget.

Public celebrations and holidays

- The difference in minority interests and level of integration in different regions should be considered while planning; More popular projects among the minorities should be supported; Each Culture Service should define a priority direction for protection and presentation of minority cultures;
- Promotion of Mughami and Ashug cultures in the local community as well as in wider public is needed. Of special interest is encouragement of the culture among Azeri youth to ensure intergenerational transition;
- The cultural events planned for the next year should include classic music concerts in the regions, deficit of which was revealed during the 2009 monitoring by the Ombudsman's office and that is still problematic;
- Additional funds for cultural events should be allocated to regions that have cute lack in this regards (Akhalkalaki, Tsalka, Ninostminda). Severe climate hinders implementation of different projects in winter;

Libraries

- Before the closure of the libraries, they were inventoried in some of the districts and the information about the number of readers etc. can be easily received. Considering the information, as well as specific character of some of the districts and villages, libraries should be reopened is a number of villages: e.g. Village Tshatsharaki Library, where about 3000 Georgian, Russian and Armenian books were stored;
- On the initiative of the Municipality Culture Services village libraries can assume a function of youth centers and arts clubs;
- Funding located for libraries by the municipalities are very little and covers costs of the central and a few village libraries. A state Library Support Program from the central governments should be initiated for the existence of the libraries with the participation of the Ministry of Education and Science, Ministry of Culture, and other bodies working in the regional development;
- Municipalities should solve the problem of heating of the libraries (reading halls, book stores) in winter; The lack of heating prohibits the libraries from working properly in winter;
- Annual replenishment of the book funds of the libraries is recommendable.

Music Schools

- Discussion at governmental and nongovernmental levels over the reestablishment of music institutions at regional level should be initiated. Experience from the previous years should be considered and a reasonable decision taken together with the music experts. At present the closure of music institutions present a barrier for pupils to higher music education and in the future this problem will hamper the development of the sector;

- By the support of the Ministry of Culture and local self-governance bodies the number of culture activities should be increased and more artists invited to the districts. Classic music concerts should be arranged, that will help in capacity building of the local personnel apart from having a pure esthetic value;
- The Ministry of Culture should closely cooperate with Municipality Culture Services and timely present new programs to them;
- In order for projects to be initiated at local level, representatives of local self governance bodies, civil society need to take relevant training. The interest was expressed in all the districts.

PROTECTION OF NATIONAL MINORITY CULTURAL HERITAGE

- The list of the monuments requiring urgent repairs should be identified. Surb Nishni and Mughni Surb Gevork churches should be included in the list; their reconstruction works and later their rehabilitation should start immediately, despite who will they belong to as religious buildings after the sentiment of the dispute;
- The database should include the address of the building as well as other additional information: whether the building is religious, operational, which culture it belongs to besides Georgian etc.;
- Inventory of movable and immovable monuments of Jewish culture: inventory and database of religious buildings as well as rich collection stored in museums and archives should be undertaken, as this was the case with other monuments (e.g. Project of Inventory of Ottoman Monuments);
- All Kutaisi and Oni synagogues should be studied and evaluated and granted the status of a cultural heritage monument. These monuments are of special importance from architectural, cultural and historic point of view. They should be reconstructed;
- Seraphime Saroveli Church in village Japaridze (Sechenovka) built in XIX century by Count Sechenov from Russian cultural heritage monument in Georgia should be paid special attention. It is not included in the registry of cultural heritage monuments so far. It should be studied and relevant reconstruction works launched;
- Promotion of Rabati (Akhaltsikhe) as a monument of cultural heritage and one of the most interesting tourist attractions in Samtskhe Javakheti should be undertaken;
- The National Agency for Monument Protection should coordinate the process of inventory in the districts (some district Culture Service successfully implements the process, but in general the process has faults and is implemented with delay). In Akhalkalaki District the only existing registry was done in 80ies last century. The staff of the Culture Services should undergo relevant training. They express their readiness and interest in it.

SUPPORTING SPIRIT OF TOLERANCE, INTERCULTURAL DIALOGUE AND RELATIONS

- Intercultural teaching methodologies need to be introduced;
- Students participate in exchange programs and summer schools with great motivation. More resources should be allocated to these projects (especially on the part of the Ministry of Education and Science and Ministry of Sports and Youth Affairs). Educational programs will greatly facilitate integration of youth and the increase of knowledge base;

- Promotion of the spirit of tolerance requires work in different directions. Media has great importance and impact in this regards. Educational and cognitive programs should be prepared that will promote authors, pieces of artistic work and historic figures that carry spirit of tolerance;

ENSURING PARTICIPATION OF MINORITIES IN THE CULTURAL LIFE OF GEORGIA

- Minority representatives should be priorly informed and prepared for participation in the activities;
- Translations should be more employed with the purpose of tightening cultural ties and studying cultures. Literary and scientific projects should be financed.
- Governmental bodies should continue collaboration with local communities. Relevant initiatives should be timely identified. The representatives of minorities noted they preferred the projects are not short term and "the cultural communications last year long and not one concrete day".

COGNITION AND PROMOTION OF CULTURE, HISTORY, LANGUAGE AND RELIGION OF MINORITIES AS CULTURAL VALUES OF THE COUNTRY

- Work should continue to ratify Regional and Minority Language Charter; also, the respective informational meetings should continue with the field experts, decision makers and other representatives of public;
- Ethnographic and historic, regional museums and archives should be attached proper attention. They store numerous interesting and valuable information on the relationships between Georgian and non-Georgian cultures. Museum staff can be recommended to prepare annual exhibitions, that reflects the intercultural dialogue and culture as a phenomenon of dynamic relationships;
- The Ministry of Education and Ministry of Culture can be recommended to mainstream the projects that will introduce public at large in Georgia the work of the people that contributed to the development of the Georgian culture, despite their ethnic and religious identity;
- Regular Radio and TV programs should reflect traditions and habits etc. of different cultures living in Georgia;
- The governmental bodies responsible for implementing integration policy should collaborate with nongovernmental organizations and research institutes (e.g. UNESCO Center for Intercultural dialogue); Experiences and knowledge should be exchanged to plan and implement new projects.

MEDIA AND ACCESS TO INFORMATION

- Ensure improvement of the news programs in minority languages with the view of the content, format and duration;
- conduct trainings for the journalist of "National Moambe" and partner regional TV channels;
- provide internship of minority representative journalists and students from the Department of Journalism at the "National Moambe" and Georgian "Moambe"
- Ensure a wider coverage for the news programs in minority languages by increasing the number of regional partner TVs;
- Ensure translation/dubbing of its products in minority languages and their broadcast through regional partner TVs.

- Ensure increased participation of national minorities and increased coverage of the problems, lifestyle, cultural or religious issues related to minorities in its programs, among them news and socio-political programs;
- Ensure the coverage of the current events and problems in the regions densely populated by minorities.

Commercial Media should:

- increase participation of national minorities and coverage of the problems, lifestyle, cultural or religious issues related to minorities in its programs, among them news and socio-political programs;
- Guarantee the coverage of the current events and problems in the regions densely populated by minorities.
- Comply with professional standards when covering the issues regarding national and religious minorities.

Regional Media should

- Develop a cooperation mechanism envisaging joint production and exchange of media products;
- Ensure the production, increase and improvement of media products in the languages comprehensible by local population.
- Guarantee the use and development of Internet media;
- Expand coverage.

Non-governmental Organizations should

- Provide regular media monitoring of the coverage of national minority issues by media and publish the results.
- Inform society at large over the breach of conduct in media, especially use of language of hatred, and hold public debates.

International Organizations should

- Promote the development of regional media in terms of technical support as well as diversification of the content;
- Support cooperation and joint projects between regional local TV stations;
- Support translation and dubbing in minority languages of educational programs prepared by public broadcaster;
- Continue capacity building of the journalists with regard to tolerance, national integration and coverage of national minority issues.

Internet Service Providers

- Ensure increase of access to the internet in the regions densely populated by national minorities.