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ANNUAL REPORT
OF THE PUBLIC DEFENDER
OF GEORGIA

THE SITUATION OF HUMAN RIGHTS AND FREEDOMS IN GEORGIA

2010

THE PUBLIC
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GEORGIA

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CONTENTS

Introduction

The given document represents the report of the Public Defender of Georgia on the situation of human rights and freedoms in the territory of Georgia for the year 2010. The report is submitted to the Parliament of Georgia according to Para 1, Article 22 of the Organic law of Georgia "on the Public Defender of Georgia".

The report covers a wide range of issues related to human rights and freedoms including the protection of Civil, Political, Social and Cultural rights. The report provides an overview of the situation in the human rights protection field in the country and reveals concrete facts of violation of human rights and freedoms.

During the reporting period, the Office of Public Defender of Georgia analyzed current legislation with recent legal amendments related to the human rights field, assessed the practices of certain governmental bodies, examined numerous cases of human rights violations and provided duly response and adequate follow-up on each of them.

The present report specifies certain governmental and local self-governmental bodies as well as public officials which violated human rights and freedoms, failed to act upon the recommendations of the Public Defender to redress infringed rights and hindered the Public Defender from exercising his functions effectively.

During the reporting period, the Office of Public Defender of Georgia produced and sent to the Parliament of Georgia several special reports which gained huge interest among public. The special reports covered the following topics: human rights situation of internally displaced persons and conflict-affected individuals in Georgia; exercising right to health within the penitentiary system of Georgia; monitoring of penitentiary establishments, temporary detention isolators and military detention facilities; human rights situation in psychiatric institutions and in houses for disabled persons under the LEPL "State Care Agency". The special reports offered detailed overview of the human rights protection in the respective fields.

Over the reporting period, the Office of Public Defender, within the framework of National Preventive Mechanism mandate, conducted monitoring of all types of institutions of deprivation of liberty. The report covers the human rights situation in penitentiary establishments, temporary detention isolators under the Ministry of Internal Affairs, houses for the persons with disabilities and in children's homes. The monitoring findings reveal that the penitentiary system continues to be one of the most problematic areas in Georgia. Overcrowding of several penitentiary establishments, caused by excessive number of inmates and inadequate infrastructure, proves to be one of the main problems. At some establishments, overcrowding and dilapidated infrastructure results in unbearable living conditions and in some cases the conditions of prisoners in such institutions could be assessed to amount to inhuman and degrading treatment. Besides, another serious problem is inadequate access to healthcare for prisoners. Healthcare in penitentiary

system does not provide relevant treatment for prisoners, which is proved by the complaints submitted to the Public Defender's Office, examined and analyzed documentation as well as by monitoring results.

In his special report "Right to Health and Problems Related to Exercise this Right within the Penitentiary System of Georgia" prepared in 2010, the Public Defender stated that "the indicator of spread of tuberculosis in the Georgian penitentiary system in the recent period has reached a peak. Tuberculosis is the major reason of deaths in prison. Despite numerous measures taken both in Georgia in general and within the Georgian penitentiary system, the problem of tuberculosis, instead of being resolved, has even aggravated." Concrete reasons of mortality in the penitentiary system have been analyzed according to the finding of monitoring during the reporting period. In 2010, the indicator of deaths of prisoners has grown up compared with the similar statistics of the penitentiary establishments in the past several years.

During the reporting period, the special preventive group studied numerous cases of ill-treatment by prison administration. In 2010, this problem was particularly relevant for several penitentiary establishments. Inadequate investigation into the above-mentioned cases is one of the most important problems.

The monitoring conducted by Special Preventive Group in the temporary detention isolators under the Ministry of Internal Affairs revealed numerous problems related to ill-treatment and obsolete and inadequate infrastructure. Long-term placement of administrative detainees in temporary detention isolators remains to be an acute problem.

The right to a fair trial has its important place in the report. In-depth analysis of the cases by the Office of Public Defender during the reporting period exposes disrespect to the laws and shortcomings in the operation of general courts that give rise to violation of human rights. Most of the violations mentioned in the report refer to the fundamental principles such as prohibition of double jeopardy, prohibition of retroactive application of the law, unchangeability of the composition of the court and etc. Inadequate reasoning of court judgments (interim or final) still remains an essential problem.

The analysis of complaints submitted to the Public Defender's Office in 2010 and the findings of monitoring conducted during the period make clear that degrading treatment and use of disproportionate force by the law enforcement bodies while fulfilling their duties, remain a pressing problem. Other setbacks violating human rights and fundamental freedoms have also been revealed in the work of law enforcements. The Office of Public Defender exposed numerous cases of using excessive force against detained persons and cases of arbitrary detention of individuals, including juveniles. The reports of Public Defender for 2009 stated that facts of inhuman and degrading treatment by the staff of the Ministry of Internal Affairs were specifically frequent in the Western Georgia. This tendency continues to be problematic in 2010 as well.

A number of systematic and individual violations have been revealed during the monitoring of children's homes in the reporting period: cases of violence against children by the staff of childcare institutions; inadequate living conditions dangerous for health and impeding proper development of children; poor sanitary conditions in the dining facilities; use of child's labor; discrimination of children as well as malnutrition that is one of the most serious problems. The lack of psychological rehabilitation remains an acute issue. Severe shortcomings have been noticed in the deinstitutionalization process as well.

Considering the existing reality in Georgia, work on the rights of Internally Displaced Persons was and still remains to be one of the main priorities of the Public Defender of Georgia. During the reporting period, the revealed problems were mainly related to the eviction/re-location process in Tbilisi. The chapter emphasizes the inaccurate planning and implementation of the mentioned process, especially the procedural violations that occurred during the eviction process of IDPs from different buildings. The report describes the results of the monitoring of alternative accommodation offered to IDPs; the small-scale research conducted on the conditions of the IDPs living in private accommodations is presented as well.

Human rights situation of the individuals residing in the conflict zones has not improved in 2010. The general situation in terms of human rights protection in the conflict zones is rather difficult. Existence of political conflicts in Georgia represents a serious challenge for the realization of the state jurisdiction. Therefore, it is crucial that international actors conduct monitoring in the area. The presence of effective international monitoring missions will guarantee the safety and security of the citizens residing in breakaway regions.

Regarding the freedom of assembly and manifestations, it should be noted that compliance of the existing law of Georgia "on Freedom of Assembly and Manifestations" with international standards still remains problematic issue. Year 2010 was not active in terms of assembly and manifestations. Several manifestations took place in Tbilisi, during which the law enforcement structures violated human rights and freedoms.

Like previous years, there were cases of interference in the professional activities of journalists, impeding their work and on several occasions - the cases of their physical insult.

As a result of examination of complaints related to the property issues submitted to the Public Defender's Office during the reporting period, it became vivid that violation of the right to property took place. The report describes as well the facts of illegal actions of the state Property Recognition Commissions ignoring the requirements established by law while discussing the cases of property recognition, which resulted in violations of citizen's rights to property.

The given report contains detailed analysis of the rights of ethnic and religious minorities, persons with disabilities, children and eco-migrants. The report covers as well the issues related to the right to work, rights of consumers and tax-payers, freedom of information, right to health, right to adequate housing and problems related to social security.

We do hope that the State will undertake effective measures to solve the systemic problems described in the given report, to eradicate drawbacks in the legislation and to redress the infringed rights, that is a vital prerequisite for building a state based on a rule of law.

2010

Conditions in the penitentiary establishments of Georgia and temporary detention isolators of the Ministry of Internal Affairs of Georgia

The present Report covers the findings of the monitoring carried out by the Special Preventive Group of the Prevention and Monitoring Department of the Office of the Public Defender of Georgia in its capacity as the National Prevention Mechanism at penitentiary establishments and temporary detention isolators of the Ministry of Internal Affairs in 2010.

There were 68 planned and 440 *ad hoc* visits to penitentiary establishments undertaken during 2010. More than 1200 inmates were personally visited during these visits.[1]

All of the nineteen penitentiary establishments were visited during the monitoring. The members of the monitoring group visited and spoke with inmates, directors, staff and medical personnel of establishments.

There were 104 planned and 47 *ad hoc* visits to temporary detention isolators undertaken. During the monitoring, the infrastructure of temporary detention isolators were examined, the registers for persons placed in temporary detention isolators, medical records, the records of external visual examination of a detained person upon placement in isolators were checked. Members of the Group met with administration of temporary detention isolators, detained persons and administratively imprisoned persons.

PROCESS OF MONITORING

It shall be positively noted that the Special Preventive Group has not experienced any problems during the exercise of its authority prescribed by law. The members of the Group were entering establishments without any impediments and had a possibility to hold confidential interviews with detainees/inmates. Administrations of all the establishments fully cooperated with the monitoring team and to the extent possible provided the requested information or the documentation as well as oral explanations regarding a variety of issues.

There were numerous cases of ill-treatment revealed in penitentiary establishments during 2010. As regards temporary detention isolators, there have not been facts of ill-treatment identified throughout the last years. However, use of excessive force by police during detention is a problem. This is confirmed both - by detainees, as well as by the records of external visual examination of detainees made into the registers upon their placement in temporary detention isolators and penitentiary establishments.

Investigations into those facts are still conducted without due diligence; investigative actions in most cases are undertaken formally, often no forensic medical examination is ordered or it is conducted with delay, when the injuries of a victim may not be traced any more.

[1] The statistics includes the visits of the Special Preventive Group, as well as the visits of the Regional Representatives of the Public Defender

ILL-TREATMENT

One of the most important international instruments from the perspective of eradication of torture is the Optional Protocol to the Convention against Torture. The Protocol was the first document to synchronize the international and national mechanisms.

The functions of the National Preventive Mechanism in Georgia were assigned to the Public Defender of Georgia from 16 July, 2009, following the changes introduced into the Organic Law of Georgia on Public Defender. The above-mentioned mechanism is one of the most viable and efficient system with a view to prevention and eradication of torture, inhuman and degrading treatment and punishment.

The most efficient means at the disposal of the Public Defender for fighting against torture, inhuman or degrading treatment and punishment is the meticulous monitoring of institutions considered by the Optional Protocol to the Convention against Torture. This first and foremost aims at prevention of torture, inhuman and degrading treatment and punishment, and not reacting over the fact which has already taken place. However, there are also frequent cases when the Public Defender and the Special Preventive Group happen to react over the occurred fact and submit the information on facts of torture or inhuman treatment to law enforcement bodies.

Investigation, as well as among others legal reaction over the facts of torture and inhuman treatment, is a prerogative of the Prosecution Service. The scope of functions of the Public Defender in this respect is limited to provision or acquiring the information, as well as, in cases of such a need, provision of recommendations of procedural nature. The Public Defender is devoid of a possibility to influence over the qualification of facts and essential aspects of investigation into a case.

It shall be nevertheless mentioned that one of the main problems related to investigation of facts of ill-treatment is exactly their incorrect qualification: often investigation commences not based on the article prohibiting torture or degrading or inhuman treatment, but based on the article prohibiting abuse of power, which is a malfeasance and committing it envisages considerably less strict sanction.

The European Court of Human Rights in the case *Ribitsch v Austria*[2] noted, that in respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention. The Court also stated that the requirements of an investigation and the undeniable difficulties inherent in the fight against crime can not justify placing limits on the protection to be afforded in respect of the physical integrity of individuals.

The problem of inefficient investigation of facts of ill-treatment is also still enduring. This hampers eradication of torture most of all, as it creates the syndrome of escaping punishment within law enforcement officials and generates a risk of similar actions be repeated. It is exactly to this end that the European Court of Human Rights not once, including in cases against Georgia, elucidated that inefficient, protracted and inadequate investigation does already in itself represent a violation of procedural requirements of Article 3 of the European Convention, despite the fact whether the applicant has submitted sufficient arguments and evidence proving the very fact of torture.[3]

The information collected by us recently, as well as an analysis of variety of materials and individual facts make it clear that the Prosecution Service often deals with the investigation of facts encompassing torture or ill-treatment of detainees and criminal cases including such acts superficially. As it was already noted, often such facts are qualified not as criminal acts of torture and degrading or inhuman treatment but rather abuse of power or beating. In almost all cases investigation of such cases bears a formalistic nature and the investigation into a case is often terminated or protracted throughout years. It is most noteworthy to mention that investigation is terminated based on the testimonies of representatives of law enforcement bodies and in some cases a victim withdraws the account submitted to the Public Defender and testifies in favour of law enforcement representatives. In some cases, forensic medical examination is

[2] Judgment of 4 December, 1995

[3] Case of Danelia v. Georgia, Judgment of 17 October, 2006; Case of Davtyan v. Georgia, Judgment of 27 July, 2006; Case of Gharibashvili v. Georgia, Judgment of 29 July, 2008

ordered at a point when the injuries suffered by a victim may not be traced any more - that is with a delay of some weeks.

According to the case law of the European Court of Human Rights, whenever a person was injured during imprisonment or at any other point of being under the police custody, any of such injuries provoke a strong presumption, that a person concerned was ill-treated.[4] It is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention.[5]

On 21 September, 2010, the report on the visit to Georgian carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (*hereinafter - CPT*) was published. The Report reflects the results of a visit of the Committee from 5 to 15 February, 2010.

The last Report of CPT mentions that Committee welcomes the determined actions taken by the Georgian authorities to prevent ill-treatment by police. It is also mentioned that considerable progress has been made in reducing the risk of ill-treatment at the hands of police officers; nevertheless, the persistence of some allegations clearly indicate that the authorities must remain vigilant.[6]

The CPT Report does fairly extensively consider a case of an inmate Ushangi G., who passed away in September, 2009. This does indicate the particular interest of the Committee to the case. On the very day of his admission to Prison No. 7, on 19 September, U.G., being unconscious, was transferred first to Medical Establishment for Convicted and Indicted Persons, and than to Gudushauri National Medical Center. U.G. passed away in that institution on 21 September. According to the forensic medical examination conclusion, the cause of U.G.'s death was *"massive cerebral hemorrhage due to blunt injury. The following life-time injuries were noticed on the corps of U.G.: massive subdural extravasations, subarachnoid and intraventricular hemorrhage. Notches: on the right forearm, right wrist joints, joints of both knees, left shank, and area of both ankles; bruises: in the areas of right wrist, right arm, on the front and the left side of the abdomen, left thigh, left forearm, left shank, and the area of main phalanx of the fourth finger on the right hand. The injuries are caused by some solid, blunt subject, they belong to heavy injury, are dangerous for life 3-4 days old"*.

On 21 September, 2009, investigation into the fact commenced based on the article of murder of negligence. This clearly contradicts with the character and severity of injuries identified on the corps, which, more than negligence do demonstrate an intentional character of acts undertaken in relation to him. The injuries were inflicted several days before the death, therefore, after the detention, which took place on 15 September. In its Report CPT did underline the inefficient investigation: in February, 2010, 5 months since the commencement of investigation, neither policemen who had detained U.G. were interrogated, nor were questioned a person together with whom U.G. was detained, the representatives of the Ajara Regional Temporary Detention Isolator, where U.G. was placed after the detention and the guard who had transferred U.G. to Prison N7 in Tbilisi from Batumi.[7]

The Report of the Committee does not note this, however according to the information received by the Public Defender from the Office of the Chief Prosecutor on 23 June, 2010, investigation into the case of U.G. commenced based on the notice received from the Gudushauri clinic. This does once again indicate the improper approach to the facts of ill-treatment: despite the fact that upon admitting to the N7 Prison and Medical Establishment for Convicted and Indicted Persons the injuries on U.G.'s body were recorded, none of the administrations of the establishments considered it necessary to notify the fact to the investigative bodies.

The investigation into the case of U.G. has still not been finalized and there has been no criminal responsibility of any person considered.

General Report N14 of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment notes, that investigation shall be absolutely detailed and extensive, it shall be conducted swiftly and persons responsible for it shall not be related to persons involved in the mentioned developments. However, often the

4 Case of Bursuc v Romania, Judgment of 12 October, 2004
5 Case of Selmouni v. France, Judgment of 28 July, 1999
6 para. 16
7 para. 21

investigations into facts of ill-treatment of inmates in penitentiary establishments are undertaken by the Investigative Department of the Ministry of Corrections and Legal Assistance of Georgia. This does put under a serious question mark the efficiency of investigation. Apart from the mentioned, this is also indicated by the information at the disposal of the Public Defender with regard to investigation into ongoing criminal cases, according to which there have been no prosecutions initiated against anybody.

The above mentioned approach creates the syndrome of escaping punishment and puts under a question mark numerous steps made by Georgia for the eradication of torture and inhuman or degrading treatment.

Within the reporting period, as a result of intensive monitoring, the Department of Prevention and Monitoring of the Office of the Public Defender of Georgia identified a number of facts of ill-treatment regarding which Public Defender approached the Georgian Prosecution Service immediately.

It shall also be mentioned here, that majority of convicts, having provided stories on the facts of their ill-treatment to the members of the Special Preventive Group, preferred to keep their stories confidential. Therefore, the present Report only reflects those cases that have been, with the consent of victims, transmitted to the Office of the Chief Prosecutor of Georgia.

USE OF EXCESSIVE FORCE DURING DETENTION

According to the information received from Chairman of the Penitentiary Department of the Ministry of Corrections and Legal Assistance of Georgia, during 2010 there were 856 inmates with different bodily injuries admitted to prisons of the Penitentiary Department, out of which 85 inmates stated that injuries were inflicted during detention.

Among the persons having entered temporary detention isolators under the Main Division of Human Rights Protection and Monitoring of the Ministry of Internal Affairs of Georgia in 2010, 466 had traces of injuries. Out of this number 71 had a claim with regard to law enforcement bodies.

During the monitoring of temporary detention isolators in the reporting period by the members of Special Preventive Group, there were some instances identified when detainees indicated to the cases of ill-treatment by Police.

Case of juvenile M.M.

On 16 April, 2010, the representatives of the Department of Prevention and Monitoring met and interviewed a juvenile inmate M. M. in the General and Strict Regime Penitentiary Establishment No. 5 for Women and Juveniles. There were various injuries identified on his body. According to the statement of the juvenile, he was detained by police due to shop-lifting in Telavi on 6 April, 2010. According to him, after being brought to the police station he was beaten by the policemen, who were demanding from him to also confess the fact of stealing a bicycle.

According to M. M. the police chief threatened to kill him if he would have made this fact known to others.

On 16 April, 2010, there were noticeable general soft-tissue lesion and excoriations and bruises at different parts of the body of the juvenile.

On 19 April, 2010, the Public Defender, deriving from the above, transmitted the case to the Chief Prosecutor of Georgia. According to the response received, on 16 April 2010, the Investigative Service of the Kakheti Regional Prosecution Service commenced the preliminary investigation into the fact with signs of a crime envisaged by paragraph 1 of the Article 332 of the Criminal Code of Georgia.

On 6 July 2010, we requested the information on the ongoing investigation into the mentioned criminal case from the Office of the Chief Prosecutor again. According to the response received with the letter Ng27-07-2010/17 the

officials of the Telavi District Unit of the Ministry of Internal Affairs of Georgia, the Kakheti Regional temporary detention isolator, and the General and Strict Regime Penitentiary Establishment N5 for Women and Juveniles, as well as persons detained together with M. M. and their parents were questioned. According to the same reply, forensic medical examination was ordered based on the health certificate issued for M. M. by the General and Strict Regime Penitentiary Establishment No. 5 for Women and Juveniles on 9 April, 2010.

The investigation into the case is ongoing.

Case of K. K.

On 22 April, 2010, Special Preventive Group visited the temporary detention isolator in Zugdidi for monitoring. Members of the group met with a detainee K.K. According to his statement, he was at home together with his disabled mother at around 10-11 p.m. on 21 February, 2010; at that time around 10 people in police uniforms rushed into his bedroom, they threw him down from the bed and insulted him physically and verbally. According to K.K. he was beaten in hands and legs, following which they physically insulted his mother. Afterwards K.K. was transferred to the Police station, where physical and verbal assault continued. Later on he was told that he was suspected in/remand with stealing a car accumulator. The detainee stated he was not aware of the identity of the policemen however he could recognize them.

Medical expert of the Special Preventive Group conducted external visual examination of the detainee, who had physical injuries. DS: general soft-tissue lesion and excoriations and bruises at different parts of the body.

The record of the external visual examination of the detainee placed in the temporary detention isolator indicated that the detainee's right eye-socket was black.

On 4 March, 2010, all the material around the mentioned fact collected by the Special Preventive Group was transmitted to the Chief Prosecutor of Georgia. The reply received from the Prosecution Service with the letter N g15.03.2010/86 stated that preliminary investigation into criminal case based on paragraph 2(b) of the Article 144[1] of the Criminal Code of Georgia commenced in Zugdidi District Prosecutor's Office on 4 March, 2010.

On 31 March, 2010, representatives of the Department of Prevention and Monitoring visited and spoke with the inmate K.K. who stated that an investigator had visited him who, and according to the inmate, "had a general conversation with him". According to the inmate, he had not undertaken forensic medical examination.

To ascertain the above-mentioned, the information on the ongoing investigation into this criminal case was once again requested from the Office of the Chief Prosecutor of Georgia. According to the reply received with the letter Ng 20.07.2010/66 on 23 July, 2010, forensic medical examination was ordered on 16 March, 2010, officials of the Zugdidi District Unit, Zugdidi temporary detention isolator and N4 Prison were questioned. According to the latest available news, the investigation into the case is ongoing.

Case of L. T.

During the monitoring of Prison N4 in Zugdidi the Special Preventive Group met and interviewed inmate L.T., who stated that 6-7 policemen entered his house on 5 March, 2010, and told him that based on the phone notification they were about to search his house.

As a result of the search police found a stolen cow in the cow house of the inmate. Following this, according to the inmate, he was slapped into face by the policemen, than they put him into a car and drew him the Zemo (Upper) Etsera Police station. The inmate stated, that the policemen were demanding from him to confess stealing a cow, they were punching him, than threw him down and 4-5 policemen bet him. According to his statement, he lost conscious as a result of beating.

As the inmate stated, following the beating, he had headaches and his hearing was impaired. As clarified by him, upon entering both - temporary detention isolator as well as N4 Prison in Zugdidi, he declared that he had been beaten by policemen; however no reaction followed.

On 7 April, 2010, representative of the Public Defender visited Zugdidi temporary detention isolator and checked the Register for the persons placed in the isolator. In accordance with the record, L.T. had a scrape in the area of head, bruise in the right eye-socket, and a scratch on a right hand finger. The record did also indicate that the inmate had no complaints, however, there was no mention as to where had he got those injuries.

The 8 March, 2010 record made by a doctor upon placing the inmate into Prison No. 4 in Zugdidi mentioned that the inmate had soft-tissue lesion in areas of both eye-sockets.

On 8 April, 2010, deriving from the above the Public Defender submitted the case files to the Chief Prosecutor of Georgia. According to the reply received, on 7 May, 2010, Zugdidi District Prosecution Service commenced the preliminary investigation into the criminal case on the fact of torture of L.T. committed with the abuse of power by policemen of the Zugdidi District Unit of the Ministry of Internal Affairs of Georgia. The crime is envisaged by paragraph 2(b) of the Article 144[1] of the Criminal Code of Georgia.

In reply to the request for information by the Office of the Public Defender of Georgia made to the Prosecution Service on 6 July, 2010 we were notified that L.T. and witnesses were questioned, forensic medical examination was undertaken, according to the results of which the inmate did not have any physical injuries.

In this case also the accuracy of investigation is questionable, as the National Preventive Group visited L. T. 3 weeks after the fact had occurred, whereas the preliminary investigation commenced after more than a month following the notification by the Public Defender.

The response from the Prosecutor's Office does not clearly state the date of the forensic medical examination, however, taking into account the fact that the investigation commenced on 7 May, 2010, it may be safely assumed that there has not been forensic medical examination conducted before 7 May. This means that minimum 2 months had elapsed from the point of inflicting injuries to the moment of examination of the person. As it was already mentioned, the person to be examined had noticeable bruises, which is a damaged epidermis of outer skin; the disappearance of the bruises depends on sex, age of a person, the location of the damage and other factors. Healing wounds in the areas of head and neck takes around 12 days, on front surface of a body and extremities requires around 14-15 days, on the lower extremities - 17 and on the back - 18-20 days. Based on the character and form of the injury an expert may ascertain the prescription of injury, features of the subject that inflicted injury, etc. Bearing in mind that fairly long period had elapsed from the point of inflicting injuries to the forensic medical examination, the macro-morphological signs of notches conceivably would not have been retained there for the medical forensic expert to see them.

The person to be examined did also have bruise which emerges as a result of hitting some stiff, blunt subject followed by congestion of tissues with blood due to slashing blood-vessel in soft tissues in and underneath of skin. Small-sized bruise disappears totally in 2 weeks. The intensity of the color of a bruise depends on its size, localization, age of an injured person, etc. Deeply situated bruises appear relatively later. The form of a bruise often is a negative materialization of an injuring subject. Taking into account the nature of injury, in such a case signs of an injury may also not be noticeable on an injured person in 2 months.

Taking into account the above-mentioned, forensic medical examination should not have been based only on the condition at the moment of examination. Presumably, forensic medical expertise has not referred to the records in the case files. Due to this ostensibly the real situation has not been reflected in the forensic medical examination conclusion.

In this specific case two types of violations are identified: first of all, the forensic medical examination was not ordered in time and it may be suggested that ordering it was protracted on purpose. Apart from this, due to the fact that the expert has not used the case files, the examination undertaken is not comprehensive and does not comply with international standards. In addition, during the investigation of alleged facts of torture, it is indispensable to undertake forensic psychiatric examination as well, as psychological consequences of torture do linger for a way longer. This aspect was totally ignored by the investigation.

Case of S. R.

On 25 February, 2010, representative of the Public Defender of Georgia met and interviewed inmate S.R. in prison No. 4 in Zugdidi. According to S.R., on 16 February, 2010, the policemen of the Senaki District Unit detained him nearby his house, beat him and verbally assaulted him. According to the inmate, policemen beat him in his head with the filled bottle of "Nabeghlavi" spring water and demanded from him to also confess stealing of mobile phones.

As stated by S.R., the above mentioned happened during his apprehension, as well as before his transfer to the police station and later on - in the building of the Unit.

As noted by the inmate, around 5 policemen beat and swore at him in the Senaki Police station; as stated by him, each of the policemen did beat him in face, head and body. As a result of beating, the inmate got injuries and had periodic head ache. In accordance with the Register of detainees of the Senaki police and the register of Senaki temporary detention isolator, the inmate had injures both on the face and the body before detention. As stated by the inmate, he was scared and therefore did not protest violence exercised against him. As explained by him, the defender of his interests visited him in the Senaki temporary detention isolator, requesting forensic medical examination; however, as stated by the inmate, this request was not granted.

According to the explanations of the inmate, in the Senaki District Unit the policemen threatened that they would detain his mother and wife, put his child in orphanage and put drugs in his belongings, as if it was his.

When representative of the Public Defender met S.R., he was on a hunger strike due to protest, demanding fair investigation of his case and punishment of the policemen.

On 11 March, 2010, the Public Defender applied to the Chief Prosecutor of Georgia for further reaction. On 6 July, 2010, the information was requested as to whether the investigation into the case had commenced. However, there has been no reply to any of the letters to date.

FACTS OF ILL-TREATMENT IN PENITENTIARY ESTABLISHMENTS

Inmates' complaints, as a rule, refer to physical assault, however often there are cases of complaining about degrading and humiliating treatment by the officials of penitentiary establishments. In both instances the Public Defender does immediately apply to the relevant agencies for reaction. However, often investigation is ongoing only formally, or is terminated based on the testimonies of the very law enforcement officials. There are often cases, when the injured person rebuffs the complaint and states that the injuries were self-inflicted or were result of an accident, such as e.g. falling down from bed. The factor of fear is first of all resulting from the fact that even after submitting a complaint injured person stays in the same establishment, under the supervision of the same officials. Frequently, in case of lodging a complaint, the case had commenced against the complaining inmate, for allegedly putting up resistance and it was "ascertained" that the injuries were inflicted as a result of his resistance. Therefore, as often investigation is based not on facts, but only on the testimonies of the witnesses representing the interested party, the syndrome of fear has emerged within inmates that certainly, considerably hinder identification of facts of ill-treatment and punishment of offenders.

• Establishment No. 16 in Rustavi

On 1 June, 2010, a new building was opened in the Prison and Closed Type Penitentiary Establishment No. 16 in Rustavi. According to the convicts, they had been transferred and placed in this establishment by employing physical force however they refrained from publicizing this fact and asked for the confidentiality. The convicts with noticeable injuries were naming different things as a cause for their injuries, such as e.g. falling down from the bed, playing football, etc.

● Prison No. 8 in Gldani

The CPT Report mentions, that the inmates in the Prison No. 8 in Gldani and the Medical Establishment for Convicted and Indicted Persons, unlike the inmates of other establishments, do not confirm ill-treatment; however inmates in other establishments do confirm ill-treatment of inmates in the mentioned establishments. In the prison in Gldani inmates are beaten in punishment cells and showers for knocking on doors, talking loudly, and contacting inmate in another cell. The Committee has not overlooked the unusual silence in the dormitory part of the penitentiary establishment in Gldani[8]. This apart from raising reasonable doubts somehow confirms the alleged by the inmates.

During the monitoring inmates in different establishments frequently talk to the Special Preventive Group about the inhuman treatment of inmates in the Prison No. 8 in Gldani. However in those cases as well they abstain from publicizing the facts.

● Medical Establishment for Convicted and Indicted Persons

During the reporting period convicts, who had been taken to the Medical Establishment often spoke of the facts of ill-treatment, however they often refrained from confirming in writing and publicizing those facts. Many of them had been stating that even in case of need they did not wish to go to the medical establishment any more due to the situation there. According inmates, during any movement at the territory of the establishment the administration forces the prisoners to have hands at the back even when the physical condition of a prisoner does not allow this. In case of not obeying a prisoner is denied of walk and some of the rights, such as an access to phone, are restricted. Often prisoners themselves try to avoid walk, as any movement may be a source of a conflict with the staff. To get clarifications over this issue, we applied to the administration of the establishment, which denied the existence of this practice, however the prisoners do unanimously confirm such a practice. There are unclear restrictions for using shop, for example prisoners are not allowed to purchase coffee, tea and a tea-urn. The administration considers purchasing of these items as a violation of the regime requirements. We consider such restrictions for inmates inadmissible.

Case of M. Ts.

On 23 June, 2010, staff of the Department of Prevention and Monitoring of the Office of Public Defender got clarification from M. Ts. in the Medical Establishment for Convicted and Indicted Persons. According to him, the representatives of the administration of Medical Establishment for Convicted and Indicted Persons physically abused him on 20 June 2010.

The convict stated that at around 10:30 on 20 June 2010, around 4-5 officials of the Medical Establishment for Convicted and Indicted Persons entered the second ward of the surgical unit, stating that the search of the ward should have been undertaken. The patients M. Ts. and A. N. were in the second ward of the surgical unit at that moment. A. N. left the ward and M. Ts. was remained by the staff of the establishment. According to him, in several minutes after the above-mentioned persons entered, the Deputy Director of the Medical Establishment for Convicted and Indicted Persons also entered the ward. The Deputy Director did address him in an irritating manner and hit with his leg the wheelchair in which M. Ts. set and got him in throat. According to M. Ts. he was physically abused also by the employees of the same establishment Avto Popiashvili and Giorgi Bitsadze. During the beating the wheel chair turned upside down, the convict lost conscious. According to him, when he became conscious after this, Avto Popiashvili verbally abused him, and Avto Popiashvili and Giorgi Bitsadze again physically abused him.

On 23 June, 2010, the accused had following bodily injuries noticeable: the bruise at the upper right part of forehead, three bruises in the form of stripes, above the right eyebrow, hematomas in the area of the right and the left eye-sockets, the scratched wound beneath the right eye-socket, bruises and intumescences on the nose, hematomas on both sides of the throat, hematomas on a side and backside of the upper part of the right and left arms.

[8] paragraphs 49, 51

On 24 June, 2010, the explanations provided by the convict were submitted for the further reaction to the Investigative Department of the Ministry of Corrections and Legal Assistance.

In the letter of the Office of the Chief Prosecutor of Georgia to the Office of the Public Defender, received on 26 July, 2010, the following is stated: on 14 July, 2010, the investigation commenced into the criminal case #073100343, on the fact of abuse of power by the staff of the Medical Establishment for Convicted and Indicted Persons, observing the signs of the crime envisaged by the paragraph 1 of the Article 333 of the Criminal Code of Georgia.

On 5 July, 2010, the representative of the Department of Prevention and Monitoring of the Office of the Public Defender once again visited the convict M. Ts. in the Medical Establishment for Convicted and Indicted Persons. M. Ts. mentioned that after the above-mentioned abuse by the administration of the establishment, his rights were violated again. In particular, he was deprived of the radio set, was not able to use the phone of the establishment, he was deprived of the right of everyday walk, services of dentist, using bath, and according to him no nurse was allowed into his ward; due to this he was not able to use toilet, his ward was not cleaned up and the remaining were not taken away. The convict was linking these to the fact that he had complained about his physical abuse by the staff of the establishment.

On 5 July, 2010, based on the above mentioned, the account provided by M. Ts. was submitted to the Investigative Department of the Ministry of Corrections and Legal Assistance.

According to the response received, the above-mentioned report was appended to the criminal case. The persons mentioned by M. Ts. were interrogated as witnesses. According to the letter, the investigation had not yet established the persons having carried out illegal actions against M. Ts.

According to the information at our disposal the investigation into this case is ongoing.

Case of M.K.

On 20 September and 24 September, 2010 inmate M.K. placed in the Establishment N6 in Rustavi of the Penitentiary Department addressed the Public Defender, noting that for the surgical treatment he was transferred from the Establishment N6 in Rustavi to the Medical Establishment for Convicted and Indicted Persons and placed in ward N18 of the Surgical Unit there on 31 August, 2010. On 4 September, 2010 the Head of the Regime Unit and the officers of the Establishment physically and verbally abused him.

On 5 October, 2010 the Public Defender addressed the Chief Prosecutor of Georgia to commence the preliminary investigation into the facts mentioned by the convict M.K in his statement.

The reply received from the Office of the Chief Prosecutor of Georgia on 26 October, 2010 stated that the investigation into a case N073100536 commenced in the Investigative Department of the Ministry of Corrections and Legal Assistance of Georgia on 15 October, 2010. The investigation commenced into the fact of abuse of power by the staff of the Medical Establishment for Convicted and Indicted Persons, observing the signs of the crime envisaged by the paragraph 1 of the Article 333 of the Criminal Code of Georgia. The investigation into the case is ongoing.

● Semi-open Penitentiary Establishment No. 14 in Geguti

The Report of the Public Defender of Georgia covering the first half of 2009 also mentioned the treatment of inmates in the establishment in Geguti. The Report mentioned that the treatment of inmates is abusive and negligent[9].

However, as a positive development, it shall be mentioned that during the monitoring undertaken by the Prevention Team in December, 2010 the interviews with inmates clarified that the officials do not treat inmates in an irritating and

[9] http://www.ombudsman.ge/uploads/reports/saxalxo_damcvelis_angarishi__2009_I__naxevari.pdf – p.57. ENGLISH?

abusive manner any more, there are no more instances of punishing inmates without a reason. There were no inmates placed in a solitary confinement cell during the monitoring.

On 26 February, 2010, the majority of inmates in the establishment in Geguti went on hunger strike. According to the inmates, the reason for the mass hunger strike was also the death of the convict Giorgi Kvantrishvili placed in the solitary cell of the mentioned establishment. As stated by inmates, G. Kvantrishvili was placed in the solitary cell due to his request to return him to the building N6 of the establishment, where he used to be. His request had not been granted, as a result of which he refused to eat. The prisoners were mentioning that the convict passed away shortly after he was placed in the solitary cell.

As stated by convicts, on the third day of the hunger strike, on 28 February, representatives of the Penitentiary Department and the establishment visited them. The convicts informed them that there was a systematic inhuman treatment of prisoners in the establishment, in particular, placing the convicts in solitary cells without any ground, and their physical abuse.

Following this conversation, scores of the Special Rapid Response Forces entered the establishment in the evening of 28 February. They searched dormitories of the establishment. Following this they called on several inmates from the register, others were told it was time to eat. According to the inmates, the convicts having refused to eat had to go through the so-called "corridor" of the Special Forces, where the latter physically abused them. Following this around 200 convicts, first of all those who had refused to end the hunger strike were dispersed in different establishments.

Deriving from the above mentioned the representatives of the Public Defender met and spoke with the inmates transferred from the establishment No. 8 in Geguti to the No. 2 establishment in Kutaisi, No. 2 establishment in Rustavi and No. 6 establishment in Rustavi. In the conversations with the representatives of the Public Defender they were unanimously confirming the above-mentioned fact, however only several of the inmates wished to publicize the facts and to provide written explanations. The majority refrained from providing the written account and requested to keep their stories confidential.

On 19 March, 2010, the Public Defender addressed the Chief Prosecutor of Georgia for reaction over the inhuman treatment of convicts in the establishment in Geguti.

According to the reply received from the Office of the Chief Prosecutor of Georgia, on 28 April, 2010, the Investigative Service of the West Georgia Regional Prosecutor's Office commenced the investigation into the criminal case based on the sub-paragraphs (a), (b), (d), and (e) of the paragraph 2 of the Article 144^3 of the Criminal Code of Georgia, on the fact of inhuman and degrading treatment of inmates. According to the reply of 27 July, 2010, the investigative actions were carried out and inmates were interrogated, however no reply was received on the 6 July, 2010 repeated address of the Office of the Public Defender, as to what specific investigative actions were undertaken, and whether anyone was made criminally responsible.

Case of L.G., Z.Kh. and A.S.

On 27 August, 2010 lawyer defending interests of convicts L.G. and Z.Kh. applied to the Public Defender. According to the statement, at night of 19 August, 2010 the scores of the Special Response Forces of the Penitentiary Department entered the establishment N15 of the Penitentiary Department in Ksani and verbally and physically abused inmates in the closed regime part of the establishment.

On 1 September, 2010 the representatives of the Department of Prevention and Monitoring of the Office of the Public Defender of Georgia met and interviewed inmate L.G. in the establishment N6 in Rustavi. As a result of this conversation it was clarified that the inmate A.S. was also transferred from the establishment N15 in Ksani along with him and A.S. was also subject to physical pressure. The convicts handed detailed explanations regarding the fact having taken place in the Establishment N15 in Ksani over to the representatives of the Public Defender. According to the account provided by the inmates, they had served the sentence in the cell N13 in the closed regime part of the Penitentiary Establishment N15 in Ksani, along with the convict Z.Kh.

According to the explanations provided by the inmates, on 19 August, 2010, at around 10 p.m. the convicts learned that the scores of Special Forces had entered the Establishment. The Forces were beating inmates with bludgeons and other items. The inmates stated that in some minutes the door of their cell was opened and the Deputy Director of the Establishment Giorgi Kokhreidze and the Head of the Regime Levan Lezhava entered shouting and using abusive words. They got the inmates out of the cell where they had to go several meters through the so called "corridor" of the Special Forces, where the latter bludgeoned them. Following this, the convicts were placed facing a wall, were stripped of their clothes and their physical and verbal abuse continued. According to the inmates, Levan Lezhava and Giorgi Kokhreidze also bet them. The inmates mentioned that they were put back to their cells naked and being again beaten. In around an hour they were again taken out of the cell and the physical abuse repeated. As stated by the convicts, L. Lezhava and G. Kokhreidze actively participated in their beating. According to the explanations provided by the inmates, they were not allowed to meet a lawyer and use phone until 25 August, 2010.

On 2 September, 2010, the representatives of the Department of Prevention and Monitoring of the Office of the Public Defender of Georgia met and got an account from the convict Z.Kh. in the Establishment N15 in Ksani. Z.Kh. also confirmed the above-mentioned fact.

According to Z.Kh. and L.G. an investigator and a person, who conducted their external visual examination, who, presumably, was a forensic medical expert. The convict A.S. also stated that he had not been questioned with regard to this fact and he had been subject to medical forensic examination.

An expert of the Department of Prevention and Monitoring of the Office of the Public Defender of Georgia visually examined convicts L.G. and A.S., who had different injuries on their bodies.

On 3 September, 2010, the Public Defender referred to the Chief Prosecutor of Georgia to commence preliminary investigation into the fact which took place in the Establishment N15 in Ksani on 19 August, 2010. The Public Defender has also notified the Chief Prosecutor that other inmates also confirm the above-mentioned fact in conversations however they refrain from providing written explanations.

According to the reply received on 1 September 2010, the Investigative Department of the Ministry of Corrections and Legal Assistance of Georgia commenced investigation into the fact observing the signs of the crime envisaged by the paragraph 1 of the Article 333 of the Criminal Code of Georgia.

On 11 January, 2011 the Office of the Public Defender of Georgia applied to the Office of the Chief Prosecutor of Georgia requesting the detailed information over the investigation into the above mentioned criminal case. According to the response received from the Office of the Chief Prosecutor of Georgia with a letter N13/1069 at this stage no criminal prosecution has been initiated against any person. The reply also mentions that the convicts A.S and Z.Kh. had no signs of physical abuse, as confirmed by the conclusion of the forensic medical examination, as for L.G., minor injury was observed on this body, which had not resulted in distortion of health.

With regard to the question, as to when the forensic medical examination had been conducted, the reply was not received neither the copy of the requested conclusion of the medical forensic examination was provided.

According to the same reply, the First Deputy Director of the Establishment N15 of the Penitentiary Department, the Head of the Social Service, the Head of the Regime Unit and the doctor of the Medical Unit were questioned. It is unclear, why the inmates who were in the closed type part of the above mentioned Establishment on 19 October, 2010, were not questioned.

Case of I.L.

On 8 October, 2010 the representatives of the Public Defender met and interviewed convict I.L. in the Establishment N6 of the Penitentiary Department. According to I.L., he was in the Establishment N15 of the Penitentiary Department; scores of Special Forces entered the establishment in the evening and physically abused the convicts, including I.L.,

having them bet. According to the convict, he was beaten all over the body, in principle in the areas of head and neck. The convict was stating that in around half an hour after this along with other convicts he was transferred to the Establishment N6, where as stated by him, he was immediately subjected to a physical pressure lasting for around 10-15 minutes. At the same time, the convict was mentioning that the staff of the administration dealt with inmates in a rude and irritating manner.

On 21 October, 2010 the copies of the account provided by the convict I.L. placed in the Establishment N6 of the Penitentiary Department to the representatives of the Public Defender and the protocols composed during the interview with I.L. were transferred for the follow-up to the Office of the Chief Prosecutor of Georgia.

According to the reply received from the Office of the Chief Prosecutor of Georgia on 12 November, 2010, investigation into criminal case N073100567 commenced in the Investigative Department of the Ministry of Corrections and Legal Assistance on 29 October, 2010, on the fact of abuse of power by the officers of the Establishment N15 of the Penitentiary Department, observing the signs of the crime envisaged by the paragraph 1 of the Article 333 of the Criminal Code of Georgia. The investigation is ongoing.

● Collective complaints of inmates placed in the Establishment N15 in settlement-Ksani

On 1 October, 2010 the representatives of the Department of Prevention and Monitoring visited the newly built part of the semi-open regime facility of the Establishment N15 in settlement-Ksani and interviewed the inmates. According to the latter, the staff of the establishment was rude to inmates, irritating and beating them. According to them, if a convict was transferred to this establishment from another one, he was forced to bend on knees and in case of refusal a convict would be beaten.

As stated by the inmates, in case of any disciplinary misdemeanor, along with being placed in a punishment cell, they were physically and verbally abused.

As clarified by the convicts, in case they expressed the wish to get in touch with the Public Defender, to provide him with the information on the above mentioned facts, the telephones were switched-off in the establishment and they were threatened with the adding a sentence. Some of them were transferred to prison regime and some were beaten.

The inmates named staff of the penitentiary establishment, particularly singled-out due to their brutality: Kitesa Gulisashvili, Levan Lezhava, Gela Iosava, some Lekso, Kakha, Nika and Levan.

Taking all the above mentioned into account, the inmates handed a collective complaint signed by 161 convicts to the representatives of the Department of Prevention and Monitoring of the Office of the Public Defender of Georgia.

The very same day the representatives of the Department of Prevention and Monitoring visited floor 4 of the C Building of the same Establishment, where they met and interviewed the inmates in a punishment cell, including G.B., V.Kh. and J.M. transferred to the cell N29 from the Juvenile Establishment on 30 September, 2010. According to the inmates, their hair was stroke against their will.

On 4 October, 2010 the Public Defender, acting in accordance with Article 21(c) of the "Law of Georgia on the Public Defender of Georgia" applied to the Office of the Chief Prosecutor of Georgia with the submission to commence preliminary investigation into the facts of dealing with the inmates in the above mentioned establishment.

According to the reply Ng22.10.2010/67, investigation into the criminal case N073100528 had commenced in the Investigative Department of the Ministry of Corrections and Legal Assistance of Georgia on 13 October, 2010, on the fact of abuse of power by the officers of the Establishment N15, observing the signs of the crime envisaged by the paragraph 1 of the Article 333 of the Criminal Code of Georgia.

On 5 January, 2011 written submission was sent from the Office of the Public Defender of Georgia to the Office of the Chief Prosecutor of Georgia, requesting the information regarding the investigation ongoing into the mentioned

criminal case. In particular it was asked to provide the following information: what investigative actions had been undertaken (with the indication of dates), and whether or not a criminal prosecution had been commenced against any person(s). According to the reply N13/391, the convicts were questioned as witnesses and the investigation is ongoing.

Case of K.P. and M.Tch.

On 25 September, 2010 the representatives of the Department of Prevention and Monitoring met and interviewed the inmates in the solitary confinement cell C-27 of the Establishment N15: M.Tch. and K.P. The inmates stated that on 24 September, 2010 the administration of the establishment brutally bet them.

As a result of visual external examination there were hemorrhages of around 10-sm diameters noticeable on the left side of K.P.'s back, as well as bruises on the neck and the back and both upper extremities. According to the inmate, the mentioned wounds were inflicted on him as a result of being beaten by belt.

The inmate M.Tch. had a noticeable reddish hemorrhages at the neck and the left side of the back.

On September 25 during the meeting the inmates asked the representatives of the Department of Prevention and Monitoring to keep their story confidential.

On 6 October 2010, the inmates from the Establishment N15 in Ksani called the hot line of the Office of the Public Defender and asked for the meeting. The same day the representatives of the Department of Prevention and Monitoring again met and interviewed the convicts M.Tch. and K.P. in the penitentiary Establishment N15. They handed a written account addressed to the Public Defender to the Prevention Team and this time they requested the respective reaction.

In their written account the convicts provided in detail the fact of their beating on 24 September, 2010. Deriving from the above mentioned, the Public Defender referred to the Chief Prosecutor of Georgia with a submission to commence investigation on 11 October, 2010.

As provided by the reply Ng02.11.2010/23, investigation into the criminal case N073100533 had commenced in the Investigative Department of the Ministry of Corrections and Legal Assistance of Georgia, observing the signs of the crime envisaged by the paragraph 1 of the Article 333 of the Criminal Code of Georgia. The investigation into the case is currently ongoing.

Case of Sh.P., N.A., O.K. and G.M.

On 8 October, 2010 the representatives of the Department of Prevention and Monitoring met and interviewed the inmates Sh.P., N.A., O.K. and G.M., being transferred from the penitentiary Establishment N15 in settlement-Ksani to the Establishment N6 in Rustavi on 6 October, 2010.

As stated by the inmates, before leaving Establishment N15 the officers of the establishment, in particular, Gela Iosava, some Vitali and some more staff, whose names they did not know, bet them. According to the inmates, the Deputy Director of the establishment also witnessed this.

As a result of visual external examination, there were small hemorrhage on the back and hyperemia close to left rib of the unmate Sh.P. noticeable.

On 11 October, 2010 the Public Defender appealed to the Chief Prosecutor of Georgia to commence preliminary investigation in relation to the mentioned. According to the reply Ng22102010/70 received, investigation into the criminal case N073100550 commenced in the Investigative Department of the Ministry of Corrections and Legal Assistance of Georgia on 21 October, 2010, on the fact of abuse of power by the officers of the Establishment N15,

observing the signs of the crime envisaged by the paragraph 1 of the Article 333 of the Criminal Code of Georgia.

According to the reply N13/1071 of 24 January, 2011 received by the Office of the Public Defender of Georgia from the Office of the Chief Prosecutor of Georgia, the investigation had questioned the inmates and the staff of the Establishment N6. We were also informed that the medical notes were requested from the Establishment N6, according to which there had been no injuries noticed on the convicts when entering the Establishment. According to the same reply, the investigation into the case is ongoing.

Case of G.O. and Sh.N.

On 21 December, 2010 the representative of the Public Defender got an account from inmates G.O. and Sh.N. in the Establishment N15 in settlement-Ksani of the Penitentiary Department. The inmates stated that they went on a hunger strike and sewed their mouths on 16 December, 2010, as they were not provided with medicines. According to the statement of the inmate G.O., the reason for his hunger strike was an inadequate medical service. He mentioned that he has varicose veins, hepatitis C, headaches and neurosis.

To officially note the protest they applied an officer on duty and a chief of a shift, to provide the information to the staff of the social service of the mentioned establishment.

As stated by inmate Sh.N. a staff of the social service visited them, who noted the hunger strike. Due to this they had a quarrel with a chief of a shift, who threatened to beat them. According to the inmates, they were scared of beating and self-inflicted injuries; in particularly they made cuts into hands. As provided by the inmates, medical service was provided to them in 30-40 minutes.

As stated by the inmates, following this, they were taken to the office of the Director, where they were threatened that if they would not stop a hunger strike, their sentence would have been increased and they would have been physically retaliated. The inmates mentioned that they were verbally abused.

On 17 December 2010, when the inmates again requested a meeting with a staff of social service, officers of the establishment visited them. They brought the inmates to the office of the Director and physically and verbally abused them there. The inmates also claimed that their sewed mouths had been opened by force.

By an external visual examination of the inmate Sh.N. excoriations of both upper extremities and wounds making holes in the area of lips are noticeable.

The wounds making holes are noticeable in the area of lips of the inmate G.O., excoriations at his forehead and the areas of wrist and elbow of the left arm yellowness are noticeable.

On 24 December, 2010 deriving from the above, the Public Defender appealed to the Chief Prosecutor of Georgia to commence preliminary investigation and issued a recommendation, to ensure the forensic medical examination of the convicts in the shortest possible term.

In accordance with the reply Ng.01.2011.20 received from the Office of the Chief Prosecutor of Georgia, investigation into the criminal case, observing the signs of the crime envisaged by the paragraph 1 of the Article 333 of the Criminal Code of Georgia, commenced on 6 January, 2011.

The Recommendation to the Chief Prosecutor of Georgia: To exercise personal control over investigation of each fact of ill-treatment of persons during the detention and while in the penitentiary establishments in order to ensure swift and efficient investigation.

LIVING CONDITIONS

Conditions in custody equal to inhuman treatment

According to the case law of the European Court of Human Rights, apart from the ill-treatment and inhuman treatment, the violation of the Article 3 of the European Convention may also result from the conditions in which a person is kept.

The Public Defender issued recommendations in his several parliamentary reports, to liquidate some of the establishments. These are: establishments N4 in Zugdidi, N3 in Batumi and N1 in Tbilisi, as well as Semi-Open Type Penitentiary Establishment N13 in Khoni.

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

In the case *of Aliev v Georgia*[10] the European Court of Human Rights established the violation of Article 3 of the Convention due to the fact that the applicant had to serve sentence in overcrowded and not hygienic cell, without the isolated toilets, and with the iron shutters which were not letting in enough light and air. The same was the conclusion of the Court in the cases *of Ramishvili and Kokhreidze v Georgia*" [11], "*Ghavtadze v Georgia*" [12] and "*Gorgiladze v Georgia*".[13]

In the case "*Ramishvili and Kokhreidze v Georgia*" the European Court of Human Rights once again reiterated the universal principle, reflected in a number of the Court's decisions: "[t]he Court reiterates that, under Article 3 of the Convention, the State must ensure that a person is detained in conditions which re compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject the individual to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, the person's health and well-being are adequately secured". [14]

● The situation in the solitary cells in the Establishment N15 in settlement-Ksani

On 1 October, 2010 the representatives of the Prevention and Monitoring Department visited the new part of the Semi-Open Type Penitentiary Establishment N15 in settlement-Ksani, where they met and interviewed the inmates in the solitary confinement cells at the 4th floor of the C Building.

As a result of conversation with inmates, as well as according to the observation of the monitoring team, it was revealed that in solitary confinement cells inmates were in degrading conditions. In particular, inmates were not provided with hygienic items, including toilet paper and soap. There was anti-sanitary in the cells. There were no light bulbs in the toilets of the majority of the solitary cells. The inmates placed there could not benefit from the right to walk and were not able to take shower.

The rule of placing sentenced persons in solitary cells was also unclear. In particular, there were two or more inmates placed in single cells, whereas several cells with two beds were occupied only ny one inmate.

As a result of conversations with inmates it becomes clear that none of them had been visited by a doctor after being placed in a solitary cell.

According to their statements, mattress and the bed linen were given to them at night.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), in the Report reflecting the results of the visit of the CPT from 31 March to 2 April, 2007 to Georgia, required the

10 13 January, 2009
11 27 January, 2009
12 3 March, 2009
13 20 October, 2009
14 para. 79

respective persons to ensure the provision of inmates in punishment cells of an establishment with mattresses and blankets as well as to ensure an access shower.

According to the standards of CPT, each prisoner, without any exception (including those placed in punishment cells) shall have a possibility to have daily walk. On 5 October, 2010 the Public Defender recommended to the Minister of Corrections and Legal Assistance to have ensured the solution of the mentioned problem in the shortest terms and provision of the human conditions for inmates.

Despite the above mentioned problems in accordance with the reply from the Ministry of Corrections and Leal Assistance: "*as the mentioned Building is in line with European standards, the conditions there may not be considered to be inhuman.*" The same reply notes that the Ministry will work actively in all the possible directions to ensure that none of the violations in penitentiary establishments, mentioned in the recommendations of the Public Defender, are repeated.

● Inhuman conditions in the quarantine regime in the Establishment N8 in Gldani

The conditions in the quarantine unit of the Establishment N8 in Gldani may be evaluated as inhuman and degrading.

There are altogether 15 quarantine cells in the mentioned unit. Seven of these are devoted to placing the prisoners who shall be brought to court hearings. There are no beds in the mentioned seven cells and there are only chairs there. Despite this, the mentioned cells are used as additional quarantine room and prisoners are placed there for several days, at times even for a week. Deriving from the equipment of the rooms, prisoners sleep on chair or straight on concrete floor. The administration of the establishment did not provide them with mattresses and blankets.

There are 48 beds altogether in the remaining eight cells. There are three two-level beds and a small table in each cell. The cells have small windows, which open half. There is no mattress and blanket on beds. There is lack of oxygen due to improper ventilation and there is a specific smell in cells. According to statements of prisoners, they are not provided with hygienic items and they are not able to take shower. They cannot enjoy a right to walk either. There is often no light bulb in toilet and water supply system is disordered in some of the cells.

As stated by prisoners, a doctor visits them only when entering the establishment. The medical treatment is completely inaccessible to them during quarantine. There were several cases in 2010 when a doctor visited prisoners in quarantine with health problems only after the the Public Defender had intervened into the issue.

On 20 October, 2010 during the monitoring, there were 140 prisoners in the quarantine unit. Out of these, 2 prisoners were brought after psychiatric forensic expertise, 1 prisoner did not know as to why was he transferred from the ordinary cell to a quarantine cell and as stated by 23 prisoners, they were brought from the residential cell as a punishment measure, because of violation of internal order.

Prisoners are often placed in quarantine for the purpose of punishment in the Establishment in Gldani, however this method of punishment is not provided for in any of the legal acts and is therefore illegal.

There are no registers maintained in a quarantine unit to register transfer of prisoners from quarantine cells to ordinary cells. As a result, it is in fact impossible to check how long do stay prisoners in quarantine. According collected information from prisoners during the monitoring in October 2010, the duration of their stay in quarantine cell was between 1 and 15 days.

Recommendation to the Minister of Corrections and Legal Assistance:

- **To ensure the liquidation of the Penitentiary Establishments N4 in Zugdidi, N3 in Batumi and N1 in Tbilisi, as well as Semi-Open Type Establishment N13 in Khoni in the shortest terms;**
- **To stop immediately the illegal placing of prisoners in quarantine unit as a measure of punishment in Establishment N8;**

- **To immediately take efficient steps to eradicate inhuman and degrading conditions and practice in the quarantine unit of the Establishment N8.**

LIVING CONDITIONS IN DIFFERENT ESTABLISHMENTS

"*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*"[15].

"*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*[16]."

Due to the insufficient ventilation inmates are in unbearable conditions in summer. Particular attention shall be paid to the situation of the inmates in prisons who have to stay in cells for at least 23 hours. This was also confirmed during the monitoring in summer 2010. Conditions in some of the establishments were further deteriorated as the inmates were either forbidden to purchase air fans at all or were not allowed to have more than one ventilator per cell.

In each newly built establishment prisoners got new bed and bed linen, however very soon these mattresses are so battled that they lost their function and prisoners have to sleep practically on gridiron of a bed. This problem occurs in the Establishment N2 in Kutaisi, N15 in Ksani, N16 in Rustavi and N5 Prison, Semi-Open and Closed Mixed Type Penitentiary Establishment for Women; however it is allowed to have a sponge handed over as a parcel into the latter.

● Establishment N15 in Ksani

According to the findings of the visit to Georgia in 2010, the CPT especially negatively assessed the conditions in the old part of Semi-Open Type Establishment in Ksani, and noted that placing a human being there could fairly be described as amounting to inhuman and degrading treatment, and issued an urgent recommendation to improve the mentioned.[17]

In addition, despite numerous recommendations issued by the Public Defender to undertake major repairs in that part of the establishment, only one redecoration was done. Though, it has not changed the conditions significantly there. Respectively, hundreds of inmates placed therein up until now are in inappropriate conditions.

Light renovations were also undertaken in the closed type part of the same establishment as well, however, the conditions there have not improved significantly there. The walls in cells still remain to be a problem, covered with a thick, uneven layer of a concrete, the so-called "furry coat ("shuba")". Electric heating appliances are used to heat cells and the lighting in cells is not sufficient. Rodents and cockroaches are also visible.

● Establishment N6 in Rustavi

The sanitary-hygienic conditions in the old-regime blocks of the General, Strict and Prison Regime Penitentiary Establishment No. 6 in Rustavi are not satisfactory. In particular, the ventilation is not provided, the walls are damp, the

[15] Rule 18.1
[16] Rule 18.2
[17] para. 7

plaster is damaged; very weak light bulbs are used for lighting and the access to natural light is not adequate. Some cells in the medical unit are also in bad condition - e.g. in the cell N8 there is moisture, a window can not be closed, a glass is broken, water supply system is damaged in toilet. Deriving from the above, renovation works need to be carried out.

● Establishment N12 in Tbilisi

The Semi-Open Type Establishment N12 is located on the territory of the former Medical Establishment for Convicted and Indicted Persons. The sanitary-hygienic conditions of the establishment are poor. Since the construction of above-mentioned institution, some cosmetic interior renovation has been done only on the ground floor of the establishment, where the offices of the administration and the medical service are located. The electric heating appliances are used to heat up the establishment. The establishment mainly houses prisoners who have to serve a small remaining of their sentence, as well as old prisoners.

● Establishment N14 in Geguti

The Establishment No. 14 in Geguti has 5 barrack-type dormitories. There are around 200 to 250 inmates on each of the floors. In its report on the visit to Georgia in 2010, the CPT issued a recommendation to transform the barrack type dwelling space in the Establishment No. 8 in Geguti into cells, which is also recommended from the point of view of security.[18]

● Establishment N17 in Rustavi

The sanitary-hygienic conditions of the cells in the dormitories I, II, III and IV of the Semi-Open and Closed Type Establishment No. 2 in Rustavi are not satisfactory and the cells require substantial refurbishment. The above-mentioned dormitories are provided with artificial lighting, as the size of windows does not ensure access to natural light. Walls are partially torn down. There is a natural ventilation, however it is not sufficient. In some of the cells the water taps are out of order; in others, there are no light bulbs. The central gas heating is provided.

● Establishment N10 in Tbilisi

The Semi-Open Type Establishment No. 10 in Tbilisi has barrack-type dormitories in need of thorough refurbishment. There is no central heating system there and inmates have to use electric heating appliances.

● Medical Establishment for Tubercular Convicts

Medical Establishment for Tubercular Convicts is a complex of 3 isolated buildings. The renovated building for the convicts with resistant tubercular disease was opened in August 2010. The other two residential buildings require refurbishment and their sanitary-hygienic conditions are poor. Heating is provided by means of electric appliances. According to the information at the official web-site of the Ministry of Corrections and Legal Assistance, the construction of a new building for 1000 beds started in the Medical Establishment for Tubercular Convicts. The construction will be finalized in 2012. Presumably, the new building will solve the infrastructure problems of the establishment.

[18] para. 77

● Prison, Semi-Open and Closed Mixed Type Penitentiary Establishment N5 for Women

The new Establishment N5 for Women was opened on 6 November, 2010. There were a number of problems revealed as a result of monitoring; the system of water supply was out of order in two cells of the imprisonment unit. There were repair works ongoing in the cells due to this fact. There was moisture noticed in the cell N24, adjacent to the cells in need of repair.

There is a concrete floor in all the cells. Due to this, prisoners are allowed to have carpets. There were carpets in only several cells during the monitoring.

The central heating system fails to ensure suitable heating of the six cells in the imprisonment unit. Due to this reason, oil electric heating appliances were handed over the prisoners. There are six outdoor exercise yards in the unit. The prisoners use one of those to dry their laundry.The renovation works of water supply system were also ongoing in the territory of the Semi-Open and Closed Type Establishments in the beginning of 2011, except two cells in imprisonment unit.

There is one residential building in the establishment (for mothers and children), composed of 6 rooms. However, as the complaints submitted to the Office of the Public Defender prove, the mentioned infrastructure is insufficient to accommodate the needs of all the mother prisoners. Respectively, the insufficient infrastructure causes the placing of inmate women in uneven conditions.

● The infrastructure for the meeting with lawyers in the Establishment N8 in Gldani

The Prevention and Monitoring Department of the Office of the Public Defender based on the complaints of lawyers checked the rooms for meeting lawyers in the Establishment N8 in Gldani.

The lawyers meet the defendants in the investigative rooms located at the IV floor of the administrative building in the mentioned establishment. There are 22 such rooms there, each 14.20 sq.m. There are 2 tables and 4 chairs in the investigative room. Two meetings are held in parallel in the room and along with that, the door of the room stays open and the officer of the establishment patrols the corridor. Respectively, the protection of confidentiality of the meeting of a lawyer and a client is virtually impossible. Along with lawyers, the meetings with investigators and prosecutors also take place in the investigative rooms.

The investigative rooms have no windows; respectively, there is no access to the natural ventilation in the rooms. The rooms have artificial lighting. The ventilation system does not work in those rooms. Deriving from all the above mentioned it is evident, that the infrastructure identified for the unimpeded meeting of lawyers with the defendants is absolutely insufficient for the establishment with over 3500 inmates.

Personal Hygiene

According to the European Prison Rules, "*[a]dequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least twice a week (or more frequently if necessary) in the interest of general hygiene*".[19]

According to the paragraph 2 of Article 21 of the Code on Imprisonment, *"as a rule, a remand/sentenced person shall have a possibility to take shower twice in a week, as well as the services of a hairdresser no less than once a month. The administration is prohibited to demand from a remand/sentenced person to strike hair, without a demand of a doctor or a hygienic necessity".*

Despite the above mentioned, inmates in a majority of the closed type penitentiary establishments have access to shower once a week, and in N4 Establishment in Zugdidi, the shower is allowed once in every 10 days. Apart from this,

[19] Rule 19.4

inmates are entitled to use shower only once in a week in the Establishment N16 in Rustavi and the regime building N6 of the Establishment N14 in Geguti, which are the Semi-Open penitentiary establishments.

As regards to the hairdresser's services, this is neglected in almost all penitentiary establishments and either inmates provide this service to each other or a convict listed in the provision unit acts as a hairdresser.

"*Prisoners shall have ready access to sanitary facilities that are hygienic and respect privacy.*"[20]

According to the paragraph 1 of the Article 21 of the Code on Imprisonment, "a remand/sentenced person shall have a possibility to satisfy natural physiological needs and keep personal hygiene without violating honour and dignity."

Toilets in the Establishment N4 in Zugdidi and Establishment N1 in Tbilisi are half-open, thus not meeting the above mentioned standards. The same may be said about the majority of toilets in cells in the Establishment N3 in Batumi (toilets in some cells were partitioned in 2009-2010).

A right to stay at fresh air

According to the paragraph "g" of the Article 14 of the Code of Imprisonment, "*a remand/sentenced person has a right to stay at fresh air no less than for an hour a day*".

The CPT called upon the Georgian authorities "*to step up their efforts to develop the programmers of activities for both sentenced and remand prisoners. The aim should be to ensure that both categories of prisoner are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature.*"

The prospect of implementation of the above-mentioned recommendation of CPT is still far away, as an exercise of a right to even an hour-long walk is still a problem in some of the closed type penitentiary establishments. A clear example of the above mentioned is the Establishment N4 in Zugdidi, where inmates have a walk every day during a week except on week-ends, for 20-25 minutes. In the Establishment N3 in Batumi walk lasts for 30-40 minutes and in the Establishment N2 in Kutaisi walk lasts for 35-40 minutes.

A right to a daily one-hour long walk (no walk on week-ends) is exercised in the Establishments N7 and N6, as well as in the closed type part of the Establishment N15. Despite the fact that the Establishment N16 in Rustavi is a semi-open and closed type penitentiary establishment, sentenced persons have no possibility to walk in the outdoor exerces yard on weekends.

Despite the fact that the law provides for a daily walk, as this was already mentioned, prisoners have no walk in any of the penitentiary establishments of closed type.

In this regard the CPT recommended to the authorities of Georgia to "*have steps taken to ensure that all inmates have the possibility to take outdoor exercise for at least one hour every day, including at weekends*".

There is also a problem of staying at fresh air in some half-open type establishments - the sentenced persons in the Establishment N14 in Geguti, the Establishment N16 in Rustavi, and the new building part of the Establishment N15 in Ksani have a possibility to stay at fresh air for 4-5 hours a day. The sentenced inmates in the Semi-Open part of the Establishment N5 for Women are able to stay at fresh air during a day for 3 hours only.

Recommendations to the Minister of Corrections and Legal Assistance:

- **To adequately refurbish all the above-mentioned establishments, to liquidate the so-called barrack system and to ensure the cell-based system in penitentiary establishments.**
- **To ensure the sufficient natural and artificial lightening, ventilation and heating of the cells in all the penitentiary establishments.**

[20] Rule 19.3

- **To order the respective services to ensure appropriate sleeping conditions for inmates, and for this the inmates shall be provided with the respective mattresses and bed linen;**
- **To ensure the allocation of sufficient infrastructure for inmate mothers to enable all mothers to have their children up to 3 years old with them;**
- **To ensure the expansion of the infrastructure for the meeting with defense lawyers in the Establishment No. 8 in Gldani and the creation of respective conditions for confidential meetings.**

Recommendations to the Chairman of the Penitentiary Department:

- **To enable all the sentenced persons in all the semi-open type establishments to stay at fresh air for 6-8 hours in a day;**
- **To ensure one hour walk every day for sentenced persons in all the closed type penitentiary establishments;**
- **To provide for inmates in all the penitentiary establishments access to shower twice a week and use the hairdresser's services once in a month.**

ADMISSION AND PLACEMENT OF PRISONERS

According to the European Prison Rules, *"At admission, and as often as necessary afterwards all prisoners shall be informed in writing and orally in a language they understand of the regulations governing prison discipline and of their rights and duties in prison."*[21] *"Prisoners shall be allowed to keep in their possession a written version of the information they are given".*[22]

The fact that the list of the rights and obligations of inmates is displayed and instantly renewed if it is damaged, in each cell in Prison No. 3 in Batumi, shall be welcomed. There are only obligations of the prisoners displayed in the cells of the Prison No. 8 in Gldani. This does once again underline the strict regime conditions in the mentioned establishment. The prisoners are informed in writing in penitentiary establishments, as confirmed by signing under the list of the rights and obligations in their personal files. However, this only carries a formal character, as the prisoners are not able to carry with them the list of their rights and obligations.

According to the European Prison Rules, *"[i]n deciding to accommodate prisoners in particular prisons or in particular sections of a prison due account shall be taken of the need to detain: a. untried prisoners separately from sentenced prisoners"*[23].

The same principle is embedded in the Article 9(2) of the new Code on Imprisonment.

Despite this, persons in pre-trial detention and convicted persons are placed together in the cells of the prisons No. 8 in Gldani, No. 3 in Zugdidi and No. 4 in Batumi, as well as in the Establishment No. 2 in Kutaisi.

Recommendations to the Penitentiary Department:

- **The handing over the list of rights and obligations in writing to prisoners on admission to establishment shall be ensured;**
- **Placing of accused and convicted persons separately in penitentiary establishments shall be ensured.**

[21] Rule 30.1
[22] Rule 30.2
[23] Rule 18.8

OVERCROWDING

A number of the reports of the Public Defender mention that the problem of overcrowding of prisons will not be solved only by building new establishments. The number of inmates has in the recent years reached the critical limit, which requires undertaking other, more global measures.

By 1 January, 2011 there were 23,684 inmates in the penitentiary system of Georgia, out of which 22,307 were male, 1,171 - female; 93 served life sentence, 171 were superannuated, 199 male juveniles and 2 female juveniles. This figure could be compared to the same figure on 1 January, 2010, when the number of inmates constituted 21,098. The number of prisoners increased with 2,586 during a year, and with 17,030 from 2004 to 1 January, 2011.

According to the replies N10/6/5–9398, N10/6/5–1000, N10/6/5–11981 received from the Special registration service of the Penitentiary Department there were 8,915 persons released from the penitentiary system during 2010 due to different reasons.

The total limit of the capacity of all the 19 penitentiary establishments is 24,720. The above-mentioned statistical data makes the trend of the growth of a number of inmates vivid. It is likely to have a problem of overcrowding emerging in all the penitentiary establishments. The CPT has at several occasions issued a recommendation to ensure the allocation of at minimum 4 sq.m. space per prisoner, however currently even the provision of each prisoner with a personal bed in some of the establishments is a problem. This renders the implementation of the recommendation of CPT doubtful.

The solution of the problem of overcrowding may not be considered only from the perspective of providing each prisoner with the individual bed, however in some of the establishments this problem is already noticed (Establishments No. 1 in Tbilis, No. 4 in Zugdidi, No. 3 in Batumi, No. 17 in Rustavi). There were more prisoners placed in some of the penitentiary establishments during the reporting period than the limits of the establishments allow (in establishments No. 14 in Geguti, No. 10 in Avchala, the Medical Establishment for Tubercular Convicts).

Proposal to the Parliament of Georgia:

- **to amend the Criminal Code of Georgia respectively, to replace the current collective principle of punishments with absorption principle of punishments;**
- **to carry out measures for the decriminalization of some crimes less dangerous for society;**
- **to respectively amend the Code on Imprisonment and envisage 4m^2 space per prisoner.**

Recommendation to the Chief Prosecutor of Georgia: in the process of criminal law policy creation, to give a priority to alternative, less strict sentences for the crimes less dangerous for society.

Recommendation to the Minister of Corrections and Legal Assistance of Georgia: to ensure the measures necessary for the efficient work of the Standing Commission of the Ministry.

CONTACT WITH THE OUTSIDE WORLD

Using the right to a short-term visit

According to the paragraph 7 of the Article 17 of the Code on Imprisonment *"a short-term visit is arranged for 1 to 2 hours period. A short-term visit is carried out with only visual control of a representative of an administration, save for as otherwise provided by the legislation of Georgia"*.

The problem of exercising a right to a long-term visit, as provided by the Law, is acute in almost all the penitentiary establishments; however the mentioned problem is especially severe in the prison No. 4 in Zugdidi, where, according to

prisoners, visit does not last longer than 20-25 minutes. This is caused by the lack of the relevant infrastructure, as well as by a negligent attitude of the administration towards the issue.

In addition to the above mentioned, prisoners have to be separated by Plexiglas screen from family members and close persons and communicate via a telephone.

It is mentioned in the Report of the CPT that visits in a room, where prisoners and visitors are separated by Plexiglas screen and any physical contact is excluded, shall take place only in individual cases and the decisions shall be respectively reasoned and well-founded.[24]

Phone conversations

According to the Code on Imprisonment, in semi-open type penitentiary establishment a sentenced person has a right to have 3 phone conversations a month on a convict's own expense. Each of the phone conversations shall last for no longer than 15 minutes. In the closed type penitentiary establishments a sentenced person has a right to have 2 phone conversations on own expense in a month, each one not exceeding 15 minutes.

New phone cards provide convicts with the possibility to call only one number for 15 minutes. The card is blocked after the very first dialing despite the length of the call. A convict is made to purchase another card, to make several calls, that is related to respective expenses, however n some of the establishments it is possible to call two numbers from one card.

As a result of the undertaken monitoring, there are the establishments identified where there is either no possibility to have phone conversation (e.g. the prison No. 3 in Batumi, where as reasons for dysfunctional phone for the recent years sometimes rains are named, sometimes - stealing the telephone cables) or is exercised once a month (the prison No. 4 in Zugdidi).

Access to press, TV and radio

The Public Defender addressed with recommendation the Minister of Corrections and Legal Assistance repeatedly to deal with the issue of ensuring prisoners with TV sets. The problem is particularly acute in closed type establishments (except for the Ksani establishment). Absence of TV set is particularly unacceptable when prisoners spend 23 hours a day in a cell and are not at all occupied with any activity. Despite the fact that the Code on Imprisonment in general authorizes having a TV set, the situation has not improved so far - in the establishment No. 6 in Rustavi (a right to have a TV set is only given to life prisoners), in the establishment No. 2 in Kutaisi (only women prisoners have TV sets). There is no translation allowed in the prison No. 8 in Gldani and the Medical Establishment for Convicted and Indicted Persons. The sentenced prisoners in the prison No. 7 in Tbilisi watch recorded DVD instead of TV programmes.

According to the European Prison Rules, *"[p]risoners shall be allowed to keep themselves informed regularly of public affairs by subscribing to and reading newspapers, periodicals and other publications and by listening to radio or television transmissions unless there is a specific prohibition for a specified period by a judicial authority in an individual case"*[25].

Applications and complaints

Complaints boxes are fixed in all the penitentiary establishments; however, similar to the previous years, in some of the establishments the problem of sending complaints to their addressees is a remaining problem.

The Parliamentary Report of the Public Defender has several times mentioned the violations of a right to correspondence of prisoners however there are still establishments, from where it is almost impossible to send complaints. In particular,

[24] para. 110
[25] Rule 24.10

these are: the establishments No. 4 in Zugdidi, No. 8 in Gldani, No. 2 in Kutaisi, No. 14 in Geguti, No. 13 in Khoni, the Medical Establishment for Convicted and Indicted Persons and the Medical establishment for tubercular convicts.

On 15 September, 2010 the members of the National Prevention Mechanism visited the establishment No. 15 in settlement-Ksani and interviewed the sentenced persons, who stated that they are not able to send letters addressed to the Public Defender, the Chief Prosecutor and the Minister of Corrections and Legal Assistance.

According to the statements of sentenced persons, the officers of the social service were telling them, that the letters are not sent automatically, as they are first sent to the Penitentiary Department, where the decision is made whether or not to send the specific correspondence to an addressee.

The representatives of the Department for Prevention and Monitoring visited the closed type part of the penitentiary establishment No. 15 in Ksani again on 22 September, 2010. By interviewing the sentenced persons it was clarified that a part of the sentenced prisoners were on a hunger strike since 21 September, 2010, as their letters and complaints were not sent from the Establishment. According to them, they applied to the Director of the mentioned establishment about the hunger strike, however the fact of their hunger-strike was not recorded and the requirement of the Article 2 of the Order N35 of the Minister of Justice of Georgia Approving the Instruction on the Rules of Dealing with the Sentenced Persons and Prisoners on a Hunger Strike was not met, according to which: *"In case of a start of a hunger strike, based on the provision of written or oral information by a sentenced person or a prisoner on a hunger strike (hereinafter - a person on a hunger strike), an officer of the Penitentiary Department or other person, a Director of the Penitentiary Establishment (hereinafter - Director) draws up a protocol in the presence of a person on a hunger strike and a doctor, indicating the date of commencement of hunger strike, as well as the demands of a person on a hunger strike and notifies about the fact the Penitentiary Department and the respective supervising prosecutor".*

On 21 September, 2010 the Public Defender recommended the Minister of Corrections and Legal Assistance of Georgia to ensure the solution of a problem related to sending applications and complaints of sentenced persons and the realization of a right prescribed by law to sentenced persons.

On 22 October, 2010 the reply was received in the Office of the Public Defender of Georgia, according to which in all the establishments of the Penitentiary Department the sending of applications and complaints to the respective addressees is exercised in line with the legislation in force.

According to them, in order to protect order in this field, the respective task was given to the Penitentiary Department, and a strict control is established from the side of the Ministry.

Recommendations to the Minister of Corrections and Legal Assistance:

- **to ensure the accessibility of a multi-use telephone cards for prisoners;**
- **to ensure the right to watch TV in all the penitentiary establishments;**
- **to have a strict control over the reali sation of a right provided to prisoners by Law - to have their complaints and applications and other type of correspondence sent to addressees in a timely manner.**

Recommendations to the Penitentiary Department:

- **to ensure the full realization of a right of prisoners to have short-term visits with a direct contact with close persons in all establishments;**
- **to ensure the unimpeded use of telephone by prisoners in all establishments.**

RE-SOCIALIZATION

According to the Article 39 of the Criminal Code of Georgia, "*the purpose of the sentence is the restoration of justice, prevention of the new crime and re-socialization of an offender*".

According to the European Prison Rules, "*[a]ll detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty*".[26]

"All appropriate means shall be used, including religious care, education, vocational guidance and training, social casework, employment counseling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his social and criminal history, his physical and mental capacities and aptitudes, his personal temperament, the length of his sentence and his prospects after release"[27].

Teaching and rehabilitation programmes

Despite the fact that the purpose of sentence is the prevention of a new crime and re-socialisation of an offender, these components are practically ignored in the penitentiary establishments - very scarce number of rehabilitation programmes operate in the majority of establishments and the emphasis is mainly made on juvenile offenders.

The psycho-social programme "Atlantis", which drug-edict sentenced persons get rehabilitation treatment, operates in Establishments No. 2 in Kutaisi, No. 6 in Rustavi and No. 5 in Rustavi. A methadone substitution therapy is run in the Establishment No. 8 in Gldani. A drawing group operates in the Establishment No. 12. Three sentenced persons receive school education in the Establishment No. 5. 93 juveniles receive school education and 48 juveniles get professional education in the Juvenile Establishment No. 11. The following types of rehabilitation programmes operate in the Juvenile Establishment No. 11: the Charity-Humanitarian Fund "Apkhazeti" provides courses to learn computer technical service, video engineering, animation, three-dimension graphics and web-design, as well as the hairdresser's services. On the initiative of the Charity Fund "New Way of Life" the wood-crafting course is run. Individual sentence planning, implemented in the Establishment for male juveniles, serves the prevention of repeated offending and the return of the rehabilitated sentenced juveniles to the society. To implement the project the rooms for meeting, teaching, educational and rehabilitation programmes have been fully refurbished in the administrative building of the Establishment No. 11. The special auditorium for meetings was also arranged.

Public lectures on different topics are occasionally held in the new part of the Establishment No. 15 in Ksani. The public lectures are conducted by teachers and professors of different higher education institutions, however often the topics of lectures bear quite narrow character and very specialized, therefore less interesting for prisoners.

With a letter 10/35/7-370 of 02 February, 2011 we were notified that the rehabilitation programme, implemented by the Women Club "Peoni" is being implemented since October, 2010 in the Establishment No. 16. The goal of the programme is to help the sentenced persons in dealing with personal problems during the finishing serving their sentence. The rehabilitation programme is voluntary. The programme lasts for 4 weeks, and there are 10-12 sentenced persons involved in it. Social worker and two psychologists work for the programme.

For the re-socialization it is also important for a convict to receive or deepen knowledge or professional skills during the period of serving a sentence and be given a possibility to participate in sports or other types of events, competitions, have the respective conditions to follow the processes taking place in the outside world, keep contact with close people and family members. All of these are important to prepare the return of a sentenced person into a society. In the contrary situation there is a high probability that a-social person having forgotten a normal way of life will not be able to find place in a society even after serving sentence and to follow the criminal path again.

Despite the above-mentioned, adult prisoners are deprived of almost all possibilities of receiving any education.

[26] Rule 6
[27] Rule 66

Employment of prisoners

According to the European Prison Rules, "*Prison authorities shall strive to provide sufficient work of a useful nature*".[28]

"The organisation and methods of work in the institutions shall resemble as closely as possible those of similar work in the community in order to prepare prisoners for the conditions of normal occupational life"[29].

"In all instances there shall be equitable remuneration of the work of prisoners"[30].

According to the information received from penitentiary establishments only 29 sentenced inmates have remunerated job in the penitentiary system.

It must be mentioned that the full-fledged realization of the employment of convicts is directly linked with attracting and raising the interest of private business. Deriving from the mentioned, in the 2009 Reports the Public Defender suggested to the Parliament of Georgia to introduce changes into the Tax Code of Georgia with a view of granting tax benefits to entrepreneurs who provide inmates with employment opportunities. We consider that the similar benefits shall be applied to the companies employing probationers.

Suggestion to the Parliament of Georgia: to introduce the respective changes and amendments into the Tax Code of Georgia, establishing tax benefits for entrepreneurs who provide convicts or probationers with employment opportunities.

Recommendations to the Minister of Corrections and Legal Assistance:

- **to elaborate the strategy and the action plan for the employment of sentenced inmates;**
- **to elaborate study programmes for sentenced inmates and the way of their implementation in partnership with the respective agencies; this shall include the system of distance learning necessary for higher education.**

STAFF OF THE PENITENTIARY ESTABLISHMENTS

The qualification of staff of the penitentiary establishments and the ways of their upgrading

It shall be kept in mind that important factors to achieve re-socialization of prisoners are also the professionalism and attitude towards inmates of the officials of penitentiary. The staff must be familiar with the Georgian legislation, as well as international documents, and during work they must be guided by the rules and standards embedded therein.

Despite the huge role attributed to the staff of the establishments to eradicate torture, as well as in the process of re-socialisation of sentenced inmates, their employment nowadays happens without any pre-determined criteria. Respectively, people deprived of their liberty are supervised by a staff lacking even a minimum knowledge and experience in the mentioned field.

The Penitentiary Training Center works hard to upgrade the qualifications of staff. However, as it was also mentioned in the previous reports, the Penitentiary Department and the representatives of the administrations of establishments have quite skeptical and often absolutely formal attitude, that hardly promotes the efficiency of such programmes.

[28] Rule 26.2
[29] Rule 26.7
[30] Rule 26.10

Social service

According to the legislation, in the process of re-socialization of a convicted person essential role shall be undertaken by the Social Service of the Penitentiary Department. According to the Article 13 of the Regulation of the Department[31] the Social Service ensures the measures for the implementation of social rights of prisoners and convicted persons, coordinates and supervises the social adaptation groups, rehabilitation centers, activities of the education service and the professional preparation of convicted persons. Unfortunately, the activities of the Social Service of the Penitentiary Department in practice are remote from the requirements of the legislation.

As regards the social workers working in the establishments, it is impossible to acquire any information on their quantity, terms of reference and any other related information, as according to the Chapter V of the "List of the Issues belonging to State Secret" approved by the Order No. 42 of the President of Georgia, dated 21 January, 1997, this information is a state secret. We consider, that the Order No. 42 of the President of Georgia contradicts the Law of Georgia "On State Secret", the Article 7 of which clearly indicates what category of the information may belong to the category of state secret.

Deriving from all the above mentioned, the Preventive Group could not study thoroughly this issue and relies only on the information provided by prisoners/sentenced inmates. As a result of the observation of the Preventive Group, in some of the establishments inmates either do not at all know social workers, or know them as officers of the regime and security units. The timely solution of the mentioned issue is especially acute in the Medical Establishment for Convicted and Indicted Persons, establishment No. 8 in Gldani, No. 13 in Khoni, No. 15 in Ksani and No. 4 in Zugdidi.

Recommendations to the Minister of Correction and Legal Assistance:

- **to elaborate the criteria for the identification of minimum qualifications of the prison staff;**
- **to control the continuity and efficiency of the study programmes directed at the upgrading qualifications of staff of penitentiary establishments;**
- **to ensure the due functioning of social services in all the penitentiary establishments, and in case of need to undertake structural changes.**

SITUATION OF JUVENILE OFFENDERS IN THE PENITENTIARY SYSTEM OF GEORGIA

The general overview of the situation of juvenile offenders

Juvenile offenders in the Georgian penitentiary system are placed in the Establishments No. 2 in Kutaisi, No. 3 in Batumi, No. 4 in Zugdidi, No. 8 in Tbilisi and No. 11 in Avchala. There are all together 330 places for them within the entire system.

In general, the attitude and approach towards juveniles in the Georgian penitentiary system is satisfactory. Along with this, as a rule, the conditions for their placement are far from the European Prison Rules and the recommendations of CPT. However, juveniles almost always enjoy relatively better conditions than adult prisoners. Even in the establishments in Batumi and Zugdidi, where living and hygienic conditions are very bad, juvenile prisoners are in slightly better conditions than other prisoners. In all the establishments, where juvenile offenders are placed, are sport equipment/trainers. Remand juveniles are placed in the Establishments No. 8 in Gldani, No. 2 in Kutaisi, No. 3 in Batumi and No. 4 in Zugdidi, and sentenced juveniles are placed in the Establishment No. 11 in Avchala. Female juveniles are placed in the Prison and Closed Type Penitentiary Establishment No. 5 for Women, as well as in Establishment No. 4 in Zugdidi. There are three cells for juveniles in Establishment No. 2 in Kutaisi. There is a central heating system in the cells. Light and ventilation - artificial, as well as natural - are sufficient.

[31] Approved by the Order N60 of the Minister of Corrections and Legal Assistance of Georgia, dated 25 February, 2009. The latter was replaced by the Order N156, which refers to the Social Service in Article 11.

According to the paragraph 1 of the Article 18 of the Regulation on Serving Prison Sentence[32], juvenile prisoners should have walked for no less than 2 hours. The Imprisonment Code in force today does not specify the duration for juvenile prisoners to stay at fresh air. The sub-paragraph "g" of the Article 14 of the Code generally provides for an hour-long walk for sentenced and remand prisoners.

Juveniles, instead of enjoying a right to one-hour long walk, as provided by the Law, have a possibility to be on a fresh air for 30 minutes each year except for Sundays and they may exercise for one hour in the room with sport equipment/ trainers for them.

They have access to shower once in a week. There were a big number of cockroaches in the cells N208 and N209 for juveniles. According to juveniles, despite the fact that their cell was disinfected several times, the solution of the problem is not possible. Juveniles have no TV sets.

The space in cells does not correspond with international standards. There are iron beds in cells, with thin mattresses. Administration provides them once a week with clean bed linen and once a month with washing soap and chlorine.

There is one cell with 14 beds for juveniles in Establishment No. 3 in Batumi. The monitoring revealed that juveniles had no means to heat cell and they had neither immersion heater nor financial possibility to purchase the mentioned objects. There were no light bulbs sold in a shop during the monitoring. According to juveniles, they use a right to a visit once in a week for 15 minutes and they have a possibility to take shower once in a week and to stay at fresh air and exercise - every day.

There is one cell with 12 beds for juveniles in Establishment No. 4 in Zugdidi. A window has no glass and a plastic substitutes the latter. As a heating appliance juveniles use three-phase electric heater, with only two phases working. The cell has semi-open toilet, which has a curtain instead of a door. There were cockroaches in the cell. According to the juveniles, they take shower once in a week and have a possibility to exercise each day except for Sunday.

Juvenile prisoners are placed in cells with six beds at the fourth floor of the building IV in the Establishment No. 8 in Gldani. They were transferred from Establishment No. 9 (former Establishment No. 5 for Women and Juveniles) to the mentioned establishment on 09 November, 2010.

The sanitary-hygienic conditions of cells are satisfactory. There is a central heating system installed and the heat is preserved. The natural and artificial ventilation and lighting of cells is ensured. Prisoners get water in a centralized, non-stop regime.

During interviews with juvenile prisoners it was clarified that after being transferred they were given a possibility to take shower. The shower is situated on the same floor next to the residential cells. According to prisoners, they were visited by a doctor of the establishment after taking shower. According to their statement, before the transfer from one establishment to another, during the transfer and after the admission to a new place there has been no pressure exercised on them and the transfer was undertaken in calm conditions.

Prisoners got TV sets, new bed linen, crockery and items necessary for personal hygiene in each cell. Prisoners mentioned that they had a possibility to use a shop in Establishment No. 8 by using their bank cards. According to them, they handed over a part of personal items and clothes to their family members some days before their transfer.

Apart from this, prisoners mentioned that already during the second day they enjoyed a right to walk, envisaged by Law. The representatives of the Prevention and Monitoring Department of the Office of the Public Defender visited both walking yards and shower for juveniles.

Outdoor exercise yard is at the same floor. It is to be mentioned that there are sport equipment/trainer in both exercise yards. Prisoners may use sport equipment during the walk.

The sanitary-hygienic conditions of a shower are good, with tiles. There are 6 showers in a shower-room and there is also a checkroom.

[32] Order N362 of the Minister of Justice of Georgia, dated 28 December, 1999.

The limit of Establishment No. 111 in Avchala for juveniles is 160 sentenced juveniles. There is one residential building in the Establishment, with a so-called barrack system (7 residential rooms with 25-27 places in each). This in itself does not correspond with standards.

The space of cells does not correspond with standards either. There is no central ventilation system in a residential building. The residential building is naturally ventilated. There is a central heating system and lighting is ensured both by natural as well as artificial way. There is no in-patient medical unit in the medical part of the Establishment. Due to this only ambulatory medical service may be provided locally.

There is only one shower room with 5 showers in the establishment. Sentenced inmates take shower according to their desire.

Hairdresser's services are provided to juveniles once in a week by hairdressers visiting the establishment from the "Association of hairdressers".

There are TV and radio transmissions in the establishment. There is a football play ground in the yard of the establishment.

Ill-treatment

Facts of ill-treatment of juveniles are very rare. Several cases became known to the Public Defender for the recent period about alleged ill-treatment of juveniles by officers of prison or police. The mentioned facts are described in great detail in the Parliamentary Reports of the Public Defender for the Second half of 2008 and 2009.

On 16 April, 2010 during the *ad-hoc* monitoring of the establishment No. 5 the representatives of the Prevention and Monitoring Department identified two juvenile prisoners who, according to their statements, were heavily beaten by Police during the detention first to get confession, and later on due to the fact that they were late in confession. There is investigation ongoing into a case of one of juveniles, who during our visit had noticeable general soft-tissue lesion, excoriations at different parts of a body and bruises, as for another juvenile, he did not wish to make the mentioned facts public.

Education

New Code on Imprisonment does not envisage any more the right to higher education. Due to the mentioned the fate of the sentenced juveniles who will pass or have already passed National Exams is still not decided. Some of them were pardoned by the President, and the others, who were not pardoned due to the degree of a crime committed by them or some other reasons, are deprived of the possibility to take higher education. The mentioned contradicts the Recommendation No. R(89)12, according to which sentenced prisoners shall be provided with a possibility to get education like the education provided for similar age groups in the outside world.

Before the Code entered into force, when the Law on Imprisonment was still if force, which still formally envisaged the possibility for sentenced inmates to get higher education, the Public Defender addressed to the Ministry of Corrections and Legal Assistance in writing to get an information on the possibilities to get distance learning in prison. As a reply the Ministry informed us that in order to ensure the distance learning, a working group had been set up in the Ministry of Corrections and Legal Assistance. The working group worked on the introduction of distance learning. Unfortunately, the above mentioned gap in the Code on Imprisonment also puts under a question mark the activity of this group, if, certainly, no respective change will be introduced in the Code and/or a secondary normative act does not establish the rules and conditions for providing higher education to sentenced prisoners.

Currently juvenile prisoners are only limited to getting general education in prison environment, and even this is provided for in establishment No. 11. Juvenile prisoners in the Establishments No. 2 in Kutaisi, No. 3 in Batumi, No.

4 in Zugdidi are deprived of even this opportunity. On the one hand, these establishments are pre-trial establishments respectively juveniles shall be spending there only several months however there are often cases, when due to different reasons sentenced juveniles are not transferred to the respective establishment. They happen to spend much more time in the above mentioned establishment, thus seriously threatening the continuity of their education.

Female Juveniles

With the 10 January, 2007 Order N6 of the Minister of Justice of Georgia the Chair of the Penitentiary Department was ordered to establish an unit for female juveniles in the General and Prison Regime Penitentiary Establishment No. 5 for Women and Juveniles in Tbilisi. With this Order the Chair of the Penitentiary Department was tasked to ensure in the shortest possible terms to accommodate female juveniles in accordance with the conditions provided by legislation in force.

On 6 March, 2009 Public Defender recommended the Minister for Corrections and Legal Assistance based on the fact that there was no educational establishment for female juveniles, where they would serve sentence according to Law. They were placed in the then General and Prison Regime Penitentiary Establishment No. 5 for Women and Juveniles, which did not have infrastructure for female juveniles and girls had to serve their sentence together with women prisoners.

On 26 October, 2009 Ministry of Corrections and Legal Assistance separated and renovated unit for female juvenile prisoners on the territory of the General and Prison Regime Penitentiary Establishment No. 5 for Women and Juveniles. Two sentenced female juveniles were placed there. The mentioned unit was only formally separated from the part for women - one room in one of the buildings for women was identified for female juveniles and they had a shared yard. Respectively, girls had to stay for a fair period in a day with sentenced women. Due to the mentioned one of the female juveniles refused to move to a new part and stayed on in a separate cell in prison.

In April, 2010 the Monitoring Group of the Public Defender visited and interviewed juvenile prisoners G.K., N.S. and S.S. During the visit of the Monitoring Group the above-mentioned establishment was overcrowded. Due to this, female juveniles had to stay with adults in one cell. They were not able to keep cleanness and personal hygiene, as they needed this. Apart from this, they had no possibility to get education.

Female juveniles were taken out of a cell for 2 hours in a day, which by the administration of the penitentiary establishment was considered to be a walk. It should be underlined that provided that the establishments envisaged for this category of prisoners by Law existed, they were entitled to stay at the fresh for the entire day.

On 6 November, 2010 new establishment No. 5 was opened in Rustavi. There is no infrastructure separately for female juveniles there either. Female juveniles on remand are placed in a cell of the imprisonment unit together with sentenced women. By the end of 2010, there was one female juvenile in the imprisonment unit. One of the officers of the establishment, who formally is employed in the unit for female juveniles, is tasked to supervise and ensure the implementation of the rights as provided by Law. However, the only difference between rights of female juvenile and women prisoners is the right to get general education - a public school operates in the establishment.

Sentenced juvenile females are also placed together with sentenced women. By the end of 2010 there was one female juvenile placed in the Semi-Open establishment No. 5. The cell for female juvenile was organized differently. Particularly, there was a laminate on the floor, there were to wooden beds (with thick mattresses), individual bedside-tables, TV set and a computer.

Apart from high school no rehabilitation programmes function in Establishment No. 5 currently. However, according to the administration, the implementation of various programmes in planned in the nearest future.

Recommendations to the Minister of Corrections and Legal Assistance:

- **to ensure the provision of improved living conditions for juvenile prisoners;**
- **to elaborate in partnership with the respective agencies the system for juvenile prisoners of receiving distance higher education;**
- **to ensure the sep arate accommodation for female juveniles and for sentenced women;**
- **to ensure the two-hours long walk every day for juvenile prisoners.**

The legislative changes introduced in the penitentiary sector in 2010

NEW CODE ON IMPRISONMENT

New Code on Imprisonment entered into force on 1 October, 2010. This was an important development. The Code introduced several important novelties, (e.g. the law directly states that a convict shall serve sentence in an establishment located close to own or close relative's residence). Some restrictions, which were a rule in the "Law on Imprisonment", are provided as an exception in the Code (e.g. a right to have a TV set).

Despite this, we consider that the Code on Imprisonment in some instances does not comply with the European standards and some of the provisions even deteriorate conditions of prisoners, as compared to the conditions that had been provided in the "Law on Imprisonment".

The General Provisions of the Code mention that "*the legislation of Georgia on remand detention and deprivation of liberty is in compliance with the universally recognized principles and norms of International Law.*"

The mentioned determination is absolutely understandable however the form does not reflect its real content. The legislation of Georgia in the chapter on remand detention and deprivation of liberty includes as legislative acts (the Constitution, the Code on Imprisonment, etc.) as well as secondary normative acts (orders of a Minister). Respectfully, the provisions of the Code shall not be declarative and shall be formulated in a way to oblige the legislator and the drafters of the other normative acts to make the acts compliant with the universally recognized principles and norms of International Law.

The Code does not envisage the possibility for sentenced inmates to get higher education. We consider it is important to give sentenced inmates a possibility to get higher education, even if this right is conditional. For the purpose of ensuring the education the Ministers of Corrections and Education formulated the Joint Concept for Distance Learning, the necessity of which is put under a question mark, if sentenced inmates do not have a possibility to get higher education any more.

"The administration is forbidden from delaying or checking an application or a complaint sent by a remand/ sentenced prisoner to the President, Chairman of the Parliament, member of the Parliament, a court, European Court of Human Rights, international organization, which is established based on an international treaty ratified by Georgia, Ministry, Department, Public Defender, defense lawyer, prosecutor."[33]

[33] With the amendment of 24 September, 2010 the word "demand" was added into the paragraph 6 of the Article 16 of the Code on Imprisonment.

It is unacceptable to ban only checking and delaying applications and complaints, as the similar protection shall be extended to any other type of documentation, that are sent to the above mentioned bodies by the persons deprived of their liberty. This may be explanation, a letter, etc.

According to the Code, a remand/sentenced prisoner, based on written request, may be granted a right to a short-term visit. The list of persons, with whom a person deprived of liberty has a right to meet, is expanded, compared to the legislative act in force before. This shall be welcome, however it is important to include into the list friends as well, as envisaged by the UN Standard Minimum Rules for the Treatment of Prisoners: *"Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits."*[34]

It shall be mentioned, that the Code envisages that supervision during visit shall be undertaken without prejudice to honor and dignity of a remand/sentenced prisoner however we consider, that the obligation to respect private life of a remand/sentenced prisoner and their contact persons must also be mentioned therein.

The Code prohibits phone conversations between remand/sentenced prisoners. We do not consider this unconditional prohibition appropriate. There shall be a right to a phone conversation with close relatives, as listed in the Code, in case they serve sentence in another penitentiary establishment. The legislator may define the restrictions to the exercise of this right (e.g. interests of investigation, security). However, each such restriction shall be duly justified deriving from the case.

According to the Code, a remand/sentenced prisoner or their group, in line with the restrictions based on the type of an establishment, may have a personal radio set and TV set, only with the permission obtained from the administration of the establishment of imprisonment/deprivation of liberty, if their usage does not violate the internal regulation of the establishment and peace of other remand/sentenced prisoners. They may purchase the mentioned equipment on their own expense or receive them from close relatives.

We consider that the right to have a personal TV set and radio set must be granted to all prisoners and the administration shall have a possibility to limit the exercise of this right by persons deprived of their liberty in duly justified specific cases, making decision on case-by-case basis.

The Code also mentions the obligation of administration to ensure the provision of bed linen to inmates and cleanness. At the same time, nothing is mentioned about the minimum frequency of changing the bed linen. Respectively, we consider it important to refer in the Code to at least a minimum frequency with which bed linen shall be changed.

According to the new version of the Code, *in case of a justified request a remand/sentenced prisoner has a possibility to invite on own expense a personal doctor with the permission of Chairman of the Department.*

The right to invite a personal doctor does directly derive from the right to choose a doctor, which is an individual right of a patient[35] and restriction of which is not allowed by the legislation. Accordingly, this right of prisoners shall exist, even without permission by Chairman of the Department. Denying a person deprived of liberty to exercise this right may be possible only deriving from exceptional circumstances (e.g. abuse of a right). In any case, the decision shall be made by the medical personal of the prison.[36] Following such a decision a doctor shall be obliged to apply to the administration of the establishment with the request to allow the doctor requested by the convict into the establishment. Any limitation of this right shall be individually justified.

According to the Code, administration is obliged to inform an investigator, a prosecutor, a court and a close relative on the admission of a remand/sentenced prisoner no later than 3 days following the admission. The mentioned rule

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34 Rule 37

35 *According to Chapter V of the European Charter of Patients' Rights, "Each individual has the right to freely choose from among different treatment procedures and providers on the basis of adequate information".* According to paragraph 17 of the Recommendation No R (98) 7of the Committee of Ministers of Council of Europe concerning the ethical and organisational aspects of health care in prison"... Sentenced prisoners may seek a second medical opinion and the prison doctor should give this proposition sympathetic consideration."

36 *The third sentence of the paragraph 17 of the same recommendation:* However, any decision as to the merits of this request is ultimately his responsibility.

does not envisage the form of notification to be sent (written or verbal). This causes problems in practice, especially from the perspective of provision of information to close relatives of a remand/sentenced prisoner. Respectively, it is important that the Code shall establish the form of the provision of information and the necessity of documenting the notification in case of oral provision of such information or notification via phone.

According to the Code, the local Council of the Ministry without an oral hearing, based on the criteria determined by the Minister, establishes to allow the application for early conditional release to the oral hearing or not. The Order No. 151 of the Minister of Corrections and Legal Assistance, dated 28 October, 2010, establishes criteria, based on which preliminary assessment (without oral hearing) shall be undertaken. These criteria - the gravity of a crime, behavior of a person, the personality of a convict, family conditions (which, according to the Order, includes the attitude of a convict towards the family members), and previous convictions - do themselves represent the conditions for early conditional release. Respectively, if their initial assessment is made without oral hearing, and even more, as a result of such assessment the case will not be considered orally any more, practically the presence of a convict and/or the defense lawyer on the oral hearing is devoid of any meaning. It would be better to consider such subjective issues, as the personality of a sentenced prisoner or his/her attitude towards the family members only during oral hearing, in the presence of a convict. Deriving from the above mentioned, we consider that the very clear and explicit elaboration of the criteria and the introduction of the evaluation system is certainly a step forward, however only in case if the assessment is made after the oral hearing. In the contrary case the assessment will have a formal nature and will not fully reflect the real situation of a convict.

The wording of the Article 54, which allows audio-video control "*for the purpose of receiving the necessary information about the behavior of accused/convicts*" is very general and grants excess discretion to the administration. Each instance of employing such control shall require respective and individual justification, and the obligation for such justification shall be reflected in the Law.

According to the Code on Imprisonment a director of the establishment makes a decision over the use of handcuffs or a sedative gown and notifies a medical worker. This disposition to a certain degree contradicts the UN Standard Minimum Rules for the Treatment of Prisoners, according to which "*the director shall at once consult the medical officer and report to the higher administrative authority*."[37]

The Code does not determine and it must determine the maximum duration of the transfer to the closed type establishment in case of the violation of the internal regulation of an establishment, as well as the conditions for return to the half-open penitentiary establishment.

Enjoying a right to a long-term visit

During the reporting period one of the main problems for prisoners in penitentiary establishments was the non-existence of contact and long-term visits. The Public Defender applied with recommendation to respective bodies several times to reintroduce long-term visits.

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, on its turn, did particularly underline the necessity for prisoners to keep normal relations with members of family. The most important means of this considered by CPT is the reintroduction of long-term visits. CPT addressed the authorities of Georgia with the recommendation to amend the legislation respectively.[38]

As for the short-term visits, the Report of the Committee indicates, that they shall be held in a room in which prisoners and visitors are separated by a Plexiglas screen and where all the physical contact is excluded only in individual cases based on well-founded and reasoned decisions[39].

37 UN Standard Minimum Rules for the Treatment of Prisoners, Article 33.
38 para. 109
39 para. 110

According to the European Prison Rules *"[t]he arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible"*[40]. *"Prison authorities shall assist prisoners in maintaining adequate contact with the outside world and provide them with the appropriate welfare support to do so"*[41].

In the second half of 2010, the Minister of Corrections and Legal Assistance of Georgia presented an initiative to grant a certain part of sentenced prisoners with a right to a long-term visit. By the end of 2010, the construction of infrastructure for long-term visits was already finalized in three establishments - N11 for juveniles, N16 in Rustavi and N6 in Rustavi.

On 25 February 2011, the Parliament of Georgia adopted a Law[42], the resolve of which - to reintroduce long-term visits - is certainly to be welcome. However, according to the adopted text of Law, a visit may not be granted to sentenced inmates in closed type establishment.

Taking into consideration the fact that a long-term visit, first of all, is the best possibility for re-socialisation and keeping close contact with close persons, sentenced prisoners in closed type establishment are in even more need of the contact with the outside world and a possibility to integrate in a society.

Yet another problematic issue linked to the refusal of a visit (short-term, as well as long-term), is the form of a decision. The establishment of time-lines for informing on granting or refusing a visit is a positive decision from the outset. However, taking into account a number of circumstances it is prudent to have the decision of administration formulated in a written form. In the contrary case it would be possible to:

- have the obligation of administration of establishment to refuse a visit only in case of respectively motivated basis to this end, turn into formality,
- have no possibility to meet an interest of a sentenced prisoner/member of a family regarding the basis of a restriction of the right.

According to the paragraph 1 of the Article 17^2 of the Code, "long-term visit is a living of a sentenced inmate with persons envisaged by the paragraph 2 of this Article in a room specifically devoted to this purpose at the territory of the establishment for deprivation of liberty, on the expense of a sentenced inmate or persons listed in the paragraph 2 of this Article, without the presence of administration."

The fact that living with the persons envisaged by the Law supports the re-socialisation of a sentenced inmate does not cause any argument. However, we consider that having a visit on the expense of a sentenced inmate or persons listed in the Law does create certain problems.

Taking into consideration heavy social conditions in the country it may be concluded that majority of sentenced inmates (their family members) may not be in a position to get funds to pay for a visit. This, on the one hand violates the Constitutional principle of equality of persons despite their property conditions, and on the other hand, will cause an introduction of a feeling of social inequality between inmates and their irritation.

It is certainly clear that the preparation of respective infrastructure and ensuring the corresponding conditions for those enjoying a right to a visit does result into financial obligations of a state. However, it shall also be taken into account that a right of a prisoner, to have a contact with family members, including via realizing a right to a visit is a right recognized by the national legislation and international law and it requires undertaking the respective steps by a state. Taking into account the mentioned obligation, it is advisable to grant socially vulnerable families with a right to have a visit free of charge.

According to the "Code on Imprisonment", a decision over a long-term visit is to be made by a director of the establishment. The drafted piece of legislation does not contain a provision of appealing against the negative decision of the director of the establishment of deprivation of liberty.

40 Rule 24.4
41 Rule 24.5
42 Entered into force from 10 March, 2011

According to the Article 42 of the Constitution of Georgia, every person has a right to apply to a court for the protection of own rights and freedoms. "The Constitution obliges a state to ensure the access to a court for the solution of any issue which will have a direct or indirect influence over the content of restriction of a right of a person," as explained by the Constitutional Court or Georgia, concluding that the restriction of a right is only possible in case of existence of legitimate public interests.[43]

Respectively, in order to ensure on the one hand a Constitutional right to apply to a court and, on the other hand, a right for which application to a court is made protected, it is advisable to introduce a specific provision in the "Code on Imprisonment" with regard to rules and conditions for appealing against a decision regarding a visit.

When the given norms were submitted to the Parliament as draft, the Public Defender presented the above-mentioned remarks and views with regard to them. However, unfortunately, they were not considered during the adoption of the Law.

A suggestion to the Parliament of Georgia: to introduce respective changes and amendments into the Code on Imprisonment that shall ensure the right of all categories of sentenced inmates to long-term visits.

2010

[43] See: The 27 August, 2009 Decision #1/2/434 of the Constitutional Court of Georgia

Temporary detention isolators under the Main Division of Human Rights Protection and Monitoring of the Ministry of Internal Affairs of Georgia

During the monitoring of temporary detention isolators the Special Preventive Group of the Public Defender is guided by the standards provided by the European Prison Rules[44] and the standards established in the recommendations issued by the European Committee against Torture (CPT) to Georgia.

As a positive note, it shall be mentioned that the monitoring team had no impediments when entering any of the temporary detention isolators. The administration fully cooperated with the Preventive Group.

According to the information requested from the Ministry of Internal Affairs of Georgia, there were 21,603 persons placed in the temporary detention isolators throughout Georgia during 2010. Out of these, 13,009 were detained according to Criminal Code provisions, there were 2,839 administrative prisoners, 7,684 persons were detained according to Administrative legislation; 19 detained were female juveniles and 437 - male juveniles.

During 2010, seventy-one persons placed in temporary detention isolators complained about the excessive use of force by Police during detention. Twenty-two detainees had self-inflicted injuries.

The members of the monitoring team checked on spot the registers for the persons in the temporary detention isolators and the records on the external visual examination. When examining the documentation, as well as during the interviews with detainees, special attention was paid to the treatment of detainees by Police as well as by the officials of temporary detention isolators. The infrastructure, including cells, investigative rooms, inventory, and the conditions for keeping food were examined. Frequency of provision of food, access to shower, outdoor execise was established by interviewing administration and detainees/prisoners.

There has been no case of violating a right of a detainee to have an access to a lawyer revealed during the monitoring - all the detainees mention that the right to have a service of a lawyer had not been violated in temporary detention isolator.

FACTS OF ILL-TREATMENT AND DOCUMENTING THEM

During the recent several years the Monitoring Team of the Public Defender has not identified any instance of ill-treatment of persons in temporary detention isolators. However, very often a person is placed in temporary detention isolator with different injuries.[45] There is a practice established in all temporary detention isolators, according to which if a detainee does not claim anything against law enforcement bodies, the Prosecution Service is not notified of the injuries even in those cases when deriving from the nature of injuries a suspicion over ill-treatment arises.

If a detainee complains, administrations of all the temporary detention isolators, as a rule, notify the supervising prosecutor and the Main Division of Human Rights Protection and Monitoring of the Ministry of Internal Affairs of Georgia.

The injuries in the temporary detention isolators are registered by the officers of the isolators.

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44 Recommendation Rec(2006)2 of the Committee of Ministers to member states adopted on 11 January 2006

45 For the information on cases of excessive use of force by Police see above, "excessive use of force by Police during detention"

GAPS IN THE MEDICAL SERVICE

CPT, in its Report to the Government of Georgia following its visit on 5-15 February, 2010, negatively assessed the practice of recording the external visual examination during the placing of a person in a temporary detention isolator. The issue was also not once addressed in the reports of the Pubic Defender. In particular, except for the Tbilisi No. 1 and No. 2 temporary detention isolators, which are served by a doctor, the external visual examination is carried out by an officer on duty, who also has an access to all the medical records. Therefore, there is no protection of confidentiality of the medical information provided. Apart from this, the Committee notes, that the presence of an officer during the conversation with a doctor, will hamper an injured person to openly disclose the reason for injuries. The CPT recommends to have only doctor conducting visual examination and also to protect the confidentiality of the medical records. If a person has injuries and points out at ill treatment, the forensic medical examination shall be undertaken by an independent doctor immediately, who at the same time shall assess the correspondence of the statement of a person with the nature of injuries.[46]

The Report of CPT also mentions that there is no psychiatric care accessible in temporary detention isolators. Psychiatric care is necessary for persons with psychiatric disorders, as well as persons abusing alcohol or drug. Detention of such persons for up to 72 hours is very likely to develop significant clinical problems. As stated by the Committee, the staff of isolators does not have sufficient awareness about this problem. The CPT recommends that steps be taken to ensure that appropriate medical intervention, including access to specialist care, is always sought in such circumstances.[47]

When talking with the Monitoring Team, administration of some of the temporary detention isolators expressed dissatisfaction due to the fact that they did not have corresponding conditions and means for drug edicts or persons with psychiatric problems, and this causes many problems during the work.

According to the version of the paragraph 4 of the Article 174 of the Criminal Procedure Code of Georgia in place before the end of 2010, "*upon the very delivery of a detainee to a place of detention a doctor shall check the detainee to establish a general condition of health and the respective record shall be made*". Deriving from the above, right upon the admission of a detainee, temporary detention isolator or Police were calling the emergency medical service.

On 10 December, 2010 the paragraph 4 of the Article 174 of the Criminal Procedure Code was drafted as follows: "*upon the very delivery of a detainee to a place of detention upon his/ her demand a doctor shall check the detainee to establish a general condition of health and the respective record shall be made*".

Respectively, the above-mentioned change does no more oblige administration of isolators to have each detainee checked by a doctor. As it was already mentioned above, there are only 2 isolators out of 44, which are served by a doctor; therefore, the access to medical care is not properly ensured.

Apart from the above mentioned, it shall be taken into consideration that in quite often cases the administration of isolators do not ensure the following the recommendations issued by doctors of emergency medical service to consult hospitals and a respective specialist.

Recommendations to the Minister of Internal Affairs of Georgia:

- **to introduce the unified system of recording injuries;**
- **to ensure respective training of the staff of temporary detention isolators in the field of due documentation of injuries;**
- **to ensure that staff of temporary detention isolators inform a prosecutor in all cases when a person is injured during the detention or after the detention, as well as in all those cases when injuries on a body of a detainee raise suspicion of ill-treatment;**
- **to ensure adding a medical staff in all the temporary detention isolators;**

[46] para. 23
[47] para. 28

- **to ensure that external visual examination be carried during admission of a person to a temporary detention isolator by medical staff;**
- **to protect the confidentiality of the medical records;**
- **to ensure due medical aid and supervision of drug addict detainees and detainees with psychological problems.**
- **to ensure follow-up to recommendations issued by doctors of emergency medical service.**

A right to a phone notification

The Special Preventive Group has often met detainees mentioning that they had not been provided with a possibility to get in touch with their family members. CPT positively assessed the fact that the legislation envisages a right of a detained person to notify close persons about the detention; however it notes that this right is not sufficiently realized in practice. The Public Defender considers that the inappropriate practice is a result of the very gap in legislation, which even though mentions the right to notify, but does not make it clear, at what stage and by whom shall this be done.

Suggestion to the Parliament of Georgia: to make clear the rules and procedures of the phone notification during the detention in the legislation.

Living Conditions

Before 2010, there was practically no legislative act regulating the work of temporary detention isolators. It shall also be positively noted, that during the reporting period the Order No. 108 of the Minister of Internal Affairs was issued on 10 February, 2010. The Order "On the approval of the additional instruction regulating activities of temporary detention isolators of the Ministry of Internal Affairs, and complementing the typical regulation and internal rules of isolators" is the guiding document for the administration of temporary detention isolators. The very fact of explicitly setting up the rules of functioning of isolators shall be welcome. However, some of the dispositions of the above mentioned order are not compliant with the European standards.

According to the Article 9 of the Order N108 of the Minister of Internal Affairs of Georgia, *"the walk shall be organized only for those persons detained administratively, who shall serve no less than 15 days of administrative imprisonment, as an administrative punishment"*.

The above mentioned disposition does not comply with European standards, as according to the Rule 27.1 of the European Prison Rules, "[e]very prisoner shall be provided with the opportunity of at least one hour of exercise every day in the open air, if the weather permits[48].

In its Report of 2010 the CPT addressed the Government of Georgia with a recommendation to ensure a right of any person detained/prisoner for over 24 hours, to have a daily walk. Respectively, it is necessary for each of the temporary detention isolators to have its own outdoor exercise yard.[49] Some new temporary detention isolators use corridors[50] for walk, which is completely not justified.

The Public Defender issued several recommendations to arrange outdoor exercise yards for walk in temporary detention isolators and to ensure a realization of a right to a daily walk for detainees. However, the majority of temporary detention isolators do not have courtyards for walk.

48 Recommendation Rec(2006)2 of the Committee of Ministers to member states adopted on 11 January 2006

49 There are outdoor exercise yards in the temporary detention isolators of Dusheti, Kazbegi, Tetritskaro, Tsalka, Marneuli, Signagi, Sagarejo, Kaspi, Imereti, Zestaponi, Samtredia, Bagdati, Terjola, Ambrolauri, Lentekhi, Borjomi, Adigeni, Kobuleti, Lanchkhuti, Zugdidi, Poti, Khobi, Chkhorotsku, as well as Samtskhe-Javakheti, Racha-Lechkhumi and Kvemo Svaneti, Mtskheta-Mtianeti, Kvemo Kartli, Samegrelo-Zemo Svaneti Regional temporary detention isolators.

50 Tbilisi No.1 and Guria district temporary detention isolators

Order No. 108 of the Minister of Internal Affairs of Georgia does not envisage a possibility for detainees/prisoners of taking shower, however the Article 4 of the mentioned Order lists the conditions that shall be provided in temporary detention isolators: *"The sanitary-hygienic and general conditions in the isolator shall ensure dignified existence of a person, respect of his/her honor and dignity, personal integrity, possibility of protecting the own interests."* According to the Article 1 of internal regulation of temporary detention isolators a person placed in a temporary detention isolator is obliged "*to protect rules of personal hygiene and cleanness*".

According to the Rule 19.4 of the European Prison Rules, *"[a]dequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least twice a week (or more frequently if necessary) in the interest of general hygiene*".

Protection of cleanness and personal hygiene is one of the important factors from the perspective of preserving dignity and health of prisoners. Therefore, all shall be done to provide each prisoner with a possibility to take shower and protect cleanness.

As a result of monitoring it was revealed that in temporary detention isolators, with shower rooms prisoners had access to shower once in a week, however the temporary detention isolators without shower rooms remained to be problematic.[51]

The above mentioned Order does not envisage the provision of clean bed linen to detainee/prisoners. All temporary detention isolators have beds with mattresses covered with leather and detainees/prisoners upon placing in a cell are given blankets. As said by the administration, the blankets are washed once a month at best. Respectively, there is a risk of spreading various diseases and parasites emerging. The exceptions are some temporary detention isolators, where blankets are washed regularly and the administration ensures provision of clean blankets to each detainee/prisoner (in Tbilisi No. 2 and Chokhatauri temporary detention isolators).

According to the Rule 21 of the European Prison Rules, *"[e]very prisoner shall be provided with a separate bed and separate and appropriate bedding, which shall be kept in good order and changed often enough to ensure its cleanliness".*

Despite several recommendations issue by the Public Defender, some of the temporary detention isolators use wooden boards instead of beds.

According to the Article 19.3 of the European Prison Rules, *"[p]risoners shall have ready access to sanitary facilities that are hygienic and respect privacy."*[52]

In the majority of temporary detention isolators, toilets are in cells and they are partly partitioned. This is true for the newly renovated isolators as well. Ambrolauri temporary detention isolator is to be mentioned separately, where the so-called Turkish toilets are installed at around 50 sm. height, without any partitioning in front of a door and not only does not provide a possibility to respect privacy, but puts a person in conditions of degrading treatment.

According to paragraph 2(b) of the Article 4 of the Order No. 108 of the Minister of Internal Affairs of Georgia, administration of an isolator is obliged "*to ensure natural and artificial lightening, heating and ventilation of cells*".

Some of the temporary detention isolators have no heating means that places detainees/prisoners in inhuman conditions. These are the temporary detention isolators in Bolnisi, Kvareli, Akhalkalaki, Borjomi, Terjola, Baghdati, Samtredia, Mestia, and Lanchkhuti.

There is no sufficient light and ventilation in the majority of temporary detention isolators, some of them have no windows (Akhaltsikhe) or they are so small that do not provide for natural ventilation and light. In some temporary

[51] There are no shower rooms in the temporary detention isolators in Dusheti, Kazbegi, Samtredia, Baghdati, Lentekhi, Adigeni, Akhalkalaki, Lanchkhuti and Mestia; There is a shower room in the Tsalka temporary detention isolator, however at the time of monitoring in the second half of 2010 there was no water heater installed there.

[52] Recommendation Rec2006(2) of the Committee of Ministers to member states adopted on 11 January 2006

detention isolators windows of cells are of a sufficient size, however triple window bars do not provide for a possibility to have lighting and ventilation (Sighnaghi).

According to the European Prison Rules, "*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*" [53]; "*artificial light shall satisfy recognised technical standards*"[54].

The Public Defender issued several recommendations, to envisage minimum 4m^2 space for each detainee, as recommended by the Committee against Torture, however so far with the exception of some of the cells of the Marneuli, Ambrolauri, Tbilisi No. 1 and Batumi temporary detention isolators, the space allocated for each detainee does not comply with the 4m^2 standard.

It shall be positively noted, that part of the temporary detention isolators, the liquidation of which was recommended by the Public Defender, were liquidated in 2010. These are the temporary detention isolators in Gori, Khashuri and Tsageri; however the Samtredia temporary detention isolator functions to-date, placing a human being there even for a short period may be considered as inhuman and degrading treatment.

It shall be positively noted, that in the second half of 2010 renovation works were ongoing in many temporary detention isolators (e.g. Marneuli, Sighanghi, Rustavi). This provides a basis to suggest that conditions in these isolators will improve.

The 2009 Report of the Public Defender, as well as the Special Report of the National Prevention Mechanism, covering the first half of 2010 referred to incompatibility of conditions in temporary detention isolators for administratively imprisoned persons. Nowadays none of the temporary detention isolators provide for a possibility to place persons there for up to 90 days.

"*Administratively imprisoned persons shall enjoy all the rights that convicts have. Deriving from the mentioned, they shall have not only the right to have a daily walk, but they shall have a possibility to meet the family members, that is not envisaged by the legislation in force in Georgia.*"[55]

Recommendation to the Government of Georgia:

- **to ensure the arrangement of special establishments for administratively imprisoned persons taking into consideration the regional principle, which shall be adapted for the long term placement of persons.**

Recommendations to the Minister of Internal Affairs of Georgia:

- **to introduce the respective changes into the Order No. 108 to reflect in it all the rights of detainees/prisoners;**
- **to ensure the right to daily walk in a fresh air for all detainees/prisoners, at the places specifically designed for this;**
- **to ensure 4m^2 space for each of the detainee;**
- **to abolish wooden boards in all temporary detention isolators and provide all the detainees with an individual bed;**
- **to provide each detainee/prisoner with clean bed linen, which shall be changed with the appropriate frequency for the administrative detainees;**
- **to provide for detainees for over 24 hours access to shower with proper frequency;**

[53] Rule 18.2, "a"
[54] Rule 18.2 , "b"
[55] Special Report of the National Prevention Mechanism covering the first half of 2010

- **to install the central heating system in cells of all temporary detention isolators, as well as to ensure the appropriate lighting and ventilation of cells, including by natural means;**
- **to liquidate the isolators, where it is impossible to introduce the appropriate conditions due to the characteristics of the infrastructure;**
- **to partition toilets in all the temporary detention isolators.**

Food

In its Report of 2010 CPT expresses satisfaction due to the fact that after its latest visit certain steps have been taken from the point of view of providing food to detainees. In particular, three meals a day are provided for detainees.

The administration of temporary detention isolators provides the detainees with the standard food - bread, tinned pate and dry package soup. The mentioned foodstuff is defective, especially taking into consideration that a person may happen to stay in the temporary detention isolator for up to 90 days.

This is more or less compensated by the possibility to send foodstuff as a parcel into temporary detention isolators, however in the cases when a detainee/prisoner does not have close persons who would provide the latter with the wholesome quality food, he/she may spend several months only receiving tedious, non-wholesome food.

Recommendation to the Minister of Internal Affairs of Georgia: to ensure three times a day provision of wholesome quality food for persons in temporary detention isolators.

2010

Protection of a Right to Health in the Penitentiary System

The Special Report of the National Prevention Mechanism of the Public Defender of Georgia on "the Right to Health and Problems Related to Exercise of this Right within the Penitentiary System of Georgia" [56] covering 2009 and the first half of 2010 was published at the end of 2010. Deriving from the above, in the present Chapter we will only refer to general trends revealed or retained during 2010.

REFORM IN THE PENITENTIARY HEALTHCARE SYSTEM OF GEORGIA

Despite the aspiration to successfully plan and implement a reform in the Georgian penitentiary health system, the current reform strategy and action plan contain an extensive number of shortcomings and inaccuracies. The role of the Ministry of Labor, Health and Social Protection of Georgia in the reform implementation process was minimal and vague; the reform process was not planned and implemented with a pre-conducted focused and evidence based medicine (EBM) needs assessment study. The changes introduced in the recent years have only fragmental character and do not represent consistent components of a single chain of actions. The reform strategy and plan are not harmonized neither with the best practices of developed countries, nor with international standards, or even with similar processes taking place at the national level in different areas.

It shall be specifically mentioned that the development of penitentiary healthcare does not at all envisage a human right to health, the ways and methods of its realization, as clearly described in a number of international instruments, as well as in national healthcare legislation.

Recommendation to the Minister of Corrections and Legal Assistance of Georgia:

- **to ensure the wider participation of healthcare professionals in the process of reform planning, as well as in the work of the working group for the implementation and promotion of a reform;**
- **to ensure the documenting of all the stages of the above mentioned works, meetings and other events.**

QUALITY CONTROL OF THE MEDICAL SERVICE

In 2010, as in previous years, the Office of the Public Defender of Georgia continued very active cooperation with the Agency for State Regulation of Medical Activity under the Ministry of Labour, Health and Social Protection of Georgia. The Office of the Public Defender of Georgia, taking into consideration the applications of citizens and the

[56] http://www.ombudsman.ge/files/downloads/ge/fyjmyknohidnexrpmtvl.pdf

results of the monitoring undertaken, has applied to the Agency several times, asking the verification of the quality and adequacy of the treatment provided to a patient. The mentioned mechanism is less efficient in case of a need of quick reaction, as often times a period of several months is needed from the point of identification of a case to the point when the final reaction is provided. Despite this, the fully-fledged enactment of this mechanism is very efficient tool to eradicate part of the gaps in the penitentiary healthcare system. Herewith we cite some examples, reflecting the relations of the Agency for State Regulation of Medical Activity under the Ministry of Labour, Health and Social Protection of Georgia and the Office of the Public Defender of Georgia during 2010:

As a result of the enquiries carried out by the Agency for State Regulation of Medical Activity under the Ministry of Labour, Health and Social Protection of Georgia, in line with the Articles 73, 74 and 75 of the Law of Georgia on Doctoral Activity, undertaken based on the applications of the Public Defender of Georgia, the Agency raised issue of professional liability of several doctors before the Professional Development Council.

"Reprimands in writing" were issued to 5 doctors-psychiatrists of the Academician B. Naneishvili National Center of Mental Health, LTD., after the verification of the quality of healthcare service provided to the sentenced P.A.[57]

As a result of inquiry concerning the quality of medical services provided to the deceased convict I.T., the professional liability of 1 doctor of the Medical Establishment for Convicted and Indicted Persons was raised.[58]

Due to professional irregularities in the process of treatment of the deceased convict K.B. the validity of State certificate was suspend, for the term of 4 months, in "oncology" to the doctor-oncologist of the General and Strict Regime Penitentiary Establishment No. 8 formerly (now No. 14) in Geguti;

Professional Development Council has reviewed the matter concerning the quality of treatment provided to Patient K.B. and made the following decisions: the validity of State certificate to a doctor-oncologist of the Medical Unit of the establishment was suspended for 4 months; the validity of State certificates to 2 doctors of the Medical Establishment for Convicted and Indicted Persons was suspended for 1 month; 5 doctors of the same establishment were issued reprimands in writing; reprimand in writing was also issued to 1 doctor of the Gudushauri National Medical Center and the validity of State certificate to 1 doctor of the same Center was suspended for 1 month. Four doctors of the National Center of Oncology were given reprimands in writing, and the validity of State certificate to 1 doctor of the same Center was suspended for 1 month.[59]

As a result of studying medical services provided to Prisoner N.M., the Agency revealed the facts of illegal medical activity in the Medical Establishment for Convicted and Indicted Persons. In particular, a record was made by a doctor specialized in traumatology/orthopedics instead of a cardiologist, a junior doctor without any certificate in any of the doctoral specializations, provided a patient with a medical service. The Agency also notes that they have no right to draw up a protocol of administrative violations concerning transgression of the law and forward it to court due to lapse of the 2-months statute of limitations. Respectively, no issue of professional liability has been raised.[60]

As a result of studying a case of a deceased prisoner J.N., the Agency found out that the medical records made in the Medical Establishment for Convicted and Indicted Persons does not correspond to the forms of unified medical documentation, approved by the Order No. 108/N of the Minister of Labour, Health and Social Protection, dated 19 March, 2009. The Agency also notes that the medical records made by local doctors in the Establishment No. 9 in Khoni and No. 2 in Kutaisi are so much incomplete that they make it impossible to fully assess the general conditions of a patient. The same letter indicated that the issue of a professional liability of 3 doctors was raised before the Council of Professional Liability.[61]

In the case of a sentenced prisoner N.N. the Agency raised an issue before the Head of the Medical Department of the Ministry of Corrections and Legal Assistance of Georgia to make sure that the in-patient medical documentation

[57] A letter №RS-017/32-4690 (14.12.2010)
[58] A letter №RS-017/32-3635 (15.10.2010)
[59] A letter.№RS-017/18-2946 (10.10.2010)
[60] A letter №RS-017/32-121 (30.01.2010)
[61] A letter №RS-017/32-4504 (02.12.2010)

in the penitentiary system be produced in accordance with the forms of unified medical documentation, approved by the Order No. 108/N of the Minister of Labour, Health and Social Protection, dated 19 March, 2009. The Head of the Department was also given the recommendation to undertake the neurological and orthopedic examination of one of the patients (the verification of a quality of medical service provided to which was requested by the Public Defender) repeatedly. The same letter clarifies that the Regulation Agency had directly indicated to the Ministry of Corrections and Legal Assistance that due to the violation of the above mentioned Order no written informed consent of a patient is received on the provision of a medical service (Form IV 300 12/a); Respectively, the patient was not informed this way, neither was it confirmed by a signature whether or not a patient agreed to the suggested treatment.[62]

The conclusion on the expertise of the prisoner D.T. makes clear, that "*the patient has not been examined by a neurologist and he has not undergone neurological examination*". The expert made a diagnosis based on the existing documentation and mentioned that "*the patient has a chronic neurological disease, without a perspective of full rehabilitation and requires the supervision of a neurologist and systematic therapy with medication*". The second expert noted on the same fact that "*the records in the medical history kept in the Medical Establishment for Convicted and Indicted Persons does absolutely contradict the conclusion of the forensic medical expert*".[63]

The issue of professional liability of two doctors of the Medical Establishment for Convicted and Indicted Persons was raised due to the deficiencies in the treatment of sentenced T.Ch.[64]

As a result of the review of the case of the deceased prisoner T.Ch. the Agency concluded that the medical documentation produced in the Establishment No. 7 in Ksani does not provide for full information about the condition of the patient. The dosage and frequency of taking medications is not indicated. There is no information neither visible on the results of the treatment prescribed twice.[65]

In the case of the convict M.Ts. the Agency raised the issue of professional liability of four doctors of the Medical Establishment for Convicted and Indicted Persons before the Council of the Professional Development.[66]

When discussing the issue of the sentenced prisoner I.Kh. the Agency raised the issue of professional liability of one doctor of the Medical Establishment for Convicted and Indicted Persons before the Council of the Professional Development.[67]

In the case of the deceased convict K.Kh. the Agency raised the issue of professional liability of four doctors of the Medical Establishment for Convicted and Indicted Persons before the Council of the Professional Development.

The Agency suspended State certificates at the meeting of the Professional Development Council to three doctors of the Medical Establishment for Convicted and Indicted Persons in respective specializations, and issued written reprimands to 5 doctors of different penitentiary establishments.[68]

According to the above mentioned letters the Agency for State Regulation of Medical Activity under the Ministry of Labour, Health and Social Protection of Georgia has also applied to the Medical Department of the Ministry of Corrections and Legal Assistance several times, Medical Establishment for Convicted and Indicted Persons and several civilian medical institutions, to study the gaps in their system and to identify the real ways for their eradication. The letters show that only the Heads of civilian medical institutions (Gudushauri National Medical Center, National Center for Oncology, etc.) reacted adequately on this. Medical Establishment for Sentenced and Indicted Persons, on its turn, was applying to the Medical Department in writing, asking to take the mentioned information as a note. The information on the real steps taken by the medical system of penitentiary to eradicate the gaps or undertake any measure is not at the disposal of the Special Preventive Group. The mal-practice of incorrect treatment still continues. A fate of the doctors with regard to him different measures of professional liability were undertaken is also not known.

62 A letter №RS-017/32-86 (11.01.2011)
63 A letter №RS -017/32-3105 (25.08.2010)
64 A letter №RS -017/32-1277 (05.05.2010)
65 A letter № RS -017/32-4172 (17.11.2010)
66 Letter №RS-017/05-1274 (05.05.2010)
67 Letter №02/2648 (16.03.2011)
68 Letter №RS-017/32-601 (02.03.2010)

Agency for State Regulation of Medical Activity under the Ministry of Labour, Health and Social Protection of Georgia unfortunately does not let us know whether or not the leadership of the medical system of penitentiary has notified them on the measures undertaken and whether or not the nature of those measures is adequate.

It is evident that the imposition of administrative penalty with regard to the illegal medical activity is also practically ineffective. This is determined by the fact that the facts of violation are in many cases made known with delay. The preparation of correspondence, its correction, sending than the review of the documentation by the Agency and making the decision does require quite a long period. Finally, as the Agency for State Regulation finalizes the study of the documentation the time limit for the committed violation of law is almost always elapsed. Deriving from this, more efficient mechanisms shall be found for the unimpeded exercise for rights of patients in this system and in general for the effective exercise of a human right to health.

Recommendation to the Minister for Corrections and Legal Assistance: To ensure that respective service of the Ministry undertakes effective measures for the immediate eradication of gaps identified in the findings of the Agency for State Regulation of Medical Activity.

Recommendations to the Head of the Agency for State Regulation of Medical Activity under the Ministry of Labour, Health and Social Protection of Georgia:

- **In the case of identifying irregularities in the process of treatment of a patient, despite the fact, whether or not the prescription period for administrative liability has elapsed or not, to raise an issue of a professional liability of a doctor before the Council;**
- **To monitor on a regular basis the medical establishments and units of the penitentiary system within the competence of the Agency for State Regulation of Medical Activity.**

OVERCROWDING

There was a problem of overcrowding in some of the penitentiary establishments of Georgia permanently or at least at some stage during 2010. Despite the fact that there was a sharp progress achieved by the penitentiary system in this respect, as compared with the previous years, overcrowding does still directly influence medical service in prisons and is proportionally reflected at the quality of the service.

FUNDING OF A MEDICAL SERVICE

Medical service of the Georgian penitentiary system is funded within the allocations of the State Budget of Georgia to the Ministry of Corrections and Legal Assistance, whereas civilian medical care funds types of medical services from the budgetary allocations for the Ministry of Labour, Health and Social Protection of Georgia. According to the paragraph 1 of the Article 45 of the Law of Georgia on the Rights of a Patient, *"Accessibility to medical services in a place of imprisonment/deprivation of liberty is ensured by means of state medical programmes"*. In reality this is not implemented. As a result, a considerable disbalance is created and the principle of equivalency of medical service is strongly violated.

Recommendation to the Government of Georgia: In order to implement the requirements of the Article 45 of the Law of Georgia on the Rights of a Patient, the expenses for the ensuring the access to the medical service for persons in the penitentiary establishments shall be reflected in the budget of the Ministry of Labour, Health and Social Protection of Georgia.

STATUS

The Medical Service of the Georgian penitentiary system has been transferred from the Penitentiary Department to the Ministry of Corrections and Legal Assistance and reorganized as a Medical Department of the Ministry of Corrections and Legal Assistance. This change must be mentioned as a positive move, however, no further progress has been made in this regard so far and the system is still not under the Ministry of Labor, Health and Social Protection; this *status quo* creates and exacerbates abundant technical, organizational, administrative, clinical and other health care-related problems.

Public Defender has mentioned in several reports the problem of licensing medical establishments of penitentiary system,[69] and there have been a number of respective recommendations issued, however the issue remains to be unsolved to-date.

A suggestion to the Parliament of Georgia: The respective changes and/or amendments shall be made into the Article 1(2) of the Law of Georgia "On Licensing and Permissions" to provide for licensing of medical establishments of the penitentiary system in a similar manner as this is done with regard to civilian medical institutions.

A recommendation to the Government of Georgia: To transfer the penitentiary healthcare system, including its staff, in the shortest possible term from the penitentiary system and to reintegrate it in the system of the Ministry of Labour, Health and Social Protection of Georgia.

PRODUCTION OF STATISTICAL DATA

Medical statistical data are not produced within the Georgian penitentiary healthcare system in compliance with the requirements set forth in the Georgian legislation. In the past years, statistical data have been managed in a non-systematic and chaotic manner. Certain positive trends have been observed in this regard since spring 2010, however, the results cannot be considered satisfactory, as the medical statistics are managed in a drastically different manner and form, compared to the national healthcare sector. Information is collected mechanically and results and health parameters are not counted and analyzed in pursuance with established bio-medical statistical rules. Consequently, it is impossible to properly assess the status of healthcare in the Georgian penitentiary establishments, to process and compare appropriate data or to take these data into account for achieving the further progress.

A recommendation to the Minister for Corrections and Legal Assistance of Georgia: To ensure that respective service of the Ministry produces the medical statistical data in line with the legislation of Georgia.

MEDICAL INFRASTRUCTURE

The problem of medical infrastructure in the penitentiary establishments of Georgia remains acute. Medical centers in some of the penitentiary establishments of Georgia remain unfit for human honor and dignity. Some establishments do not provide inpatient medical services. Medical rooms are incompliant with relevant international and national standards and are not equivalent to medium level accepted in the general health care system in the country. Licensing of medical treatment establishments in the penitentiary system remains an unresolved problem. We strongly disagree with the stance of the Ministry and of the Department that these treatment establishments are consistent with the European standards. Medical units of the penitentiary establishments are scarcely equipped with medical items, equipment, furniture and other necessary inventory. An absolute majority of the establishments does not have items required for the provision of urgent medical service. During 2010 medical infrastructure has been repaired in some of

[69] See: The Report of the Public Defender of Georgia for the II half of 2009. pp. 45, 80; Special Report of the Public Defender: "*The Right to Health and Problems Related to Exercise of this Right within the Penitentiary System of Georgia*", p.27.

the penitentiary establishments. It should be mentioned that, even though as a result of completion of the repair works, the conditions have been seriously improved in terms of sanitation however, the repaired medical centers are basically regular cells with no medical-specific purpose.

A Recommendation to the Minister of Corrections and Legal Assistance of Georgia: To ensure the improvement of the infrastructure of the healthcare of penitentiary system, the respective technical equipment of medical units.

PROVISION WITH MEDICINES AND WORK OF PHARMACIES

The matter of provision with medicines is arranged differently in various penitentiary establishments. In spite of the fact that the money allocated for the purchase of medicaments has been increased in 2010, lists of medicaments available in each penitentiary establishment are not in any way satisfactory to meet the actual health care needs in the relevant establishments. Provision of medicines to a number of establishments is being delayed. The move to a tender-system for the purchase of some types of medicaments has created lots of organizational problems. Tenders are often conducted with delays resulting in belated provision of necessary medications. A general increase in prices at the drugs market has created problems also in the penitentiary healthcare system. Making requests for and provision of expensive drugs into the penitentiary establishments is either impossible or very limited in number thus resulting in impossibility for inmates to adequately undergo required medical treatment. In the past, pharmacies in the penitentiary establishments were run mostly by pharmacists; however, since the second half of 2010, the pharmacies have been renamed as "drugs storage" and the running personnel as "the persons responsible for drugs storage"; this change has been to the effect that the latter position can be occupied by a person who has no education of a pharmacist. Therefore, this change can be assessed as a step backwards.

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

- **To increase the money allocated for the purchase of medication for medical units of the penitentiary system, considering the existing needs;**
- **To conduct the activity of drugs storage of penitentiary establishments in accordance with the rule established by the Law of Georgia "on Drugs and Pharmaceutical Activity";**
- **To open pharmacies on the territories of all penitentiary establishments, which shall be provided with the equipment and staff as provided by legislation.**

ACCESS TO A DOCTOR

Access to a doctor in the Georgian penitentiary establishments varies in different regions. The number of doctors is sufficient in some establishments but is severely low in others. Some of the penitentiary establishments still have doctors whose licenses include medical specialties that have been deleted from the list of doctors' specialty. The same is true about medium-level medical personnel. Our monitoring has revealed that doctors do not keep 24-hour duty in some establishments. We have also revealed imbalance in terms of doctors' specializations. Medical specializations held by local doctors according to their certificates are limited and, practically, they cannot be made up by consultant doctors' groups from eastern and western Georgia. Patients are sometimes not provided with medical support in certain medical areas due to unavailability of relevant medical professionals or their excessive workload, if they are available locally.

Recommendation to the Minister of Corrections and Legal Assistance: To ensure revision of the composition of medical personnel of the penitentiary establishments by respective services at the ministry and to supplement them taking into consideration the healthcare legislation of Georgia and the practical needs.

EQUIVALENCY OF DENTAL SERVICES

During 2010 a positive change was been introduced in the Georgian penitentiary establishments, as the volume of dental services provided increased. Dentist's rooms have been equipped in almost all of the establishments. Most of the establishments already have their own dentists. In some cases, one dentist serves several establishments during pre-defined week days. In the past, dental services available at penitentiary establishments were limited basically to tooth extraction; as a result of the change, therapeutic dental care has also been added, which enables inmates to receive tooth filling services and treatment of some dental diseases locally. Despite this, there have been a number of cases identified by us, when dentist's rooms do not function due to the non-existence or limited provision of filling material. This problem, in some cases, became so acute, that the components of therapeutic dental care are not provided any more.

Recommendation to the Minister of Corrections and Legal Assistance: In order to keep the progress achieved in the field of dental services, to ensure that respective structural unit of the Ministry establishes the permanent control over the provision of dental service, including, on the regularity of supply of the material and equipment required for the dental rooms of the establishments.

PRISON MEDICAL PERSONNEL

Responsibilities of the prison medical personnel in penitentiary establishments are not clearly defined. A part of doctors remain under the influence of the administration of establishment and, when making medical decisions, gives priority not to the patient's best interests but to views of the administration of the penitentiary establishment. The transfer of Medical Department from the Penitentiary Department into the structure of the Ministry has not made much difference in this regard. The upgrading doctors' qualifications and their continuous professional development in fact remain at zero point. In 2010, an overwhelming majority of doctors have not participated in continuous medical education programmes accredited by the Professional Development Council of the Ministry of Labor, Health and Social Protection of Georgia. As for participation in other training courses and seminars, still much remains to be done to ensure that doctors have the chance to upgrade their knowledge and qualifications continuously. Accordingly, level of professional competency of a number of doctors is very low. Some doctors do not have professional skills and sufficient knowledge. One of the reasons thereof is that doctors of the penitentiary health care system are structurally isolated from the public healthcare system and maintain only insignificant contacts with the civilian sector. We have not come across a single doctor in the penitentiary healthcare system holding a membership of any professional association at either local or international level.

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

- **To strengthen the guarantees of independence for doctors of penitentiary system;**
- **To ensure the introduction of doctors' continuous professional development and upgrading qualifications.**

ILL-TREATMENT

The Georgian penitentiary system continues to maintain a malpractice of having a doctor directly participating in the process of punishment of prisoners. With some exceptions, in all the establishments, the placement of an inmate in a punishment cell is preceded by signing a document by a doctor, which, in fact, sanctions punishment of the given prisoner by stating that he is physically fit to survive the punishment. Such practice clearly contradicts Article 54 of the Georgian Law on Doctoral Practices as well as the national and international ethics norms. It is certainly the responsibility of a doctor to have a prisoner placed in a solitary confinement cell under the constant supervision. However, this does not mean that a doctor shall confirm with a signature the possibility of punishment of the latter. As for the other sides of ill-treatment and their medical aspects, this latter is still not regulated in the penitentiary system.

The health service in a prison can potentially play a very important role in the fight against ill-treatment within the establishment and outside of it. Despite this, the level of activity of doctors in this regard in minimal. During a visual physical examination (and most specifically the one performed upon admission of a prisoner), any trace of violence which could have been a result of an ill-treatment is not always duly noted and registered by doctors, neither in the personal file of the detainee nor in a general register listing traumatic lesions. No signs of psychological or psychiatric disturbances are registered at all either. This may on the one hand be explained by low competence of doctors, and on the other hand, by inactivity and lack of will of doctors. All of these are based on a number of subjective and objective reasons. There are no registers for traumatic lesions in some establishments that shall be considered as a harsh violation of prevention of torture. Where such registers exist as such, the records entered into them are incomplete, do not include a comment of patients and accurate medical information. The facts of "correcting" and falsifying information are also frequent. Recording of violence taking place on spot is also not undertaken accurately. The reasons of specific injuries (self-inflicted injuries, injuries inflicted by one person to another, everyday life traumas, injuries inflicted by other person, etc.) are not classified.

In some of the penitentiary establishments medical examination of newly admitted prisoners has only a formal character; in other establishments, such checks are not conducted at all. In a number of penitentiary establishments, medical examinations are conducted practically under open air. The principles of confidentiality and inviolability of private life are harshly violated. In such conditions it becomes impossible to observe doctor-to-patient secrecy. The process of making medical records is often attended by staff of penitentiary establishment. Representatives of administration of penitentiary establishments even sign some of the medical documents; this is unacceptable and unjustified. Even more, a person having brought a prisoner to a penitentiary establishment does personally attend and even signs the record entered on the visual external examination. This leads to a conflict of interest. The prevention of torture and ill-treatment becomes automatically impossible.

As a result of the monitoring, there were numerous facts revealed when physical injuries found on a prisoner's body provided a serious ground for the Monitoring Group to doubt a fact of ill-treatment however majority of such prisoners had not been seen by a doctor at all.

The undertaking a medical forensic examination still remains an unresolved problem. According to the existing practice, when investigation commences on the fact of bodily injury, a medical forensic examination either is not ordered at all or it is ordered about a month later, as traces of injuries can in fact no longer be found on the body.[70] Such an approach directly indicates an unwillingness to investigate and effectively document facts of ill-treatment and attempts to hide such facts; this is unacceptable and unjustified. It is unfortunate that doctors often take part in this process.

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

- **To eradicate participation of doctors in any form in any mechanism of punishment;**
- **To ensure that respective services of the Ministry keep the documents in the medical centers of the penitentiary establishments in line with the rules established by the Istanbul Protocol;**
- **To ensure the preparation of medical personnel in line with the Istanbul Protocol;**
- **To ensure that respective services of the Ministry undertake medical examination of a prisoner upon the admission into penitentiary establishment following the protection of a principle of confidentiality and the rules of Code of Medical Ethics;**
- **To ensure that respective structural unit of the Ministry undertakes regular control over due registration of each fact of ill-treatment and on the respective follow-up on these facts .**

[70] See above "Ill-treatment".

UNLAWFUL DOCTORAL ACTIVITY

As a result of numerous monitoring visits during 2010, numerous facts of unlawful doctoral activity have been identified. In particular, there are facts when functions of a doctor of a certain specialization are performed by those not having the required profile. For example, doctors holding specialty "internal medicine" provide to patients surgical assistance, initial surgical processing of wounds, suturing, draining, etc. This causes serious threat to patients' health and lives. Frequently, such actions are taken to avoid a transfer of the patient to another medical institutions for surgical (or other type of medical) assistance.

Prescription and use of psychotropic medications shall be mentioned separately; the situation in this regard is alarming: such medications are usually prescribed and used in violation of appropriate rules; this, in turn, sharply negatively affects as prisoners' health, as well as the general environment in penitentiary establishments. Some types of medical activity are conducted in unsuitable conditions, without observing the rules of sanitation and hygiene. Facts of unlawful doctoral activity were revealed also by the Agency for State Regulation of Medical Activity, following a motion submitted to the Agency by the Public Defender. However, as it was already mentioned, the employment of sanctions prescribed by the Georgian legislation often becomes impossible due to lapse of prescription period for the offence (unlawful doctoral activity).

Recommendations to the Minister of Corrections and Legal Assistance:

- **To undertake a strict control of the compliance of the qualifications of medical personnel of penitentiary establishments with the services provided by them;**
- **To elaborate the system of strict control and registration of the disbursement of psychotropic medications.**

CONFIDENTIALITY AND DOCTORAL SECRECY

Patients' rights are grossly violated in the penitentiary healthcare system. In this regard, neglecting the principles of confidentiality and doctoral secrecy shall be underlined. These principles are enshrined and affirmed in international conventions ratified by Georgia, Georgian legislation on health care and other local as well as the international standards. In almost all of the penitentiary establishments, the process of provision of medical services such as medical check-ups, manipulations and other medical measures are attended by non-medical personnel. Medical documentation is not protected from being accessed by third parties. Medical documents are often signed by non-medical penitentiary staff. The above-mentioned practices in penitentiary establishments harshly violate not only health care legislation but also the standards for prevention of torture.

The plan prepared by the Ministry of Corrections and Legal Assistance, according to which the so-called medical records of patients will become electronic, is particularly disturbing. According to the leadership of the Ministry, the only aim, which this initiative shall serve is the centralization of records - and their accessibility for the Ministry, including for the leadership of the Medical Department. The confidential information will automatically be revealed in this case, that is a violation of law. Apart from this, taking into account the fact that the health care system of the country has not yet moved to such service, it is not clear how this information shall be added to the system, which shall be linked to the portion of a treatment of an inmate patient in a civilian healthcare institution. We consider that moving only the penitentiary healthcare system to this mode of management will cause its further marginalization and isolation from the healthcare system of Georgia. All the efforts shall be employed not to have this initiative causing even widening the gaps in relation with the equivalency of healthcare services and protection of confidentiality, especially as there has been no Concept, a justification or even financial calculation as a document for the introduction of the electronic system of recording the medical data of inmates. The leadership of the Ministry including the Head of the Medical Department is tasked with the overall management of the system; this does not include the management of treatment of specific patients. It seems to be the only way out for the ministry due to the low qualification of penitentiary medical personnel.

Deriving from all the above mentioned, the Public Defender considers it inadmissible to have the medical information about inmate patients placed in the widely accessible electronic database.

Recommendations to the Minister of Corrections and Legal Assistance:

- **To ensure the protection of confidentiality during the medical procedures and the production of respective documentation in the penitentiary establishments by respectve services, as guaranteed by the Constitution of Georgia, international agreements of Georgia and conventions to which Georgia is a party to, including in the field of health care;**
- **To take into consideration the health care legislation of Georgia, as well as the international standards on the confidentiality of information regarding a patient, the equivalency of civilian and penitentiary health care systems in the process of undertaking any reform in the penitentiary system, in this specific case in the process of creating the electronic database on patients.**

PROVISION OF INFORMATION

The realization of one of the fundamental individual rights of a patient - to receive information –is another acute problem within the Georgian penitentiary healthcare system. Upon the admission into almost any of the penitentiary establishments of Georgia prisoners are not able to receive information about medical services, hygienic norms or other assistance. Prisoners usually get this information either from each other or collect it from self-experience. Normally, no informed consent is obtained prior to undertaking certain medical manipulations locally. Furthermore, monitoring carried out in the Georgian penitentiary system revealed that an absolute majority of patients practically does not have access to medical records created within the penitentiary about them. The medical staff has been explaining that prisoners rarely ask for access to their medical records or for copies; according to the observation of the Monitoring Group, this does not reflect the reality. Inaccessibility to medical records describing the patients' health status was, to a certain extent, caused by the fact that some times such records and documents simply did not exist.

Recommendation to the Minister of Corrections and Legal Assistance: To ensure the access of prisoners to medical documentation about them, as well as their provision with adequate information on the importance and expected results of each medical manipulation.

MEDICAL DOCUMENTATION

As regards the making medical records, doctors and other medical personnel, deriving from the Georgian legislation, are obliged to make records in the medical documentation in accordance with the rules approved by the Ministry of Labor, Health and Social Protection. Despite this, temporary forms (templates) of medical documentation of the Penitentiary Department's medical establishments and medical units (27 forms in total) were approved by the 24 June, 2002 Order No. 486 of the Minister of Justice. These forms qualitatively and essentially differ from forms of medical documentation being used in the national healthcare system of Georgia and they are pretty outdated. Rules of filling them in, keeping and maintaining these forms are also different. However, an overwhelming majority of penitentiary establishments do not produce even such documentation. By the 10 November, 2009 Order No. 771 of the Minister of Corrections and Legal Assistance a form (template) of medical files of the Medical Department of the Ministry was approved (the Order was several times annulled afterwards and issued again, however its content has not been changed substantially); this form is also inconsistent with the medical documentation forms used in the general healthcare system of Georgia. The Order No. 158 of the Minister of Corrections and Legal Assistance dated 11 November, 2010, annulled the Order No. 771 and approved a new medical file form for remand and sentenced prisoners. Comparison of the old and new forms shows practically no difference, except that the word "penitentiary" on the title page of the old form was replaced with the words "imprisonment and deprivation of liberty" in the new form. The mentioned note points to the fact that the Ministry of Corrections and Legal Assistance does not take into consideration the Public

Defender's recommendation on this issue. The abovementioned Order once again clearly confirms that penitentiary healthcare system is being artificially separated from the country's general healthcare system. The penitentiary system harshly violates rules of keeping the medical documentation, as provided by an Order of the Minister of Health. Only the Medical Establishment for Convicted and Indicted Persons keeps the archives of medical documentation. Other establishments use varying and not uniform principles for keeping medical documents. In some establishments medical documents are destroyed or kept locally or transferred to the establishment's administration.

Recommendation to the Minister of Corrections and Legal Assistance: To ensure the production of medical documentation in the penitentiary health care system is in line with the rule approved by the Orders No. 108 and No. 224 of the Minister of Labour, Health and Social Protection of Georgia and by the forms attached to the above-mentioned Orders.

TRANSFER OF PRISONERS TO MEDICAL ESTABLISHMENTS

The Special Preventive Group has thoroughly studied the transfer of ill inmates from penitentiary establishments to the Medical Establishment for Convicted and Indicted Persons, Establishment for Medical Treatment of Tubercular Convicts and other town hospitals during the reporting period.

According to the information collected by the Special Preventive Group, the number of convicted persons and prisoners transferred to medical establishments has slightly increased compared with previous years; however, the number of transfers to various civilian healthcare institutions has decreased. The indicator of transfer of patients to Medical Establishment for Tubercular Convicts stayed basically unchanged; however, as the problem of tuberculosis has exacerbated and increased in scale, the indicator seems too low. The cases of transfer of patients to the Tbilisi Referral Hospital since the second half of 2010 shall be considered to be a new trend. The indicator of the transfer of tubercular convicts to medical establishment is almost at the same level, however if we take into consideration the extended problem of tuberculosis and its scope, this number is quite low. Commencement of the construction of a new block in the vicinity of the Medical Establishment for Tubercular Convicts shall also be considered to be a positive trend; however, the very fact of constructing a building will not solve the problem, if the approach towards this issue and the attitude of the leadership of the penitentiary system to this problem is not changed.

By Order No. 902 dated 29 December 2009, the Minister of Corrections and Legal Assistance approved new procedures for the transfer of diseased prisoners and convicted persons from Penitentiary Establishments to general-profile hospitals, the Medical Establishment for Tubercular Convicts and the Medical Establishment for Convicted and Indicted Persons. The mentioned Order shall be considered a positive step, as its predecessor regulating the same issues, contained numerous medical-type erroneousness, which had been underlined several times by the Public Defender. Although the new Order rectified the mentioned shortcomings, frequently the issue of transfer of patients to other hospitals is addressed and decided not solely based on the medical criteria but depending on the opinion of the administration of the prison where the prisoner is placed. In some establishments, participation of a doctor in deciding transfer of a patient to a hospital is insignificant and only carries a formal character.

According to the information collected by the Special Preventive Group concerning movement of diseased prisoners clearly contradicts information received from the Ministry of Corrections and Legal Assistance; the contradiction shows the need for a deeper study and analysis of the issue.

A clear example of inadequate information received from the Ministry of Corrections is the correspondence in between the Office of the Public Defender and the Medical Department of the Ministry about the surgical treatment of two convicts - D.Gh. and I.Ts. In particular, in both cases the issue was about the written question over the endo-artificial limb of hip. As a reply to the written question as to when was the mentioned surgical treatment planned, we received the identical reply from the Medical Department of the Ministry of Corrections with regard to both cases. In particular, we had been notified that the negotiations were ongoing to solve the issue of the surgical treatment with the Ministry of

Labour, Health and Social Protection of Georgia, following the completion of which the time for the surgical treatment would be set.[71]

On 27 October, 2010 the Public Defender applied to the Ministry of Labor, Health and Social protection of Georgia with a letter №3678/03–2/0094–10 to get the information regarding the nature of the ongoing negotiations with the Ministry of Corrections and Legal Assistance of Georgia and by when was the solution of an issue of surgical treatment of the respective convicted persons was planned. As no reply followed, the Public Defender applied to the Ministry of Health with the same question on 1 February, 2011. As a result, on 7 March, 2011 a reply was received from the Ministry of Health, indicating that the Ministry of Health was unaware of the negotiations that Chief of the Medical Department of the Ministry of Corrections referred to. We were also notified that for the clarification of the mentioned issue the Ministry of Labour, Health and Social Protection applied to the Ministry of Corrections and Legal Assistance and there has been no reply received so far. At the end, it is unclear what type of negotiations the Medical Department of the Ministry of Corrections had referred to. It is even more alarming that fate of both sentenced convicts, who still can not move due to problems with lower extremity, is unclear.

Recommendation to the Minister of Corrections and Legal Assistance of Georgia: to ensure the instant transfer of prisoners to the medical institutions of respective profile based on the recommendation of a doctor.

SANITATION AND EPIDEMIOLOGICAL STATUS

Problems related to sanitation and epidemiological status in the penitentiary establishments have been on the way of being gradually resolved in the recent months. The process has been facilitated by the opening of new penitentiary establishments and refurbishment of the existing infrastructure. The Penitentiary Department is a recipient of various city sanitary services on the basis of contracts concluded with them. In particular, the sanitary services carry out disinfestations and disinfection works twice a month on average on the spot. Monitoring revealed disinfection works are not carried out in all of the penitentiary establishments. Intensive burning of trash at the Gldani landfill pollutes air negatively affecting the health of prisoners placed in Establishment No. 8 in Gldani. Inhalation of such air is categorically impermissible and it is particularly dangerous for patients with certain disease placed in Medical Establishment for Convicted and Indicted Persons. Insufficient attention is paid to issues such as air temperature, humidity, lighting and ventilation in penitentiary establishments. Appropriate standards are not properly observed in newly-built penitentiary establishments either. Situation reaches critical point in summer when conditions in cells become unbearable due to high temperature. With a view to the existing infrastructure in a majority of penitentiary establishments, inmates can take shower only once a week, which is clearly insufficient in summer due to sanitation and epidemiological considerations. At the same time this is incompatible with honour and dignity of a human being. Different establishments have different practices to comply with the Joint Order No. 5/500/O of the Minister of Justice and the Minister of Labor, Health and Social Protection, dated 22 December, 1999 "on nutrition norms, garments and sanitary-epidemiological conditions of convicted persons". Transmittable and highly-contagious infectious diseases are not accurately registered, identified, treated and managed adequately. In this regard, the emphasis shall be made at the non-uniform and ineffective approach to tuberculosis and hepatitis. Problems such as mange, pubic louses and regular louses have been relatively reduced compared with previous years due to relatively improved inmates' living conditions. Screening of sexually transmittable diseases does not take place. There are at least three instances identified as a result of analysis of the forensic medical expertise of deceased prisoners, where a diagnosis of syphilis had been mentioned. One of the most important positive trends identified by the National Preventive Mechanism is that, along with dental care equipment being installed, all of the penitentiary establishments have been equipped with dry temperature sterilizing devices making it possible to have medical equipment and items sterilized. A majority of establishments lacked such a possibility in the past with a result of aggravated epidemiological status due to parenterally transmitted infections (including virus hepatitis).

[71] Letters N07-8662 dated 30 September, 2010 and N07–9151dated 11 November, 2010.

Recommendation to the Minister of Corrections and Legal Assistance of Georgia: To ensure that respective services of the Ministry undertake a regular supervision over the sanitation and hygienic conditions in penitentiary establishments as well as to carry out the respective measures for the identification and timely and adequate solution of the existing problems.

INMATES FOR WHOM LONG-TERM IMPRISONMENT IS INAPPROPRIATE

Monitoring carried out by the Special Preventive Group has revealed a number of facts in various penitentiary establishments of keeping inmates for whom long-term imprisonment was inappropriate. We have also come across inmates who required special care conditions and caretakers but none of these were available in the establishments. The review of the conclusions on the forensic medical expertise of prisoners having passed away in 2010 also makes it clear that a certain number of deceased prisoners had forms of terminal cancer, strong neurological pathologies, and irreversible diseases of liver in final stages. Despite this, the issue of postponing serving the sentence or releasing these prisoners with heavy and incurable disease from serving sentence has not been raised in majority of cases. Some of these inmates move with wheelchairs or crutches. Some inmates suffer from strong neurological residual problems. Around 40 inmates are with amputated extremities. About 60 inmates are diagnosed with cancer pathologies. These figures are not necessarily accurate because such inmates are not separately registered. In reality, the state of affairs is rather severe.

The 27 March 2003 Order No. 72/N of the Minister of Labor, Health and Social Protection "on approving a list of grave and incurable diseases that constitute a basis for requesting release from serving punishment" is ineffective and outdated. Diseases listed in the Order are not classified according to International Classification of Diseases (ICD 10) provided by the World Health Organization. Wordings of diagnoses are often outdated and no longer used in the modern world. It should also be noted that the amendments to the Order are very frequent and the same disease is sometimes included and sometimes not included in the list – this fact demonstrates not a serious approach to the matter. Despite this, according to the information collected as a result of monitoring, requests for release from or postponement of serving punishment on the ground of serious illness to the Ministry's Permanent Commission greatly increased in 2010.

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

- **To ensure the application by the Director of the penitentiary establishment and the administration of penitentiary to the Joint Permanent Commission of the Ministry of Corrections and Legal Assistance and the Ministry of Labour, Health and Social Protection for the release from serving a sentence by prisoners with sever or incurable disease;**
- **To ensure the adequate informing of convicted persons with regard to the mentioned issue and procedures.**

Recommendation to the Minister of Labour, Health and Social Protection: To make Order No. 72/N of 27 March, 2003 compliant with international standards, including the international classification of diseases by the World Health Organization.

WOMEN INMATES

In 2010 three women inmates passed away in the establishments of the penitentiary system of Georgia. This indicator is the highest compared to the data of the previous years. Women inmates were placed in 5 different establishments of the Georgian penitentiary system in both eastern and western regions of Georgia. It shall be considered as a positive aspect that, in Establishment No. 5 for Women and Juveniles, conditions and facilities of medical services in 2010, alike the previous years, were greatly better than in other penitentiary establishments. The mentioned establishment

is the only facility where women-specific health matters are addressed more or less satisfactorily. When it comes to women's health, it should be noted that the Medical Establishment for Convicted and Indicted Persons does not provide women's inpatient services; this problem is relatively compensated by a high number of transfer of convicted and indicted persons from the establishment No. 5 for Women and Juveniles to civilian hospitals. Such services are practically not available to women inmates in other Establishments, which in a way creates geographical imbalance. We should specifically note problems related with mental health and drastic increase of the number of women inmates since summer of 2010, resulting in the overcrowding of the Establishment No. 5 for Women and Juveniles. A positive step has been the opening of a new penitentiary establishment for women close to Rustavi with considerably improved medical infrastructure. Although female inmates were not moved to the new establishment until the last month of 2010, we suppose the women-specific health matters will be more adequately dealt and regulated in the establishment in the close future.

REMAND PRISONERS

Due to special medical needs of remand prisoners, the National Preventive Mechanism paid particular attention to such prisoners. The Monitoring Group was, in fact, unable to detect a single case when such a prisoner's request to have a medical or psychiatric/psychological forensic examination carried out was granted. Forensic medical examinations are either carried out with a delay or are not carried out at all. When forensic medical examinations are delayed, it becomes no longer possible to obtain evidence having crucial importance for the prisoner. Newly-admitted prisoners often find it difficult to adapt to the new environment; they are not provided with adequate medical care and their right to health is violated. It should be mentioned that the term of quarantine where all of the newly admitted prisoners are placed is often protracted for a period longer than necessary. Newly-admitted prisoners' situation is further aggravated by unbearable conditions, including by very low and inappropriate level of medical services available and provided.[72] The principles of doctor-to-patient secrecy and inviolability of private life are harshly violated. Newly admitted prisoners' requests to be examined by own doctors are almost never granted. Due to the above-described problems, the rights of patients envisaged by the Georgian healthcare legislation are gravely infringed.

Recommendation to the Minister of Corrections and Legal Assistance of Georgia:

- **To ensure the timely provision of medical and psychiatric/psychological forensic examination to remand prisoners;**
- **To ensure the access of remand prisoners to fully fledged medical service;**
- **To ensure the realization of a right to choose their own doctor by remand prisoners in line with the legislation of Georgia and international standards.**

PRISONERS WITH MENTAL PROBLEMS

Mental health is one of the most serious and unresolved problems within the Georgian penitentiary system. Detection, diagnostics, treatment and rehabilitation of persons having mental problems takes place in a disorganized manner and are provided in a limited way due to absence of qualified psychiatric aid in penitentiary establishments. Such persons are not examined by a psychiatrist immediately upon admission. Prisoners are able to receive psychiatrist's consultation about once a month by means of visits paid by individual consultants. Although senior doctors have stated that, when needed, prisoners can consult with a psychiatrist, we were unable to find any relevant recordings having examined the documentation available on the spot. There was an attempt of local doctors to misinform the members of the Monitoring Group. Absolute majority of penitentiary establishments does not have any special programmes to support mental health or rehabilitation programs that would involve various measures of medical, social and psychological assistance. The information at the web-site of the Ministry of Corrections and Legal Assistance of Georgia states that such programmes exist. However this statement does not correspond with reality, as the active programmes during

[72] See: for details above "Ill-treatment".

the reporting period did not include the medical component. Due to these programmes may not be considered as psycho-medical rehabilitation. The only psycho-medical and social rehabilitation programme was implemented by the Center "Empathy" in the Penitentiary Establishment for Women and Juveniles. However, the Ministry of Corrections and Legal Assistance has refused to prolong the contract. As a result the psycho-medical support was immediately stopped to a number of beneficiary women and minors. This shall be considered as a step made backwards. In general, the regime and conditions existing in penitentiary establishments as well as attitude to prisoners suffering from mental disorders are inappropriate and inadequate, which negatively affects the inmates' mental health. For these reasons, **keeping persons suffering from mental diseases in penitentiary establishments should be considered as inhuman treatment.** Psychiatric services available within the entire penitentiary system are limited only to services of 5 psychiatrists of whom three doctors work for the Medical Establishment for Convicted and Indicted Persons and each of the remaining 2 is a part of groups of consultants working for the eastern and western Georgia. Before 2010, the consultant from western Georgia served all of the 5 establishments in western Georgia; however, since the beginning of the year, the psychiatrist has not been visiting prisons in Zugdidi and Batumi. For this reason, prisoners of the mentioned establishments are not able to receive even elementary psychiatric aid.

Penitentiary establishments do not carry out suicide risk assessment. Adequate assistance is often not provided even to persons who have attempted to commit suicide. Journals for registration of injuries often contain records according to which the same person systematically inflicts various types of self-injuries. Nevertheless, these persons are not subject to adequate medical monitoring. Persons with mental problems either are not transferred to the Medical Establishment for Convicted and Indicted Persons due to lack of beds there or are transferred only with protracted delays. Such persons often violate the prison regime, making brawls and having conflicts with other inmates. Such conduct is not understood by the prison administration properly. Most of the prison staff regards them as malingerers as a result of which these persons become victims of ill-treatment.

Monitoring revealed a series of cases when mentally retarded persons were serving sentence in penitentiary establishments and neither have they been examined by medical forensic examiners at the investigation stage nor is their examination planned in the future. Medical and psychological rehabilitation of persons with mental problems practically does not take place. The only programme that used to provide such services to women and juveniles has been stopped by the Ministry of Corrections and Legal Assistance, justifying this by other alternative programmes; the Ministry's stance should be given negative assessment.

A separate problem is the prescription and use of psychotropic medicaments. Such medications are prescribed and distributed in an unjustified manner and in disturbing scale. Considering the periodicity of a psychiatrist's visits, review of dosage or prescription was not taking place. The National Preventive Mechanism has detected many cases when psychotropic medications were distributed/handed out by the administration of a penitentiary establishment.

The problem of persons undergoing treatment of other somatic diseases shall also be mentioned. For example, treatment using medication such as Interferon or anti-tuberculosis or some other medications often causes side effects in the form of mental problems; even in these cases, psychiatric aid is not accessible to prisoners.

During the monitoring, the National Preventive Mechanism revealed a general trend in penitentiary establishments that prison staff, including medical staff, does not possess knowledge of mental health problems. Accordingly, no effective ways to solve the problems are available. During the year, it was practically impossible to have patients transferred to civilian psychiatric establishments. At the same time, there was no mechanism to carry out forensic psychiatric examination of convicted persons who became mentally ill in the course of serving their sentence. In this regard, a positive step was the amendment to the Law of Georgia on Imprisonment in December 2009. Despite this, the by-law envisaged by the Law was not issued within a reasonable time. The Public Defender addressed the Minister of Corrections and Legal Assistance in September 2010 with a recommendation to implement the requirement of the Law by issuing the by-law envisaged therein. The Minister of Corrections and Legal Assistance issued the Order No. 135 dated by 13 September, 2010 approving a Statute of the Penitentiary Department Commission. According to the Statute, the purpose of the Commission is to review the status of convicted persons displaying signs of mental disorder for the purpose of regulating their transfer to a psychiatric institution. Shortly after the release of the above mentioned

Order, on 11 November 2010, the Minister of Corrections and Legal Assistance issued another Order No. 157 "on approving the Statute of the Psychiatric Commission of the Ministry of Corrections and Legal Assistance". The new Order annulled the Order No. 135. By 1 December 2010, no single prisoner had been transferred to a psychiatric institution on the basis of the Commission's decision. It shall also be noted herewith that, shortcomings in the existing legislation and by-laws on healthcare, which should become a subject of separate analysis and monitoring, create serious problems in the penitentiary system in terms of initial diagnostics and further prompt and adequate response. Addressing this matter goes beyond the competence of a prison doctor.

Recommendations to the Minister of Corrections and Legal Assistance:

- **To provide penitentiary establishments with the psychiatrists for the adequate and timely psychiatric support to prisoners;**
- **To ensure the support of the fully-fledged psychiatric programmes in penitentiary establishments;**
- **To ensure the timely identification of prisoners with psychiatric problems and the undertaking the measures necessary for placing them in the respective profile hospitals;**
- **In order to prevent suicide, to ensure revealing of the mentioned risk timely, to ensure timely assessment of the regular self-inflicted injuries and other not adequate actions by a psychiatrist and to have the respective measures undertaken taking into consideration the interests of health and life of a patient;**
- **To ensure that respective service of the Ministry register the prescription and distribution of psychotropic medications and undertake the regular control as envisaged by the health care legislation;**
- **To ensure the adequate management of the psychiatric developments accompanying some of the treatment courses by respective services;**
- **To ensure the establishment of the respective legal basis for the uninterrupted work of the Psychiatric Commission of the Ministry of Corrections and the undertaking of all the necessary measures.**

PERSONS ADDICTED TO MEDICATIONS

The number of persons addicted to medications is quite high in penitentiary establishments. This category includes inmates diseased with alcoholism, narcomania and toxicomania. The monitoring undertaken by the Special Preventive Group has revealed Drug-addicted patients are not provided with proper treatment and medical advice. There have almost not been instances of inviting an outsourced consultant during the reporting period (except for one exeption). As for the assistance and rehabilitation programmes for drug-addicted persons, such a programme is running in the Prison No. 8 in Tbilisi (methadone programme). There is also the programme Atlantis ongoing in three establishments of the penitentiary system of Georgia. The programme Atlantis does not contain a medical component. The existence of the Methadone programme shall be considered as a positive trend. The extension of the mentioned service is advised at those penitentiary establishments where remand prisoners and especially women are kept, who, during 2010, as in the past were deprived of this service.

Recommendation to the Minister of Corrections and Legal Assistance:

- **To ensure the provision of adequate medical service to persons addicted to medications by respective services;**
- **To ensure the extension of the rehabilitation programmes and their implementation in all the penitentiary establishments, including the Establishment No. 5 for Women.**

NUTRITION

During the monitoring undertaken by the Special Preventive Group it was revealed that the organization of the provision of nutrition to sentenced and remand prisoners has to a certain degree improved during the recent period and positive trends are identified. Despite this, the problem of the organization of diet tables remains unsolved. In 2010, as well as in the previous years, such tables did not exist in the Medical Establishment for Tubercular Convicts. As for the Medical Establishment for Convicted and Indicted Persons, the diet tables are introduced in the establishment, however they do not correspond with the standards approved by the Minister of Labour, Health and Social Protections. According to the representatives of "Megafood", which is a contractor of the Penitentiary Department, the contract does not envisage the provision of diet food for deceased sentenced persons and remand prisoners, including for the persons deceased with diabetes mellitus. At the time of concluding the contract the Order No. 258/N of the Minister of Labor, Health and Social Protection dated 17 September, 2002, which approves the treatment diets was not taken into consideration.

Experts of the National Preventive Mechanism in some of the establishments studied energetic value of food provided to prisoners, sanitation and technical equipment in the kitchens as well as inventory and planning matters. The monitoring showed that the major energetic indicator is increased at the expense of increased amount of food containing carbohydrates (in particular, cereals and macaroni products). The violations of balance of organic substances in the food ration provided shall be noted in this case.

In general, sanitation and technical conditions in nutrition units of newly-built penitentiary establishments are satisfactory. Penitentiary establishments in Kutaisi, Zugdidi and Geguti are well equipped technically. There are minor shortcomings as well, which can well be rectified with local efforts.

Taking into consideration the results of the monitoring undertaken, the solving of a systemic problem – centralized provision of food – was clearly appropriate and positive step made. Despite this positive development, there are standing problems, which should be dealt with by means of constantly renewable control mechanisms. The penitentiary system must provide control mechanisms to resolve the mentioned problems; in particular, food ration should be established in accordance with established standards, therapeutic diets should be used in the penitentiary nutrition system, energetic value balance should be observed and balanced nutrition should be ensured. It should be ensured as well that nutritious fats used in food are good for use. It is desirable that standard planning norms of nutrition units are observed when constructing new prisons.

Recommendation to the Minister of Corrections and Legal Assistance:

- **To ensure the provision of therapeutic diet to all the prisoners with such a need in penitentiary establishments as envisaged by the Order N258/N of the Minister of Labor, Health and Social Protection;**
- **To ensure the fully-fledged, balanced nutrition for all prisoners;**
- **For the better provision of prisoners with the food required for them, to ensure the provision of the seasonal fruit and vegetables to shops of all penitentiary establishments.**

HUNGER STRIKES

Monitoring carried by the National Preventive Mechanism revealed a trend that convicted persons and remand prisoners have been using hunger strikes as a form of protest less compared with the previous period. Despite the fact that the facts of announcing hunger strikes in 2010 were officially registered by the medical personal, in reality, the number of inmates announcing hunger strike is much higher. A part of prisoners were noting during the monitoring that they were on a hunger strike however the administration was not registering their hunger strike; some times they were not allowed to write official statements on announcing a hunger strike, some times they were even physically abused due to this. Sometimes pre-agreed groups of inmates were going on hunger strike. In the course of the monitoring, the

Special Preventive Group revealed cases when announcement of a hunger strike by inmates resulted into their unjust punishment and ill-treatment.

Recommendation to the Minister of Corrections and Legal Assistance: To ensure the provision of the appropriate treatment of prisoners on hunger strike, as well as absolute observance of the procedures of protection of prisoners on a hunger strike, as envisaged by the legislation.

TUBERCULOSIS

The indicator of spread of tuberculosis in the Georgian penitentiary system in the recent period has reached a peak. Tuberculosis remained the major reason of deaths in prisons in 2010 as well. Despite numerous measures taken in Georgia in general and within the Georgian penitentiary system, the problem of tuberculosis, instead of being resolved, has even aggravated. We consider that, a reason of this aggravated situation is ineffective implementation of standard anti-tuberculosis measures in Georgia, without considering the local specificities. There is no assessment and analysis of the TB spread risk undertaken. The medical personnel require serious re-training. One-off short-term trainings are not sufficient to resolve the problem, as it is evident that the medical personnel are either unaware or unable to use basic skills and knowledge of TB-infection management due to their very low medical autonomy and independence in making decisions autonomously. Multi-resistant forms of tuberculosis are considerably increased. Extra-pulmonary forms of TB are not a rarity either and their spectrum has significantly expanded so as to include diseases from TB pleurisy to neuro-tuberculosis damaging almost all of the internal organs. We consider that this trend shall be indicated as a direct result of inadequate management of TB infection within the penitentiary system. Even though a great number of penitentiary establishments do carry out screening on TB, identify and include infected prisoners in relevant programs, such measures have low effect; this is especially so against the background of systemic and specific reasons of spread of the disease having been remained unresolved for years.

The TB infection is transmitted by inhaling the air containing airborne particles of mycobacterium tuberculosis coughed out by a person infected with tuberculosis. Mycobacterium survives a few hours in the air and the duration of this period depends on the environment. Infection as a rule gets transmitted in a closed environment (a room), without an adequate aeration. The direct sun beams quickly kill micro bacteria causing TB, however this is not achievable in a closed environment.

The risk of catching the infection depends on a number of factors; one of the most serious factors is the concentration of mycobacterium tuberculosis in the air in a closed spaced (a room) and the period of exposure of the bacterium in this ambient. It means that the risk of spread of tubercular bacillus is very high in overcrowded and inadequately ventilated rooms.

The following are risk factors for transmitting tuberculosis:

- **long stay** (long stay of a human being within the area of an infectious agent; infection is contracted when the human being is breathing the air containing bacillus);
- **air volume** (stay in a small area together with an infected human being);
- **ventilation** (bad or no ventilation in the area where the person is staying);
- **bacillary excretion by an infected person** (the following factors increase the number of mycobacterium excreted by a person infected with tuberculosis: diseases of lungs, upper respiratory tracts or gullet; intensified coughing or other respiratory movements, especially when a person cannot cover his nose or mouth when coughing or sneezing; existence of cavern; inadequate or no availability of anti-tuberculosis treatment).

When there are auspicious conditions for spread of tuberculosis, multi-drug-resistant (MDR) tuberculosis can be contracted as a primary disease. Primary resistance develops when a person gets infected through strains of

mycobacterium resistant to anti-tuberculosis drugs. Acquired resistance develops in case of premature termination of a treatment course or treatment with inappropriate anti-tuberculosis regime.

Extensively drug-resistant tuberculosis (XDR-TB) represents a threat for the public health system and, in general, for the management of tuberculosis infection as the latter places on the agenda the spread of TB infection, that becomes practically incurable.

Therefore, treatment of tuberculosis is not only a matter of individual health care but this is one of the most acute public health problems.

Treatment of tuberculosis is aimed at:

- curing the patient and restoration of his life quality and productivity;
- preventing the chance of death due to tuberculosis or its later effects;
- prevention of recidivism of tuberculosis;
- reducing the chance of transmitting the tuberculosis infection to other persons;
- preventing the development and transmission of drug resistance.

It has been ascertained by international studies that 15% of patients having undergone anti-tuberculosis treatment in the past develop MDR (*Tuberculosis drug resistance in the world: fourth global report*. Geneva, World Health Organization, 2008 (WHO/HTM/TB/2008.394). The key point in preventing this threat is to prevent premature termination of anti-tuberculosis treatment and to make all efforts to this end. Since tuberculosis is a public healthcare problem it threatens the entire society, other citizens, personnel working with the patients and other persons in contact with them. Due to the above mentioned the improvement of access to anti-tuberculosis treatment and removal of artificial barriers to such access should become an integral part of the National Anti-Tuberculosis Program.

In accordance with the Plan on Control of Tuberculosis in force the Ministry of Labour, Health and Social Protection is responsible for planning and implementation of the measures in this regard. This task is undertaken by means of the National Program on Tuberculosis. Despite the fact that the Anti-TB Strategy is being implemented in the system of the Ministry of Corrections and Legal Assistance for long already, it does not result into efficient outcome. This is due to the fact that the mentioned Strategy is oriented only at the medical component and it ignores such factors as components of tubercular epidemiology, in particular: nutrition, air, sum beams, living conditions, hygienic conditions, etc. Against this background the initiative of the Minister of Corrections and Legal Assistance shall be considered as a positive move, which was voiced out at the briefing devoted to the World Tuberculosis Day. According to the Minister, *"the new Action Plan for the timely identification, prevention and efficient treatment of TB in the penitentiary system was established in the Ministry"*. The components of the New Action Plan were also named. The following shall be outlined among those: *"there shall be one specialist from the TB National Program attached to each of the establishments for the very timely identification of TB disease, separation of its transmittable forms, diagnostics and further high quality treatment. This represents the most efficient method of the control of TB that on its turn is the best preventive measure"*. According to the Minister, "*rehabilitation and expansion of the Medical Establishment for Tubercular Convicts*" is ongoing in parallel, "*the entirely new building is being constructed to this end, which in line with the recommendations of the Ministry of Health, shall be fully compliant with all the required standards. This shall allow the prevention of the spread of disease*".

The more active involvement of the Ministry of Labour, Health and Social Protection of Georgia in this field within penitentiary system is the most important precondition for the efficient undertaking of the anti-TB measures that shall be supported and ensured.

As for the Medical Establishment for Tubercular Convicts, its services, as this was already mentioned, only covers sentenced prisoners. The remand prisoners are devoid of this service. It shall be mentioned that in the establishment, with the motive of violating the regime conditions, quite a number of prisoners are subject to the change of the regime and they are transferred to strict regime establishment (now already closed type establishment). This often is a cause to termination of treatment. The monitoring has revealed the facts when a prisoner's treatment was interrupted and than

re-started (or not continued at all). This constitutes one of the main reasons for the development of multi-resistance form that is not taken into consideration by the penitentiary system. A majority of multi-resistance forms do terminate with lethal outcome in a certain time period. It shall be noted that the indicator of deaths due to the multi-resistance form has considerably increased in the recent period, compared to the first half of the year. Due to this we consider it important to have the peculiarities and trends of the implementation of the Program "DOTS+" analysed and have more active involvement in its planning of the leading specialists and institutions of the country.

Newly-built penitentiary establishments pay little considerations to the importance of due provision of lighting and aeration systems that are one of the crucial components to prevent spread of tuberculosis. TB infection often accompanies infection with virus hepatitis and Acquired Immune Deficiency Syndrome (AIDS) drastically aggravating the infected prisoner's health and ending, practically in an overwhelming majority of cases, with a lethal result. The monitoring carried out in the penitentiary establishments of Georgia revealed a trend of the transfer of TB patients in extremely bad condition to the National Center of TB and Lung Diseases where the patients die shortly. TB diseased sentenced prisoners and remand prisoners or those with regard whom there is a suspicion that they may be TB infected, shall be placed in isolated wards in the medical unit of prisons, as provided by the international standards. Despite this, the mentioned standard is not observed in all the penitentiary establishments of Georgia. The monitoring has revealed that such isolated TB wards are only in medical units of 8 establishments. The monitoring and study undertaken by the Special Preventive Group has made it clear that a total of 1579 persons diseased with tuberculosis were detected by means of screening and further tests conducted in the establishments of the Georgian penitentiary system. Of these, 1172 persons were involved in the DOTS programme. 60 persons were diagnosed with multi-resistant form of tuberculosis out of which 59 persons were involved in the DOTS+ programme. The DOTS+ programme is run in the Medical Establishment for Tubercular Convicts (52 patients involved), Medical Establishment for Convicted and Indicted Persons (6 patients involved) and the medical Establishment for women and juveniles, where 1 patient was involved.

There were facts revealed in 2010, when the program "DOTS+" was conducted in the Establishment No. 8 in Tbilisi.

To improve the established critical condition we consider it important to plan and undertake the efficient and joint measures in close cooperation with the specialists of the filed. In addition to this, according to Article 35(4) of the Law of Georgia on Public Health, it is the direct responsibility of the Ministry of Corrections and Legal Assistance of Georgia to undertake the preventive health measures in the establishments of the correctional system.

To this end, first of all, the practice of frequently transferring the TB diseased convicted persons from the Medical Establishment for Tubercular Convicts No. 19 in Ksani to other penitentiary establishments before the completion of the treatment course shall be mentioned. Apart from the declining the level of efficiency, the mentioned leads to a variety of problems and complications, that may be: dissatisfaction from the side of convicted persons and as a protest refusing the anti-TB medications; the announcement of a hunger-strike in the closed type establishments by sentenced prisoners transferred to closed type establishments is absolutely not desired during the treatment process. The infliction of self-injuries by sentenced prisoners, is, certainly, predetermined by the unstable mental condition of the latter, the aggravation of which is promoted by anti-TB medications. All the above mentioned aggravates the risk factors for the emerging disagreement and the establishment of tense relations between the convicted prisoners, the administration and the medical personnel of penitentiary establishment. Such an artificial way of the interruption of the treatment even for the short time period directly determines the formation of heavy forms of TB that is considerably reflected at the indicator of the sickness and death of prisoners. Apart from this, in other establishments, especially in closed and overcrowded establishments, the successful treatment and management of patients is practically impossible. In this regard, according to the Article 21 of the Organic Law of Georgia on Public Defender of Georgia, the Public Defender applied to the Ministry of Corrections and Legal Assistance with a recommendation[73] to undertake the measures for the eradication of the above mentioned practice, in order to stop the transfers of TB diseased sentenced prisoners from the Medical Establishment for Tubercular Convicts to different penitentiary establishments before the undergoing of the entire treatment course. The recommendation also noted that the TB-diseased prisoners shall be provided with the medications required for the protection from the side-effects of the treatment undertaken and the timely and rigorous supervision by a psychiatrist, as well as diet nutrition and all the required food staff.

[73] Letter N4105/03–1/1788–1, dated 29 November, 2010

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

- **To ensure the implementation of measures to improve the irregularities and gaps indicated in the recommendation issued by the Public Defender of Georgia on 29 November, 2010.**
- **To take into consideration the specific norms and conditions in the process of constructing the infrastructure for TB diseased prisoners, the protection of which is necessary to efficiently fight against the mentioned disease (aeration, insulation, isolation of wards, etc.);**
- **To ensure the in-patient treatment conditions and the environment of the adequate treatment of TB-diseased remand prisoners;**
- **To ensure, in case of emergence any suspicion with regard to TB, the timely and adequate examination of a prisoner and in case of diagnosing the disease - the immediate transfer to the specialized medical institution and adequate treatment.**

VIRAL HEPATITIS

The problem of viral hepatitis remains one of the most acute issues within the establishments of the penitentiary system of Georgia. Quite a considerable part of inmates deceased in 2010 were infected with viral hepatitis some aggravated form of it. 15% of the deceased had liver cirrhoses and related exacerbations, including bleeding from the upper parts of gastrointestinal tract that in some instances had become a direct reason of death of inmates. As regards the statistical data for 2010, 47.4% of prisoners who died in the first half of 2010 were diagnosed with viral hepatitis; some of them developed exacerbations dangerous for life. Monitoring carried out by the National Prevention Mechanism revealed that chief doctors of penitentiary establishments recognized viral hepatitis as one of the most widely spread diseases. Despite this, no accurate registration of or another statistical data on viral hepatitis are maintained in prisons in Georgia. Doctors possess information only on those cases of hepatitis that are proven by lab results. During the monitoring we found that many inmates with the clear clinical signs of liver damage had never been tested on hepatitis. No tests are made in epidemiologically unfavorable cases either. Our monitoring revealed that treatment with Interferon due to hepatitis was prescribed to 14 patients from the entire system and they were undergoing the treatment courses in 4 different establishments. With regard the treatment with Interferon, it shall be mentioned that, apart from the treatment course being expensive, patients require adequate dynamic monitoring in the course of the several-months treatment due to the consideration, at least, that the medication causes explicitly expressed negative impact on the patients' mental condition. We have visited prisoners who had started such treatment courses in the Medical Establishment for Convicted and Indicted Persons but later were transferred to a penitentiary establishment with no minimum medical monitoring conditions or an infection diseases doctor available. The doctors on spot try to justify this saying that an infectious specialist (doctor) periodically visits patients but the periodicity of such visits is not very intensive. We consider that such practice must stop and full treatment courses should be given in appropriate medical environment and conditions in order to avoid high risks endangering patients' life and health. As one of the reasons for such a wide spread of hepatitis in the penitentiary system is the existing epidemiologically unfavorable conditions caused by a serious healthcare crisis that has been deteriorating in the recent years. An example of such unfavorable conditions is the way and conditions in which the medical unites of penitentiary establishments function. The introduction of dental services into the penitentiary establishments has played immense role in terms of not only upgrading the access to dental treatment and services *per se*, but also prevention of spread of parenteral infections, among them hepatitis. The case is that as already mentioned, the dental equipment installed in the penitentiary establishments was accompanied by dry temperature sterilizers to have surgical and dental care instruments and other medical items sterilized. These already provide for an opportunity to sterilize the subjects of medical significance, surgical and dental instruments and other objects.

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

- **To ensure the timely and adequate screening of viral hepatitis in penitentiary establishments;**
- **To undertake the treatment of prisoners diseased with hepatitis under the adequate medical monitoring.**

HIV/AIDS

By the beginning of 2010, 229 cases of HIV infection were registered in the establishments of the Georgian penitentiary system. Of these patients, 35 died (9 of them died in the prison). Out of the 99 infected patients identified in the beginning of 2010, only 60 patients were undergoing anti-retrovirus treatment. Monitoring carried out by the National Preventive Mechanism showed that the penitentiary system has 138 registered HIV-infected persons; 55 persons undergo treatment. It shall also be noted that some of the experts of the L. Samkharauli National Forensics Bureau do still not conduct forensic medical examination of deceased prisoners known to have been HIV-infected.

To the Head of the Legal Entity of Public Law the Levan Samkharauli National Forensics Bureau: To eradicate the discrimination of prisoners with HIV/AIDS based on the disease and to systematically undertake their forensic medical examination.

DEATH RATE IN THE GEORGIAN PENITENTIARY SYSTEM

Population of the penitentiary system of Georgia reaches one of the highest indicators in the world. Per 100,000 of the population of Georgia there are 538 prisoners. This is the highest indicator in the European region, after the Russian Federation. Around the world, among 216 states, Georgia is on the 6th place with the ratio of prisoners.[74] Based on the same source, there were 23,864 prisoners in different establishments of the penitentiary system of Georgia by 31 December, 2010.[75] The recent annual report published by the Council of Europe on 22 March, 2010[76] also provides a clear indication of the trend about the statistics of the penitentiary system of Georgia. The Report contains the results of the 2008 survey. According to the mentioned document, Georgia is also identified from the point of view of density of placing prisoners per 100 places. The living space provided to 1 prisoner in Georgia is the smallest in Europe.

A number of prisoners considerably increase year by year in Georgia. This increases the severity and importance of the problems of penitentiary healthcare with the respective proportion. For the assessment of the efficiency and success of the health care system, as well as for the checking the quality of provided service, the internationally recognized health care indicators are employed. One of the important components in this regard is the death rate indicator and the peculiarities determining the alteration of this indicator in dynamics.

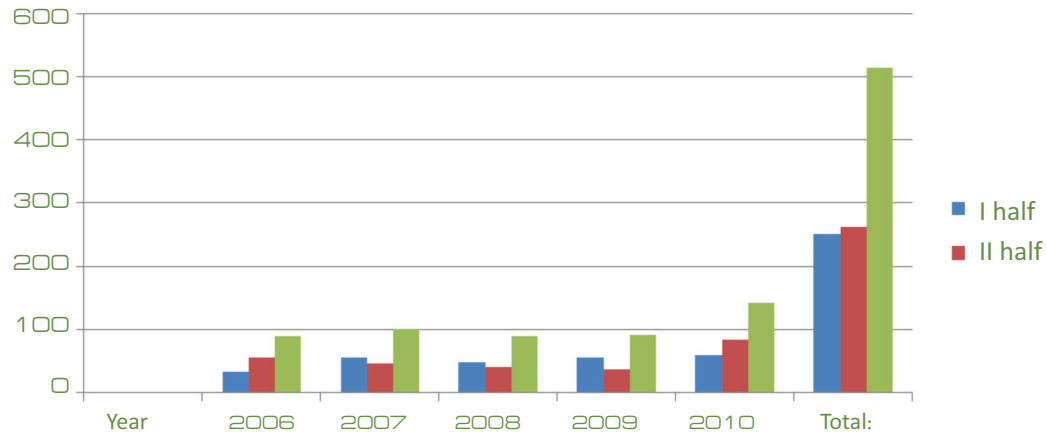
The Office of the Public Defender of Georgia has been actively studying the situation in this regard in the penitentiary system of Georgia for years already. The analysed data at our disposal reveal that during the last five years (2006-2010) there were minimum 513 prisoners deceased in the penitentiary system of Georgia. As a breakdown according to years and months, the mentioned data are as follows:

Year	January	February	March	April	May	June	July	August	September	October	November	December	Total
2006	6	3	10	6	3	5	8	12	14	6	10	6	89
2007	10	12	10	9	7	7	11	6	6	8	8	7	101
2008	5	3	8	5	12	16	9	6	6	6	7	7	90
2009	12	9	7	3	14	10	4	3	5	6	7	11	91
2010	7	12	7	10	13	10	13	15	15	14	12	14	142
Total:	40	39	42	33	49	48	45	42	46	40	44	45	513

2010

[74] World Prison Brief. By the International Center for Prison Studies, School of Law, King's College, London UK.
[75] http://www.kcl.ac.uk/depsta/law/research /icps/worldbrief/wpb_country.php?country=122
[76] Council of Europe, Annual Penal Statistics. Survey 2008. Strasbourg, 22 March 2010 pc–cp\space\documents\pc-cp (2010)07-e

The mentioned data, broken down by the first and the second half of the year, is provided below:



As provided in the graphics, if there was a more or less stable death rate (though still high) in 2006-2009, the indicator reach a peak in 2010 and increased with 56% as compared to 2009. If we compare the previous years, a number of deceased is more in total during the first and the second halves of a year, as well as almost in all months. During 2010 the maximum death rate was identified in the period of August-September, that compared to the data from previous years is not ordinary. The mentioned trend requires profound study.

OBSTACLES

The National Preventive Group of the Public Defender of Georgia studied the spectrum of the death of prisoners in the penitentiary system and the peculiarities related to it by undertaking a number of planned and *ad hoc* monitoring visits. The correspondence received from the Ministry of Corrections and Legal Assistance of Georgia was also employed as a source of information. The final conclusions are made following the study of the conclusions made by the Legal Entity of Public Law the Levan Samkharauli Medical Forensics National Bureaus after the conducting the medical forensic expertise of deceased.

In the above mentioned process, as in the previous years, the Special Preventive Group encountered certain obstacles. First of all, the mentioned obstacles were created by protracting the reply to the requested information. Apart from this, the Ministry of Corrections and Legal Assistance of Georgia was not providing the fully-fledged answers to the requests sent to the Ministry by the Special Preventive Mechanism Group. The Ministry has not provided the full list of the deceased prisoners. For example, in reply to the request to provide the list of prisoners who died in the second half of 2010, the incomplete reply letter was received by the Office of the Public Defender of Georgia on 31 January, 2011, indicating that there were 45 prisoners died in the second half of the year. According to the reply letter received from the Medical Establishment for Convicted and Indicted Persons on 2 February, 2011 only that in the mentioned establishment (among others, the transferred patients, who passed away) there were 45 facts of deaths recorded. The mentioned data was considerably contradicting the information collected in each of the penitentiary establishments. At the end, as a result of combining all the information at our disposal there were 83 cases of deaths of prisoners in the second half of 2010.

As usual, in reply to the letter sent to the Penitentiary Department, with which we were requesting the information about the deceased prisoners, the prisoners who passed away during the treatment in civilian in-patient treatment institutions, were not included in the lists. This indicates the fact that as in the previous years, there is an evident attempt of artificially decreasing the number of deceased.

There was again no efficient support provided by the Samkharauli National Medical Forensics Bureau in this regard. The Public Defender of Georgia applied to the Bureau several times, requesting the approved copies of conclusions of forensic medical examination of deceased patients. The letter was accompanied by the list of deceased prisoners, composed by us at the mentioned stage. The Bureau was requested to double-check and correct the mentioned list taking into consideration the information at their disposal. Despite this, the Bureau was only providing us with the conclusions on the cases of prisoners whose names have been provided by us in the working version of the list. Deriving from the dynamics of the working process, upon identifying each new deceased prisoner, we had to again apply to the Forensics Bureau with a request to submit the information. This was altogether hampering the process of studying the information.

GENERAL TRENDS AND INDICATORS

The number of deceased prisoners, as established by the National Preventive Mechanism, was 142 in 2010. This number was absolutely proved by the protocols of the examination of deceased prisoners received from the National Medical Forensics Bureau. It shall also be mentioned here that this number does also include 3 deceased prisoners, out of which the forensic medical examination of 1, as stated by the Bureau, is still ongoing, as for the 2 other cases, the Bureau does not possess any information on them.[77] Despite this the fact of deaths of these two prisoners is proved on spot in penitentiary establishments, with the documentation in the medical unit and the records.

The Ministry was providing inaccurate information about deaths not only to the Public Defender, but also to international organizations as well. The clear example of this is again the last annual report published by the Council of Europe on 22 March, 2010.[78] According to the document, 98 prisoners died in the establishments of the penitentiary system of Georgia in 2007. This is against the background, when the number of death of prisoners, as proved by the Public Defender in the same year was 101. Along with that, the number of suicides in that year is also not correct, which according to the source, were 6 only. Despite this, the same source indicates that Georgia is still one of the top countries with the indicator of death within penitentiary system in Europe. The death rate of prisoners in Europe per 10,000 prisoners is 33.2, whereas this indicator, according to the last report by the Council of Europe is 53.3 in Georgia.

There were 3 women and 139 men prisoners within 143 deceased prisoners in 2010. It shall be noted that 2010 was particular due to the cases of deaths of women prisoners as well as compared with the previous years. The 42% of deaths in 2010 took place in the first half of the year, and the 58% died in the second half of the year. All the three deceased women died in the second half of the year.

We studied and analysed the age spectrum of deceased persons within the penitentiary system. The average age of the deceased persons constituted 44±4. This, in principle, does not differ from the average age of deseased prisoners in 2009 (45±4). According to the information at our disposal, it may be said that the age scope of the prisoners deseased in the recent years varies within at the same level. As for the age groups of those deseased in 2010, this informaiton is provided in the table below:

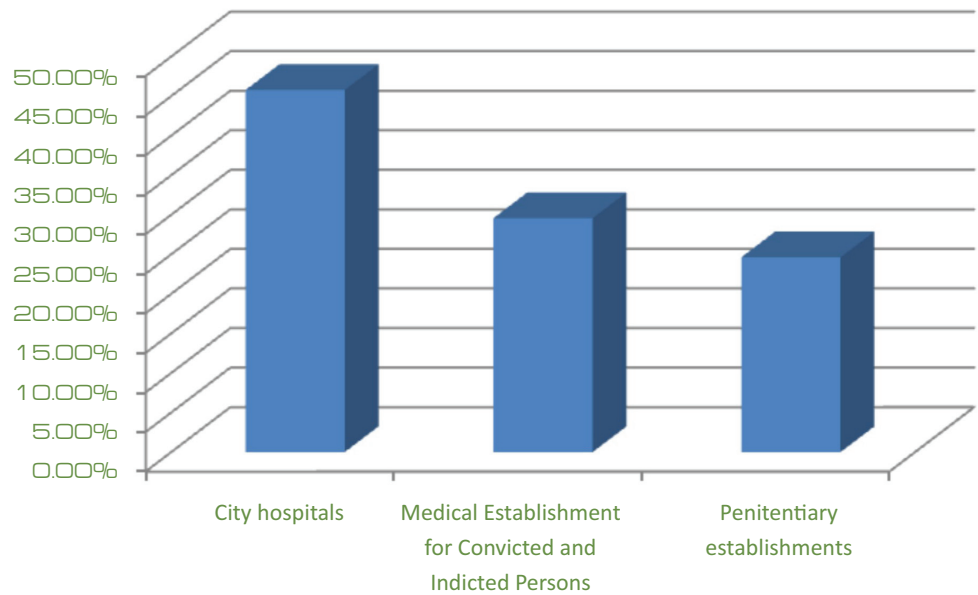
≤ 20	1	0.73 %
21 - 30	15	10.56 %
31 - 40	39	27.46 %
41 - 50	45	31.69 %
51 - 60	23	16.19 %
61 - 70	14	9.85 %
70 ≥	5	3.52.%

[77] Letter N5-004369-2011, dated 14.03.2011

[78] Council of Europe, Annual Penal Statistics. Survey 2008. Strasbourg, 22 March 2010 pc-cp\space\documents\pc-cp (2010)07-e

As evidenced from the tables above, the cases of deaths are maximal (around 32%) in the 41-50 age group. The next age group is 31-40 years (27.5%). Taking into consideration the spectrum of the reasons of death we can conclude that in 2010 young men died in the penitentiary system of Georgia mainly as a result of specific diseases. The same diseases do not cause such a high degree of death in the civilian sector institutions. It is possible to once again conclude here that the penitentiary health care is not equivalent to the health care system of Georgia that severely violates the right of prisoners to health.

As for the places of prisoners' death, there were interesting trends in this regard as well revealed in 2010. In particular, 45.78% of death cases is identified in different civilian city hospital; 29.58% of the dead prisoners passed away in the Medical Establishment for Convicted and Indicted Persons, and 24.64% died in other penitentiary establishments. The mentioned ratio is provided below in graphic:



If in 2009 almost half of cases of death were identified in the Medical Establishment for Convicted and Indicted Persons (49%), according to the 2010 data, the mentioned indicator is almost half. Against the background when in other penitentiary establishments (apart from the Medical Establishment for Convicted and Indicted Persons) percentage indicating the number of death varies within more or less the same range (22-24%), it turns out that the transfer of prisoners in terminal health condition to a variety of city hospitals has practically doubled during a year. The purpose of the transfer of prisoners is in this case to have the death recorded outside the penitentiary system. Therefore, during the last years, we see some phenomenon, which may be named as "**export of death**". The basis of using the mentioned term is again the analysis of the medical documentation and the conclusions of the medical forensics examinations. This clearly indicates that patients in terminal health conditions would have died anyway, wherever they would have been transferred. As for the medical measures, especially their transfer to city clinics, they would have been efficient only at an earlier stage of the development of the disease. This, unfortunately, is limited and often not accessible in the reality of the penitentiary system of Georgia.

The analysis undertaken by us has revealed that a considerable part of deceased prisoners were diagnosed with heavy or incurable diseases. These are: malignant tumour of lung, large intestine, genital glands, adrenal gland, liver, brain, stomach, prostatic gland, as well as severe form of leukemia, soft tissue and the others. Apart from this, a part of the patients were diagnosed with the most severe forms of tuberculosis, multi-resistance, the aggravated cirrhosis and so forth. The issue of postponing the serving the sentence by these prisoners or their early release has not been considered. The conditions and the measures used for treating and taking care of patients, for whom long term imprisonment is inappropriate, shall be mentioned separately. Each such case identified by us shall be assessed as inhuman treatment of a human being. Unfortunately, this issue has been neglected for years. This further complicates the anyway alarming situation.

During the year we recorded one fact when a patient Nadim Tsetskhladze died with an aggravated and heavy form of tuberculosis. Several days before his death, the patient was transferred to the National Center of Tuberculosis and Lung Diseases and the application to postpone the serving of the sentence was granted by the court 2 days before the death. Respectively, deceased Nadim Tsetskhladze was not included in the list of deceased, as by the time of his death he was no longer a prisoner. Despite this it is the fact, that there were harsh mistakes made at different stages of diagnosing and treating the patient, as well as management of the disease, that at the end resulted in the death of the patient.

The share of prisoners who had passed away transferred to different city medical institutions, constituted almost 46% in 2010. National Center of Tuberculosis and Lung Diseases is at the top of the list in this regards, where 43% of the prisoners, deceased in city hospitals, have passed away. The next on the list is the Gudushauri National Medical Center, where the same indicator is 33.8%. From the second half of 2010 there is the third (new) establishment emerging, where the prisoners with the terminal health conditions are transferred - this is the Tbilisi Referral Hospital. The death rate in the latter institution is 12.35%. As in the previous years, during the last year as well a certain part of prisoners died in the Center of Infectious Pathologies, AIDS and Clinical Immunology (6.15%). As for the other hospitals, 1.5% is recorded in other hospitals. These are the National Center of Oncology, the Scientific Research Center of Hematology and Transfusiology and the Batumi Republican Hospital. The data presented above for the sake of clarity is provided in the table:

National Center of Tuberculosis and Lung Diseases	43.07 %
Gudushauri National Medical Center	33.84 %
Tbilisi Referral Hospital	12.35 %
Center of Infectious Pathologies, AIDS and Clinical Immunology	6.15 %
Batumi Republican Hospital	1.53 %
Scientific Research Center of Oncology	1.53 %
Scientific Research Center of Hematology	1.53 %

For the sake of comparison it shall be mentioned that in 2009, 50% of deceased prisoners were in the Gudushauri National Medical Center, 23% - in National Center of Tuberculosis and Lung Diseases, and 11.53% - in Center of Infectious Pathologies, AIDS and Clinical Immunology.

As it was already mentioned, around ¼ of prisoners died in different establishments of the penitentiary system, i.e. in basic places where they served sentence (apart from the Medical Establishment for Convicted and Indicted Persons). The mentioned statistics, with the indication of the establishments, is provided in details in the table below:

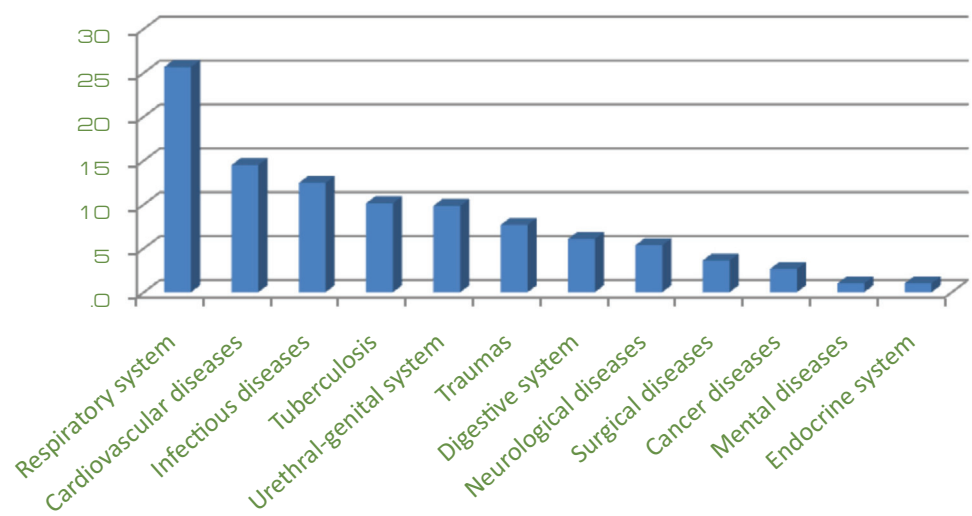
№	Penitentiary Establishment	Absolute number	%
1	Establishment №14 (Geguti)	6	17.14
2	Establishment №15 (Ksani)	5	14.28
3	Establishment № 16 (Rustavi)	4	11.42
4	Establishment №19 (Ksani) Tuberculosis.	4	11.42
5	Establishment №12 (Tbilisi)	4	11.42
6	Establishment №17 (Rustavi)	3	8.57
7	Establishment №8 (Tbilisi)	2	5.75
8	Establishment №4 (Zugdidi)	2	5.75
9	Establishment №6 (Rustavi)	1	2.85
10	Establishment №2 (Kutaisi)	1	2.85
11	Establishment №1 (Tbilisi)	1	2.85
12	Establishment №5 (Rustavi) for Women	1	2.85
13	Establishment №10 (Tbilisi)	1	2.85

As it is evidenced from the table above, the cases of deaths were maximal in the Establishment No. 14 in Geguti and Establishment No. 15 in settlement-Ksani. The mentioned trend was identified in 2010, as during the last year there was no single prisoner deceased in the Establishment No. 14, whereas in the Establishment No. 15 only 1 prisoner died.

During the reporting period of 2010, the materials of the monitoring undertaken by the National Preventive Mechanism of the Public Defender in all the penitentiary establishments, as well as the results of studying different documents were analysed for the studying the reasons of prisoners' deaths. The information on the deceased prisoners and the reasons of death were requested from the Penitentiary Department of the Ministry of Corrections and Legal Assistance as well. The conclusions of the forensic medical examination of deceased prisoners were requested from the Legal Entity of Public Law the Levan Samkharauli National Bureau of Forensic Medical Examination.

Some of the copies of the medical files of the deceased prisoners were received from the Medical Establishment for Convicted and Indicted Persons, as well as from the civilian medical institutions. A part of the medical documentation was transferred also to the Agency for State Regulation of Medical Activity under the Ministry of Labour, Health and Social Protection of Georgia. The conclusions provided by the Agency are to a degree reflected in the analysis. The existing materials were summarized and analysed. To analyze the reasons of the deaths of prisoners, we used forensic medical diagnoses; also, in some cases we made a research on the basis of diagnosis contained in the medical files of the prisoners produced by the hospitals. We unified the reasons of death and the diagnosis of the forensic medical examination in certain classes of diseases, which are Diseases of deceased patients are grouped and presented below[79]:

№	Class of diseases	%
1	Respiratory system	25.65
2	Cardiovascular diseases	14.49
3	Infectious diseases	12.46
4	Tuberculosis	10.14
5	Urethral-genital system	9.85
6	Traumas	7.68
7	Digestive system	6.08
8	Neurological diseases	5.36
9	Surgical diseases	3.62
10	Cancer diseases	2.65
11	Mental diseases	1.01
12	Endocrine system	1.01



[79] The mentioned table does not reflect directly the reasons of death; it only lists the diseases that the deceased prisoners suffered. The data reflecting the reasons of death is provided below.

As clearly indicated in the diagram and table above over ¼ of the deceased prisoners suffered some form of pathology of respiratory system. This class of diseases does not include tuberculosis of respiratory system, as it is separately identified. It shall be mentioned that the share of the diseases of respiratory system of deceased prisoners is practically the same as it was in 2009 (25.63%). Therefore, the problem in this regard has not been changed and it is still acute. The spread of tuberculosis in comparison with the previous year decreased with 1% and moved from the second place to the third place. In parallel the spread of cardiovascular diseases increased. If this disease was at the 5th place with 9.13%, by 2010 the spread of the cardiovascular disease was at a rate of 14.5%, at the second place. As for the spread of infectious diseases, which practically unifies virus hepatitis and HIV/AIDS, no trend of considerable change is noticed therein. This disease again is at the third place however it has increased with around 2-3%. As per the frequency, the pathology of Urethral-genital system is at the 5th place and shows a trend of slight increase, as compared with the previous year. The traumatology has also moved with two positions up as well, that includes the facts of bodily injuries and facts of forceful deaths. The pathology of digestive system, without taking into consideration the virus diseases of a liver, shows the trend of decrease in 2010, as compared with the previous year. At the same time, the role of surgical diseases in the death rate is slightly decreased; however it shall be noted herewith that the share of the neurological pathologies has increased, as it has become the trend for the last years. No changes were noticed from the frequency of spreading with regard to oncological diseases, psychiatric nosologies and endocrine pathologies. These three groups of diseases, alike the previous year, are at the last three places.

At the following stage we studied in depth each of the nosological groups and identified the specific diseases, which played the respective roles in deaths.

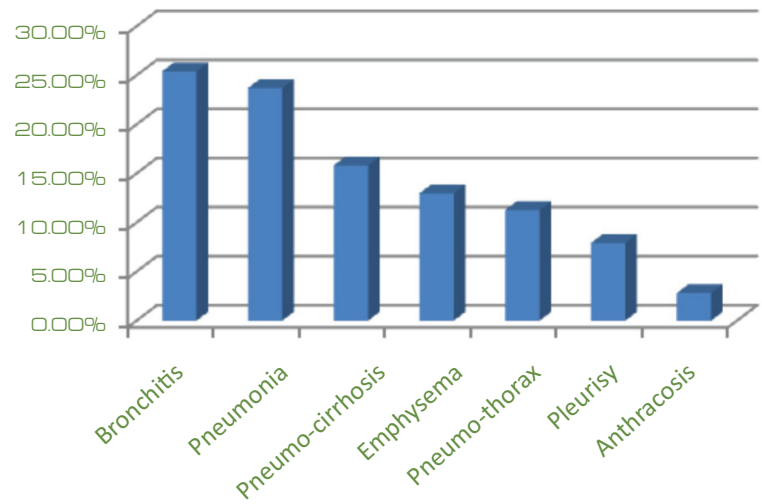
DISEASES OF RESPIRATORY SYSTEMS

Bronchitis (exudative, purulent) were recorded most of all, as this was on top of the other crimes in that group, out of the diseases of respiratory system, which became the reason of prisoners' death. Pneumonia is the second most frequent, which we have divided into two categories. 74 patients out of 142 deceased patients, i.e. 52% of prisoners had pneumonia. There were 32 cases of caseous pneumonia, which was not included in this group and will be considered together with tuberculosis and 42 cases of proved bacterial pneumonia, with suppurative focus. It shall be noticed that according the conclusions of the medical forensic examination of the deceased prisoners, which also partially considers the medical file of patient, prison doctors in many cases may not identify pneumonia and such patients are left without treatment. Pneumonia in some cases represents the aggravation of the conditions of a prisoner in terminal health conditions in the reanimation unit. The pneumonia is often of dual character, particularly aggravating the conditions of a patient and causes respiratory insufficiency. Development of pneumonia if frequent also in cases of patients confined to bed, undergoing the inpatient treatment course due to another reason. In such cases the intoxication caused with pneumonia often becomes the immediate factor causing death.

Pneumo-cirrhosis was morphologically proved in 28 cases; in 23 cases lung emphysema was confirmed; there were pneumo/hemo/hydro-thorax cases identified 20 times by the conclusion of forensic medical expertise. There were 14 cases of Plevritis of non-tubercular genesis recorded. Often the Plevritis accompanies pneumonia and presumably, represents its aggravated form resulting from non-adequate diagnostics and treatment of pneumonia. Plevritis is often exudative pleurisy (purulent-fibrinal) that gravely aggravates the conditions of a patient. Anthracosis was morphologically confirmed by medical forensic examination in 5 cases. The mentioned disease, as a rule, is a professional one, and it develops from the collection of production dust (in this case including carbon) in lungs. The cases of this disease were revealed in the previous years as well. At the end, this issue needs further in-depth study and analysis.

The share of the above mentioned diseases among the respiratory diseases is provided in the table and diagram:

Bronchitis	25.42 %
Pneumonia	23.72 %
Pneumo-cirrhosis	15.83 %
Emphysema	12.99 %
Pneumo-thorax	11.29 %
Pleurisy	7.93 %
Anthracosis	2.82 %



Patient T.D. (female) (Code No. 62) passed away in the Tbilisi Referral Hospital. According to the forensic medical examination conclusion, the death was a result of respiratory insufficiency developed against the background of pneumonia (crupous-exudative bronchitis).

It shall be noted that as in the previous years, unfortunately, the frequent facts of deaths of patients in the establishments of the penitentiary system due to banal form of pneumonia are still noticed. This, at the current stage of the development of medicine is a shame!

CARDIOVASCULAR SYSTEM DISEASES

As it was mentioned, the trend of increase is noted with regard to cardiovascular system diseases, as compared with the previous year. Ischemia was revealed in 54.2% cases out of 142 deceased prisoners. Among those, the morphological prove of myocardial infarction was there in 31 cases; this is noticeably high marker. It shall be mentioned that compared with the previous years, the trend of making the myocardial infarction "younger" is noticed, i.e. this disease more and more moves to younger age groups.

The patient K.Tch. 37 years old (Code II No. 37) died in the Establishment No. 15 in Ksani. The conclusion of the medical forensic examination notes that the patient had ischemia, cardio sclerosis, coronaro sclerosis, and aneurism of the front wall of the left ventricle, infarction of a muscle of heart, pneumonia, exudative bronchitis, bruises in the lower outer left corner of eye-socket and left eyelid. As a result of death the myocardial infarction is directly noted.

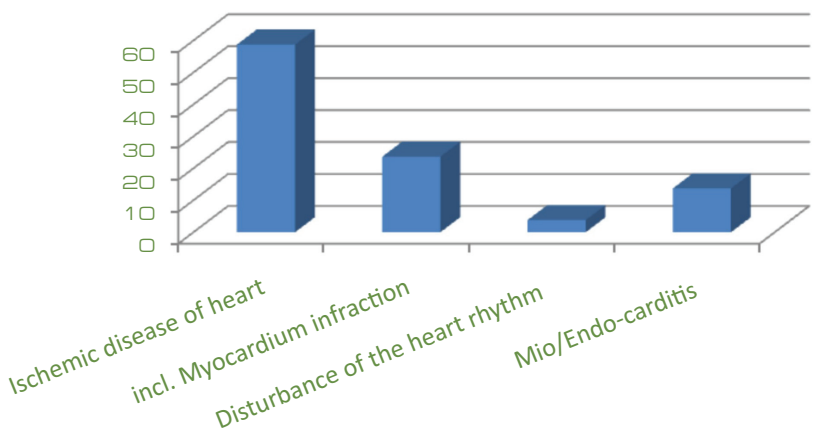
The patient B.V. (Code II No. 39) died from peritonitis in the Medical Establishment for Convicted and Indicted Persons. Despite this the conclusion of the examination clearly indicates that the patient had myocardial infarction in the stage of organization that was not indicated in the medical files. This means that the diagnosis of the mentioned pathology could not have been made.

The patient G.N. (Code II No. 45) died in three days after being placed in the Medical Establishment for Convicted and Indicted Persons. The conclusion of the examination notes, that myocardial infarction in the stage of organization is confirmed morphologically, with the thick and thin post-infraction cicatrices. This indicates that this was not the first process that the patient had to face. The severe infraction of myocardium as a result of the aggravation of the chronical ischemial disease was recorded as a result of death.

The patient T.M. (Code II No. 47) died in the Establishment No. 6 in Rustavi. The medical file shows that the patient was undergoing ambulatory treatment. The examination report shows that myocardial infarction in the stage of organization is confirmed. This indicates the already undergone process that, presumably, could not have been revealed in time. As a result of death the examination indicated myocardial infarction, developed against the background of ischemic disease.

The disruption of the heart rhythm was recorded in 5 cases of radiological diseases, whereas in 18 cases the inflammatory and other injuries of myocardium are verified morphologically. The conditions caused by the injuring the endocardium are also included therein. The spectrum of cardiological diseases in provided in the table and diagram:

Ischemic disease of heart	58.77
incl. Myocardium infraction	23.66
Disturbance of the heart rhythm	3.83
Mio/Endo-carditis	13.74



The monitoring undertaken by us revealed that qualified cardeological assistance is not accessible in establishments of penitentiary system. No screening of patients, identification of risk groups, and even in cases of confirmed diagnosis the adequate treatment of patients take place. Patients often self-prescribe medications or continue taking the medications prescribed by a cardiologist before being placed in a penitentiary establishment. The dosage and in general the appropriateness of receiving medication is practically not re-considered. On the other hand, the local medical units could not provide patients with the qualified assistance. Almost none of the medical units (with several exceptions) have even a cardiograph. We do not even deem appropriate to mention the non-existence of the possibility of confirming the myocardium ischemia by contemporary laboratory (with ferment) means. The constant stress and the existing substratum injuries develop diseases of this type, that with a high probability are lethal for a human being.

2010

INFECTIOUS DISEASES

The problem of infectious diseases, in particular, the problem of spread of viral hepatitis is not new in the penitentiary system. Despite this, there have been no efficient and effective ways of solution of the problem identified. The Strategy approved by the Joint Decree of the Minister of Corrections and Legal Assistance and the Minister of Labour, Health and Social Protection was not followed-up by the effective steps. There has been no Action Plan elaborated, due to this the above-mentioned Strategy remained to be only a document of declarative nature.

Exactly due to the non-existence of the efficient measures of the solution of the problem, in the conditions of not efficient prevention, diagnostic and treatment the problem of viral hepatitis deteriorated. This had a strongly negative effect as in general on the medical aspects of the system, as well as on the solution. It is exactly due to this that the deaths following the viral hepatitis and the conditions developed by them increase in a stable manner from the year to another. Out of 142 patients deceased in 2010, there were 76, i.e. over the half of the deceased prisoners, infected with viral hepatitis. In some cases the immediate cause of death was the damage of a liver, and in some cases the damage of this organ has resulted into the potential progressing of some dangerous diseases, that again had a lethal outcome.

The aggravated form of the liver cirrhoses was recorded in case of around 15% of deceased prisoners. As for the existence of ascites, this condition was recorded in cases of 24% of deceased prisoners. This is a fairly high indicator. Out of the virus hepatitis, according to the medical files of the deceased, the absolute majority had HCV-virus, and in some cases there were also indicated HBV. It shall be noted that the viral hepatitis, as a result of tubercular infection, is one of the acute problems for each of the establishments.

No screening of hepatitis is undertaken on spot and to undertake the examination (diagnostics) the patients have to ravage immense attempts. The results of examination are also delayed. The initiation of the treatment is also related to enormous difficulties. Etiotropic treatment is undertaken with regard to a very few patients. At best, the patients are prescribed the medications for protection of liver. The conditions are also aggravated with the fact that there is no adequate diet nutrition in the establishments that have big importance for treatment and finding solutions.

HIV/AIDS

During 2010 there were 8 cases of death of prisoners with HIV infection in the establishments of the penitentiary system of Georgia. As it was already voiced in the previous reports of the Public Defender, the forensic medical examination of deceased prisoners infected with HIV/AIDS had not been undertaken. This had been assessed by the Public Defender of Georgia as a discrimination of HIV/AIDS infected persons and the recommendation was issued to solve this problem.

In 2010 there was forensic medical expertise was not undertaken only in one case (code No.I-20) out of 8 cases of death of prisoners infected with HIV. The report of the forensic medical examination notes that "*autopsy has not been performed on corps of persons infected with HIV/AIDS due to non-existence of safety conditions*". Apart from this, the same record itself is not logical, as the mentioned action is the continuation of the mal-practice trend that has already been mentioned and which shall be rectified by all means. The other 7 bodies were examined according to the rules of forensic medical expertise. Respectively, the experts had not expressed any claims. It is probable that in some cases the experts do not possess the information about the HIV status of a body. In any case the issue is a differentiated approach to this problem that requires immediate involvement of the leadership of the National Forensic Medical Examination Bureau and the active actions.

CO-EXISTENCE OF DISEASES

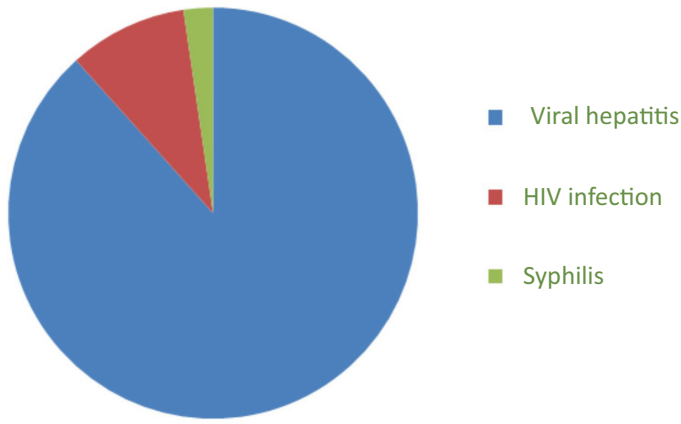
The studies undertaken in Georgia and variety of countries around the world last year show that HIV infection, tuberculosis and viral hepatitis often co-exist, often aggravating conditions of a patient and resulting in death.[80]

[80] [1) V. Burek, J. Horvat, K. Butorac et all - Viral hepatitis B, C and HIV infection in Croatian prisons - Epidemiology and Infection - (2010), 138: 1610-1620;

We studied the cases of co-existence of these three severe diseases in cases of deceased prisoners who passed away in 2010. It turned out that the co-existence of virus hepatitis and tuberculosis was the case in 28% of deaths. As for the all the three infections (hepatitis, tuberculosis, HIV), they were identified in 5 cases (3.52%). The remaining 3 persons infected with HIV had no confirmed hepatitis; however all of them had lung tuberculosis. It shall be mentioned that the health care system of Georgia has a guideline on the management of tuberculosis, HIV and virus hepatitis, which is not known to the penitentiary system (http://www.moh.gov.ge/index.php?lang_id=GEO&sec_id= 68&info_id=104).

It shall be mentioned in addition that 2 deceased prisoners also had syphilis in blood as proved in lab. At the end, the spread of infectious pathologies in provided on the table and diagram below:

Viral hepatitis	88.34 %
HIV infection	9.34 %
Syphilis	2.32 %



TUBERCULOSIS

The spread of tuberculosis is at the 4th place within the deceased prisoners, whereas the mentioned disease was number one in the list of cause of deaths. It shall be noted that some aggravated form of lung tuberculosis was identified in 49.3% of deceased prisoners, i.e. this is practically every second deceased person. As a rule, these cases are the primary pesthole of tuberculosis. It shall be noted that during 2009 the same ratio was established, which means that the spread of tuberculosis and the deaths caused by it has not decreased and the tubercular infection practically remains the reason No. 1 for the death of prisoners. The mentioned trend often causes concerns including at the international plane.[81]

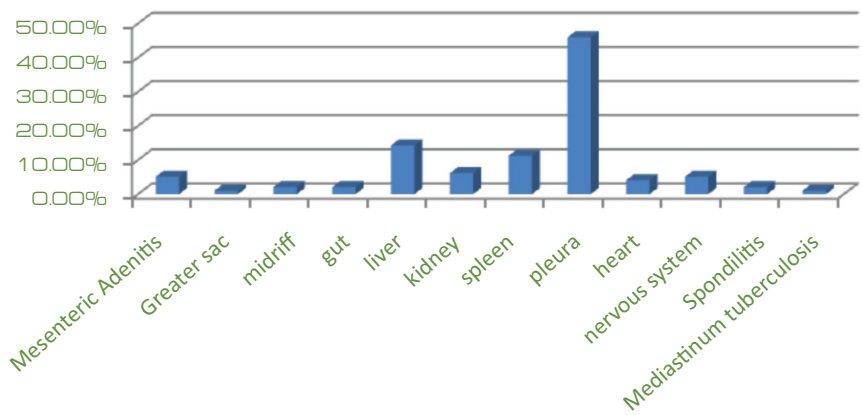
The expert conclusions also refer to multi-resistant forms of tuberculosis. The mentioned information is taken from the medical files of the deceased patients. The information is confirmed in around 19% of cases of patients with lung tuberculosis. As it was mentioned already, caseous pneumonia was morphologically confirmed with regard to 32%. Apart from this, unfortunately, similar to the previous years, the cases of tuberculosis outside lung are still quite

2) S. Todts, F. Van Mol et all - Tuberculosis, HIV, hepatitis B and risk behaviour in a Belgian prison. Archives of Public Health, 1997, vol. 55, n°3-4, pp. 87-97 (28 ref.);
3) F.A. Drobniewski, C. Graham - Tuberculosis, HIV seroprevalence and intravenous drug abuse in prisoners. Eur Respir J 2005; 26: 298–304;
4) Michael Puisis – Clinical Practice in Correctional Medicine. MOSBY 2006;
5) Kazib et all - Risk factors and prevalence of tuberculosis, human immunodeficiency virus, syphilis, hepatitis B virus, and hepatitis C virus among prisoners in Pakistan. Formularbeginn Formularende International Journal of Infectious Diseases. Vol 14, Supplement 3. September 2010]

81 Guidance on ethics of tuberculosis prevention, care and control. ISBN 978 92 4 150053 1 WHO Library Cataloguing-in-Publication Data 2010.

frequent. Out of the mentioned the following were identified in 2010: tuberculosis of liver, gut, kidney, spleen, pleura, heart, midriff, greater sac, Mediastinum tuberculosis, as well as tuberculous meso-adenitis and the forms of neuro-tuberculosis. The spectrum of tuberculosis outside lung and their percentage is provided in the table and diagram:

Mesenteric adenitis	5.11%
Greater sac	1.02 %
Midriff	2.04 %
Gut	2.04 %
Liver	14.28 %
Kidney	6.12 %
Spleen	11.22 %
Plevra	45.92 %
Heart	4.08 %
nervous system	5.11 %
Spondilitis	2.04 %
Mediastinum	1.02 %



Such a variety of extra pulmonary (out of lung) tuberculosis and a high share shall again be considered as a direct result of the inadequate management of tubercular virus.[82] The precedents of frequent termination of treatment course shall be particularly singled out in this regard, as well as the non-existence of the places in the Medical Establishment for Tubercular Convicts, on its turn meaning the starting the course of treatment late or undertaking the course in other inappropriate conditions. The inadequate ventilation, sun insulation, nutrition, lack of fresh air and the detainment of tens of prisoners in big cells causes the difficulties with regard to the prevention and management of tubercular infection. It is to be noted as well that the types of medical service delivered to sentenced prisoners in the Medical Establishment for Tubercular Convicts in Ksani is accessible to convicts only. These types of service are practically not accessible to remand prisoners. In addition to this the facts of forcible interruption of treatment due to the motives of regime and discipline and the transfer of a prisoner to another establishment also exist. In this case infection becomes dangerous not for diseased only, but also for those persons in whose environment the infected person happens to be. Taking all the mentioned into consideration the strategy and principles of the management of infection within the penitentiary system of Georgia requires serious re-consideration and corrections.[83]

During 2010, just like during the previous year, several patients died of tuberculosis of nervous system. The mentioned represents the most severe form of tuberculosis and it is hard to say that the patient would have survived if properly

[82] WHO Regional Office for Europe (2007). Status paper on prisons and tuberculosis. Copenhagen, WHO Regional Office for Europe www.euro.who.int/document/e89906.pdf

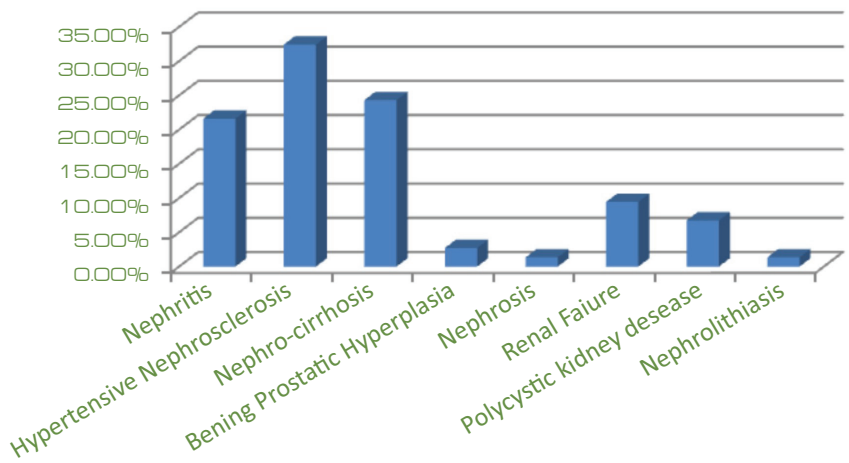
[83] How health systems can address inequities in priority public health conditions: the example of tuberculosis. Copenhagen, WHO Regional Office for Europe, 2010.

treated. However it is the fact that there is the aggravated infection, which had been managed improperly. The prevention of this could certainly have happened. Tubercular infection, particularly its extra pulmonary (out of lung) forms in some cases could not have been identified. The diagnosis was only made known as a result of the conclusion of forensic medical examination, after the decease of a patient.

URETHRAL-GENITAL SYSTEM DISEASES

There was quite a high share of diseases of urethral-genital system, mainly of kidneys in the death during 2010. The mentioned diseases were noticed in approximately 10% of the deaths. This part does not include the cases of tubercular damages of kidney, which is considered above as one of the composing parts of the extra pulmonary form of tuberculosis, together with the statistics of tuberculosis. The cases of hypertensive nephrosclerosis are confirmed morphologically most often. They are noted in 32.43% cases of patients with pathologies of kidneys. The next from the point of view of frequency is nephro-cirrhosis, identified in 24.32% of cases. There are different forms of nephritis confirmed morphologically in 21.62% of cases. Insufficiency of kidney is identified in the diagnosis of forensic medical examinations in 9.45% of cases of the patients having diseases of this group. It shall be noted that insufficiency of kidney was the direct cause of death of 2 patients and it, together with the multiple organ dysfunction, caused 4 deaths. Polycystic kidney desease was confirmed in 6.75% of cases. Bening prostatic hyperplasia was confirmed in 2.73% of cases; in 1.35-1.35% of cases there were Nephrolithiasis and Nephrosis confirmed. The statistical description of the mentioned group, for the sake of better quality, is provided below:

Nephritis	21.62 %
Hypertensive Nephrosclerosis	32.43 %
Nephro-cirrhosis	24.32 %
Bening Prostatic Hyperplasia	2.73 %
Nephrosis	1.35 %
Renal Faiure	9.45 %
Polycystic kidney desease	6.75 %
Nephrolithiasis	1.35 %



CASES OF FORCED DEATH

As in previous years, the special attention was devoted to the facts of violence in prison this year as well. This is reflected in the Special Report on Right to Health and Problems Related to Exercise of this Right within the Penitentiary System of Georgia. The Journals to register injuries (in case of existence of such) were studied in each establishment.

The spectrum of injuries and the existing mechanisms of their registration were analysed. The information shall be considered together with the data provided in this Chapter about the cases of forced death as well as on the injuries on bodies of deceased persons described by the forensic medical expertise. As a rule, the mentioned injuries are not dangerous for life; therefore in the majority of cases the expertise cannot establish the direct causal link between the injuries and death. Due to this the information, in the absolute majority of cases become not interesting for investigation, thus a number of international standards get violated. The first an foremost the guidelines against torture get violated.

We came across the cases when expertise gets around making respective conclusions on purpose due to the nature and type of injuries. In such cases the injuries are so described that they might have been resulted into death, however the categorical nature of the statement is not revealed. Due to this investigation is again not directed correctly. Apart from the non-ethical activity of doctors, in such cases the results and their assessment are artificially altered. The examples proving the mentioned herewith shall be considered later.

During 2010 there are 8 cases of forced death identified by analyzing the conclusions of the forensic medical examination in penitentiary system establishments of Georgia. Out of these cases 3 deaths happened during the first half of the year, whereas the 5 more cases were identified in the second half of the year. Out of the mentioned 8 cases, according to the information of expertise, the death in 4 cases was caused by the mechanical asphyxia as a result of hanging, one prisoner committed suicide, by cutting neck area with some sharp subject, in 2 cases the heavy injuries in the area of head inflicted by some blunt strong subject, were a cause of death, and in one case a prisoner died due to a fire in the establishment, as a result of burns, as well as asphyxia due to inhalation of smoke. Out of the mentioned 8 cases 2 happened in the former Establishment No. 7 in Ksani, a patient died with intracranial injury in the Gudushauri National Medical Center, a prisoner with self-injury in the neck area died in the Establishment No. 2 in Kutaisi. Each of the remaining cases unified in this group were identified in the Medical Establishment for Convicted and Indicted Persons, Prison No. 8 in Tbilisi, Establishment No. 16 in Rustavi and Establishment No. 14 in Geguti. It shall be mentioned that the fact of death in the latter establishment was followed with a huge turmoil within prisoners. They refused to take food. The mentioned "problem" was resolved by bringing Special Forces into the Establishment and using physical and psychological force against prisoners. National Preventive Mechanism studied the mentioned incident in details.[84]

In this case the attention shall be drown to the fact that in case of death of one of the prisoners (code I-17) the local doctor made a record in the Journal for Registration of Injuries, according to which the doctor came across the dead prisoner in the punishment cell. There were no injuries noticed at the neck of the prisoner as a result of external visual examination, however there was a cut injury at the front abdomen, as described by the doctor. The attention shall be paid to the fact that there is exactly the opposing record in the conclusion of the forensic medical examination. In this case the conclusion describes strangulated fracture in the area of neck, whereas the injury at the front abdomen is not considered to be important. It is impossible that the local doctor would not have been able to distinguish the mentioned injuries. Respectively, the suspicion emerges, that one of the parties (either a doctor or the medical forensic examination) did purposefully falsify the description of the injuries. In any case, the reliability of the expert examinations and medical records undertaken with regard to the mentioned prisoner becomes questionable, that shall be an important factor for investigation.

The case of the prisoner who died in the Establishment No. 2 in Kutaisi (Code II-68), who according to the official version passed away as a result of self-injuries, was also studied by the Office of the Public Defender. The mentioned fact took place on 29 November, 2010. The forensic medical examination names severe anemia developed due to complete damage of carotid as the cause of death. The expertise notes that "*the corps had the life-time injury - the cut injury in the right side of the neck area with the complete damage of carotid - inflicted with a cutting object and belongs to the dangerous injury for life. The injury was made immediately before the death. The mentioned injury is at the easily reachable part.*"

The expert also describes other injuries - the wounds with not clear-cut edges in the right and middle parts of the area of nape. The injuries are inflicted with some sturdy blunt object and carry the signs of slight injury. The injuries

[84] See: Special Report of the National Preventive Mechanism on the monitoring of the penitentiary establishments, temporary detention isolators and military detention facilities covering First half of 2010, "General and Strict Regime Penitentiary Establishment No. 8 in Geguti", p.16. The same events are referred to in the part on Ill-Treatment of the current Report of the Public Defender.

were inflicted before death and their term of limitation does not contradict the date indicated in the circumstances of the case. The injury with not clear-cut edges in the middle part of nape is relatively old. The injuries inflicted as a result of burns in both cheeks, nose and forehead were inflicted before death, and developed as a result of some high temperature, and belong to minor damage. The injuries were inflicted approximately 5-6 days before the examination of the corps.

The attention shall also be paid to the data indicated in the resolution ordering the forensic medical examination. According to these data, on 29 November, 2010, at around 13:30 the sentenced A.D. (35 years old) died in the cell No. 324 of the "C" Building of the General and Strict Regime Establishment No. 2 in Kutaisi. The medical file provides the following: "*05.45 am: the prisoner has 5-5,5sm long shred in the area of nape, bleeding injury. According to the prisoner, he self-inflicted the injury due to anxiety. The injury was processed with aseptic. (…) 23.11.10, 03:00 am: The first degree burns in the area of cheeks, nose and forehead are identified. As stated by the prisoner, he self-inflicted the injuries. The injury was processed with furacilin solution, vishnevski ointment.(…) 29.11.10 13:20: the record of the doctor on duty: "I was called to cell in the "C" Building. The following was witnessed by me: a prisoner laid at the upper deck of a bed, turned to a wall. I turned the prisoner over. He could not communicate. The strong bleeding of a stream type was noticed. Following this the sizeable injury was found at the right side of the neck, with deep straight edges on the carotid projection; the prisoner was immediately placed at the wheel litter and was transferred to the procedure room of the medical unit. The peripheral pulse was not noticed at any of the central veins. The body was with strong cyanosis. The deep breathing, very seldom. The corneal reflex is negative; the tones of heart are not identifiable. b/p - 0, stopped breathing; cordimine, cofein were injected. Dexametason, due to the degree of self-injuries the reanimation of the patient could not take place. Death was recorded at 13:30. Emergency medical service arrived at 13:35, which was called by us and which also confirmed death."*

In the mentioned case it is the fact that the prisoner was often inflicting self-injuries, including such that are dangerous for life. Despite this he was not provided adequate psychiatric aid, the prisoner was not placed under the special control. Having the above-mentioned measures been thoroughly implemented, there was a certain chance of avoiding lethal outcome in the case.

Our attention is particularly attracted by the two facts of forced deaths. In the first case (Code II-23) 39 years old prisoner passed away in the Gudushauri National Medical Center. According to the data entered in the resolution ordering the forensic medical examination sentenced N.O., born in 1971, passed away in the Gudushauri National Medical Center on 20 August, 2010. According to the medical file the time of death is: 10:50 on 20.08.10. It is also mentioned therein that the patient entered the medical institution with the diagnosis of left side hemiplegia, right side ptosis on 15.08.10. The text follows: severe disruption of blood circulation in the brain; intracerebral hematoma in the forehead-apex-temple right part; intraverticular and subaracnoid hemoragia; atonic coma, death of brain; cerebro-cardial syndrom; diffuse purulent endo-bronchitis; multiple organ failure; arterial hypertension. The forensic medical examination concludes that the corps has damages at the area of nape and bruise in the left semisphere of apex-nape; the internal investigation revealed subdural and subarachnoid bruises, as well as bruises in the soft membrane. According to the expert, the cause of death is "*swelling of brain, with the dislocation and tamping of the blade, developed as a result of the intracranial blunt injury...***The injuries are inflicted before death, with some sturdy and blunt object. They belong to the category of injuries dangerous for life and are in direct causal relation with the result."**[85]

There is no indication as to where the patient was transferred from or in what circumstances had the injuries been inflicted in the documents at our disposal.

In the second case (Code II-26) a 48 years old prisoner died. The information indicated in the resolution on the ordering the forensic medical examination does not at all refer to the medical file of the convict. The injuries described in the conclusion of the forensic medical examination it is noted that "corps had notches, injuries of a cranial base, traumatic hemorrhages, bruise in brain, resulted from the action of some blunt object in the shortest period before the death or during the death, the injuries together belong to the heavy bodily injury and **are** not directly casually linked with death"[86].

Against this background, the expert concludes categorically that the reason of death is "*severe infarction of heart muscle developed as a result of aggravating the cronic ischemic disease of heart.*" The dead prisoner was also diagnosed with "*goldbladder*

[85] The underline is ours.
[86] Id.

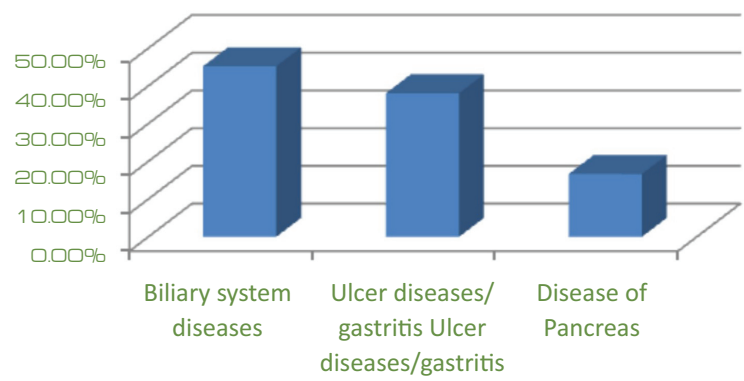
pebbles disease; chronic bronchitis; chronic interstitial pneumonia." It is clear that in this specific case the qualification of an expert is either absolutely low or the conclusion in forged on purpose. Despite the fact, whether or not there was myocardial infarction confirmed morphologically (there is no clinical prove visible) it is impossible that such a heavy injury would not be in direct causal connection with the death. It is also possible, that the myocardial infarction was even developed due to the trauma. **In any case the neglecting the importance trauma by the expert and its inadequate assessment puts the investigation on a wrong path. Due to this it will not be possible to establish the real cause of death.**

The analysis of the conclusions of the forensic medical examination of prisoners who passed away in 2010 shows that some form of bodily injury was identified in case of 32% of corps, i.e. in cases of almost every third person. We do not count here the injuries or traumas, which are the traces of medical manipulations. Herewith we refer to damages inflicted as a result of non-medical mechanisms, bruises, wounds, etc., which, according to the forensic conclusions, are inflicted by some external object before the death. Despite this, the forensic expertise concludes that the injuries are of light nature and they might not have resulted into death. Even if we would agree with the experts in this part of the conclusion, the question arises, as to where and in what circumstances, as well as by whom were the life-time injuries inflicted onto them and why are these facts not investigated? This is a serious gap for the penitentiary system and is absolutely incompatible with the national and international standards of prevention of torture and other cruel inhuman treatment and punishment.

DIGESTIVE SYSTEM DISEASES

Different types of digestive system diseases with different gravity were identified in cases of 29.6% of deceased prisoners. First of all the diseases of biliary system shall be mentioned here. The ulcer diseases and gastritis are at the top of the list. There were 7 cases of inflammatory pancreas diseases confirmed. The group does not include the tubercular damages of digestive system, which shall be considered together with the tuberculosis statistics. The share of diseases in percentage is provided in the table and graphics below:

Biliary system diseases	45.24 %
Ulcer diseases/gastritis	38.09 %
Disease of Pancreas	16.67 %



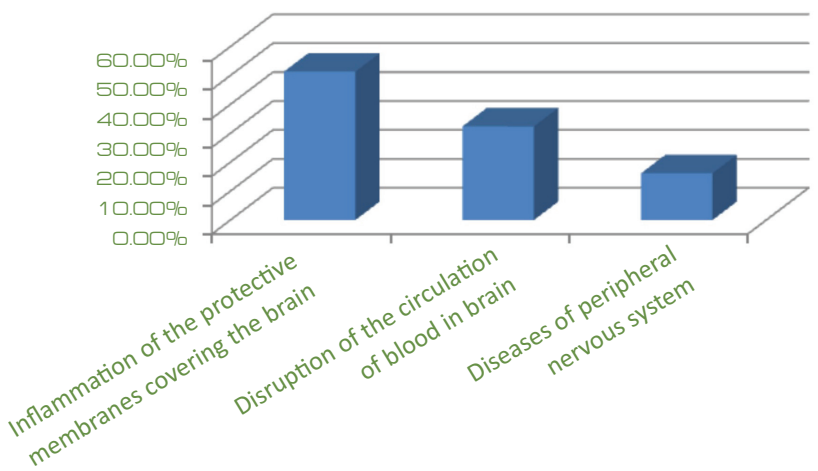
The aggravated forms of ulcer diseases are to be carefully looked at. They often get aggravated with bleeding. During the monitoring it was revealed that in case of existence of gastric complaints the patients do not receive adequate medical assistance. There is an extremely low usage of endoscopic examination in case of need. The only means provided to the patient in such case is the medicine available in the medical units - omeprazole. The doctors on the spot are not aware of and do not use the European Helicobacter Pylori Study Group Guidelines (the Maastricht consensus).

Therefore, there is no standard the first or the second line treatment prescribed in any of the establishments. The contemporary studies reveal that the wide and uncontrolled use of first line Proton Pump Inhibitors (omeprazole) can cause hypoacidic state in the stomach that is one of the risk factors for the development of the stomach cancer; however the solution and the remote perspectives of the management of disease is not the interest of local doctors. This approach is exactly the reason of developing such forms of aggravated diseases that in many cases creates the real risk to life and health of a human being.

NEUROLOGICAL DISEASES

The next place from the point of view of frequency is given to the group of neurological diseases. As it was mentioned already the 26% of the dead prisoners had some type of neurological disease. In some of the cases these very diseases became the immediate cause of death. The spectrum of the mentioned diseases is provided in the table and graphically below:

Inflammation of the protective membranes covering the brain (meningitis, arachnoiditis)	51.35 %
Disruption of the circulation of blood in brain	32.43 %
Deaseases of peripheral nervous system	16.21 %



As it is evident from the table, the most frequently revealed neurological pathologies in cases of prisoners who passed away in 2010 were meningitis or arachnoiditis. The trend of the development and fast expansion of the mentioned diseases was revealed still during the last year. It showed a trend of sharp increase during this period. All of this happens against the background of having only one doctor neuropathologist working in the Medical Establishment for Convicted and Indicted Persons, whereas the doctors of this profile and experience are almost not met in different penitentiary establishments. It is clear that from the point of view of neurological assistance there is a serious crisis created in the system. A large part of the diseases may not be diagnosed, and in the best case the treatment undertaken and the management of the disease loosely correspond the contemporary medical standards. The consideration of the cases reveals that there is no timely and adequate neurological assistance provided, as well as there is no accessibility of the adequate examinations and treatment methods. Activities of one neurologist may not provide for the adequate diagnostic and treatment of patients with neurological profile. In this regards it is apt to take the decisive measures, the upgrading of qualification of doctors and wider and more accessibility to diagnostic means.

Patient M.B. is 24 years old (Code II N55). The resolution ordering the forensic medical examination indicates that the prisoner died in the emergency unit of the Medical Establishment for Convicted and Indicted Persons. The diagnosis

provided by the sending establishment was the comatose state, hyperglycemic coma. As stated by the forensic medical examination conclusion, the cause of death is the sizeable swelling, developed as a result of chronic inflammation of soft membrane. The patient also had strokes in brain, swelling of brain substances; the purulent bronchopneumonia; exudative desquamative purulent bronchitis; Decubitus at the right buttock.

A patient Gh.Z. 37 years old (Code II N28) also died of the tubercular meningoencephalitis in the Medical Establishment for Convicted and Indicted Persons. According to the medical file, the patient was placed in the Medical Establishment for Convicted and Indicted Persons with the diagnosis - the disruption of the circulation of blood in brain; right side spastic hemiplegia; multiple voluminous formation of brain, peripheral cancer of lungs with multiple metastasis in brain and regional lymphatic nodes of lungs, according to the conclusion of the forensic medical expertise no oncopathology is confirmed. The following is described: tubercular meningoecephalitis; the existence of caseosic necrosis zone in brain and soft membrane; purulent bronchitis; bronchopneumonia; tubercular pleuritis; the existence of tubercular granulomas; existance of the cyst in the Renal cortex. The polyorganic insufficiency, developed as a result of tubercular meningoencefalitis is noted as a cause of death.

Unfortunately, alike the previous year, the instances of disruption of blood circulation in brain (cerebral hemorrhage or ischemic stroke) are still frequent. The sharp elevation of frequency of these diseases was recorded last year as well and there has not been trend of its decrease noticed since. It shall be mentioned that in half of the instances when the disruption of the circulation of blood was recorded, stroke became the direct cause of death. In the majority of cases the fact of death was recorded in the Gudushauri National Medical Center. In other cases death was recorded in establishments of penitentiary system.

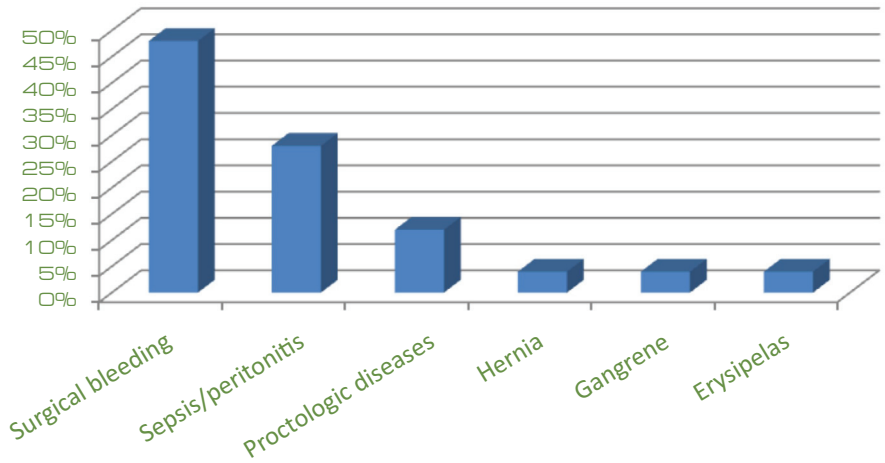
Patient Ts.Z. (Code II N54) died soon after the transfer from the Medical Establishment for Convicted and Indicted Persons to the Gudushauri National Medical Center. Diagnosis - cerebral haemorrhage in pia mater of brain, in the brain substances and by entering all the four ventricles. Swelling of brain. According to the forensic conclusion, the cause of death is the swelling of brain, tamping of blade in a large pore of nape, developed in brain as a result of non-traumatic, subaracnoid, intracerebral and intraventrical hemorrhage.

In the group of diseases of peripheral nervous system the neuropathies and polyradiculoneiropathologies shall be outlined. The mentioned pathologies were not the immediate causes of death, however in the forensic medical examination of the deceased prisoners it is still noted like in the previous years.

SURGICAL DISEASES

Surgical diseases are recorded in 3.62% of the forensic medical examination conclusions of deceased prisoners. In some cases surgical pathology has become the immediate cause of death of a patient. The spectrum of surgical diseases in the mentioned group is provided graphically and in a table below:

Surgical bleeding	48 %
Sepsis/peritonitis	28 %
Proctologic diseases	12 %
Hernia	4 %
Gangrene	4 %
Erysipelas	4 %



As it is shown in the table, bleedings are at the top of the list. The sources of bleeding in different cases were the digestive tract or respiratory system. As an example we cite the case of a patient K.G. (Code I No. 3). The patient died in the Gudushauri National Medical Center. According to the forensic medical examination conclusion the death was a result of severe general anemia due to bleeding from the ulcer of the duodenum tuber. There was a hemorrhage in the area of ulcer and between smooth fibre-muscles, dark blackish grumed blood in stomach -550 ml and throughout the entire length of large gut. The similar situation was noticed in the case of patient D.Ch. (Code II N3). The patient also died in Gudushauri National Medical Center. According to the forensic examination the death was caused by severe general anemia due to bleeding developed from the ulcer of the duodenum tuber. The patients were transferred from the Medical Establishment for Convicted and Indicted Persons to the Gudushauri National Medical Center. The death was recorded within the first 24 hours period.

The reasons for death due to bleeding are recorded in different cases. Unlike the previous years, there was a sharp decrease of cases of bleeding developed from lungs. Despite this, such cases are still noted. A prisoner Ch.M. (Code II N11) died in the Medical Establishment for Convicted and Indicted Persons. According to the forensic conclusion, the cause of death was aspirate asphyxia developed as a result of blocking the respiratory tracts by vomited blood masses. The patient was 27 years old. He had lung tuberculosis. It seems that the bleeding was developed from pathological areas. The forensic conclusion states that the thin and thick bronchi are stuck with grumed blood, the nidus of intra alveolus hemorrhages. As a result, the aspirate asphyxia developed as a result of blocking the respiratory tracts by vomited blood masses. Along with that, according to the forensic conclusion, severe bleeding erosive gastritis was established, with around 800 ml grumed blood in stomach. The forensic conclusion does not indicate when was the mentioned patient transferred to the Medical Establishment for Convicted and Indicted Persons, however it the fact that this was the aggravated form of tuberculosis. Unfortunately, such cases are frequent in the system.

It shall be mentioned that the analysis of the forensic medical examination conclusions revealed a number of cases when the causes of death of patients in the Medical Establishment for Convicted and Indicted Persons are the post-surgical complications. Taking into consideration the complexity of a disease, the scale of surgical intervention, and the need for the special conditions of treatment it is often surprising, why do surgical interventions of such a scale take place in the Medical Establishment for Convicted and Indicted Persons. Would it not be better to have patients in such cases directly transferred to civilian medical institutions, even the same Gudushauri National Medical Center, where the conditions and possibilities are much better for the adequate management of the situation? The mentioned trend is startling and the problem requires immediate solution, at least with taking into consideration the fact that cases of deaths as a result of technical or tactical mistakes made during the sizeable surgical interventions were mentioned in the reports of the Public Defender at different occasions in previous years as well.

As an example of this we cite a case of the deceased patient B.V. 50 years old (Code II N39). From the documentation at our disposal we find out that the patient underwent gastroscopy. The investigation revealed the tumor lesions with

dense consistence surface in the body of stomach, whole length of the arterior and margins of the greater curvature also in the subcardial region. Biopsy was carried out. The diagnosis made was the blastoma of stomach. Despite the fact that the mentioned establishment does not have license in oncology and the very pathology represents quite complex nosological unit, the treatment of the patient anyway continued in the Medical Establishment for the Convicted and Indicted Persons. Following the extreme complication of the conditions of the patient he was operated – middle expanded laparatomy, revision, evacuation of the pus of around up to 2000 ml, resection of the necrotic-perforated loop of the small bowel with further formation of the entero-transversostomy,remove of MTS from greater sac. The following diagnosis is also recorded in the medical file: mechanical obstruction of the small bowel complicated with intestinal necroses, perforation and diffuse purulent reritonitis. Carcinoma of the stomach with multiple metastases in both lungs and bones (4th stage, 4th class). Early occult syphilis. It is the fact that intervention of such size was not justified. Apart from this, it is also interesting to note that despite the aggravated for of the oncologic disease, the issue of postponing the serving of a sentence by the prisoner or his early release was not raise. At the end the patient died. According to the forensic conclusion, the cause of death is polyorganic insufficiency, developed as a result of diffuse purulent peritonitis and stomach cancer - adenocarcinoma.

The patient A.E., 37 years old (Code I N12) was placed in the Medical Establishment for Convicted and Indicted Persons with the diagnosis of perforation of gut. In 2 weeks he was transferred to Gudushauri National Medical Center, where he died. Diagnosis - perforation of the terminal end of the ileum; abscess of Ileocalecal angle; tiphlitis with perforation; generalized puerperal, fecal peritonitis; Right hemicolectomy, iliotransversostomy side to side, abdomen drainage, post-rererelaparatomy period; perforation of Duodenum, Duodenoraphy, Duodenostomy, post sensation and drainage period. It seems that in this case as well there was a minimal chance of a survival of the patient.

The similar instance is also described in the case of the patient S.K. (Code I N15). The patient was again transferred to the Gudushauri National Medical Center, where he died. Diagnosis - abscess of the cavity of the lesser pelvis, Perforation of the sigmoid colon, generalized puerperal, fecal peritonitis, postoperative period of laparatomy, sanation and drainage of the abdominal cavity, the splenectomy and sigmoid colon resection and descendostomy.

The patient R.T. (Code I N54). The patient was transferred to the Medical Establishment for Convicted and Indicted Persons with delay. In the Establishment he was operated due to acute intestinal strangulation ileus. Due to the post-surgical complications relaparotomy was undertaken. The insufficiency of links of anastomoses was identified. At a later stage the patient was transferred to the Gudushauri National Medical Center, where another surgical intervention took place - this time rererelaparotomy; Entero-entero anastomose; sanation and draining of abnomal. Following the surgical intervention the patient was transferred back to the Medical Establishment for Convicted and Indicted Persons. The case files reveal that the patient had applied again to the Gudushauri clinic, where he passed away as a result of fibrin-purulent peritonitis.

To cite more examples here is, to our mind, absolutely not needed. It is the fact that due to peritonitis and its post complications one of the reasons determining the deaths of patients is the belated surgical intervention. If the Medical Establishment for Convicted and Indicted Persons is able to deal with the diseases and procedures with such difficulties that is determined by peritonitis, then why are the patients transferred to civilian clinics? In the contrary case, it would be much more efficient to timely diagnose the patients and transfer them directly to the Gudushauri or any other civilian clinic.

Hernia, gangrene of ankle, Erysipelas and proctologic diseases (paraproctitis, hemorrhoidal desease) are also noted in the conclusions of the forensic examinations in the group of surgical diseases, however in these cases the death was not resulted directly by these diseases or their complications.

ONCOLOGICAL DISEASES

As it was already mentioned, the death of prisoners diseased with cancer was slightly decreased in 2010. Despite this, their share in the death rate is 12.67%. There were 18 cases of cancer pathology recorded. The most frequent are the

lung cancer cases (6 cases); there are 2 cases of different types of cancers of brain and stomach each, and there were single cases of tumours of large gut, seed gland, Adrenal gland and liver, pericardial, prostate, soft tissue, as well as the complicated form of leukemia, each. It shall be mentioned that in these cases each cancer was complicated, with multiple complex metastasis and clearly identified intoxication of the organism.

The patient (Code II N28) - 37 years old died in the Medical Establishment for Convicted and Indicter Persons, where he was diagnosed the adenocarcenoma of the prostate with metastases. Despite this, the forensic examination conclusion does not include this, and the tubercular meningoencephalomyelitis is indicated as a cause of death.

There are inconsistencies identified between the diagnosis of clinics and forensic medical examination also in the case of the patient A.V. (Code II N 46), who was clinically diagnosed with lung cancer, however this is not reflected in the conclusion of the medical forensic examination, where as a cause of his death is indicated the insufficiency of the function of liver, developed as a result of cirrhosis. The similar inconsistencies were also identified during the analysis undertaken last year as well.

DECEASED PRISONERS WITH MENTAL PROBLEMS

4.92% of the prisoners deceased in the penitentiary system establishments during 2010 had mental problems identified before death. The mentioned problem, due to non-existence of the adequate psychiatric assistance, becomes more severe from the year to another. This has not once been outlined in the reports of the Public Defender. Apart from the fact that leaving the persons with mental problems in penitentiary establishments without any psychiatric assistance represents an example of inhuman treatment, the mentioned nosologies result in the sharply increased facts of self-injuries, attempted suicides and accomplished suicides. The analysis of suicides in 2010 revealed that several prisoners had attempted suicide in the past as well. Despite this, the adequate support and rehabilitation was not provided to them. One of the examples of this is the fact of suicide in the Establishment No. 2 in Kutaisi, when the forensic expertise confirmed the existence of traces of burns and other self-injuries on the corps. The mentioned patient did self-inflict the injuries some time before the suicide. Unfortunately, even after this the patient did not get respective attention.

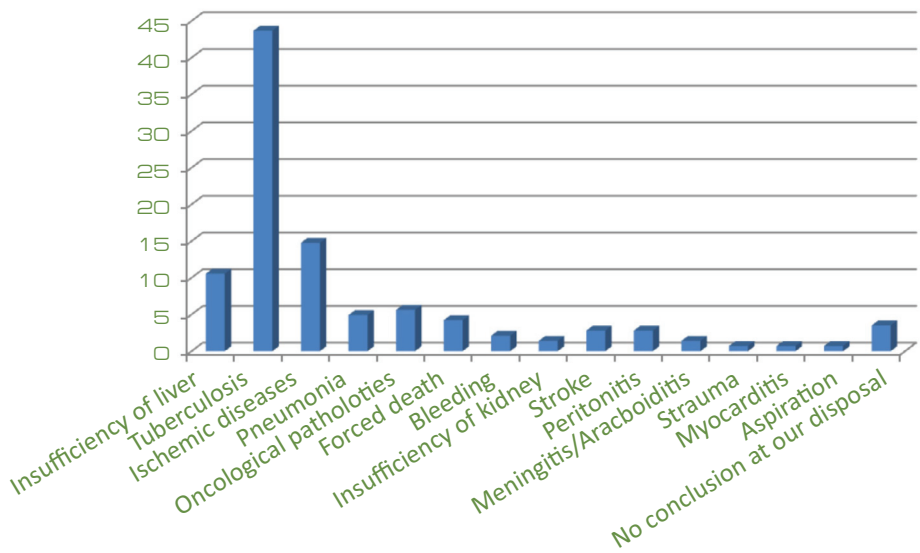
ENDOCRINE DISEASES

4.92% of the deceased patients, i.e. 7 persons had endocrinological pathologies. Out of these there were diabetes mellitus confirmed in 5 cases, and goitre - in 2 cases. In one case the mentioned pathology of the thyroid was the direct cause of death of the patient.

The patient M.E. (Code II N36), 43 years old, died in the Establishment No. 16 in Rustavi. According to the forensic medical examination conclusion, the cause of death of the prisoner was a severe cardio-vascular insufficiency, developed against the background of hyper function of thyroid, defuse glandular goitre.

Therefore, the diagnosis contained in the forensic medical examination conclusions about the deceased prisoners were considered by us in details, grouped in nosological groups. Despite this, we attempted to find out, what was the direct cause of deaths of patients during 2010. To this end we analysed all the forensic medical examination conclusions at our disposal. In 3 cases, when we could not get the conclusion, we used the existing medical records. The identification of the cause of death in those cases was made only on the basis of the main cause of death, as indicated in the forensic medical examination conclusion. No accompanying diseases were considered in these cases, that considerable contributed to the complication of the conditions. The described statistics is provided in the table below:

№	Immediate cause of death	%
1	Insufficiency of liver	10.56
2	Tuberculosis	43.66
3	Ischemic diseases	14.78
4	Pneumonia	4.92
5	Oncological pathologies	5.63
6	Forced death	4.22
7	Bleeding	2.11
8	Insufficiency of kidney	1.41
9	Stroke	2.81
10	Peritonitis	2.81
11	Meningitis/Aracboiditis	1.41
12	Struma	0.71
13	Myocarditis	0.71
14	Aspiration	0.71
15	No conclusion at our disposal	3.52



As seen in the table and diagram, in accordance with the forensic medical conclusions issued by the National Bureau of the Forensic Medical Examination the main cause of death of prisoners in the establishments of the penitentiary system is tuberculosis, the percentage share of which in the spectrum of death is 43.66%. The next one is ischemic disease, and the deaths caused by it, which constitutes 14.78%. This group includes the deaths caused with myocardium infarction, as well as other types of ischemic diseases, that the expertise named as the main cause for lethal outcome. The insufficiency of kidney is at the next - third place with 10.56%. Oncological pathologies, pneumonia and the types of forced deaths are at the following three places. Respectively, their shares are 5.63%, 4.92% and 4.22%. The other reasons, which are fully reflected in table, do not exceed 3%, however deriving from the nature of the disease and the complexity of the problem, they shall also be paid respective attention.

Monitoring of children's homes

INTRODUCTION

In January 2011, the Special Preventive Group of the Public Defender, within the frame of the National Preventive Mechanism, monitored children's homes. The following institutions were visited during the monitoring: children's homes in Tbilisi, Rustavi, Tskneti, Saguramo, Kojori, Telavi, Lagodekhi, Surami, Tashiskari, Aspindza, Tsalenjikha, Zugdidi and Batumi; "House of Future" and "Satnoeba" in Tbilisi. The mentioned institutions are under the Legal Entity of Public Law "State Care Agency" under the Ministry of Labor, Health and Social Protection. The Public School N15 in Samtredia under the Ministry of Education and Science was also visited during the monitoring.

The degree of protection of rights of beneficiaries placed in children's homes was checked during the monitoring. When employing the competencies as envisaged by the Law of Georgia on the Public Defender of Georgia for the National Preventive Mechanism, the Special Preventive Group is guided by the Constitution of Georgia, the United Nations Convention on the Rights of a Child, National Standards of Child Care[87], Law of Georgia on "Licensing child institutions" as well as other respective normative acts[88] and checks the conditions in the children's homes, as the compliance of the treatment and other components with the standards and norms established by the above mentioned acts.

During the monitoring undertaken in January 2011, the attention was also paid to the degree of implementation of recommendations issued following the monitoring undertaken by the Special Preventive Group in February 2010.[89]

The main results of the monitoring:

As a result of the monitoring conducted in 2011, a range of systemic and specific violations were revealed in child institutions:

- The cases of violence by staff of the children's homes toward children. The violence is long-lasting practice in the majority of child institutions. Low level of awareness regarding the essence of violence and the use of violence as a method of upbringing represent the main starting points for this problem;

[87] The Order N281/M of the Minister of Labor, Health and Social Protection, dated 26 August, 2009 on the Approval of the Child Care Standards.

[88] The Law of Georgia on Social Assistance, the Law of Georgia on Adoption and Raising Foster Care, the Joint Order of the Minister of Labor, Health and Social Protection, the Minister of Internal Affairs of Georgia, and the Minister of Education and Science N152/M-N496-45/M, dated 31 May, 2010 about the Approval of the Referral Procedures for the Protection of Children, the Order of the Minister of Labor, Health and Social Protection N52/M, dated 26 February, 2010 on Placing a Person in Specialized Institution and the Rules and Conditions for Taking a Person out of that institution, the Order N1/550 of the Director of the Legal Entity of Public Law State Care Agency dated 12 July, 2010, on Approving the Rules of Protection of Beneficiaries of the child institutions from Violence.

[89] See: below, "The Changes implemented as a result of the monitoring undertaken by the Special Preventive Team in Children education institutions child institutions in 2010".

- In an absolute majority of children's homes children are absolutely unprotected from the violence among the beneficiaries. The administration is not able to ensure the psycho-social rehabilitation of children with behavioral deviation or children with other problems;
- The unfavorable environment conditions for the development of a child and the environment dangerous for health: a number of cold living buildings (temperature 7^0), insufficient and damaged furniture, barrack type sleeping rooms (16 beds in 1 room), the short beds not in line with the needs of the age of children, anti-sanitary in the dining blocks, unprotected territory;
- The use of child labor: the child labor is used against the will of children. In particular: cleaning of restrooms and kitchens; washing with cold water; as well as picking citrus; cleaning of houses of teachers; it shall be noted that children clean the houses of teachers for the minimum remuneration - getting cloth, or 5-10 Georgian Lari. According to children, they are the cheap labor force;
- Discrimination of children: it is evident that children live in different conditions in different child institutions; at the same time, there are differences within the same institution on the provision of care and minimum living conditions of children;
- Insufficient nutrition for children: the menus of the child institutions lack fruit; Food is provided to the child institutions with delay or the food provided is not fit for eating;
- Severe lack of the psycho-social rehabilitation: children, who had experienced serious psychological stress within the institution or before entering it, are in the prolonged post-traumatic condition; the attempted suicides are noted, the deviant behavior and dis-adaptation with the environment. The beneficiaries have not received adequate psychological assistance to solve this problem to date.
- The serious gaps identified in the process of deinstitutionalization: children had returned to families, where they have no sufficient medication, nutrition, their right to education got limited; some of the children survive by means of bagging, after being reintegrated with their families.

THE MONITORING PROCESS

It is important to note the obstacles, problems and the attempts to stop the monitoring, that had to be overcome by the representatives of the Public Defender during the monitoring. Following the instruction by the management of the State Care Agency the Directors of several children's homes refused the members of the Preventive Group to have confidential interviews with children. The Group members clarified the competencies of the National Preventive Mechanism, one of the most important of which is the right to a confidential interview with persons placed in the closed institutions, including children in the child institutions; the Group members also explained that non-compliance with the legitimate request would have caused their fining in accordance with the regulation envisaged by the legislation.[90] The mentioned expands also to the cases of non-compliance with the legitimate requests of the representatives of the Public Defender, and even more, to the requests of the members of the Special Preventive Group. Following the mentioned clarifications, as well as the phone conversation with the Director of the Agency, the Special Preventive Group members were provided with the possibility to interview the children in the institutions in the confidential environment.

The special attention shall be given to the case of the child institutions in Kojori, where during the interviews of the representatives of the Public Defender with children, a teacher and the Head of the Logistics Unit entered the room, took children out and started questioning them about the issues discussed by the representatives of the Public Defender with them. The similar questioning was frequent in other child institutions as well. In some cases it was evident, that the children had undergone "the preparatory work" - completely irrelevantly and out of the context, the children were repeating the phrases studied by heart, as to how good teachers they have, hot grateful children are of their teachers,

[90] The Article 173^4 of the Code of Administrative Offences of Georgia: "*Disobedience with the legitimate requirements of the Public Defender shall result into a fine for the amount from the twenty times minimum remuneration to fifty times minimum remuneration.*"

how well the children are treated, etc. However, the same children were referring to a variety of facts of ill-treatment and violation of rights in the course of interviews.

At the end, only following the direct communication between the Minister of Labor, Health and Social Protection and the Public Defender it was made possible to continue the monitoring in normal conditions.

It shall be mentioned, that if we disregard the problem related to the instances of confidential interviews with children, directors and staff of all children's homes expressed full readiness to support the monitoring and were immediately providing documentation and information. This fact itself indicates to the positive trend.

Deriving from the above-mentioned we consider it necessary to once again underline the mandate and the competence of the Special Prevention Group:

The creation of the National Prevention Mechanism was determined by the ratification of the Optional Protocol to the Convention against Torture (OPCAT) by Georgia on 8 July, 2005. According to the Article 20 (d) of the Optional Protocol, in order to enable the National Preventive Mechanism to fulfill its mandate a state shall ensure the opportunity to have private interviews with the persons deprived of their liberty without witnesses, as well as with any other person who the National Preventive Mechanism believes may supply relevant information.

We shall also indicate herewith that the deprivation of liberty, according to the Article 4(2) of the Optional Protocol to the Convention against Torture, "*means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority*" A place of deprivation of liberty is any institution, to leave which a person needs a decision of the special body.

According to the 16 July, 2009 changes and amendments introduced into the Law of Georgia on the Public Defender of Georgia, the Public Defender was provided with the function of the National Preventive Mechanism in Georgia. In order to exercise this competence, according to the Article 19[1] of the Organic Law, Special Preventive Group was established with the Public Defender. According to the paragraph 3 of Article 19 of the same Law, "*Meeting of the Public Defender of Georgia/a member of the Special Preventive Group with persons under arrest, pre-trial detention or any other form of restriction of liberty and a convicted person shall be confidential. Any interception or surveillance shall be prohibited.*" In the persons under any other form of restriction of liberty, beneficiaries in the children's homes are also considered, who are placed in the mentioned institution based on the administrative decision of the corresponding body and who in practice, are limited in their freedom, as they may not leave the institution without the decision of the respective body.[91]

In a commentary on the Article 25 of the United Nations Convention on the Rights of the Child by the Child Rights Committee[92] the following is stated: "*the Committee recommends that the States Parties establish an independent and effective monitoring mechanism for children without parental care. Such a body should have a mandate to receive, investigate and address complaints from children (…)*"[93]

In the Recommendation Rec(2005)5 of the Committee of Ministers to member states on the rights of children living in residential institutions it is stated that children living in residential institutions have the right to make complaints to an identifiable, impartial and independent body in order to assert children's fundamental rights. The Explanatory Report to the same recommendation mentions that *"it is important to have the effective preventive mechanism of periodic visits by an independent body or the agency that will include the confidential meetings with children in those institutions. This will enable states to have timely reaction on any problem."*[94]

It shall also be underlined that despite a right of any member of the Special Preventive Group to have interviewed children, for the better protection of the interests of a child, the mentioned interviews was conducted by either

91 In this case - the Legal Entity of Public Law Social Service Agency

92 Article 25 of the Convention on the Rights of the Child: "*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.*"

93 Committee on the Rights of the Child, Report on the fortieth session, Sept. 2005, CRC/C/153, para. 684

94 Rights of children at risk and in care, Council of Europe Publishing, Council of Europe, December 2006, p.27

psychiatrist or psychologist member of the Group and who had experience of working with minors for years. Such interviews, in case of an agreement of a child, were recorded by a audio recorder.

We paid attention to the right to confidential interview above, however it shall be noted that the members of the Special Preventive Group have a wide circle of competences provided by law, including unimpeded entrance to closed establishments, requesting and receiving any needed information and documentation in the form appropriate for them, the competence to get any public official's or civil servant's explanation. Impeding any of these competences represents administrative offence and it is punishable by law.

In the above-mentioned cases of creating impediments to the work of the Special Preventive Group, the Public Defender showed a good will and refrained from the recording the administrative violation. During the monitoring, the members of the Special Preventive Group once again clarified to the directors and teachers the mandate of the Public Defender of Georgia and provided the detailed information about the competences of the Public Defender and his representatives, as well as about the role and objectives of the institution of Public Defender as a whole. It is unfortunate that in a number of cases directors and staff of the child institutions had incorrect understanding of the competences of the Public Defender and his Special Preventive Group.

The Public Defender expresses the hope that for the future the members of the Special Preventive Group and the representatives of the Public Defender will not come across the similar obstacles and the Director of the State Care Agency and other persons in management will refrain from orders that might impede due implementation of monitoring and result in violation of law.

Recommendation to the Directors of the Legal Entity of Public Law State Care Agency and Legal Entity of Public Law Social Service Agency:

- **To ensure the training of the staff of the State Care Agency and Social Service Agency in the national and international legislative norms in the field of child rights protection, as well as in the international and national mechanisms established for the protection of the mentioned rights.**

Recommendation to the Director of the Legal Entity of Public Law State Care Agency:

- **To ensure unimpeded monitoring by the Special Preventive Group and its support.**

THE CHANGES INTRODUCED AS A RESULT OF THE MONITORING OF CHILDREN'S HOMES BY THE SPECIAL PREVENTIVE GROUP IN 2010

According to the administration and staff of children's homes, a number of positive changes are vivid, that had been introduced as a result of the monitoring undertaken by the Office of the Public Defender in 2010. In particular:

The Legal Entity of Public Law under the Ministry of Labor, Health and Social Protection initiated an active process of deinstitutionalization of children from the child institutions. According to the information provided by the institutions, in 2010 there were 34 children involved in the de-instutionalisation programme from the Aspindza children's home; 33 children - from the Tashiskari children's home; 9 children from the Rustavi children's home; 12 children from the Telavi children's home; 23 children from the Tskneti children's home; 13 children from the Surami children's home; 8 children from the Saguramo children's home. A certain part of children was also transferred to the alternative small size institutions, the number of which was 37 by the beginning of 2011. Out of these, 17 are on the state funding (137 children), whereas 20 are supported by the donor organizations (120 children). The placing of children took place also in biological and foster families; however there were serious gaps identified during the monitoring, which shall be addressed separately in a chapter below.[95]

[95] See below, "The Violations Revealed in the Process of Reintegration"

The administrations of the child institutions also positively assess the measures directed at the upgrading the qualification of staff, that the Legal Entity of Public Law State Care Agency implemented in 2010 - approximately 600 staff of the children's homes (Senior care givers, care givers, doctors, psychologists, administrators) were assessed from the point of view of professional qualification by the State Care Agency and non-governmental organizations.[96] On the basis of the assessment the persons who could not overcome the minimum level (approximately 100 persons) left the institutions, whereas a part of the staff changed the position based on the recommendation of the Evaluation Commission. The selected personnel, 520 staff, were retrained at different stages by international and local organizations in 2010;

The change of the attitude towards the issue of violence against children by administration of several children's homes (Tskneti, Saguramo, and Telavi) shall be assessed as particularly positive. They identified the problem of violence against children in the institutions and started finding the ways for their solution. For example, last year, even the alleged facts of violence against children in these institutions were entirely rejected. The information on the facts of violence provided by the Preventive Group of the Public Defender was ignored. Unlike the previous year, the directors of the children's homes adequately understand the facts of violence against children and in the majority of cases undertake the measures for revealing and solving this hidden problem.

The measures undertaken by the Legal Entity of Public Law State Care Agency shall also be mentioned herewith. The Child's and Woman's Rights Centre of the Public Defender's Office applied in writing to the Agency on 24 January, 2011 to get the information on number of notifications received by the Agency on the ill-treatment of beneficiaries of the children's homes or any other violation of rights during 2010 and the reaction on them. According to the answer received from the Direction of the Agency on 1 February 2011, there were only 3 notifications (2 cases from Tskneti and 1 case from the Surami children's homes) made during the previous year. In all the mentioned cases the notifications were on the facts of violence exercised by care givers against children. In the first case a care giver A.A. was given a verbal reprimand; in the second case after the repeated use of violence by the same care giver he was discharged. The third case was referred to the Minister of Internal Affairs and the Social Service Agency. Currently the mentioned case is being considered by the regional body of the Social Service Agency. The fact of having the Agency interested in the facts of violence against children and the measures undertaken shall be by all means assessed as a positive step.

Despite the above-mentioned positive trends, the measures undertaken to eradicate violence are not sufficient, as it seems, during the monitoring undertaken in January, 2011 the Special Preventive Group of the Public Defender learned about numerous other facts of violence against children in child institutions. These facts shall be considered in the respective chapter.[97]

To improve the working conditions for the employees of the child institution certain measures were undertaken - there was a 20% increase of their salaries. In December, 2010 the staff of the children's homes were granted bonus (the so called thirteenth salary) by the Agency. However, in the majority of the child institutions the working conditions of the employees are still not satisfactory[98].

VIOLENCE AGAINST CHILDREN

The Public Defender presented the information on the facts of violence against children, revealed during the monitoring of the children's homes in 2010, for the consideration at the UN Universal Periodic Review in the form of the special report.

The mentioned was used as a basis for a number of recommendations made by the 10th session of the UN Human Rights Council to Georgia with regard to protection of children. The recommendations of the UN member states specifically underlined the need to have the measures undertaken by the state to eradicate the violence against children[99].

96 "Save the Childen/ Children of Georgia", "The First Step", "EveryChild", "WorldVision".
97 See below, "Violence Against Children"
98 See below "Rights of Staff of the Institutions"
99 Advanced Unedited Version of the human Rights Council Working Group on the Universal Periodic Review; Tenth Session, Geneva, 24 January-4February, 2011. http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/GE/Georgia-A_HRC_WG.6_10_L.9-eng.pdf

The violence against children in the child institutions is also mentioned in the Report by the Office of the High Commissioner for Human Rights[100] prepared for the UN Universal Periodic Review. The Coordinator of the Global Initiative to End All Corporal Punishment of Children, the author of the Implementation Handbook for the Convention on the Rights of the Child Peter Newell speaks about the unresolved issue of the violence against children in Georgia[101].

According to the results of the monitoring undertaken by the Public Defender in 2011, violence against children still remains an unresolved problem in children's homes and first of all, it requires the serious consideration by the responsible persons.

DEFINITION OF VIOLENCE AGAINST CHILDREN

General Comment N13 of the UN Child Rights Committee (issued at the 56th session, 7 January-4 February, 2011) provides the following explanation of the Article 19 of the UN Child Rights Convention "a right of a child to be protected from all forms of violence":

Violence against children is all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse. According to the comment of the Committee, often the violence against children is narrowed down to physical violence or targeted damage of a child. This is unacceptable. Violence against children necessarily includes non-physical and not intentional forms of damage of children as well. Among others this includes the neglect and maltreatment of children as well. The detailed definition of the forms of violence is defined in the General Comment N13 of the UN Committee on the Rights of the Child as follows:

Neglect or negligent treatment: Neglect means the failure to meet children's physical and psychological needs, protect them from danger, or obtain medical, birth registration or other services when those responsible for children's care have the means, knowledge and access to services to do so. It includes:

(a) Physical neglect: failure to protect a child from harm, including through lack of supervision, or failure to provide the child with basic necessities including adequate food, shelter, clothing and basic medical care;

(b) Psychological or emotional neglect: including lack of any emotional support and love, chronic inattention to the child, caregivers being "psychologically unavailable" by overlooking young children's cues and signals, and exposure to intimate partner violence, drug or alcohol abuse;

(c) Neglect of children's physical or mental health: withholding essential medical care;

(d) Educational neglect: failure to comply with laws requiring caregivers to secure their children's education through attendance at school or otherwise; and

(e) Abandonment: a practice which is of great concern and which can disproportionately affect, inter alia, children out of wedlock and children with disabilities in some societies.

Mental violence. "Mental violence", as referred to in the Convention, is often described as psychological maltreatment, mental abuse, verbal abuse and emotional abuse or neglect and this can include:

(a) All forms of persistent harmful interactions with the child, for example, conveying to children that they are worthless, unloved, unwanted, endangered or only of value in meeting another's needs;

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[100] Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1; Human Rights council Working Group on the Universal Periodic Review, Tenth Session, Geneva, 24 January-4 February, 2011. http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/175/74/PDF/G1017574.pdf?OpenElement

[101] Briefing for the Human Rights Council Universal Periodic Review – 10th session, 2011 http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/GE/GIEACP_GlobalInitiativetoEndCorporalPunishmentofChildren-eng.pdf

(b) Scaring, terrorizing and threatening; exploiting and corrupting; spurning and rejecting; isolating, ignoring and favouritism;

(c) Denying emotional responsiveness; neglecting mental health, medical and educational needs;

(d) Insults, name-calling, humiliation, belittling, ridiculing and hurting a child's feelings;

(e) Exposure to domestic violence;

(f) Placement in solitary confinement, isolation or humiliating or degrading conditions of detention; and

(g) Psychological bullying and hazing by adults or other children.

Physical violence. This includes fatal and non-fatal physical violence. The Committee is of the opinion that physical violence includes:

(a) All corporal punishment and all other forms of torture, cruel, inhuman or degrading treatment or punishment; punishment, in which any physical force is used and intended to cause some degree of pain or discomfort to a child, however light. Most involves hitting ("smacking", "slapping", "spanking") children, with the hand or with a whip, stick, belt, shoe, wooden spoon, etc., kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, caning, forcing children to stay in uncomfortable positions, burning, scalding, etc. Certainly, this is not the exhaustive list of physical punishment;

(b) Physical bullying and hazing by adults and by other children.

Sexual abuse and exploitation, which includes: child prostition, trafficking in minors, sexual exploitation in travel and tourism, sale of children, forced marriage, etc.

Torture and inhuman or degrading treatment or punishment. This includes violence in all its forms against children in order to extract a confession, to extrajudicially punish children for unlawful or unwanted behaviours, or to force children to engage in activities against their will, typically applied by police and law-enforcement officers, staff of residential and other institutions and persons who have power over children. Victims are often children who lack the protection of adults responsible for defending their rights and best interests.

Violence among children includes physical, psychological and sexual violence, often by bullying, exerted by children against other children. Although children are the actors, the role of adults responsible for these children is crucial in all attempts to appropriately react and prevent such violence, ensuring that measures do not exacerbate violence by taking a punitive approach and using violence against violence.

It is clear, that the above listed possible forms of violence against children are not exhaustive and the UN Child Rights Committee in the paragraph d of the Chapter IV of its General Comment N 13 underlines that for protection of children from violence the states shall pay attention to the following measures among the other numerous measures: the ratificaion and the implementation of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (sub-paragraph 38) and the promotion of the role of independent national human rights institution, ombudsman in the promotion and protection of the rights of the child (sub-paragraph 39).

THE METHODOLOGY OF MONITORING OF VIOLENCE AGAINST CHILDREN

Within the scope of the National Preventive Mechanism established on the basis of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment the group of experts of the Public Defender acted based on the human rights approach and the sensitive approach towards the needs of children during the monitoring of children's homes.

Highly qualified psychologist/psychiatrist (with a minimum of 10 years of experience in child psychology/psychiatry), the expert of the National Preventive Mechanism and a lawyer - the representative of the Office of the Public Defender were meeting children confidentially, deriving from their desire, in each of the child institution. Minimum 10% of the children were met in each of the child institution. A meeting was held in a separate room, in an environment acceptable for a child, where the conversation of the child and the human rights deferred were protected from the hearing and intervention by third persons. A child could have stopped an interview at any point. In case of such a desire, the interview was taped with an audio recorder.

The special attention of the representative of the Public Defender and the expert psychologist/psychiatrist was devoted to avoiding having a child tired during the interview; interviewing a child as the child preferred; not having re-traumatisation of a child by talking about a negative moment of a child's life.

In case of revealing violence, other members of the Monitoring Group checked the documentation (medical records, the Journal for registration of accidents, the Journal for registration of injuries), were discussing with the responsible personnel; as a result of summing-up the information on violence received from several sources the fact was studied in a complex manner.

Members of the Special Preventive Group, during the monitoring, as well as after its completion, alike the monitoring during 2010, watched and undertook the continuous supervision to avoid further punishment, repeated violence against children or any other undesired result caused by provision of information by children about violence to human rights defenders.

INAPPROPRIATE APPROACH TOWARDS THE VIOLENCE AGAINST CHILDREN

Unlike the monitoring undertaken in 2010, in 2011 administrations of some of the children's homes (Tskneti, Saguramo, Telavi) openly talked about the facts of different types of violence against children in the institutions and the measures undertaken to solve this problem. This shall be considered as a positive trend; however, in a number of cases, the measures implemented by them were unjustified or inefficient from both - educational perspective, as well as from the angle of protection of child rights. This makes the need for the more knowledge in this field apparent.

The facts of psychological and physical abuse among the beneficiaries are frequent in child institutions. These are revealed in the negative stereotyped form of self-establishment, protection or punishment. The part of the administration of the institution and caregivers prefer to be silent about the facts of violence. They do not register the facts of violence, the educational measures undertaken and the results achieved as a result. The other part use violent methods to prevent violence, restore order and discharge the aggression among children, and use threatening, psychological pressure and physical punishment (boxing ears, pulling hair, putting in a corner, beating, "banging against a wall", slapping). The most unfortunate is the fact that a part of caregivers and teachers, as well as a part of beneficiaries consider relatively mild forms of violence (boxing ears, pulling hair, smacking) to be absolutely admissible methods of upbringing.

According to the observation of the Monitoring Group, in a number of cases the administrations consider ethical not to informing the respective agencies about the facts of violence and do not fully realize the results of such behaviour, due to the not obeying with the obligation provided by law on informing about a fact of a crime. In some cases the facts of violence against children remain unpunished. This hampers their eradication and prevention. Unfortunately, the unjustified argument used as a justification by caregivers is still around: "all of us may do this at home - not to be able to restrain and smack a child". Respectively, the low level of information about the Child Rights Convention and other international acts among the personnel is vivid. According to these documents, a guarantee to protect from violence a child placed in the child institution shall be absolute, as these children are under much higher risk of violence and a state shall undertake all measures to eradicate any form and type of violence in those institutions.

CASES OF VIOLENCE IN CHILDREN'S HOMES

● Children's home in Tsalenjikha

The monitoring team interviewed 5 children, out of whom 4 described in identical manner the exercise of physical violence against children aged 8 and 9 by caregivers. The stories provided by the children also show a pattern of violence (repeated violence, the content and sequence of which coincide): beating by a stick into hands and legs, pulling hair for the purpose of punishment, slapping, boxing ears. All the four children, independently from each other, provide information to experts on often repeated practice of punishment of one of the children, who is put alone in a corner, forbidding turning around. The experts also received information on heavy emotional reaction of a punished child about the repeated incidents of punishment. One of the victim children of violence had injuries (excoriations) on hands, the origin of which a child does not name. There are no records on the cause of injuries in medical files or a personal file of a child.

The monitoring team itself witnessed the fact of a psychological pressure on a child exercised by a caregiver. As the worst negative fact during the stay in the children's home, one of the children named the fact that nobody congratulated his/her birthday. This hurt the child and mentioned that they do not celebrate the birthdays of other children either. During the conversation an accountant of the institution entered the room by chance, who gave a remark to the child with a rough tone. The child left the room to take a jacket and after coming back, without any repetition of the question, refused what he/she had already said and stated that they celebrated the birthday and he/she even got a teddy bear and a bicycle which he/she took home.

The existence of the psychological violence and of threatening is also proved with the fact that children, when talking about completely unrelated topics, spontaneously repeat the phrases used by caregivers and containing threatening, which contemplates that a parent will be notified about their behavior and a parent will subsequently beat them with a stick.

One of the alarming information also provided to the monitoring team was the fact that children, before entering children's home, had undergone heavy psychological stress. Nobody in the institution had taken care of their rehabilitation. One of the children told the members of the group, that he/she used to live in the conflict region and at different times had witnessed a murder of the father, the rape and murder of the 7 years old sister, and blowing up of 3 men at mine. According to the minor, due to the stress he/she had an attempted suicide (selvage is noticeable on the body). He/she has hard psychological condition to-date, repeating memories; it was difficult for him/her to talk about the events and was showing the typical symptoms of post-traumatic stress. No psycho-social rehabilitation of the children had taken place in the institution. Presumably, the child experiences deep stress that requires immediate professional intervention.

There is the similar situation with regard to children victims of domestic violence. They talk about the harshest circumstances that they had undergone before entering the institution: beating of a mother, being kicked-out from home, beating of a younger sister, domestic conflicts. These children are under heavy psychological stress; they reveal strong depressed non-verbal reactions.

The serious academic lagging was also revealed during the interviews with children, that evidences the problems from the point of view of education: 10 years old child can not name week-days, can not recognize colors, counts 7 fingers on one hand.

● Children's home in Surami

The monitoring team interviewed 7 children and received the information from three of them about the facts of violence by teachers and other people against them. The facts of violence also include violence at school. According to children, beating, banging against a wall, bearing in a stomach by a teacher (Ziniko teacher) take place in school. The teachers of the children's home, according to the children, box ears. This is the fact these children, as well as other

beneficiaries, are victims of child violence. This may not be dealt with by the staff just like the problems in the school. The children recall the concrete episodes of physical conflict with other children during winter.

Out of the children victims of violence, one had mental retardation, whereas the other has some mental problems. Insomnia, depressive episode, nihilism, and indifference are noticed. Other children call him "mad". The information is confirmed by the psychologist of the institution as well. The child is completely excluded, does not have any contact with anybody, does not get involved in any activity, and does not attend the school. He/she is not provided with the adequate psychological support. When alone, he/she goes to the kitchen.

● Children's home in Zugdidi

During the interviews with the Monitoring Team three children indicated the permanent nature of the violence among children. The personnel are not able to solve the mentioned problem by using the positive methods of upbringing. All the three children describe that in order to protect themselves they apply to their brothers for help or protect them themselves. Instead of helping them teachers beat them in hands with a ruler, box ears, put them in a corner and pull their hair. It is clear that there is the tense psychological condition of children and the crisis caused within children as a result of violence, however there is absolutely disappeared protest on the facts of punishment by teachers that children refer to indifferently.

● Children's home in Tskneti

The monitoring team received the information from 8 children about the facts of violence between children. It is important that the Director and the Administration confirm the facts of violence between children, however, they consider, that have already solved the problem on their own. Their initiative was to segregate the victims of violence from the groups and to establish a group of weak and victim children. The mentioned initiative was assessed by the members of the monitoring group as unjustified from the point of view of child rights and the management of violence. The position of the monitoring team was confirmed by the facts of violence among children, which not only were not solved, but most probably were aggravated by the inaction of the administration.

All the eight children provided the information to the monitoring team on the facts of their beating by elder children, as well as the facts that such actions of elder children are not only not eradicated by the administration, but even promoted, in order not to have created additional problems from the perspective of the establishment of the discipline with younger children. The elder children instead deal with them physically: beat them and do not allow them talk.

According to some of the beneficiaries, in such cases the Director of the institution threaten younger children by transferring to the groups of elder children, telling them "they would have improved them".

The concrete facts of discrimination of younger children in favour of elder children were also witnessed by the tonitoring team as well on spot that is described in the respective Chapter.[102]

● "Momavlis Sakhli (House of Future)"

Four children in the "Momavlis Sakli (House of Future)" provided the information to the Monitoring Team about physical punishment of 5 children by one of the caregivers Nato M. The mentioned person made 5 girls (10-12 years old) get up from their beds as they were not getting to sleep and so that one of them could not even manage to dress, ordered them to go from the second floor to the first one, where she ordered them to put on knees in the corridor and let them stay in such condition from half an hour to an hour. Afterwards she made them apologize and with the

[102] See: "Discrimination of children"

promise that they would have gone to sleep she let them go to bedroom. The children were describing the precise details of the case: including the place of putting on knees and the persons present.

The strange form of punishment by one of the caregivers Mzia T. was also noted: making a child to stand close under a tree for an unlimited period.

On the question of the Monitoring Team, how many facts of violence were recorded in the institution from 2009 to date, the administration of the "Momavlis Sakhli" clarified, that none of the facts of violence were recorded; however, as it was revealed later, pretty heavy forms of violence among children, which have systematic nature, were confirmed by the explanatory notes of the caregivers of child institutions themselves:

Two children informed the Special Preventive Team that on 18 December, 2010, at 1:00 am there was a conflict between two children of the branch that aggravated. One of the children could not control the behavior and tried to exercise physical violence against the other child. The conflict was also followed by the material damage - several window glasses were broken. According to the teachers, the fact of violence is expected to be repeated, that will threaten other children as well. The teachers request reaction from the administration, which has not undertaken any measures for the prevention of the future incidents.

As it is made clear, the fact of violence and the breaching of the internal regulation repeated among the same children in 18 days: according to the 5 January 2011 explanatory note of the teachers the beneficiaries insulted them and children, swore, damaged the inventory, tried to escape from institution, had a conflict with other children, as well as with teachers, did not sleep during night and did not let other children get some rest. The teachers were noting that these facts have systematic nature and still request reaction from the administration.

Neither statement nor the explanatory note of the above mentioned teachers was officially registered by the administration. There has been no record on the reaction over the incidents noted either. As a result, the cases of violence among children continue:

In the registration book of a psychologist of the "Momavlis Sakhli", another conflict among two children was registered on 1 January, 2011. According to the record in the same registration book one of the children verbally and physically abused the other one and bite on arm on 5 January, 2011. The bruises were noticed at the place of injury.

- **Child institution "Satnoeba"**

As a result of interviewing 8 children the Monitoring Team received the information on the facts of inhuman treatment in the Public School 201 (where beneficiaries study) from the side of several teachers and a director. According to them, the children in child institutions are singled out from other children and call them degrading names: primates, dirty, with lousy, monkeys. The Director offends dignity of children and their biological families, underlining the fact that they are from children's homes and says that their families live in piggery, their parents do not look after them, and this is why they ended up in child institutions.

Some of the beneficiaries describe in detail the fact when despite a request of a child the teacher of Mathematics Marina Tch. he/she did not let to toilet, as a result of what the child could not but pissed in the class.

According to children, the teacher of biology hit in hand one of the children Sopo J. with a stick, as a result of this the child broke an arm. The record in the medical files is not made about this. The teacher of history Maia D. hits by leg children in case of whispering with each other. The children explained in detail the case, when the Director of the School made one of the children put a hand at the table, brought a knife very close to the hand and threatened to cut fingers.

It is important to note that the Director of the child institution also confirms the existence of certain problems in the mentioned school.

● Children's home in Saguramo

The Monitoring Team met 5 children in the institution in Saguramo. According to one of the beneficiaries, a teacher slapped in face him/her slapped, and the Director witnessed this, however did not react on the fact in any way, only verbally noted to the teacher. The similar fact is also referred to by the Director as well, according to whom in 2010 there was physical violence ("smacking") by a teacher against a child noted in the institution he/she is responsible for. However the Director has not provided the information to the Social Service Agency. Respectively, the procedures for the child referral were violated. No record had been made on this in the respective Journal either. According to the Director, the case was considered with his personal participation with the victim of the violence, abuser and other staff, following which the teacher apologized to the victim.

● Children's home in Kojori

The monitoring team interviewed 5 beneficiaries in the institution in Kojori. It shall be mentioned that the story by the child repeated with a high precision the information received during the monitoring in 2010 about the physical violence exercised by the same Director of the institution against children. In particular: heating in the head, shaking, brining up hooked with a neckband and throwing down on a floor (9 years old beneficiary had a yellow spot on the face, a trace of injury. The child noted he/she had felt down when running on the stairs).

The experts' team received the information during the monitoring that the day before some type of an attempt of sexual violence between 2 beneficiaries (7 and 9 years old) was noticed (simulating the sexual acts of adults), due to this the director bet both. 7 years old beneficiary mentioned, that he/she was shy to talk on this, whereas the 9 years old beneficiary blamed the 7 years old, as if that child was involved in pervert action, however not against the second beneficiary, but with own self (describes not real act).

In the beginning the Director of the institution refused any attempt of sexual acts between beneficiaries, however as he realized that the monitoring team was aware of the above mentioned fact already, he/she stated that the fact had taken place, however put all the responsibility on the 7 years old child. He/she also stated that that he/she would not have bet these children, that the psychologist of the institution had respective records on this. As the psychologist was not in the institution, the representative of the Office of the Public Defender of Georgia re-visited the institution next day. However, it turned out that the psychologist had no records on the mentioned incident.

Certain tension was noticed during the interviews with children of the children's home in Kojori. The impression was made that they were instructed by the staff of the institution as to what not to discuss with the experts. In cases when someone opened the door to the room where the interview with beneficiaries was going, one of the children during the interview used to start talking inadequately and loudly, saying that everything was all right there, the Director and all the teachers were good, nobody beat the children. A child was repeating this non-stop until the door was open. On the question, as to why was this done, a child noted that he/she did not have choice. A child was revealing signs of psychological suppression.

● Children's home in Telavi

During the visit the experts interviewed 7 children in the children's home in Telavi. The concrete case of disregarding a child was revealed directly during the monitors' presence on the spot: the evening before the monitoring one of the 10 years old child damaged a door of a cupboard; as a result of this one of the caregiver (Eter) punished him/her with not allowing him/her to take breakfast in the morning. The child was hungry until the mid-day. Other children provided this information to the Monitoring Group. The beneficiary first stated that this caregiver did not allow him/her to take the breakfast, however later on the teacher allowed him/her to eat and he/she had the breakfast. He/she could not

provide a reply to a question what was for breakfast, and later on the child confessed that he/she was not allowed to have breakfast even later and the teacher mentioned above told him/her to have this story told to the monitoring team this way.

The violence among children is a frequent practice in the children's home in Telavi. One of the children permanently physically abuses other children. The same child inflicted the heavy burns on another beneficiary in the areas of a hand and face by putting a fire on a hand with petrol in November of the last year. There is no record on this in the medical unit. The fact of burning is proved by the records made by the Medical Group "Curatio" in the medical examination records of children, however the concrete circumstances are not indicated.

The heavy violence among children is being confirmed by the administration as well. The violence by minor X exercised against other children and teachers was identified in the child institution in Telavi. As the explanatory note[103] by the caregiver R.T. of children's home in Telavi addressed to the Director of the institution states, 12 years old X employs systematic physical and verbal abuse against other children and caregivers, escapes from the child institution, smokes, drinks alcohol, does not attend the school, and steals. Despite the fact that the Administration of the child institution in Telavi undertook a number of measures to solve the problems of X - a psychologist, a psychiatrist were involved in the case, they applied to a social worker for support - the problem is still not solved. According to the information provided by the caregivers, X is a victim of domestic violence. In very early age a father had thrown him/her from a balcony. As a result of this he has a trauma on the head. According to caregivers, the violence by the father against X and his brother in the same institution, as well as against their mother and three other sisters and brothers, who stay in the family, presumably continues up until now. Both brothers in the child institution have a strong stress. This is expressed by a heavy behavioral deviation.

As stated by the caregivers, one of the recent violent acts undertaken by X was strangulating other children in throat. The mentioned incident, due to the intervention of the caregiver, did not result in any victims. However the attempt of suffocation by X was not a one-off accident.

It is clear that the data collected by the Monitoring Group are only a small portion of the real picture of the cases of violence and this provides for a possibility to suggest that the violent acts against and among children have a regular character in the children's homes that puts all the children there under a real threat.

RECOMMENDATIONS:

To the Minister of Labor, Health and Social Protection of Georgia:

- **To elaborate the efficient and proficient mechanism, with the respective accountability system, for the monitoring and controlling of the children's homes;**
- **To place under the personal control the reaction on all the revealed facts of violence.**

To the directors of the Legal Entity of Public Law State Care Agency and the Legal Entity of Public Law Social Service Agency:

- **To undertake the joint, complex and coordinated activities to reveal the facts of violence and to manage them in the children's homes.**

To the Director of the Legal Entity of Public Law State Care Agency:

- **To elaborate and establish the swift, efficient and the transparent system for the administrations of the institutions to reveal the facts of violence and have an accountability for them;**

[103] The Explanatory Note 25.11.2010, N 05/152.

- **To inform the General Inspection of the Ministry of Education and Science as well as the Legal Entity of Public Law Social Service Agency on all the facts of violence exercised by the teachers of public schools against children from children's homes;**
- **To introduce the respective amendments into the regulations of the institutions to ensure the external visual examination by a doctor of children upon each entry and exit of a child from the institution, including for the prevention and identification of domestic violence;**
- **To ensure that doctors of each of the institution keep the Journal for registering injuries, where the facts of all injuries, self-injuries and everyday traumas will be registered and described in the respective part, along with the indication of their reasons according to the explaination by the child as well;**
- **To ensure that doctors of each institution and every single staff immediately provide the administration with the information on the possible cases of violence, including the cases, when the abuser, as explained by the child, is the Director. In such a case the information shall directly be provided to the Legal Entity of Public Law Social Service Agency;**
- **To ensure that psychologists of each institution run a special Journal to record the facts of violence, as well as immediate provision of the information about the mentioned facts to the administration. In the situation, when the abuser, as stated by the child, is the Director, the information shall be provided to the Agency directly.**

To the Minister of Education and Science of Georgia:

- **To ensure the respective reaction of the General Inspection of the Ministry on each of the notification on the facts of ill-treatment of the beneficiaries of children's homes from the side of teachers of public schools.**

CHILD LABOR

Employing child labor is confirmed on the basis of independent questioning of a variety of sources by the Monitoring Group. The administration of the children's home in Batumi confirmed that the children helped the local population in picking mandarin in exchange of a small remuneration. It shall be mentioned that the administration does not control the equivalency of the remuneration with the work undertaken or the monitoring of its complexity; however by analyzing the concrete cases of employing child Labor, as said by children, the fact that the information provided by the administration is not complete becomes clear.

16 years old beneficiary notes that they not only help neighbors in picking mandarin, but also clean up houses of the teachers of children's home or their neighbors; they call themselves cheap Labor force, as they know that for the performance of the same work others get much more payment, than granting some cloths and the remuneration of equivalent to 5 Georgian Lari.

The situation gets particularly aggravated, when this and other beneficiaries retell the stories of cleaning against their will the toilets and kitchen in the children's home. According to a child, when the officer on duty is absent, the cleaning lady demands from them with a strong voice to clean not only their own group space (this the children do not protest against), but also other groups. Another child also mentioned that they are forced to clean toilets and corridors. In case of not obeying, according to the child, their cloth is not washed in the washing machine anymore and they are forced to wash in cold water.

It is important to note that National Preventive Mechanism has also received the information from the Director of the Legal Entity of Public Law State Care Agency about the employing child Labor ,who had sent the complaint by a parent of one of the beneficiaries of the children's home in Surami. The complaint describes the facts of washing linen by children with hands in cold. The night nanny Dariko, in cases of pissing in bed by children, makes them wash

their close and physically abuses (beats) them. It shall be noted that the Legal Entity of Public Law State Care Agency submitted the mentioned case to the competent authorities.

Recommendation to the Legal Entity of Public Law State Care Agency:

- **To ensure revealing the cases of employing child labor instances and undertaking the adequate reaction on them. The Agency shall ensure protection of children of child institutions from any form of labor exploitation of children.**

DISCRIMINATION OF CHILDREN

Unequal conditions for different children groups were clearly seen during the work of the monitoring group on the spot in the children's home in Tskneti. A cottage of one of the groups of the children's home was clearly better equipped, than any other cottages. In a relatively normal living temperature children could have been dressed in adequately warm cloth, whereas in all the other cottages due to explicitly low temperature children wore jackets in cottage as well. Due to low temperature in rooms, children wore coats, fur coat. In some cottages, due to cold, children were gathered around the only gas heater (so called "Karma") all day long.

A bedroom of one of the cottages, where 8-10 years old boys were placed, had beds of different sizes. There are 5 beds in the bedroom: 3 beds are of 139 sm long and 64 sm wide, the other 2 beds have 151 sm length and 67 sm width. The same was the case in the girls' bedroom as well, where the same aged children had beds of different sizes, one had a large bed (length 1.88 sm and width 93 sm) with a mattress, whereas the other child had small not a standard bed (with the length of 138 sm and the width 69 sm) with a thin, completely appalling mattress. Conditions are not equal in other groups as well.

The privileged condition of some of children in one of the group was also noticeable. In the period of the monitoring some children spent the entire day in the building of administration, where there was heating, food and sweets. At the same time the children in the group were dressed completely not relevantly for the cold weather (snow and freezing temperature in the evening) and they were in a noticeably in a condition of not being looked after (with dirty hands, with liquid from nose), they were without supervision in the yard for the entire day. According to the administration, any child may stay in the administrative block at any time; however this is not confirmed via interviews with children, according to whom they are not allowed to enter the administrative building.

There was no different approach recorded in the child institutions with regard to the children representing ethnic minorities (child institutions in Lagodekhi, Telavi) during the monitoring.

A positive practice was recorded in the child institution in Lagodekhi: one of the caregivers speaks Azeri language; this creates particularly native environment for children from the Azerbaijani community, who before learning Georgian communicate on their needs to the personnel via this very caregiver.

Alike to a public school, in children's homes as well there are some instances of discriminatory marginalization of children. Children are nicknamed: "Crazy", "Dimitrian", "Tatars", and "Beggar". This represents the additional source of stress and often becomes the reason for physical controversy and violence among children.

Recommendations to the Director of the Legal Entity of Public Law:

- **To ensure the prevention and eradication of discrimination and unequal treatment of children by the mechanisms of internal monitoring of the children's homes;**
- **Particular attention shall be paid to the special needs of the beneficiaries from the groups of ethnic minorities (religious, nutritious, social and other).**

LIVING CONDITIONS

According to the Convention on the Rights of the Child, every child has a right to be provided with such a life quality, which is necessary for a child's physical, mental, spiritual, moral or social development. The state, on its turn, is obliged to create corresponding conditions for the implementation of this obligation. Normal, as equaled to family environment as possible environment is required for the fully-fledged development of a child.

According to the standard 14 Child Care Standards[104], *"the location of the buildings identified for the child care, as well as their visual side and space shall be compliant with the purpose of the service and satisfies the needs of a customer. This means that the physical environment is convenient, in a maximum degree possible close to the family environment, refurbished and easily accessible for disabled persons. The service provider ensures the observance of hygienic norms at the territory of service delivery and promotes these norms within customers".*

Despite the above mentioned in some cases children are place in buildings without normal living conditions. A clear example of the mentioned are the conditions in child residential institutions in Lagodekhi, in Tbilisi "Momavlis Sakhli", child residential institution in Tsalenjikha, and two cottages of the child residential institution in Tskneti. Plaster falls down from the walls in the mentioned institutions, water is leaking from the roof and the floor is damaged. Due to the unbearable conditions, IV group of the child residential institution in Tskneti was dismisses during the monitoring. The listed buildings require major repairs.

A part of some of the childcare residential institutions is partially renovated. In some of them bedrooms are renovated, windows are changed or toilets are refurbished. In general, all children's homes required refurbishment.

Bedrooms for children in some cases are of barrack type with more than 10 beds in one bedroom. A clear example of the mentioned is the children's home in Tsalenjikha. There are 15 beds in one of the bedrooms of 48 m^2 of the mentioned institution; the other one (with 69 m^2 space) has 16 bedrooms. Two bedrooms of the child institution in Surami, with 57 and 59 m^2 spaces, have 14 beds each. There are 15 beds in one of the bedrooms of the child institution in Lagodekhi. According to the Article 10 (a.a) of the Law of Georgia on "Licensing the Child Institutions", space of bedrooms per child shall be no less than 6 m^2. Also, no more than 10 children shall be placed in one bedroom.

As it was mentioned above, there shall be no less than 6 m^2 space per child in children's bedrooms. This standard is also violated in some of the children's homes. For example, in the child institution in Lagodekhi a bedroom is divided into two: there are desks and firewood stove on one side and children's bedroom on the other. One of the bedrooms is 34.56 m^2 and it has 10 beds in it (there is 3.456 m^2 per child). There are 15 bedrooms in another bedroom where only approximately 3.24 m^2 space is allocated for each child. Bedroom space in the child institution in Rustavi is 29.7 m^2. There are 7 beds in the room, with 4.24 m^2 for each child. There are 7 beds in one of the bedrooms of the child institution in Tskneti. The space of that bedroom is 18.8 m^2. Respectively, there are only 2.38 m^2 allocated for each of child there. Another bedroom with 10.24 m^2 has 4 beds in it.

According to the Childcare standard, a child has a right to have personal objects and place to keep them (e.g. closet, bedside table).

There are several children's homes (in Tskneti, Zugdidi) where all children have no personal bedside tables.

There are iron "bedside tables" in the bedrooms of children's home in Lagodekhi, where mainly firewood is stored, and there are closets, however they are damaged and not in a sufficient quantity. Old and damaged closets and bedside tables are in other child institutions as well (Zugdidi, Surami, Batumi, Tsalenjikha, Aspinda).

The majority of the beneficiaries replied to the question as to what would have they changed in their institution, that each child would have the own space and closet, which could have been locked. According to children this is due to the fact there are frequent instances of taking each others' cloth and different items without asking each other. In the majority of child institutions the equipment is outdated and requires change.

[104] Order #281/N of the Minister of Labour, Health and social Affairs "on Child Adoption of child care standards" dated August 26, 2009

The child institution in Saguramo shall be assessed positively. There are furniture there and each child have the own closet and a table.

Some bedrooms are damaged in "Momavlis Sakhli (House of Future)"in Tbilisi, the child institutions in Batumi, Tashiskari and Zugdidi.

According to subparagraph "b" of the Standard 8 of the Childcare Standard, the service provider is equipped with the resources compatible with children's age and interests.

It shall be positively noted that there are computer room, TV sets, musical centers, sport halls in almost all the child institutions and some of them have playgrounds in yards.

As a rule, library is in all the children's homes (the exception from this is the child institution in Tsalenjikha). The number of books is also quite large. There are mainly Russian language books in the child institution in Batumi and as clarified by the personnel, the library has not been updated for approximately last 7 years. According to the personnel, they are mainly supplied with the school books. There are no Journals registering the circulation of books in child institutions. According to the administration of the children's homes, the functions of the librarians are taken over by psychologists or caregivers. The library in Tashiskari shall be assessed positively, where the books are quite interesting and diverse.

Recommendations to the Director of the Legal Entity of Public Law State Care Agency:

- **To ensure the refurbishment of the children's homes, in order to create elementary conditions for children to live in dignity;**
- **To ensure the equipping of the children's homes with the respective furniture and equipment.**

HEATING, VENTILATION AND LIGHTING

According to the sub-paragraph "a" of the Child Care Standard 14, the building for the service provision shall comply with the following norms: is bright (with the respective natural lighting); is well ventilated; is provided with the season-adequate temperature.

The natural lighting and ventilation in the institutions visited by the National Preventive Group is sufficient due to their large windows. However, the "Momavlis Sakhli (House of Future)" in Tbilisi is an exception. There are no windows in the rooms there and access to the ventilation is ensured via windows in the corridor. This is not sufficient.

There was no enough artificial light in the majority of institutions. In the rooms where there should have been 4-5 light bulbs working, only 1 or 2 were working. According to the administration of the child institutions, bulbs burn out often in the institutions and their ordering takes place in a centralized manner; therefore, institutions are not in a position to change them constantly. The same problem emerges in the institutions in case of a need to change a broken window glass.

The heating is centrally and sufficiently provided in Kojori, Saguramo, Rustavi, "Momavlis Sakhli (House of Future)" and "Satnoeba (Compassion)". The institutions in Tbilisi and Tskneti are heated with electrical heating appliances and natural gas heating appliances, but the mentioned means can not ensure the sufficient heating. The majority of the child institution in regions is heated with the firewood stoves. However, it was very cold in some of the children's homes during the monitoring, as the firewood stoves were only in one or two rooms. In the child institution in Lagodekhi only one - common room was heated and it was cold in other rooms (temperature 7^0). There were three firewood stoves at each of the floor in the children's home in Telavi, out of which only one or two were on. The same may be said about almost all the institutions which are heated by means of firewood stoves. Mainly the rooms were teaching process was ongoing (e.g. musical class or school class rooms) were heated, however in parallel to this, the rooms where there were

children (corridors, dining rooms, cloakrooms and toilets) is was quite cold. In the child institution in Batumi, as it was impossibly cold, the experts, when interviewing beneficiaries, were asking them to move to get heated, despite the fact that children wore jackets. According to children, they watch TV in the evening wrapped in blankets and duvets.

Recommendation to the Director of the Legal Entity of Public Law State Care Agency:

- **To ensure the heating of children's homes in a centralized manner, as well as appropriate equipping of living parts, toilets and shower rooms.**

SANITARY AND HYGIENIC CONDITIONS

In the great majority of institutions children are able to take shower once a week. In majority of cases children keep their toothbrushes and toothpastes themselves. The first cottage of the children's home in Tskneti was an exception, where toothbrushes were put together without cover in bathroom.

According to the administration of the chilrden's homes, the bed linen is changed once a week. However, as the Monitoring Group observed, dirty bed linen and bed covers were noticed in some of the institutions – e.g., in the "Momavlis Sakhli (House of Future)", the child institution in Lagodekhi, some of the cottages of the child institution in Tskneti. Private towels are sufficient in all the institutions, however towels were not clean in Tskneti and "Momvalis Sakhli (House of Future)".

According to the administrations of the children's homes, the rooms are cleaned daily, however as observed by the monitoring, anti-sanitary was noticed in some of the institutions. In particular, there were breadcrumbs on beds and floors, floors and furniture were dusty ("Momavlis Sakhli (House of Future)", V and VI groups of the children's home in Tskneti).

There are mainly Asian type toilets; however in some of the institutions the lavatory pans are also installed. At the second floor of the cottage in Tskneti, as well as in Surami and Lagodekhi the lavatory pans are installed next to each other. This does not allow for privacy. Even in those cases when toilets are partitioned from each other with walls, they have not doors. The toilets in Lagodekhi and "Momavlis Sakhli (House of Future)" are in very bad conditions. In the majority of child institutions the entry doors to toilets have no lockers (in Telavi, Zugdidi, Batumi, Tsalenjikha, Aspindza).

The showers are not isolated in some of the institutions. Around 7-8 children happen to take shower together (children's homes in Kojori, Telavi, "Momavlis Sakhli (House of Future)"). In some of the institutions the shower room is not properly equipped (Tsalenjikha). The shower room at the first floor of the child institution in Batumi is in deplorable conditions. In the shower room of the Tashiskari children's home, the water is heated by the firewood stove and the shower room is not properly equipped and arranged.

Recommendation to the Director of the Legal Entity of Public Law State Care Agency:

- **To ensure the regular control over the preservation of hygienic conditions in childdren's homes.**

NUTRITION

According to the information provided, the menus are composed in the child institutions with the extremely outdated standard. The document provided by the children's home in Tskneti is dated to 1988 (the document is so old that the date is hardly seen on it). This is the recommendations provided by the Republic level Methodical Office for the Pre-School Education of the Ministry of Education of the Georgian Soviet Socialist Republic. The standard is devoted to

only pre-school education (kindergartens). Respectively, it may not meet the requirements of older children.

On 20 July, 2010 the Director of the State Care Agency[105] provided the children's homes with the document on the energetic value of nutrition of beneficiaries (kilocalories calculated according to the age); however the mentioned document does not indicate exactly what type healthy food shall be provided to children according to their age norms. As a result the administration of each of the child institution plan the daily menu based on its own assessment. This in many cases is completely based on the non-understandable principle. The nutrition ratio with excessive carbohydrates, by supplying large quantities of brad and bread products is striking by the general assessment of menus.

There is absolutely no indication of providing fruit to children in the menu of the children's home in Tashiskari. This may seriously damage the health of children. The menu of the same institution does not contain the calculation of calories of nutrition.

According to the records in the menu of the child institution in Tbilisi, children eat 200 gram fruit (apple) only one day in a week. There is no calculation of calories indicated here either.

According to the menu of the child institution in Lagodekhi children eat fruit only during three days in a week.

The documentation (menu) provided by the "Satnoeba (Compassion)" child institution reveals that children eat fruit during 5 days a week.

According to the menu of the children's home in Telavi the eating of fruit by children is limited to only one apple a week. As the menus provided by this institution state, 7-8 years old children drink coffee every morning for breakfast. The mentioned confirms that the administration of the institution either do not know the negative influence of caffeine on minors, or the mentioned record is just a formality, just alike the record about the provision of tomatoes, cucumber and green beans in winter (record from the menu).

None of the children were undergoing the treatment nutrition dietary nutrition in child institution. The age needs of children were not taken into consideration during the process of composing the menus in any of the child institution.

It shall be noted that the amount allocated for nutrition per child a day in child institution was 3-4 Georgian Lari. However, there were institutions were this amount was increased on the expense of humanitarian aid.

To sum-up it shall be mentioned that the menus of child institutions are not diverse. They contain very few fruit and vegetables, the calculations of calories are satisfied on the expense of eating a large amount of bread and bread products.

Recommendations to the Minister of Labor, Health and Social Protection:

- **To elaborate the age appropriate menus, to establish the daily norms of nutrition ingredients for the fully-fledged development of children and teenagers.**

Recommendations to the Director of the Legal Entity of Public Law State Care Agency:

- **To ensure provision of healthy food to teenagers, with the respective inclusion of sapwood, fats and carbohydrates, minerals and vitamins, for the sake of fully-fledged development of children;**
- **To consider the allocation of the increased budget for the celebratory menus.**

[105] The Order N 1/253 of the Director of the Legal Entity of Public Law "Service Agency for Persons with Limited Capacity, Elderly and Children Deprived of Care" dated 20 July, 2010.

PURCHASE AND THE SECURITY OF PRODUCTS

The Agency provides the food staff to the child institutions in a centralized manner, with different frequencies (perishables - with small intervals). Based on the application of the child institutions the required products are supplied by a company selected in a tender. However this form of purchasing food stuffs has considerable gaps.

The fluctuation of market prices on food stuffs and the quick raise of prices by the end of the year do not allow the purchasing of the quality food stuffs with the amount allocated a year in advance. Therefore the Monitoring Group during the visit identified the low quality, often stock of wretched products.

In the children's home "Satnoeba (Compassion)" in the beginning of the year there was 0.50 tetri allocated to buy one kilogram of potato, however the market price of potato was at least twice as much than the envisaged price by the end of the year. Respectively, the quality of the purchased staff deteriorated significantly. As stated by the administration of the child institution in Surami, children have for long not received buckwheat, despite the need, as its price has drastically increased.

Deriving from the system of centralized purchase of products, the administration in the regions have to get the large stock of products at a time (via the supplier firm) and their consequent storage in refrigerators, however due to the interruptions in the provision of electricity the large quantities of supplied products get spoiled often. The Monitoring Group recorded the stock of spoiled meat in the children's home in Tsalenjikha.

The situation gets particularly deteriorated at the beginning of each year, as according to administration, there are often the cases of belated holding of tenders of the last tenders of the previous year to identify the supplier firm. This results in disruption of provision of food stuffs.

In the child institution in Aspindza, as stated by the personnel, the egg and fish supplied in summer, 2010 were old, and bread was foisted. The children refused to eat the product.

The centralized system of supply does not allow providing children with new seasonal fruits, vegetables and verdure. The latter reaches the institutions relatively remote from Tbilisi in already damaged form. The provision of fresh bread is also problematic due to the same reason. According to the directors of the institutions, the situation is paradoxical in some of the regions - the products, produced/grown locally (citruses, verdure, cheese, potato) are provided to the institutions via Tbilisi. The mentioned, presumably, increases the costs for the provision of products and considerably deteriorates the quality of the food.

Recommendation to the Director of the Legal Entity of Public Law State Care Agency:

- **To ensure the holding the tenders for the provision of the institutions with food stuffs timely to avoid the disruptions in the supply;**
- **To ensure during the organization of tender the purchasing of perishables and seasonal food stuffs from local producers;**
- **To control the strict observance of the rules for keeping and supplying the products in the institutions.**

FOOD BLOCK

The monitoring revealed that the recommendations issued during the previous monitoring on the preparation and keeping of food are observed in majority of the children's homes. The security of the cooking is improved. However, the marked sinks are still missing in some of the institutions that shall be used for the washing of products, vegetables and crockery (child institution in Tbilisi). The boards for cutting meat are not marked in the child institution in Samtredia.

None of the child institutions have functioning air-pumps or they are not installed at all. The ventilation takes place only by natural ventilation.

There is anti-sanitary in some of the food blocks (Telavi, Surami and Tsalenjikha). A part of the food blocks necessarily require refurbishment, as the floor is damaged, it is not covered with floor cover, the walls are moistured and wall covers have fell down (child institutions in Tbilisi, Surami, Batumi and Samtredia). The damaged and outdated electric stoves are often kept in the kitchens of the institutions ("Satnoeba (Compassion)", Kojori and Telavi).

Kitchen staff, as a rule does not wear dressing gowns, hats, they do not have a closet to keep their cloth, or a separate space to keep the cloth (children's home in Tbilisi, Tskneti, Telavi).

The centralized supply of hot water to kitchens does not happen. The water is boiled at the gas stove (Lagodekhi, Tskneti, Surami).

The crockery is mainly washed by hand. The plates, forks and knives are kept in a cupboard without a door, which is covered by a curtain ("Satnoeba (Compassion)", Saguramo).

Recommendation to the Director of the Legal Entity of Public Law State Care Agency:

- **To control the strict observance of the sanitary-hygienic standards in the food blocks of the child institutions;**
- **To ensure the adequate material-technical provision of the food blocks;**

PROVISION OF POTABLE WATER

There is a serious problem of provision of potable water in a number of child institutions. The child institution in Tskneti is provided with water once in 2 days or for several hours a day. The collection of water happens in large pans in kitchen. The potable water is also collected in plastic containers in cottages as well. The potable water is provided in a centralized manner according to a schedule; however for dish washing the water collected in the water tank is used, whereas the drinking water is carried over from the water spring.

Water is collected in large water tanks in the child institutions in Aspindza and Kojori. This water is also used as a drinking water; however it is not examined (Kojori, Aspindza). This may threaten the health of children.

The well water is used in child institutions in Zugdidi and Samtredia. In this case also there has been no examination of the water undertaken.

Recommendation to the Director of the Legal Entity of Public Law State Care Agency:

- **To ensure the regular examination of potable water and the appliances used as water collectors in the children's homes.**

MEDICAL CARE

Medical care in the children's homes is provided according to the Article 135 of the Law of Georgia on Health Care, according to which *"the state ensures the provision of healthcare in the institutions for orphan children and children deprived of parent care, as well as children with physical and mental deficiencies".*

The 30 December, 2009 Order N441/M of the Minister of Labor, Health and Social Protection approved the Child Care Programme for 2010. The Programme includes sub-programmes, among which, from the perspective of provision

of medical care, the sub-paragraph "g" of the point 4 of the sub-programme on the support to the child institution is important. It determines *"the provision of beneficiaries with the primary medications and care and in case of need the organization of the ambulatory and the in-patient medical service".*

The Child Care Standards approved by the 26 August, 2009 Order N281/M of the Minister of Labor, Health and Social Protection is also important. According to the Standard N9 - The support to and Protection of Child Health Care - *"... the service provider ensures the access of the service recipient to the immunization and the medical-prophylactic examination. (...) In case of such need, the recipient of the service will be provided with the quality medical service."*

The internal regulations of the child institutions of the Legal Entity of Public Law State Care Agency under the Ministry of Labor, Health and Social Protection establish the working hours of the medical staff, and the decree contains the rights and obligations of all the categories envisaged by the staff lists.

The decrees of the institutions are almost identical and they list in detail the rights and obligations of a doctor. The sub-paragraph "a" of the Article 8(4) mentions that a doctor *"provides medical care to children"*, according to sub-paragraph "c" a doctor *"carries systematic treatment and prevention measures in the branch".*

Children are provided with the primary medical assistance in almost all the child institutions. In case of need children are taken to hospitals; the vaccinations are planned and the provision of vaccination in the district policlinics and healthcare centers are ensured. The ambulatory treatment is provided on the spot; however the medical personnel do not make the respective records in the General Journals.

KEEPING THE MEDICAL RECORDS

In the Child Care Standard which envisages the promotion and protection of children healthcare the indicators of implementation, i.e. the indicators based on which it is possible to assess the efficiency of the medical service provided in the institution are listed. The sub-paragraph "b" of the Standard 9 of the Child Care Standard - "the promotion and protection of child health" indicates the following implementation indicator: *"a service provider registers in the special journal the cases of child accidents;"* Sub-paragraph "d" of the same standard notes that *"service provider undertakes the control over infections".* However, as it was revealed during the monitoring, the adequate registration does not take place in all the institutions.

The Journal registering accidents was identified in only several institutions (Saguramo, Tskneti, Tsalenjikha). These Journals contain records about dog biting, and breaking a finger during playing rugby.

Only several child institutions keep a Journal for controlling the infectious diseases (Tskneti, "Satnoeba" (Compassion), Saguramo, Kojori). Despite the fact that during the monitoring last year the attention was also paid to the keeping this and other Journals, the mentioned recommendations is still not followed.

The obligation to keep the full medical records shall be observed in parallel to the provision of medical service, as envisaged by the Law of Georgia on Medical Activity.[106]

Despite this requirement of the legislation, the monitoring revealed that the individual medical files of children are kept in notebooks, in majority of cases - not fully and they do not reflect the real health conditions of a child. Due to unclear content of the records, the establishment of the actual conditions of a child and the concrete needs is impossible. No real monitoring of health conditions of beneficiaries and of their physical development is undertaken.

[106] Chapter VII "The obligation of the subject of the independent medical activity to keep medical records", Article 56, paragraph 2: *„(...) b) medical records are fully provided. The subject of independent medical activity shall fill-in each part of the medical records (personal social, medical and other data of the patient) in full;*
c) The information shall be entered in the medical records on time and within the established time-limits;
d) The medical records shall adequately reflect all the details related to the medical care provided to the patient;
e) Each new portion of the medical records shall be confirmed by the subject of independent medical activity with a clear signature, in accordance with the established rule."

The assessment of the physical development is undertaken in some of the institutions only during the preventive check-ups (once in a year). In some of the institutions even this is not possible due to the non-existence of weighing-machine and a machine to measure height ("Momavlis Sakhli").

The individual development files of the beneficiaries were not accessible in some of the institutions (Lagodekhi), the documentation is dispersed (a part of the documents is in child institution in Lagodekhi, whereas the part of the documents is in the Heath centre). This makes the undertaking of the full monitoring of health complicated. No respective records are entered in cases of worsening health conditions, trauma or any other severe conditions.

A child got a burn in a shower room in the child institution in Telavi a day before the monitoring. He was transferred to a hospital by the time the monitoring was ongoing. No respective record could have been found in the medical file about the incident.

The registration of ambulatory help is undertaken differently in different child institutions. In many cases the respective aid and the recommendations are not entered in time or are not entered at all. The monitoring of issuing medications to the beneficiaries undergoing ambulatory treatment is also not regulated (the prescription forms are used only in Saguramo); there were often cases identified with the following records on the box of medication or at the paper: "*Please write for me down the medications, whoever take them*", *"Give to (a name, surname of a child) Amoxaciline and Strepsils"*. The transmitting the information between a doctor and a nurse about the treatment practically does not happen via the respectively documented recording.

Despite the fact, that as explained by a doctor and a nurse, they undertake the assessment of hygienic conditions of beneficiaries, in majority of cases it is impossible to find any record as to when and what type of problems did the children have and what type of medical help concretely was provided to them (Surami, Tashiskari, Batumi, Rustavi).

By analogy it is possible to keep in the child institutions, taking into consideration their specificities, the forms envisaged by the 22 August, 2009 Order N224/M of the Minister of Labor, Health and Social Protection of Georgia "on the Approval of the Forms of the Primary Medical Files, their Keeping and the Rules of Filling-in them in the Primary Healthcare Institutions".

A special mention shall be given to the sub-paragraph "a.g" of the Order N224/M on the registration of medications and subjects with medical prescription (Form N IV-007/a) and the sub-paragraph "a.h", on the history of the development of a child (Form N IV - 008/a). The introduction of these forms in the child institutions will considerably ease the control and supervision over the registration of medications, and the implementation of the forms of the history of development of a child will support the improvement of the monitoring of the healthcare of children.

Recommendations to the Director of the Legal Entity of Public Law State Care Agency:

- **To undertake the fully-fledged registration of the treatment undertaken by the medical personnel and the improvement of children's health for the sake of provision of full medical support to children;**
- **To ensure that doctors in the** child**ren's homes keep records in accordance with the forms approved by the 22 August, 2009 Order N224/M of the Minister of Labor, Health and Social Protection on the registration of medications and subjects with medical prescription (Form N IV-007/a) and the sub-paragraph "a.h", on the history of the development of a child (Form N IV - 008/a).**

MEDICAL CABINET

There is a space allocated for medical office in all the child institutions, however practically in none of the child institution does the medical office fully comply with the standards.

In some cases the medical office is not heated (Tsalenjikha), or does not have taps (Kojori, Tashiskari, Rustavi, Aspindza, Saguramo, "Satnoeba"), need refurbishment (Tsalenjikha, Surami, Lagodekhi, Tskneti), is very small and overcrowded ("Satnoeba").

The medical offices are not equipped with the required equipments (a machine measuring height, weighing-machine, the drugs storage, plank-bed for the examination of a patient, a machine for measuring blood pressure, thermometer, etc.), or is very old and amortized (Lagodekhi), however some of them have inhalators (child institutions in Tbilisi, Kojori) and gluco-meter (child institution in Tbilisi).

Almost none of the child institutions have the respective space devoted to the medical isolator. The sub-paragraph "a.b" of the Article 5^1(10) of the Law of Georgia on "Licensing the child institutions" provides that no less than 25 m^2 room shall be identified for a quarantine. There are absolutely no medical isolators in child institutions in Tsalenjikha, Lagodekhi, Saguramo, Tskneti and Rustavi. The medical isolators do not comply with standards, need refurbishment or equipment, or are very small, are very cold, are not heated, have no tap and other sources of water, or are very remote from the medical office, that makes the medical supervision hard (Tbilisi, Tskneti, "Satnoeba").

Following the recommendation issued as a result of monitoring undertaken by the Public Defender of Georgia in 2010, the medical office in the children's home in Tbilisi "Momavlis Sakhli" was transferred to a larger and brighter room. The doctor has expressed gratitude for this, as the mentioned changes provided the doctor with minimum work conditions.

Recommendation to the Director of the Legal Entity of Public Law State Care Agency:

- **To ensure the allocation of the respective infrastructure and equipment for the medical units of the child institutions.**

THE ESTABLISHMENT OF THE STATUS OF CHILDREN WITH HEALTH PROBLEMS

Following the recommendations issued by the Special Preventive Group after the monitoring undertaken in 2010, the provision of a status of children with disabilities to some of the children in children's homes, deriving from their needs, shall be assessed as a positive step (2 children from the children's home in Tskneti, 2 children from "Satnoeba" in Tbilisi, 1 child from the children's home in Lagodekhi). As a result of this, a part of them were already transferred and the other part will be transferred in the nearest future to specialized institution and are granted a pension, however the problems do still exist in this field.

The detailed examination of personal medical files of the beneficiaries in the child institution revealed the trend that, children with different diagnosis live in different institutions. They are subject to be granted a status of a person with disabilities (enuresis, oligophrenia with disembriogenetic stigmas, epilepsia, dyslalia, hypophyseal nanism, encopresis with enuresis and others). Four beneficiaries with enuresis have no status (Saguramo), whereas a dry night Journal is being kept. There are 4 children with the diagnosis of enuresis in the child institution in Batumi as well, whose medical files do not contain the respective records. One beneficiary, *"with mental lagging, who has infringed speech, has difficulty in contacting others, has not adequate reactions",* is assessed as a person without any limited capacity. According to the doctor, the latter undertakes the medical check-up of children of children's home together with a nurse, the final diagnosis is only limited to the following conclusion: *"the development of the child is in line with the age"* or *"the development of the child does not comply with the age"*. No health complaints, objective conditions, the height, the weight and other features of a child are indicated. There are no recommendations provided for the necessity of the consulting with other narrow scope specialist either. Inadequate assessment of the health of a child may not provide for the early identification of diseases and their timely and qualified treatment.

All the insurance policies envisage the medical examination needed for the establishment of the status of a person with disability, with the exception of the high technology examinations. Despite this, even in case of having the respective

diagnosis, children are not granted the status of a person with disabilities as envisaged by the 17 March, 2003 Order N62/M of the Minister of Labor, Health and Social Protection of Georgia (Tsalenjikha, Surami), on the basis of which they shall be granted the respective pension and other support.

Recommendations to the Director of the Legal Entity of Public Law State Care Agency:

- **To ensure the profound study of the healthcare conditions of the children in children's homes, based on the study of documents and the objective assessment;**
- **To ensure the referral of all the beneficiaries with the respective status to the in-patient medical examination and further, to the medical-social examination.**

TRANSFER OF BENEFICIARIES FOR IN-PATIENT TREATMENT AND THE CONTINUITY OF MEDICAL SERVICE

There are no fully-fledged records in the institutions about the transfer of children to a hospital. In some cases the record is made only in individual medical file; there is no unified Registration Journal about the patients transferred to hospital (the exception is the children's home in Kojori) neither registering the planned transfers (for a variety of surgical interventions) nor the emergency transfers by the emergency service car.

It shall be mentioned that this issue is neither regulated by the 26 February, 2010 Order N52/M of the Minister of Labor, Health and Social Protection "on the Approval of Rules and Conditions of Transfer of Persons to Specialized Institutions and the Taking a Person out of such Institutions". The paragraph 1 of the Article 7 - "Temporarily taking a beneficiary out of the Specialized Institution of Children" - establishes the rules of temporarily taking away a beneficiary from the 24/7 type of Specialized Institution. However, there is no paragraph envisaging the rule of temporarily taking a beneficiary out of the institution for the sake of placing a beneficiary in the institution for in-patient treatment and the mechanism of registering such transfer. This is the basis for the above mentioned problems.

Transfer of a patient to a hospital takes place on the basis of the letter of a Director. The letter indicates only name and surname of a child and the request to transfer the child. The letter does not contain the full information about the preconditions of the aggravating the health conditions of the child and the information about the development of the disease. The letter does not contain the information about the treatment undertaken in the child institution either or the degree of its efficiency. This in practice creates the problems for the fully-fledged treatment of children.

The doctors of the children's institutions have incorrect information as if they are not authorized to keep the form N IV-100/a, however according to the paragraph 2 of the Article 2 of the 9 August 2007 Order N 338/M of the Minister of Labor, Health and Social Protection of Georgia, *"any medical institution (despite the organizational-legal form and the form of ownership) and a certified doctor with a right to independent medical activity (hereinafter - a doctor - a specialist) is authorized to issue a note on the conditions of health within the scope of competence."*

In reality, there is no continuous supervision over a sick child. Children returned from hospital are only in separate cases accompanied with the form N IV-100/a, and only after the persisting request of doctors (Tskneti, "Momavlis Sakhli"). This practically aggravates the continuity of medical care and monitoring of children's healthcare. There have been cases when children were not given the form N IV-100/a even if so requested by doctors of children's homes from a hospital (Zugdidi, Tsalenjikha, Aspindza, and Surami). The full information on the medical examinations undertaken in a hospital remains unknown for persons responsible for the healthcare of children in 24/7 care institutions.

Recommendations to the Minister of Labor, Health and Social Protection of Georgia:

- **To add to the Article 7 of the 26 February, 2010 Order N52/M of the Minister of Labor, Health and Social Protection "on the Approval of Rules and Conditions of Transfer of Persons to Specialized**

Institutions and the Taking a Person out of such Institutions" the respective sub-paragraph to regulate the temporary transfer of a beneficiary to a hospital or other type of medical-rehabilitation institution;

- **To ensure the recording in the form N IV-100/a on each of the instance of the transfer of a beneficiary of the child institution to a hospital and the transfer of its copy to the child institution.**

Recommendation to the Director of the Legal Entity of Public Law State Care Agency:

- To ensure that doctors in the children's homes keep medical documentation in accordance with the rule established by the healthcare legislation of Georgia.

OTHER ISSUES IMPORTANT FOR THE NATIONAL PREVENTIVE MECHANISM

Contact with the outside world

According to the Standard 4 of the Child Care Standards[107] (observance of confidentiality), it is important *"to have such an environment and a form for providing a service which shall ensure the inviolability of personal life of users (written and electronic correspondence, telephone conversations and private meetings)".*

According to the sub-paragraph "e" of the Standard 14 telecommunication means used in the service shall be installed so as to ensure the best possibility for private conversations.

There was no room identified for individual meetings in some of the child institutions and this function was performed by a room with a different function. Using the phone for beneficiaries is provided in almost all the institutions. However, the observance of confidentiality does not happen in the majority of institutions, as the phones for children are stationed in the offices of Directors or are on a parallel line with phones in the offices of directors. The telephone is installed in the office of a guard in the children's home in Tskneti.

As stated by the caregivers, they let children call from their mobile phones or let them "give a ring by dialling" to get the phone call back for a conversation. The use of telephone is better provided in the children's home in Rustavi. In that institution the phone is installed in the bedroom and the use of it is possible at any time by anybody who needs to do so.

Recommendation to the Director of the Legal Entity of Public Law State Care Agency:

- **To ensure the access to telephone and the confidentiality of conversation for beneficiaries in all the child residential institutions.**

Security

The implementation of the recommendations issued by the Special Prevention Group following the monitoring in the beginning of 2010 on placing the contact information for Police, Fire--fighters, Emergency Medical Service, Office of the Public Defender of Georgia and other agencies by all the institutions at the easily accessible places for children shall be positively noted.

However, the issue of the protection of security is still problematic. In some of the child institutions electric wires are not protected and are exposed without any isolation. The plugs are destroyed that threatens lives of children (Lagodekhi, Tskneti, Tbilisi, "Momavlis Sakhli").

[107] The Order N281/M of the Minister of Labor, Health and Social Protection, dated 26 August, 2009 "On the Approval of the Child Care Standards".

The territory of the children's home in Tskneti is not a protected area from the perspective of the protection of security of children. Despite the fact that there is a booth of a guard placed at the main entrance gate, which formally supervises the prevention of leaving the territory of children without authorization, the wall protecting the yard of the children's home is destroyed at different places and the second gate of the institution is also open. During the presence of the monitors on spot 7 years old child left the territory of the children's home without permission and ran to the main highway. The caregivers could not notice the fact of running away. Another child who witnessed the mentioned incident by chance ran after the minor to return the child. There are no protecting doors for the dark cells under the cottages of the same institution and due to abruptness angles is a threat of falling of children in there. As stated by beneficiaries, children enter those cells without supervision.

The territory is not protected in the child institution in Lagodekhi also. In the yard of the child institution there is a building where Internally Displace Persons live. The shared gate is in fact never locked, due to this, as stated by the caregivers, there is a constant risk that a child may leave the yard without supervision and get lost. During the last year one of the beneficiaries was escaping the institutions constantly.

The caregivers of the children's home in Telavi mentioned that the security of their beneficiaries is at risk every day, as they have to cross one of the main highways of Telavi in order to reach school. According to caregivers, there is a road in front of the children's home, crossing which is not regulated by street lights, with the underground passage and/or the bridge for crossing a road. Each morning, during the brining of children to school, caregivers have problems in crossing the mentioned street together with children. As stated by them, they addressed different responsible agencies repeatedly to solve the problem however this issue remains unsolved to-date. The mentioned road is especially dangerous for those beneficiaries as well who manage to leave the territory of the institution without supervision.

Recommendation to the Director of the Legal Entity of Public Law State Care Agency:

- **To ensure the creation and sustaining the secure environment for children in all the children's homes.**

● Psychological assistance

Starting from 2010 a place for a psychologist was introduced in all the children's homes, which according to the regulation, is in charge of the observation of the psycho-social development of beneficiaries, their psychological diagnostics, the correction of behavior of children in case of such need;

Despite the huge importance of the above mentioned functions in the process of the development of children deprived of parent care, the place of a psychologist exists in a majority of institutions only formally. As a result of this, children who have undergone heavy psychological stress (domestic violence, sexual violence, etc.) remain without any rehabilitation. In some of the institutions, especially in regions, the hiring of a professional psychologist is completely impossible.

Often, if such a person exists in the institution, the obligations and the nature of work of a psychologist are not differentiated from the obligations of a caregiver or a teacher. In many cases this is the help in preparing for classes (in some cases they are even proud of this) and it becomes unclear for a beneficiary, what role is of a psychologist or a beneficiary may not recall at all whether he/she has ever had a session with a psychologist.

Psychologists have no documentation or if they have, such documentation on the results achieved by the work undertaken for the purpose of psycho-social assessment of each of the beneficiaries and psychological intervention, as well as improving the interpersonal relations and the psycho-social environment are less informative, fragmented and incomplete. Due to this, it is impossible to assess their work with the objective markers.

Psychologists are not provided with unified standards and protocols for the documentary proves of the psychological assessment, intervention, feedback assessment and the work undertaken, which would have been oriented at a variety of target groups, not only divided by age groups, but also by taking into consideration the possibilities of psycho-social

problems and intellectual capacities. Psychologists are not provided by the standard equipment required for the work (adapted scales, tests, thematic booklets for role plays, etc.).

No special training, re-training for psychologists or the specialization courses for the specific target groups following the contemporary psycho-therapeutic methods is provided. Majority of them work empirically, on the expense of basic education and conscientiousness.

"Momavlis Sakhli" children's home in Tbilisi has a psychologist, according to whom, despite the fact that there are often cases of quarrels among children in the institution, the serious conflicts are rare[108], therefore the doctor does not consider it necessary to use neither the tests for revealing aggression, nor the use of techniques of the management of aggression. A doctor uses 2 verbal tests, does not use non-verbal, projectoral tests, there is no multi-disciplinary approach and the management of a case. A doctor only talks with children. During the monitoring in the institution, a victim of inhuman treatment was identified, who along with other beneficiaries requires multi-profile rehabilitation.

A psychologist of children's home "Satnoeba" in Tbilisi performs the functions of a director from 26 February of the last year, who states that the performance of the functions of a psychologist is no more possible. There was no new psychologist employed either.

A psychologist of the children's home in Tbilisi stated that he/she uses psycho-metric tests, projection tests, and despite the fact that a psychologist presented material prepared by several children - "a house, a tree, a human being", the psychologist could not interpret the test. There is a beneficiary in the institution, who, according to the staff of the institution, is a victim of domestic violence. The mentioned beneficiary has psychological problems; however there have not been fully-fledged consultations of a psychiatrist and psychologist provided to the beneficiary. No management of a case and the multi-disciplinary work are being carried out.

During the conversation, the psychologist of the institution in Tskneti (with a working experience in the institution for 8 months) stated that the psychologist works with approximately 10-12 children systematically. In reply to a question, as to which psychometric tests does the psychologist use with children, the psychologist replied that he/she tried testing, however realized that this did not make any sense, as children could not fulfill the tasks given to them and were getting irritated. A psychologist could not present psychological records and he/she has no coordination with other specialists - a doctor, or caregivers.

The institution in Saguramo has no psychologist. According to the Director, despite the fact that the Director is psychologist by a profession, can not perform the functions of a psychologist. The interviews of the interviewed beneficiaries also reveal that they do not get any psychological interventions. The members of the Monitoring Group identified persons in the institution who had been victims of inhuman treatment and domestic violence in the past, with quite expressed emotional and behavioral transgressions, with an attempted suicide; and they need intervention and rehabilitation. The mentioned beneficiaries are not able to use the services that they need.

We saw the standard type evaluations of children in the children's home in Kojori, which presumably, are made once a year. No other records were found.

A psychologist of the institution in Rustavi who has been working there for 2 years, told the members of the Monitoring Team that he/she was undertaking the individual and group work - he/she worked on the issues of reasoning, memory and attention, as well as with caregivers, teachers, and parents as well, however a psychologist could only present several records, and stated that the main records the psychologist had at home. A psychologist stated about a case of one of the beneficiaries, who presumably was a victim of violence, that the details of the case were not known to him/her and a psychologist was not undertaking psycho-rehabilitation activities.

A child institution in Lagodekhi had a psychologist, who had been working there for approximately 5 months. In an interview with a psychologist it was clarified that there were children with a variety of types of emotional and behavioral deviations in the institution, as well as with some mental retardation, aggressive and auto-aggressive behavior, one beneficiary had suicidal attempt. Apart from this, there is presumably a victim of domestic violence in the institution.

[108] See: the Chapter on "Violence against children"

A psychologist showed to us several tests made, however could not present the records that have been made as a result of their analysis.

A position of a psychologist is vacant in the institution in Tsalenjikha. As stated by the Director, no specialist with the corresponding education could have been identified in the region. Respectively, no assessment of the psycho-social conditions of the beneficiaries and taking care of their mental health takes place in the institution.

We could not have interviewed a psychologist in the children's home in Zugdidi (a holiday coincided). Documentation kept by a psychologist is not accessible to a Director or caregiver. Respectively, they could not have provided the information on the work undertaken by the psychologist.

A person, who has occupied the position of a psychologist in the children's home in Surami, could not provide the respective diploma. The person stated that he/she had graduated from a private institution and so far could not have got a diploma due to technical problems, and the information on the work undertaken is kept in the computer, which she/he would have provided to us immediately after the resumption of the provision of electricity. This has not happened despite the fact that the electricity was provided before the end of the monitoring.

A psychologist of the institution in Batumi appeared to be on a maternity leave. The position was temporarily occupied by the person who had received the respective professional training. According to the psychologist, no written information on the psycho-social assessment of beneficiaries or the work undertaken was transferred to him/her from the predecessor. According to psychologist, she/she had not been supplied even with elementary equipment needed for work and therefore he/she performs the work with beneficiaries only verbally, or by means of the simple equipment purchased by him/her.

The positions of psychiatrists in the children's homes in Samtredia, Tashiskari and Aspindza are occupied by the specialists of the respective education background. Taking into consideration the results of the interviewing of beneficiaries and the climate of the psycho-social climate of the institutions, compared with the other child institution, the quality of the work is better; however it still does not correspond with the contemporary standards. The documentation kept by psychologists is less informative, not following standards and incomplete.

Recommendations to the Director of the Legal Entity of Public Law State Care Agency:

- **To ensure the work of professional psychologists in the children's homes;**
- **To provide the children' homes with the equipment and means necessary for the undertaking of professional duties;**
- **To elaborate the unified standards, guidelines and protocols of psychological research and intervention, by taking into consideration the specificities of the** child care residential institutions **and the target groups;**
- **To elaborate the unified system of documenting the work undertaken by psychologists.**

Mechanisms of appeal

The monitoring revealed that the existence of boxes for complaints has only a formal character in the majority of institutions. In some of the institutions such a box does not exist ("Momavlis Sakhli" in Tbilisi).

There is a complaints box in the children's home in Aspindza; however there is no journal for registering the complaints. There is a group composed of a psychologist, caregiver and the Chief of the institution, who consider the complaints placed in the box. Despite this, they could not provide a legal document, based on which the work of the group is regulated, the date for the consideration of the complaint, the mechanism for reaction and the functions of the members.

They could not have provided the records in relation to the practical work of the group either. The administration stated that there has been no complaint submitted via a box during the year.

The complaint box does not exist in the child institution in Batumi. As stated by the Director, there is no other means of appeal. The complaints of a child are considered orally, mainly caregivers or the Director; however there are no records in the institution on this.

There is a complaints box in the child institution in Tashiskari. However, as stated by the Director, the beneficiaries do not use it.

The complaint box in the child institution in Surami, as stated by the Director, is open at the end of each week; however the system of the consideration of complaints is not elaborated. There is no record on considering even one complaint identified.

There is no complaints box in the children's home in Tsalenjikha. The opening procedure of the box is regulated by the order of the head of the institution; however the consideration of complaints takes place orally. The results of the consideration are not recorded in writing.

There is a journal for the registration of complaints in the child institution in Zugdidi. However children never use it. There is no document, which would have regulated the procedure of the consideration of complaints.

In the majority of the above mentioned cases the complaints box, in case of the existence of such, are empty. This, according to the administration, is explained by the fact that children are not dissatisfied with anything. According to them, the children have so close relations with caregivers and the administration that they may directly state about the dissatisfaction.

The telephone communication may be considered as a means of providing the complaint to the outside world, especially so as the phone numbers of different institutions, including of the Public Defender are displayed in practically all the institutions at the accessible place; however the confidentiality of the phone conversation in some of the institutions is not preserved, that makes this mechanism not efficient.[109]

The monitoring has revealed that the mentioned system of complaints is not efficient and does not reflect in reality the views and complaints of children with regard to the situation in the child institution. One of the possible reasons of the mentioned is the fact that the children often are not adequately informed on the right to appeal or do not trust the mechanism of appeals, as according to the Child Care Standard, a person who shall consider their appeal (Administration, a caregiver), may be a very abuser in the institution.

A recommendation to the Director of the Legal Entity of Public Law State Care Agency:

- **To ensure the efficient appeals mechanism for the children in the children's homes, the elaboration of the clear and understandable procedures of appeals and the respective informing of the beneficiaries on the mentioned right.**

GAPS IN THE PROCESS OF ENTERING THE CHILD INSTITUTION

From the point of view of the rules for entering the institutions the case of the public school N15 in Samtredia under the Ministry of Education and Science is to be paid an attention. According to the regulation of the school presented by the Administration of the school, 11-14 years old boys shall enter the mentioned institution, with regard to whom there is a decision made by the Juvenile Commission and the respective referral by the Ministry of Education. However, according to the Director of the institution, the Juvenile Commission does not exist any more. Respectively,

[109] See: "Contact with the outside world".

with the current state of play the decision on the inclusion of a juvenile into the school is made by a court of a multi disciplinary group at the Ministry of Education and Science. As stated by the Director of the institution, the inclusion of the beneficiaries into the school does not fit within the competence of the Social Service Agency; however the examination of the personal files of the juveniles revealed that a part of the beneficiaries were admitted to the school by the social workers of the Social Service Agency. At the same time, it shall be mentioned that the public school N15 in Samtredia today has unclear profile and the criteria for serving children. As the Director of the institution mentions, according to the old internal regulation of the school, it was a special educational close type institution for the rehabilitation of juvenile criminals, those committing misdemeanor and other minors the bringing up of whom was related to difficulties. Today this description is not relevant. However, as the Ministry of Education and Science has up until today not renewed the rule of admission to the school, its concept and the profile of its activity, the institution keeps the vicious characteristics from old time: there are only male juveniles placed in the institution (some of them are there already for the seventh year) and the work of the institution is defined in the documents provided by the administration as "regime". Deriving from the profile of the institution, any juvenile who happens to be there is subjected to a serious stigmatization from the side of society. This is particularly sad, as the Public School N15 is an ordinary educational institution and children placed there at this stage do not differ with a particular aggression or the inclination to breaching the law.

The Monitoring Group found out that the return of the old "status" to the Samtredia institution is planned. This contemplates that the children will be placed there for "improvement". At this stage it is unknown, how exactly will the internal regulation of the Samtredia institution be formulated and what will be its concrete function. However, it is clear that this shall be identified by taking into consideration the interests of children, to make sure that the school in Samtredia does not make the counter-effect on the children with problems and inclined to violations of law - their stigmatization and once and forever the attribution of a title of a "criminal" to them, that will in no way support their psycho-social rehabilitation.

Recommendation to the Minister of Education and Science of Georgia:

- **To ensure the introduction of the unified rule for the admission of children to the boarding residential educational institutions under its authority, the approval of the internal regulation of the Samtredia public school N15, the profile of the work of which shall be defined in a way not to promote the stigmatization and exclusion from the society of children.**

TAKING BENEFICIARIES TEMPORARILY OUT OF THE INSTITUTION

The temporary taking children out of the child institutions appeared to be un-regulated in some of the child institutions or this has been exercised in violation of the regulation in force. According to the Article 7 of the 26 February 2010 Order N52/M of the Minister of Labor, Health and Social Protection of Georgia "on the Rules and Conditions of Placing of a Person in a Specialized Institution and the Taking out of it":

1. Temporarily taking away a beneficiary from the residential specialized institution is possible:

   a) by a person, whose data (name, surname, the relative link with a beneficiary and a personal number) are provided in the decision on placing a person in such an institution (the excerpt from the record);

   b) by the administration of the service provider - for the purpose of recreation, participation in cultural-sporting, educational and entertaining events.

2. The responsibility for the observation of the conditions and time-limits provided for in the paragraph one of this Article lies on the service provider, and upon the violation of these the institution is obliged to immediately notify the local body of foster care.

3. The record on the taking a beneficiary temporarily out of the specialized residential institution and the return back to the institution is made into the Journal in which taking beneficiaries away are registered and the person taking the beneficiary away or the beneficiary sign the record, provided the latter is an adult with a full legal capacity.

The same Order approved the special form - "The recording of the temporarily taking away of a person". This form itself requires the improvement. The form requires indicating the return date (i.e. the suggested date, when a person taking away the beneficiary, plans to return the child back to the institution); however there is no respective line in it, which would record the real time of return of a child to the institution.

The form does not include the confirmation in writing of the information on the temporarily taking out a child by a representative of the institution either - the graph about a representative of the institution does not exist at all. This is not requested neither according to the rule provided by Article 7 of the order - the paragraph 3 of the Article, as it was revealed, mentions only a signature of a person taking a child out of the institution or of a beneficiary. Presumably, it is meant that without a representative of the institution nobody may use the Journal. However, it would have been better to have a representative of the institution confirming the correctness of the information provided in the form with a signature; this is especially important taking into consideration that the very service provider, i.e. the institution is obliged to have reaction over the facts of threat to violence or violence against a child, when a child is outside the institution, as provided by the Standard 12 approved by the 26 August, 2009 Order N281/M of the Minister of Labor, Health and Social Protection.

The analysis of the practice showed that temporarily taking a beneficiary out of the institution happens in a quite chaotic manner, and the above mentioned rule for the temporary taking a child out of the institution, even when observed, does not provide the security of a child when a child leaves the institution.

The rule of temporarily taking a child out of the institution was violated several times in several institutions: signatures of 12-13 years old beneficiaries were registered in the journal for temporarily taking a child out of the children's home in Kojori, who were leaving the institution based on their own request. As stated by the Director, the reason for leaving the child institution without supervision is the fact that often a parent, who desired to take a child out of the institution, has no money to travel from Tbilisi to Kojori by bus. The administration of the institution, based on the phone call of a parent (without a signature of a parent), accompanies a child to the bus station. At the destination, presumably, a child is met by a parent. As stated by the administration, such a decision is justified to support the relations of a child and a parent. Despite the mentioned positive purpose, such a violation of the rule for a temporarily taking a child out of the institution, as approved by the Order of the Minister, is not admissible, as this threatens the security of a child.

The journal for registering taking a child temporarily out of the institution in the "Momavlis Sakhli" in Tbilisi does not include the full information on the movement of children. There are cases, when 12-13 years old beneficiaries, for the purpose of attending different art courses, leave the institution without a supervision, based on their own request. The mentioned requests are not registered in the Journal for temporarily taking a child out of the institution. Some times taking a child out of the institution takes place based on the applications by parents, which are often not signed or/and a date and which are not registered in the Journal for temporarily taking a child out of the institution either. Letting children out of the institution also takes place based on the phone calls of parents.

Almost none of the child institutions could present the applications composed in full compliance with the Order, based on which children would have been temporarily taken out of the institution. None of the applications were accompanied with the requisites which give a letter or an application legal character. In the children's home in Zugdidi it was revealed, that children, or other persons, who take beneficiaries temporarily out of the institution, write applications

in advance, that they would take a child out temporarily the week after. As stated by the administration, this takes place in cases when parents are not able to take children out personally. In such cases children leave the child institution on thier own.

Children's home "Momavlis Sakhli" had no registration of beneficiaries at all. The main purpose of the registration of children and the means as well as in many other institutions was the setting up of the lists for menus for next day. However neither caregivers nor administration had exact information as to how many children were exactly in the institution during the monitoring day. It shall also be mentioned herewith that the personnel working at night were handing the information over the caregivers working during daytime only orally ("Satnoeba", the child institution in Kojori) and there were no records made as to how many children were on spot.

Recommendation to the Minister of Labor, Health and Social Protection of Georgia:

- **To make the respective changes and amendments into the Order N52/M to make sure the indication of the real date of return and the signature of the representative of the institution when registering the cases of leaving the institution by a beneficiary.**

Recommendations to the Director of the Legal Entity of Public Law State Care Agency:

- **To ensure the proper supervision by the staff of the institutions over any movement of children;**
- **To ensure the provision of the child residential institutions, in case of need, with the adequate transport and human resources.**

PEDAGOGICAL WORK AND ARTS CLASSES

The monitors identified different types of pedagogical activities and arts classes in all the child institutions at different scale. The list of the arts courses is long and it includes the courses of dancing, drawing, music, wool material production, loam, photographing, computer, sewing, etc. However, as the course teachers do not keep the individual records on the achievements and development of children, it is impossible to assess the efficiency of any of the courses.

There are courses of beads and wool material production in the child institution "Satnoeba", however the administration do not have material which could have been used by children during the courses and the caregivers have to bring the material from home. Due to the same problem the children of the child institution "Satnoeba" were taking public transport to attend the courses of beads and wool material production in children's home "Momavlis Sakhli" in 2010. Children of the institution "Satnoeba" do not have dancing and football uniforms either. The dancing and football courses function as a result of contributions of donors in these institutions.

Unfortunately, without the recording procedures, which would have indicated the achievements within the courses, and the existing problems, it is impossible to fully evaluate the efficiency of their existence.

In some of the children's homes (in Tbilisi, Telavi, Saguramo, Aspindza) the inclusion of children in courses takes place very actively. This shall be noted as a positive practice. The special emphasis should be made at the motivated inclusion of boys of the child institution in Saguramo in the rugby team, which is led by a highly skilled rugby coach. It is also important to mention the decision of the administrations of child institutions about the inclusion of children in those courses which are organized outside the child institutions.

Recommendation to the Director of the Legal Entity of Public Law State Care Agency:

- **To ensure the regular character of the vocational and arts courses - their provision with the needed material and equipment; to ensure the control of the efficiency of the course - by the submitting of**

the periodic reports by the teachers of the courses, with the indication of the strong and weak sides of the course.

REPORTING SYSTEM

The "Child Care Standards" approved by the 26 August 2009 Order N281/M of the Minister of Labor, Health and Social Protection of Georgia do not include the list of the necessary documentation the keeping which shall be a responsibility of the child care institution. The Standards envisage the necessity of making the record in several cases only. In particular, these are the Journal for registering accidents (Standard 9), the Journal for registering feedback (Standard 3); the registration of all the facts of violence or the applications about the violence, as well as the registration in writing of the measures taken in response (Standard 12). Such a list is not defined in the internal regulations of the institutions either.

The mentioned gap complicates the possibility for the child residential institutions to have fully-fledged system of documentation and reporting, and complicates the analysis of the functioning of these institutions for the mechanisms controlling those institutions.

In the majority of the child residential institutions the internal reporting system is not well functioning or does not exist at all. Senior caregivers in majority of cases do not keep the daily records about the conditions of children. This is justified by the administration of the child institutions by the argument that Article 5 of the Child Care Standards[110] regarding the individual plan of service entered into force on 1 January, 2011. According to the sub-paragraph "b" of the paragraph 3 of the Article 8 of the regulation approved by the State Care Agency for child institutions the entering into force of the elaboration of the individual plans by senior caregivers on 1 January, 2011 is also envisaged. However, it shall also be mentioned herewith that according to sub-paragraphs "c", "d", "e", "f", "j" of the same paragraph 3 the rights and obligations of the senior caregivers during 2010 also included: undertaking the daily pedagogical activities, the support in selecting a profession, maintaining the systematic communication with a psychologist and a teacher, as well as legal representative of a child, and the development of self-service skills; respectively, the implementation of all these functions, which constituted rights and obligations of the senior caregiver, according to the regulation of the child institution, necessarily required the making concrete records about each child on each of the concrete topic. These records should have been stapled in the personal file of a child and the monitoring team as well as the legal representative of a child would have been informed on the development of a child or the problems identified in this process. The mentioned records were not identified in the absolute majority of the child institutions. Respectively, as a conclusion it shall be stated that reporting by the personnel of the child institutions is not well functioning.

According to the sub-paragraph "f" of the paragraph 2 of the Article 7 of the regulation of the institutions, the chief of the branch considers the reports of the employees about the work undertaken and presents to the Director of the Agency.

The Monitoring Group is not at this stage aware of the efficiency of the mentioned mechanism, however it is clear that without the keeping such records by staff (care givers) the meeting the mentioned obligation is practically impossible.

The devotion and the work undertaken by the senior care givers of the children's homes in Zugdidi and Tbilisi shall be noted as a positive practice, with which they notified the Monitoring Group the assessment and development plans for their trainees.

The regulation approved by the State Care Agency for the child residential institutions does not consider the keeping the records by the night shift care givers about the services provided to children.

[110] 26 August, 2009 Order N281/M of the Minister of Labor, Health and Social Protection of Georgia "on Approving the Child Care Standards".

The regulation does not consider the provision of information by a nigh shift care giver to a day time care giver about the conditions of children either. This shall be considered as a gap, as according to the sub-paragraph "b" of the paragraph 9 of the Article 8 of the same regulation, there is one-sided obligation, according to which the (day time) senior care giver on duty is obliged to provide the information to the (night shift) care giver about the conditions of children during day. To ensure the quality of child care the mutual sharing of information by the day time and night shift care givers in important; for example, the management of such a complex problem as the Enuresis of children, requires the agreed and coordinated work of the day time and night shift care givers. This may not happen in reality in the presence of the above mentioned gap in the regulation of child institutions.

Recommendation to the Director of the Legal Entity of Public Law State Care Agency:

- **To ensure the keeping of the fully-fledged reports and documentation in the child institutions, which fully reflect all the services provided to children, the communication between children; for this purpose the list of the documentation that shall be kept in the child institution shall be added in the regulation.**

INFORMATION ABOUT CHILDREN

In the majority of the child institutions visited by the Monitoring Group, the personal files of the children were not properly maintained. Their majority includes only child's birth certificate or ID (in cases of the existence of such), poor information about parents (in case of the existence of such), the conclusion of a social worker about the inclusion of a child in the child institution (in case of the existence of such). The personal files of children do not include such important and needed information, as: the history of development of a child from the point of entering by a child of the institution to date; the assessment of a child's cognate, emotional and physical development; the records of a care giver and a psychologist about the child's strong and weak sides.

The data collected by the Social Service Agency in 2010 as a result of assessment of all the children in children's homes and their families in some cases (child institutions in Saguramo, Tskneti, Tashiskar, Tsalenjikha, "Momavlis Sakhli") are not accessible to the care givers and administration of the child institutions, who work with the same children every day. The lack of coordination between the branches of the Social Service Agency and the State Care Agency is evident. This gets negatively reflected on the protection of the best interest of children. On a variety of questions put by the Monitoring Group about the development and medical needs of children, the staff of the child institutions replied that the mentioned information was at the disposal of a social worker, however even for the administration of the institution this information was not easily accessible. As explained by the heads of the institution, the deficient personal files hamper them in the process of drafting the child service plan. They have no information about the place of residence of the family and parents of a child. The head of the children's home in Surami stated that he personally wished to visit the families of the beneficiaries, in order to have an understanding as to where, in what conditions have children to leave the child institution temporarily. For this reason he collected the addresses as a result of hard work and personally visited all the families.

In some of the cases the administration of the institution manages to get the information about children with unofficial channels. However, the administration is not able to check the information collected this way as a result of official assessment. This makes the identification and eradication by leadership of the child institutions of violence against children taking place outside the child institutions even more complicated. This is the obligation of the leadership of the child institutions in line with the Standard 12 of the Child Care Standard.

In some of the institutions (Tashiskari) the majority of the personal files of children do not contain the basis for the admission of a child into the institution - the assessment document. There are two types of reasons: majority of children were admitted several years ago, when children were admitted without the assessment of a social worker; the

assessment document by a social worker for the admission of a child is kept in the Social Service Agency and in some cases their sending to a child institution is delayed or does not take place at all.

The personal files do not include the assessment of a child for the sake of their inclusion into the reintegration programme or the exclusion of a child from the institution due to age either. As a rule, a child institution receives only one page long conclusion from the documentation prepared by a social worker with regard to reintegration. This one-page long document does not provide the sufficient information on the appropriateness and the efficiency of reintegration. According to the heads of child institutions, the mentioned documents are also entirely kept in the territorial centers of the Social Service Agency. However, they consider that after the admission of a beneficiary this information shall be fully provided to the child institutions, as the strong coordination between the child service provider agencies and the institutions shall exist.

Some children do not have IDs. There are 17 children without IDs in the child institution in Tskneti. Four children in the child institution in Kojori have no birth certificates.

Recommendation to the Director of the Legal Entity of Public Law State Care Agency:

- **To ensure the fully-fledged keeping of children's personal files;**

Recommendation to the Director of the Legal Entity of Public Law Social Service Agency:

- **To ensure the provision of all the documents containing the assessment of a child by a social worker to child institutions;**
- **To provide all the beneficiaries with the IDs and birth certificates.**

PROVISION OF MEDICAL SERVICE BY INSURANCE COMPANIES

Medical service to child institutions takes place in line with the service packages provided by different insurance companies ("Imedi L" - Batumi, Telavi; "IC Group" - Tsalenjikha; "Alpha" - Tskneti, "Momavlis Sakhli", Kojori, "Satnoeba"; "GPI Holding" - Saguramo; "IRAO" - Rustavi).

All beneficiaries of the children's homes may not use the packages of the insurance services. Out of 7 children in the residential child institution in Rustavi only 4 have the insurance packages; 13 children in the children's home in Telavi have no insurance policy either. Despite the fact that the former director of the institution sent letters (N 04/157, N04/160 and N 04/161) to the Head of the Telavi District Branch of the Social Service Agency on 12 October, 2010, in which he was asking for the issuance of the insurance policies for 9 beneficiaries, even for the moment of monitoring (23.01.2011) the beneficiaries had still not received neither insurance policies, nor a reply letter, to get explanation based on what were the children left without the insurance policy. Neither a doctor of the child institution could provide the information on the provision of the remaining 4 children with an insurance policy.

36 children of the child institution in Lagodekhi had no insurance policy. As the doctor of the child institution states in the explanatory note: *"from March, 2010 the beneficiaries no more have the insurance policies for vulnerable persons. This creates serious problems during the consultation of children with narrow profile specialists and in cases of the need of hospitalization. I provide services to children based on my personal requests. Our district is served by the insurance company "Archimedes Global Georgia". We ask you to help us to have all the beneficiaries insured, to make it possible to solve all the problems related to their health".*

A part of the children in the child institution in Tsalenjikha have no insurance policy for the simple reason that the "IC Group" filled-in the names, last names and the personal number of the beneficiaries of the insurance policies, as a result of which the policies were returned.

The volume of the service suggested by insurance companies is almost similar. In none of the cases the specifics of diseases of children and teenagers are considered, characteristics of development and their dynamics, the situations bordering pathologies, hormonal changes related to growth and development and the medical-psychological rehabilitation components. Therefore, the problems emerging during the medical service of beneficiaries of child institutions, is almost always identical. No endocrine deviations and the respective examinations, the gynecological consultation of adult girls, the costs related to purchasing spectacles are financed. In case of chronic pathology the insurance does not consider the monitoring of analysis, no computer tomography is financed even as exception.

Despite the fact that all the insurance packages fund the planned surgical operations, it was impossible to undertake tonsilectomia with narcosis in a specific situation (child institution in Tskneti), eye surgery (child institution in Kojori). Child institutions applied to the Agency and the insurance companies with a letter and additional Invoice, however the procedures got very protracted and by the moment of the monitoring this issue was still not resolved.

All the child institutions have a problem of not envisaging dental services in any of the insurance packages, whereas the high frequency of dental complications happens in this age group. The infestation of children with worms is also frequent. And according to doctors, diagnostics and treatment of this disease is not considered by the insurance.

The issue of dentist's services was solved in different manners: the State Care Agency allocated additional money for the dental services for child institutions taking into consideration the number of children in each of them. The dental services are provided based on a contract taking into consideration the territorial principle (child institutions in Tskneti, Tbilisi, Telavi); or dental services are provided free of charge – e.g. the private dental clinic "Densi" serves the children of children's home in Rustavi. However, it shall be mentioned that the dental services were still not accessible for the children of all the child institutions (Lagodekhi).

None of the insurance policies envisage the injection of the anti-tetanus anatoxim in case of a need. Therefore, as state by the directors, often "pay from their pockets" for this injection, whereas the risk of the injury is quite high exactly with regard to children and teenager.

Recommendations to the Director of the Legal Entity of Public Law State Care Agency:

- **To consider the characteristics of growth and development and the risks of development of pathologies of children and teenagers, as well as the characteristics and needs of the diseases while detailing the conditions for the tenders for selection of insurance packages;**
- **To ensure that the insurance policy includes the dental service, as well as other types of required medical assistance;**
- **To ensure the timely provision of insurance policies to beneficiaries;**
- **To undertake the monitoring to ensure the provision of timely and quality medical assistance as envisaged by the insurance policy.**

RIGHTS OF THE STAFF OF INSTITUTIONS

The gaps in the rights of personnel is outlined in the 2010 Special Report of the Public Defender on the human rights situation of persons with disabilities in the state institutions.

As a result of the monitoring of child institutions in 2010 it was revealed that the similar problems exist in the mentioned institutions with regard to the staff of the institutions.

The State Care Agency did not take into consideration the recommendations of the Public Defender. Therefore it is needed to once again underline the situation of rights protection of personnel in child institutions.

During the monitoring in 2010 the part of the personnel, who had to work with children at night (infant institution in Batumi) stated that they had to be on 24 hours duty once in 3 days. They stated that this was extra burden for them, causing their exhaustion and were requesting the introduction of the rule to be on duty every 4 days.

The monitoring in 2011 revealed that the schedule of the work of the staff of the child institutions got even worsened. For example, in the children's home in Tskneti, as well as in the institution "Satnoeba" the caregivers are on duty every second night. Respectively, they face a serious risk of the physical exhaustion.

It is important to assess the work of the personnel in a complex manner, in particular to consider the factors which hamper them from due implementation of their rights and obligations. The staff of all the levels according to the internal regulations of the institutions has certain obligations; however often they are not able to meet those obligations. The reasons of this may be different. First of all, it shall be mentioned that the regulations and internal rules of the institutions provide the lists of functions of the personnel at the declaratory level. However, the details as to how shall they be implemented in practice are not provided in detail anywhere (the exception from this is the issue of the drafting of the plans of individual services, the trainings in relation of which were delivered and the specific instructions were provided to them several months ago). When interviewing the personnel of the institutions by the Monitoring Group, the staff of many institutions was asking the experts to explain to them as to how to implement certain obligations (e.g. the feedback from beneficiaries).

The caregivers of the "Momavlis Sakhli" did not have information, as to how shall the cases of the temporarily taking beneficiaries from the child institutions be registered. This means that they have no information about the Order N52/M of the Minister of Labor, Health and Social Protection, which regulates the mentioned issue. As stated by the caregivers of the children's home in Lagodekhi, they composed such a Journal on their own initiative. It is clear that the head of the institution and the Agency have not informed the caregivers on the mentioned issue.

It is important to note that the internal regulations of the child institutions contain quite vague clarification of the rights and obligations of senior caregivers: a general note on "everyday care giving work" are explained in different manner by staff of different institutions and according to their personal understanding at times they consider the pedagogical lessons in this process (a lesson on a mother, on Georgia's culture, etc.) and sometimes – informal conversations with children. It is most important that in none of the cases the result and/or the efficiency of the educational process was recorded in any of the documents of any of the child institutions. Neither the administration of the institution nor the State Care Agency have provided the document to caregivers regulating in the fully-fledged manner the process of reporting, in case of the fully observing which the caregivers would have been protected from the claims against them with regard to their gaps in reporting.

One of the important problems for caregivers of the child institutions is the obligation envisaged by the sub-paragraph "k" of the paragraph 3 of the Article 8 of the internal regulation on the teaching of healthy life-style. This, naturally, means the provision of the age-specific respective sexual education as well. None of the child institutions happen to have a caregiver who would have the mentioned competence. As clarified by the caregivers, this topic has not been adequately analysed by the Agency during the trainings delivered to them for the upgrading their skills. However, in the majority of the child institutions the children are in turning-age, provision of such information to whom is particularly important, for the perspective of the protection of their health and personal life rights. The staff of the child institution in Tskneti as well as the child institution "Momavlis Sakhli" openly discusses the necessity of provision of such education to children and they mention that there is a need of having the staff with the respective qualification. In the absence of the competence and the information it is quite hard to request from the senior care givers the implementation of the mentioned paragraph in the regulation.

The problem of the lack of the information on the legal regulation is persistent in almost all the institutions. Respectively, when we discuss the violations, first of all the conditions in which the staff work, as well as what is the level of informing them on different issues, or why did the Agency not provide them with the correct and the needed information, etc. shall be taken into consideration.

Despite the fact that there was 20% increase of salaries of the staff of the child institutions by the State Care Agency the inadequately low salary of the personnel remains still to be an unresolved problem. Due to this the attraction of the highly skilled staff to those institutions is almost impossible. The maximum salary of the senior (daytime) care giver is 350 Lari, and the salary of a caregiver (who every second night works in a night shift with children) is 290 Lari; the psychologists and the leaders of different courses working in the institutions get 290 Lari, salary of a doctor is 350 Lari, salary of a cook is 240 Lari. In such conditions the administration may not ensure the attraction and maintenance of the qualified staff. This was proved in the cases of the specific child institutions as well.

A part of doctors in child institutions have not got any professional training for the last year. The doctors indicate the need for the specific needs oriented, uninterrupted medical education courses. The doctors were also indicating the need for organizing the special courses for nurses as well, taking into consideration the specific needs of the beneficiaries of the child institutions.

Doctors and psychologists were asking for the methodic teaching material, as well as the informing on the lists of the necessary and the required documentation and the rule of their keeping, as well as the documents on the hygienic norms and the requirements of the day and night nutrition, and the composition of the age specific menus.

All the above mentioned do clearly indicate that the improvement of the working conditions for the caregivers in the child institutions – the provision to them of the information, the upgrading of their qualification, the change of the work schedule detrimental to their health and the provision of the adequate remuneration – are the necessary conditions for the improvement of the situation of the protection of the rights of children.

Recommendations to the Director of the Legal Entity of Public Law State Care Agency:

- **To ensure the provision of the adequate working conditions for the staff of the child residential institutions, including by the provision of the respective remuneration;**
- **To ensure the drafting of the respective detailed guidelines for the staff for the purpose of the implementation of their obligations and the provision of the full information on the legislative and sub-legislative basis regulating their work.**

THE ONGOING REFORM AND THE PROBLEMS RELATED TO IT

According to the legislation of Georgia[111], child residential institutions fall under the competence of the management of the Legal Entity of Public Law State Care Agency of the Ministry of Labor, Health and Social Protection of Georgia.[112] The issue of the admission to and exclusion from the institutions is overseen by the Legal Entity of Public Law the Social Service Agency of the same Ministry.[113]

Different types of information regarding the functioning of the child institutions and the implementation of the 2010 Programme of the Child Care,[114] the reform of the child care system, etc. were requested from the respective institutions before the undertaking of the monitoring.

According to the Order N441/M of the Minister of Labor, Health and Social Protection of Georgia the monitoring of the implementation of the child care programme is an obligation of the social protection and the administrative departments of the Ministry of Labor, Health and Social Protection. Respectively, the Office of the Public Defender of Georgia applied in writing to them and requested the copies of the documents on the mentioned monitoring/assessment, as well as the copies of the documents containing the methodology of the monitoring/assessment.[115] The

111 The Orders N428/M and N339/M of the Minister of Labor, Health and Social Protection of Georgia.
112 Except for the rare exceptions which are subjected to the Ministry of Education and Science of Georgia.
113 The 26 February, 2010 Order N52/M of the Minister of Labor, Health and Social Protection of Georgia on the Approval of the Rules and conditions for the Placing a Person in a Specialised Institutions and Taking a Person out of this Institution.
114 Approved by the 30 December, 2009 Order N441/M of the Minister of Labor, Health and Social Protection.
115 Letters N121/03 and 122/03 of 24 January, 2011.

reply from the Ministry[116] notified us that the meetings of the representatives of the Ministry and the representatives of different institutions were taking place on spot, as well as in the Ministry on a regular basis during the program implementation for the purpose of assessing the implementation of the program. During the meetings *"the joint discussions of such complex problems takes place as: the equipment of the buildings of child institutions, the identification of the regulations of the admission of children, the consideration of the problems of healthcare of children, as well as the upgrading the skills of the staff of the child institutions.*

Along with that, in the beginning of 2009, on the basis of the request of the Ministry of Labor, Health and Social Protection of Georgia the Legal Entities of Public Law under the Ministry – the administrations of the child institutions presented the information about their material-technical basis. During the previous year, for the purpose of the studying the existing conditions, the representatives of the Ministry visited all the child institutions. This served the purpose of the identification of the problematic issues in the institutions, as well as the studying of the conditions of the buildings. This would have [helped] them in identifying the child institutions which would have been subjected to the rehabilitation by taking into consideration the priorities."

According to the same letter, *"as for the activities undertaken in the framework of the sub-program of monitoring of the 2010 program of child care, the Social Protection Department undertook the analysis of the reports provided by the persons implementing the program and the assessment off the results of the measures."*

Unfortunately, the attachment to the mentioned letter did not include any of the documents, which would have reflected the results of the work undertaken, the gaps identified during the meetings and monitoring, and the ways of their eradication. It did not include the results of the analysis of the reports provided by the persons implementing the programs or the assessment of the results of the measures either. It shall be mentioned that such documentation were not provided in reply to the repeated request either.[117]

Therefore, the Special Preventive Group could not have collected the respective documentation and the information about the monitoring by the respective services of the Ministry of Health of the implementation of the child care programs or the documents reflecting the results of the visits, meetings and the discussions and based on these about the ways of the planning and the implementation of the process of eradication of violations and problems.

THE VIOLATIONS REVEALED IN THE PROCESS OF REINTEGRATION

The process of deinstitutionalization contemplates the return (reintegration) of the beneficiaries of the child institutions to their biological families or their placement in a foster family. For the implementation of the deinstitutionalization the social worker of the Legal Entity of Public Law assesses the family. This includes the assessment of the material and physical possibilities of parent/parents and the other family members, as well as other components for making it clear, as to what degree does the family have a possibility to provide a child with the respective conditions for physical, psychological and mental development. In 2010 as a result of the particular activeness of social workers, a certain number of children were reintegrated with their biological families.[118]

During the monitoring the Special Monitoring Group identified vivid gaps in the process of reintegration of the children in child institutions. The administrations and care givers in some of the child institutions (children's homes in Lagodekhi, Telavi, Surami, Tashiskari, and Aspindza) indicated the specific instances, when children were taken to biological families before the time and without the due assessment of the possibilities of the family and the environment necessary for the development of a child. As a result, some children were returned to a biological family where there are no even elementary conditions for the development of a child.

According to the personnel of child institutions, parents and the children the social workers often use not very much acceptable methods for the reintegration of children to their families: instead of objectively evaluating the conditions

116 Letter N01–10/04/680 of 4 February, 2011.
117 A letter N202/03, dated 16 February, 2010.
118 See: above, "The changes undertaken as a result of the monitoring of the Child Institutions by the Special Preventive Team in 2010".

of a family and making a decision as to the best interests of a child will be protected by the return of a child to the family (which is inalienable mechanism of the deinstitutionalization process), they convince parents that if a child is not returned to the family, the parents will be deprived of the right of a parent. This is not true, as keeping a child in the child institution does not determine the deprivation of a right of a parent - according to the law,[119] in such a case a restriction of a right of a child is limited to some situations (a right to medical intervention, leaving of the institution by a child for the purpose of participating in some events), when an administration of an institution makes decisions instead of parents. This in no way means that a parent may not see a child any more or may not return a child to the family, provided that at some point a parent again has a possibility to do this. Based on the analysis of the practice of the Social Service Agency it may be concluded that limitation of a right of a child in cases of beneficiaries of child institutions is mainly limited to two directions: a right to representation of a child and a right to determine a place of residence of a child.

As stated by parents and care givers, in some cases the social workers go even further and "lure" parents with material gain. According to them, often parents are not provided with the full information about the support attached to the reintegration process, in particular, about the fact that the assistance - 90 Lari[120], which is given to a biological family in case of reintegration of a child, is only provided during 6 months. This will in no manner ensure the provision of the means for the bringing-up of a child in a socially vulnerable family. There are cases when for the purpose of getting the mentioned support a biological parent agrees taking a child from the child institution home, however after this a child is given to some relative, whereas a parent is only "limited to" receiving assistance (children's home in Aspindza).

We hope that the above mentioned facts only indicate the lack of knowledge by some social workers of the principles of ethics and professionalism and this does not represent a targeted policy of Social Service Agency aimed at the artificial speeding up of the process of deinstitutionalization.

Despite the fact that the very process of deinstitutionalization shall be welcome, it shall be duly managed and the respective mechanisms of assessment and control shall be elaborated. In the contrary case it is possible that the process of deinstitutionalization develops not in the desired direction and results in undesired effects, where children are placed in unfavorable environment, without any conditions for neither physical nor mental development.

Deriving from the importance of the above mentioned meeting, as during the process of the planned monitoring of the institutions it became impossible to register all such doubtful cases and to undertake the visit to a place of reintegration, the Public Defender plans for the future the checking of the similar cases and the monitoring of the process of deinstitutionalization.

● The case of the children's home in Surami

In a letter of the Director of the children's home in Surami addressed to the Director of the State Care Agency[121] it is stated that according to the father of the children N.A., T.A., T.A., and I.A. in the children's home in Surami, Kh.A. social workers were forcing him to take children out of the institution. In the contrary case, the social workers threatened the father with the limitation or the deprivation of a right of a parent. Kh.A. says that he has no conditions to bring up the children. His spouse has passed away. He has no flat. He overnights with relatives, however visits the children systematically.

At the same time, the mother of I.B., G.B., and J.B., Ts.B. states that the social workers oblige her to take her children out of the institution, in the contrary case they were threaten her to deprive her of a right of a parent. Ts. B. herself notes that she is an internally displaced person from the village Eredvi of the Gori district. She and her husband do not work. She is a mother of many children. She has no means to take care of her children.

[119] Paragraphs 6 and 7 of the Article 14 of the Law of Georgia on Adoption.

[120] Article 10^3 of the 28 July, 2006 Ordinance N415 of the Government of Georgia:
„The support for reintegration shall be determined in the following amounts:
a) for a healthy child - 90 Lari a month;
b) for a child with limited capacity - 130 Lari a month."

[121] 20 July, 2010, N118.

Children G.M., B.M. and Z.M. talk about the similar problems. Their father passed away and the mother does not visit them. Only a grandfather visits them, who is very old and has no conditions to take children out of the institution.

According to the reply of the Social Service Agency to the mentioned letter of the Director of the Child Institution in Surami[122] the Statement of Ts.B., who is the mother I.B., G.B., and J.B., does not correspond the reality, as *"(...) the family has an income - the support to internally displaced persons and the social support, which constitutes 198 Lari a month (...) the family also has milking cow and domestic fowl (...)."* As social worker considers that it is possible to reintegrate the children into the family with the support that the family receives, however the mother refuses to return children to the family; therefore, a parent's status shall be defined by the court (to limit or to deprive the rights of a parent), in order to place the children in the alternative form of care.

As observed by the Monitoring Team, in the similar cases the parents still agree to reintegrate the children in the biological families. As a result, the Monitoring Team has noted several cases of reintegration when children appeared in unfavorable conditions.

● Children's home in Aspindza

Reintegration of the beneficiary of the children's home in Aspindza, 16 years old L.M. took place into the biological family, despite the fact that according to the assessment of a social worker: "the economic conditions of the family does not allow the family to accommodate the basic needs of the child (the rating score of the family in the database of the families beyond the poverty level is 32310)". The Monitoring Group visited the family of the child on spot and noted that at the moment of the visit the minor was sick with the infectious disease, had high temperature, and according to the statement of the family, they could not have provided the child with the needed medication. The very conclusion of the social worker also mentioned that the family lives in a village without a school. Due to this during the school period a child would have been placed in the family of a relative. However, during the interview with the monitoring team, a parent of the minor noted that with the reintegration amount (90 Lari) they would have to hire a flat in Aspindza, where the minor would live alone, instead would have a possibility to attend school. Respectively, it shall be mentioned that the minor L.M. was returned to the biological family under the risk of the limiting the right of health, education and development. As concluded by a social worker, the only guarantee for the improvement of the economic condition of a biological family was the financial support for reintegration (90 Lari), which was provided to the biological family for 6 months. As stated by a parent, the only reason for the making a decision on the child's reintegration was a scare of the deprivation of a right of a parent.

The right to education of beneficiaries of the children's home in Aspindza S.B. and M.B. who left the child institution with the reintegration program, was limited, as in the village Orgora, where they were returned to their biological family, there was not Georgian language public school. As a result, the children had to stay in a flat of a relative in Aspindza, who has no sufficient social-economic conditions. The conclusion of the social worker again mentions that "the family is involved in agricultural activities that do not provide for a stable income, the economic situation does not allow them to satisfy the basic requirements of a child". In this case the guarantee of the economic strengthening of a family was considered to be the financial aid for the reintegration (90 Lari) which was provided for 3 months.

● Children's home in Lagodekhi

As stated by the administration of the child institution in Lagodekhi, three minor sisters - E.M., E.M., and A.M. were reintegrated in 2009. According to a caregiver, since then the children are systematically engaged in begging in a street.

The reintegration of the beneficiary T.R. of the same child institution took place in 2009. As a result a child based

[122] 4 October, 2010 N03/12–18847

on the decision of the family, regularly serves as a cattleman. Due to this the child can not get the education. The child is also deprived of a fully-fledged nutrition. The mother of the minor has several times applied to first the child institution, than - to the Social Service Agency, with a request to return the child to the child institution. The child has not been returned.

● Child institution in Tashiskari

As stated by the administration of the children's home in Tashiskari, Z.M. was reintegrated into the biological family in 2010. The vivid signs of domestic violence were noticed in the family. The mother applied to the head of the child institution several times with the request to return the child to the child institution. There was the similar case during N.G.'s reintegration from the institution to the biological family; the child was constantly asking the head of the child institution to allow return to the child institution; in this case social worker was in fact able to identify the case of domestic violence in the family and the child was again placed in the children's home.

A parent of the former beneficiaries of the child institution in Tashiskari applied to the Director of the institution, indicating that the reintegration of the children was undertaken by a social worker based on the false promise that in case of the return of children to the family, for the purpose of supporting the family, the living space of the family would have been renovated and domestic animals would have been purchased. As clarified by the Director, the mentioned promise had not been fulfilled by the Social Service Agency.

Another former beneficiary of the child institution in Tashiskari D.R. clarified in the written application that his/her expulsion from the child institution took place without an interview with social workers. When talking with care givers, the beneficiary identified by chance that he/she was not any more registered in the child institution and was made to return home with three sisters and brothers. At home, as stated by the Director of the institution, there is a hard economic condition.

It is necessary to have the Social Service Agency interested in the implementation of the reintegration process in more details and depth, to make sure that the work of some of the social workers does not damage the efficient implementation of this important reform.

Recommendation to the Director of the Legal Entity of Public Law Social Service Agency:

- **To monitor and re-assess all the problematic cases of the return of children to the biological families.**

THE PROCESS OF THE SUBSTITUTION OF LARGE CHILD INSTITUTIONS WITH THE FAMILY TYPE HOUSES

It shall be mentioned from the very beginning that the Special Preventive Group of the Public Defender could not receive practically any information from the Ministry of Labor, Health and Social Protection about the planning of the implementation of one of the core directions of the reform of child care - the process of the substitution of large child institutions with the family type houses, apart from the general data which is contained in the 2011-2012 Action Plan on the Main Directions of the Child Care System Reform.

The mentioned document states, that after the completion of the process of deinstitutionalization and the foster care, around 576 children remaining in the child institutions will be distributed in small family type houses based on the regional principle. Each of these houses will serve maximum 8 children. Seventy two such houses are planned to be

built at the initial stage. The so-called foster mother and foster father will act as care givers. The small family type houses will be funded from the budgetary allocations, as well as with the support of donors and according to the Action Plan, *"with the existing calculations their costs shall not exceed the costs of the currently working institutions."* According to the Action Plan, small family type houses will be managed by the non-governmental organizations selected as a result of competition. Their licensing is planned in the nearest future. The constant monitoring of the activities of foster mother and foster father, as stated by the Action Plan, will be probably a responsibility of the Agency for the Regulation of Medical Activities. In parallel, the Social Service Agency, via social workers, will assess the needs of a child regularly.

The above mentioned novelty, which contemplates the transfer of a child from large child institution to an environment resembling the family conditions, for the well-being of the child, shall certainly be welcome. The success of the reform is largely dependant on the correct undertaking of the mentioned process and the preliminary identification of all the important aspects. As the Action Plan only includes the main directions of the reform, the Public Defender applied to the Minister of Labor, Health and Social Protection for the clarification of some of the issues[123] and requested the information and the respective documentation on the following topics:

- the criteria for selecting foster parents, as well as the document containing their functions and the methods of their work (if these do not exist, by when is the elaboration of the mentioned documentation planned);
- The document containing the criteria for selecting the organization managing the small family type house (the conditions of the competition);
- Which aspects of the work of the small family type houses will be monitored by the Agency for the Regulation of Medical Activity (in another case, which agency shall monitor the mentioned houses and how); are there introduction of any changes and amendments in this regard planned in the legislation of Georgia (which acts?);
- The documents on the methodology of the regular assessment of the needs of a child by a social worker;
- Any other document or the draft legislative change, which is related to the implementation of the reform of the child care system.

According to the reply received from the Ministry of Labor, Health and Social Protection[124], *"service providers for small family type houses are non-governmental organizations (...) who have elaborated the individual criteria and methodology for the selection of the caregivers of small family type houses, as well as the job descriptions of care givers and the systems of the supervision over their activities."* The mentioned criteria, the job descriptions and the documentation reflecting the methodology were not attached to the information provided by the Ministry.

According to the same letter, the document reflecting the criteria of the selection of the managing organization of the small family type houses as well as the conditions for the competition are not established at this stage. The body responsible for the monitoring of the small family type houses and the issues related to the undertaking of the monitoring were being considered at that stage and the decisions have not been made yet.

Based on the above mentioned information, according to which a lot of issues related tot the functioning of the small family type houses are still to be made precise, at this stage it is impossible to assess the reform process, and stating how well planned and prepared is the process of transfer to small family type houses undertaken.

123 A letter N 161–03 of 1 February, 2011.
124 A letter N 01/1418dated 3 March, 2011

CONCLUDING RECOMMENDATIONS:

To the Minister of Labor, Health and Social Protection of Georgia:

- To elaborate the efficient and effective mechanism with the respective reporting system for the monitoring and control of the child institutions;
- To place under the personal control the reaction on all the revealed facts of violence;
- To ensure the amendment of Article 7 of the 26 February, 2010 Order N52/M of the Minister of Labor, Health and Social Protection "on the Approval of Rules and Conditions of Transfer of Persons to Specialised Institutions and the Taking a Person out of such Institutions" with the respective sub-paragraph which shall regulate the temporary transfer of a beneficiary to hospital or other type medical-treatment rehabilitation institution;
- To ensure the keeping of the Form N IV-100/a in each case of placing a beneficiary of the child institution in a hospital and the handing a copy of this document over to the child institution.
- To ensure the introduction of the respective changes and amendments into the Order N52/M in order to make it obligatory to indicate the real date of the beneficiary's return in case a beneficiary leaves the institution, as well as the signature of the representative of the institution.

To the Minister of Education and Science of Georgia:

- To ensure the adequate reaction of the General Inspection of the Ministry on all the facts of notification from the child institutions regarding the ill-treatment of beneficiaries by school teachers.
- To ensure the introduction of the unified rule for the admission of children to the boarding residential educational institutions under its authority, the approval of the internal regulation of the Samtredia public school N15, the profile of the work of which shall be defined in a way not to promote the stigmatization and exclusion from the society of children.

To the Directors of the Legal Entities of Public Law State Care Agency and Social Service Agency:

- To ensure the training of staff of the State Care Agency and the Social Service Agency in the national and international legal frameworks of child rights protection, as well as in the international and national mechanisms for the protection of the same rights.
- To undertake the joint, complex and coordinated work for the identification and management of the cases of violence against children in child institutions.

To the Director of the Legal Entity of Public Law State Care Agency:

- To ensure unimpeded monitoring by the Special Preventive Group and its support
- To elaborate and introduce aswift, efficient and transparent system for the administrations of the institutions to reveal the facts of violence and have an accountability for them;
- To inform the General Inspection of the Ministry of Education and Science as well as the Legal Entity of Public Law Social Service Agency on all the facts of violence exercised by the teachers of public schools against children from children's homes;
- To introduce the respective amendments into the regulations of the institutions to ensure the external visual examination by a doctor of children upon each entry and exit of a child from the institution, including for the prevention and identification of domestic violence;

- To order all the doctors in each of the institutions to keep the Journals for the registration of injuries, to register and describe all the facts of injuries, self-injuries and casual traumas in the respective part of the Journal, with the indication of the version provided by a child on their emergence;
- To order doctors and staff of each of the institution to immediately inform the administration about any alleged fact of violence, including the cases when an abuser, as stated by the child, is the very Director of the institution. In such a case the information shall be directly submitted to the Legal Entity of Public Law Social Care Agency;
- To ensure that psychologists of each institution keep a special Journal to record the facts of violence, as well as immediate provision of the information about the mentioned facts to the administration. In the situation, when the abuser, as stated by the child, is the Director, the information shall be provided to the Agency directly.
- To ensure the revealing of the facts of the use of child Labor and the adequate reaction on them. To protect the children in the children's homes from any forms of Labor exploitation.
- To ensure the prevention and eradication of discrimination and unequal treatment of children in children's homes by internal monitoring mechanisms;
- To pay particular attention to the specific (religious, nutrition, social and other) needs of the beneficiaries representing the ethnic minorities.
- To ensure the refurbishment of children's homes to create the elementary conditions for dignified life for children placed in the children's homes;
- To ensure the equipment of the children's homes with the respective furniture and equipment;
- To ensure the central heating system in the children's homes, as well as the adequate equipment of the living parts, toilets and shower rooms;
- To ensure the regular control of maintaining the hygienic conditions in children's homes;
- To elaborate the age specific menus, to establish the daily norms for nutrition ingredients for the fully-fledged development of children and teenagers;
- To ensure healthy nutrition, with the respective for teenagers with the respective sapwood, fats and carbohydrates, minerals and vitamins, for the sake of fully-fledged development of children;
- To ensure the allocation of the increased budget for the celebrating menus;
- To ensure the timely holding of the tenders for the provision of food staffs for the institutions to avoid the gaps in provision;
- To ensure the provision of the perishables and seasonal products from the local producers during the organizing tender;
- To strictly control the strict keeping and the use of the products in the institutions;
- To control the strict protection of the standards of the sanitary-hygienic conditions in the dining blocks in the children's homes;
- To ensure the adequate provision of the dining blocks with the adequate material-technical equipment;
- To ensure the regular checking of the potable water and the containers for their keeping in the children's homes;
- To ensure the fully-fledged registration of the treatment by medical personnel and the children's health conditions, for the sake of the fully-fledged provision of the medical service;

- To ensure the provision of the respective infrastructure and the equipment for the medical units of the children's homes;
- To ensure the thorough study of the health conditions of children in children's homes based on the documents and the objective study;
- To ensure the referral of all the beneficiaries with the status to hospitals for examination and later on, for the medical-social expertise;
- To order the doctors of the children's homes to keep the medical documentation according to the rule established by the health legislation of Georgia;
- To ensure the access to telephone for each of the beneficiaries in children's homes and the confidentiality of conversations;
- To ensure the establishment and maintenance of the secure environment for children in all the children's homes;
- To ensure the work of the professional psychologists in children's homes;
- To provide the children's homes with the equipment and the means for the undertaking of the professional duties;
- To elaborate the unified standards, guidelines and protocols for the psychological studies and intervention, taking into consideration the specificities and the target groups of different institutions;
- To elaborate the unified system of the documenting of the psychologists' work;
- To ensure the efficient mechanism for the appeals for the children in institution, the elaboration of the clear and understandable procedures for appeal and the adequate informing of beneficiaries about the mentioned right;
- To ensure the respective supervision by the employees of the institutions over any movement of children;
- In case of need to provide the children's homes with adequate transport and human resources;
- To ensure the regular character of the functioning of vocational and the arts groups - their provision with the needed material and equipment; also to ensure the control of the efficiency of the functioning of these groups - the provision of the periodic reports, with the indication of strong and weak sides of the work of groups;
- To ensure the keeping of the well structured reports and documents in the children's homes, which will fully reflect the service provided for the children, the communication between the professionals, and to this end to add the list of the documentation produced in the institution;
- To ensure the fully-fledged maintenance of the personal files of children;
- To take into consideration the characteristics and the risks of development of pathologies of the growth and development of children and teenagers, as well as the specificities of diseases and the respective needs during the determination of conditions for the tender to select the insurance packages;
- The insurance policy shall include the dental service, as well as other types of the required medical aid;
- To ensure the timely provision of health insurance policies for the beneficiaries;
- To undertake the monitoring of the timely and quality provision of medical aid envisaged by the insurance policy;

2010

- To ensure the respective conditions for the staff of the children's homes, including by the respective remuneration;
- To ensure the drafting of the detailed guidelines and the provision of the full information on the regulating legislation and the sub-legislative acts to the staff for the implementation of their obligations.

To the Director of the Legal Entity of Public Law Social Service Agency:

- To ensure the provision of the document reflecting the assessment by the social worker to the children's homes in full;
- To provide all the beneficiaries with the IDs and birth certificates;
- To undertake the monitoring of all the cases of the return of children to biological families, and the re-assessment of all the problematic cases.

Public Defender and Constitutional Control

One of the means by which the Public Defender oversees the observance of human rights and freedoms in the territory of Georgia is participation in the abstract constitutional control.

The Public Defender of Georgia, being one of the subjects having the right to lodge a constitutional claim with the Constitutional Court, can apply to the Constitutional Court with a constitutional claim in case he/she believes that a normative act is in violation of human rights and freedoms enshrined in Chapter Two of the Constitution, or if it is deemed that the norms related to a referendum and elections as well as the elections (referendum) conducted or to be conducted on the basis of these norms are unconstitutional.

The Public Defender is authorized to lodge a constitutional claim either on his/her own motion, or based on the applications and complaints of physical or legal persons.

In 2010, the Constitutional Court of Georgia examined four constitutional claims lodged by the Public Defender of Georgia.

- **With the judgment of 28 June 2010 the Constitutional Court fully satisfied the Public Defender's constitutional claim No 466 and found the wording 'residing in Georgia' and 'of Georgia' (preceded by the words 'legal entities') contained in Article 39, Para 1, subparagraph "a" of the Organic Law "On the Constitutional Court of Georgia" unconstitutional in relation to Article 42, Para 1 of the Constitution of Georgia.**

According to Article 39, Para 1, subparagraph "a" of the Organic Law "On the Constitutional Court of Georgia" the right to lodge a constitutional claim as to constitutionality of a normative act or particular provisions thereof in relation to the rights and freedoms provided for in Chapter Two of the Constitution of Georgia was granted to citizens of Georgia, other individuals residing in Georgia and legal entities of Georgia. Hence, individuals who are not citizens of Georgia and at the same time do not reside in Georgia were deprived of the right to appeal to the Constitutional Court, as were legal entities not registered in Georgia.[125]

According to the Public Defender, since Article 42, Para 1 of the Constitution of Georgia recognizes that everyone has the right to apply to a court for the protection of his/her rights and freedoms, it obligates the state to provide to everyone under its jurisdiction[126] the right to apply to a court .

The Constitutional Court found it expedient to clarify the wordings 'other individuals residing in Georgia' and 'legal entities of Georgia'. In relation to individuals, the Constitutional Court concentrated attention on the terms 'residing in Georgia' and 'present in Georgia'.

[125] By ruling No 1/7/281 of the Constitutional Court of Georgia (dated 6 April 2004, the constitutional claim of two French nationals were found inadmissible based on the contested norm.

[126] Based on Article 44 of the Constitution of Georgia, these include legal entities as well.

Based on the overview of the effective legislation, the Constitutional Court considered it unquestioned that in construing the term 'residing' the minimum and necessary requirement is for a person to reside in the territory of Georgia, i.e. to be physically present during a certain span of time.[127] Thus, individuals who are not physically present in the territory of Georgia cannot be considered to be 'residing in Georgia' and, hence, they cannot apply to the Constitutional Court.

In what concerns legal entities, the contested norm only provided the right to apply to the Constitutional Court for legal entities of Georgia. Based on the analysis of the national and international law, the Constitutional Court concluded that the effective legislation does not give any grounds to include in the legal entities of Georgia all legal entities within Georgia's jurisdiction. Therefore, those legal entities that are not legal entities of Georgia would in any case include those that do not meet the above criterion, but are within Georgia's jurisdiction nevertheless.[128]

The Constitutional Court held that the contested act denied the right of applying to the Constitutional Court to:

— The foreign nationals not residing in the territory of Georgia;

— The legal entities that are not legal entities of Georgia, but are within Georgia's jurisdiction.

The Court did not find it necessary to give a detailed interpretation of the right to apply to a court, while at the same time pointing out that … even though the right of access to a court can be restricted, but not on the basis of persons' nationality. Article 42, Para 1 of the Constitution of Georgia specifies the subjects of law. In particular, it states that everyone has the right to apply to a court, which implies every person, irrespective of his/her nationality[129].

The Court decided that:

— Foreign nationals and stateless persons are subjects of human rights recognized by the Constitution of Georgia;

— Article 42, Para 1 of the Constitution of Georgia has as its subject every person (including foreign nationals and stateless persons not residing in the territory of Georgia);

— Article 42, Para 1 provides for these persons the right to apply to the Constitutional Court;

— In certain cases the recourse to the Constitutional Court is the only possibility or the necessary remedy for these persons to ensure protection of their rights;

— There exists no valid reason to ban these persons from applying to the Constitutional Court;

— Even if there existed a valid reason to interfere with the right, a person with impaired rights cannot be left without any legal remedy for redress, the more so without the possibility to have the impaired rights defended in the court.[130]

■ **The second constitutional claim concerned unconstitutionality of several provisions[131] of the Law of Georgia "On Broadcasting" in relation to Article 24, Para 1 and Para 4 of the Constitution of Georgia. Even though the Court has already examined the said claim on the merits, the case has not been finalized with a decision.**

The norms put in question with the constitutional claim concern the mandatory requirement for terrestrial stations of broadcasting satellite systems and cable networks to have the license. The position of the Public Defender is that licensing of media is justified in order to judiciously manage scarce resources that are subject to natural depletion. In what concerns licensing of cabled-network-based broadcasting, there can be found no legitimate public reason to

127 See Decision No 466 of the Constitutional Court of Georgia dated 28 June 2010.
128 See Decision No 466 of the Constitutional Court of Georgia dated 28 June 2010.
129 See Decision No 466 of the Constitutional Court of Georgia dated 28 June 2010.
130 See Decision No 466 of the Constitutional Court of Georgia dated 28 June 2010.
131 On constitutionality of the words 'license holder' in Article 2 subparagraph s); 'by the terrestrial stations of broadcasting satellite systems, cable networks' in Article 38, Para 3; 'as well as by terrestrial stations of broadcasting satellite systems or cable networks' in Article 38, Para 4; Article 38, Para 5; Article 41, sentence 1 of Para 1 in relation to Article 24, Para. 1 and 4 of the Constitution of Georgia.

justify licensing of such media and institution by the state of legal barriers for broadcasters, since broadcasting of this kind is not dependant on scarce resources.

Considering that resources needed for satellite and cable-based broadcasting are not limited, free entrance of any such broadcaster into the market will not be detrimental for the interests of other social groups or segments, though this in no way implies that such broadcasters should be entirely free from control by the state. The state has the function to control the conformance of the activities of such broadcasters with the effective legislation.

According to the Public Defender, the existing system of licensing of cable networks and terrestrial stations of broadcasting satellite systems is in conflict with the Constitution, as "there is no legitimate public reason as stipulated by Article 24 of the Constitution of Georgia to justify it. The exercise of the right to receive and impart information may be restricted as an extreme measure that can only be applied in a limited number of circumstances, defined by the Constitution, to save public good of equivalent value, namely, in the interests of ensuring 1) state security, 2) territorial integrity, 3) public safety, 4) for prevention of crime, 5) for the protection of the rights and dignity of others, 6) for prevention of the disclosure of information acknowledged as confidential or 7) for ensuring the independence and impartiality of the judiciary".[132]

- **The third constitutional claim concerned unconstitutionality of Article 42, Para 5[1] of the Criminal Code of Georgia in relation to Article 39, Article 40 Para 1, and the first sentence of Article 42 Para 5 of the Constitution of Georgia.**

Under the contested norm, in case the convicted person is a minor and insolvent, the court shall award the payment of a fine imposed on the convict to his/her parents, guardian or trustee. According to the Public Defender, such an approach offends the principle of individualization of punishment (*nulla poena sine culpa*) established in the criminal law. In its Decision No 1/51 of 21 July 1997, the Constitutional Court of Georgia stated that individualization of punishment is one of fundamental principles.

Under article 7 of the Criminal Code of Georgia, a crime constitutes a ground for criminal responsibility. In what concerns the punishment, according to the Criminal Code, the purpose of punishment is to restore justice, prevent a new crime and resocialize the criminal. Hence, one can conclude that a penalty shall be awarded to:

— A person who has committed a wrongful and guilty act;

— In order to restore justice, prevent a new crime and resocialize the criminal.

As mentioned above, under the contested norm, in case the convicted person is a minor and insolvent, the court shall award the payment of a fine imposed on the convict on his/her parents, guardian or trustee. Thus, it follows that the ground for imposing a fine (i.e. responsibility) on a parent is not the commission of a crime, but the fact that his/her child who committed the crime is a minor and unable to pay.

The position of the Public Defender concerning imposition of criminal responsibility on a parent without a valid ground, i.e. without the commission of crime, is based on the construction of the fine as one of the forms of punishment. It is to be noted that the fine was interpreted a as one of the forms of responsibility of a respondent party, and as a form of the parents' civil responsibility and at the same time part of the juvenile justice by the Ministry of Justice of Georgia.

The questions raised during the examination of the constitutional claim on the merits concerned whether the purpose of punishment can be achieved through the imposition of a fine on parents; whether such imposition of a fine would result in violation of the rights of other persons (including other family members); whether it would be possible for a parent to challenge the imposition of a fine; whether the parent would be subject to any form of responsibility in case of non-payment; what practice exists as to the application of the said norm, etc.

The Constitutional Court examined the case on the merits; however, the decision is pending.

[132] GYLA and the citizen of Georgia Rusudan Tabatadze v. the Parliament of Georgia. Decision No 2/3/364 of 14 July 2006.

- **The Constitutional Court also examined on the merits the Public Defender's constitutional claim concerning unconstitutionality of some norms[133] of the Law of Georgia on Assembly and Manifestations in relation to Article 25, Para 1 of the Constitution of Georgia. The decision of the court is pending.**

The constitutional claim challenged the norms of the Law of Georgia on Assembly and Manifestations and the Law on the Investigation Service of the Ministry of Finance of Georgia that ban the employees of the aforementioned Service from participation in a public assembly or manifestation. It also brought into question the norms which:

— Ban initiating a public assembly or manifestation by one person only, and organizing a protest by a stateless person;

— Ban holding a public assembly or manifestation within a 20-meter radius of the entrance to the premises of certain establishments and administrative bodies;

— Ban holding of a public assembly or manifestation in the traffic or pedestrian section of the road and deem blocking of a street by pedestrians possible only when it is caused by the number of participants of a public assembly;

— Require a 5-day notification to be given to a local self-government body, and thus exclude the possibility of a spontaneous assembly or manifestation.

The above constitutional claim contests also the norms of the Code of Administrative Offences of Georgia which ban making various graffiti and inscriptions on the traffic and pedestrian section of the road, and holding a public assembly or manifestation within 20-meter radius of the residence of a judge.

According to the Public Defender, the contested norms are in conflict with the right to assembly and manifestation established by Article 25 of the Constitution of Georgia, the right to freedom of expression established by Article 24 of the Constitution of Georgia, as well as with the rights and freedoms of similar effect enshrined in international treaties and agreements, since the restrictions stipulated by the contested legal provisions fail to meet such criteria as being:

— Established by the law;

— Necessary in a democratic society;

— Proportionate to the purpose.

Notably, the issue of constitutionality of some of the norms challenged by the constitutional claim was examined by the Constitutional Court in its judgment No 180-183 delivered on 5 November 2002 by the Second Panel of the Constitutional Court. Due to particular importance of the case and considering provisions of Article 21^1 of the Organic Law on the Constitutional Court of Georgia, the Public Defender's constitutional claim was examined on the merits by the Plenum of the Constitutional Court.

In the course of examination of the claim on the merits, special attention was given to evaluating the domain protected by Article 25 of the Constitution. As the said article of the Constitution does not explicitly state the grounds for

[133] Constitutionality of the formulation "as well as employees of the respective service of the Ministry of Finance of Georgia vested with special powers", contained in Article 1, Para 2 of the Law of Georgia on Assembly and Manifestations; the formulation "political party, association, enterprise, institution, organization or citizens' initiative group" contained in Article 3 (g) and Article 5, Para 1 of the same law; the formulation "as well as persons not having Georgian citizenship" contained in Article 5, Para 2 of the same law; the formulation "and within a 20-meter radius of the their entrance" contained in Article 8, Para 1 and Article 9, Para 1; the first sentence of Article 9, Para 1(j), Article 10, Para 1 (b), Article 11, Para 3 (b), Article 11^1 Paras 1 and 2; the formulation "proceeding from the number of people participating in an assembly or manifestation" and the word "necessity" contained in Article 11^1 Para 5; the formulation "in the event of violation of provisions of Article11^1 " contained in Article 13; the formulation "near the residence of a judge" and the formulation "within 20-meter radius of it" contained in Article 174^1 Para 3 of the Code of Administrative Offences of Georgia in relation to Article 25 of the Constitution of Georgia. Constitutionality of the formulation "as well as in the adjacent territory, including on the traffic and pedestrian section of the road" contained in Article 150, Para 2^1 of the Code of Administrative Offences in relation to Article 24 and 25 of the Constitution of Georgia.

restricting the respective right, the Court looked at what would be deemed a legitimate ground for restricting the right, and what could serve as a yardstick for assessing the proportionality of a restriction.

In the reporting period the Constitutional Court terminated proceedings on two constitutional claims lodged by the Public Defender.

- **Ruling No 1/1/474 of 28 June 2010 terminated proceedings on the Public Defender's constitutional claim concerning unconstitutionality of the word "the sixth" in Article 11, Para 2 of the Law of Georgia on the Occupied Territories in relation to Article 42, Para 5 of the Constitution of Georgia.**

Article 6 of the Law of Georgia on the Occupied Territories (both in its present form and as formulated at the time of recourse to the Constitutional Court) defines the forms of economic activity that cannot be carried out in the occupied territories and, if conducted, would entail the responsibility stipulated in the law. The constitutional claim concerned this ban and the entailing responsibility when applied to the relations in place since 1990. In the Public Defender's view, the application of this restriction to the relations in place since 1990 would give retroactive force to the criminal law provisions establishing the responsibility for the action banned under the new law, and as such, was in conflict with Article 42, Para 5 (sentence 2) that states that the law that neither mitigate nor abrogate responsibility shall have no retroactive force.

The changes made to the Law of Georgia on the Occupied Territories on 26 February 2010 included, *inter alia*, an amended wording of Article 11, Para 2, namely: "Articles 5, 6 and 8 of this Law shall apply to the relations in place since 1990. No provision of these articles that establishes criminal responsibility shall have retroactive force".

Resulting from this legal amendment, by the time when constitutional claim No 474 was admitted for consideration on the merits, the challenged provision was no longer valid. Consequently, the Constitutional Court terminated proceedings on the case in accordance with Article 13, Para 2 of the Law of Georgia on Constitutional Court Legal Proceedings.

- **The case terminated by Ruling No 1/1/452-453 of 30 July 2010 was initiated by the Public Defender jointly with the Georgian Young Lawyers Association. Constitutional claim No 453 concerned constitutionality of sentences 2, 3, 4, 5 and 6 of Article 129[8], part 10 of the Electoral Code of Georgia in relation to Article 41 of the Constitution. The disputed norms concerned the procedure of access to video materials from CCTV installed in the district electoral commission in the period of parliamentary elections.**

According to the Public Defender, the formulation contained in the Electoral Code "CCTV data do not represent public information as defined by the General Administrative Code of Georgia" was in conflict with Article 41 of the Constitution of Georgia, since CCTV records do not contain state, professional, commercial or personal secret, and as such should be considered as public information.

On the basis of amendments made to the Electoral Code on 15 July 2008, Article 129[8], including the disputed sentences, was removed from the law. In this case, too, the Constitutional Court was guided by Article 13, Para 2 of the Law of Georgia on Constitutional Court Legal Proceedings, and in the absence of the legal grounds to carry on judicial proceedings it terminated the proceedings on this claim.

The Right to a Fair Trial

Under the Constitution of Georgia, one of the forms through which judicial power is exercised is justice administered by general courts.[134] Etymologically, the word 'justice' is associated with justness, rightfulness or lawfulness. Hence, independence and impartiality of the court, unflagging protection of human rights determine the authority and effectiveness of the court. According to the Constitutional Court of Georgia:

Access to the court by individuals is the means initiating the exercise of the judiciary power and in this regard, its constitutional weight is closely linked to the effective exercise of the judiciary power.[135]

The judiciary reform has been underway in Georgia for several years already. The new wave of reforms aims to strengthen the justice and enhance the trust the public places in the judiciary. The latter is an essential prerequisite for proper functioning of the judiciary, and in the final analysis, it represents a catalyst for the effectiveness of the judiciary branch of power.

One of the important achievements of the judiciary reform is elaboration and adoption of the new Criminal Procedure Code of Georgia that entered into force on 1 October 2010. The new code fostered further the adversarial nature of proceedings and the equality of arms principles. An interesting innovation is to be seen in the introduction of the jury trial. It is hoped that these changes will contribute to proper exercise of the right to a fair trial at every level of judicial proceedings, as guaranteed by the Constitution of Georgia[136] and the European Convention on Human Rights[137]. However, it is important to note some issues in the new CPC that may give rise to certain problems in the course of judicial proceedings. While analysis of legal norms is the focus of another section of this report, this part will dwell on those violations that were found to occur in the process of application of the law irrespectively of deficiencies in the law, as demonstrated by the analysis of the cases referred to the Public Defender's Office in 2010.

In his report covering the second half of 2009, the Public Defender addressed the problem of inadequate reasoning of court decisions (both interim and final). The problem of inadequate reasoning of court decisions was not only present in criminal proceedings, but was also found to occur in decisions taken by courts on cases concerning administrative offences. The problem is found to be persistently present today, too. Apart from inadequate reasoning of court decisions, analysis of citizens' complaints referred to the Public Defender's Office in 2010, as well as cases examined by the Public Defender on his own motion clearly point to other shortcomings in the operation of general courts that give rise to violation of human rights. Most of the violations stem from impairment of some of the fundamental principles such as legitimacy under criminal law, prohibition of double jeopardy, and unchangeability of the composition of the court.

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134 Article 83 of the Constitution of Georgia
135 Ruling II-2, No 1/3/421.422 of the Constitutional Court of Georgia dated 10 November 2009 /
136 Article 42 of the Constitution of Georgia
137 Article 6 of the European Convention of Human Rights

REASONING OF COURT DECISIONS

The Public Defender's Report of the second half of 2009 noted that inadequate reasoning of court decisions was not the problem evidenced only in the operation of a particular court or a particular judicial instance, but of many courts across the territory of Georgia. Analysis of cases referred to the Public Defender's Office in 2010 shows that inadequate reasoning of interim and final judicial decisions is still the case, which means that the systemic problem persists.

Many applications and complaints referred to the Public Defender's Office concerned the lack of reasoning in court decisions, in particular, in orders and judgements concerning imposition of restraint (preventive) measures.

In 2010, the Public Defender's Office examined the case of V.V. On 29 April 2009, the judge of the Zugdidi District Court issued a ruling by which he let stand the order on imposition on the accused of detention as a preventive measure.

The court failed to give reasons as to why it considered that the preventive measure had been chosen correctly, whether the legal requirements for imposition of detention had been met or whether factual or procedural grounds existed for imposition of the most stringent preventive measure. The judge limited himself to some general remarks stating that he had examined the materials of the criminal case, and that detention as a preventive measure was imposed on the defendant correctly.

Inadequate reasoning of court rulings concerning application of preventive measures was evidenced in another case examined by the Public Defender's Office, namely, in the case of K.Ch.

On 21 October 2010, police officers of the Isani-Samgori Department of Internal Affairs arrested K.Ch. He was accused of the offence stipulated in Article 353, Para 1 of the Criminal Code of Georgia.[138] On 23 October 2010, the Panel of Criminal Cases of the Tbilisi City Court applied to K.Ch a two-month detention as a preventive measure.

The ruling of the Tbilisi City Court concerning imposition of detention as a preventive measure reads:

- "In deciding on application of a specific preventive measure, the Court considers that the action by the accused falls within the category of less grave crimes for which apart from alternative sanctions the legislation envisages also the deprivation of liberty. Hence, there are reasonable grounds to believe that in the event a non-custodial preventive measure is applied, the defendant may try to flee, fail to appear before investigation or in court, obstruct collection of evidence, or commit a new crime. At the same time, there is a threat that the defendant may influence the persons who can incriminate him".

This reasoning was deemed by the court to justify application of detention as a preventive measure against the accused.

In the reasoning of the ruling of 23 October rendered by the Tbilisi City Court, the judge limited himself to listing general grounds for application of preventive measures and detention contained in the Criminal Procedure Code of Georgia. However, he never stated as to what circumstances substantiated his belief that the accused would not appear before the investigation or in the court, obstruct collection of the evidence, commit a new crime or influence those persons who might incriminate him. In this case the judge failed to reason as to what circumstances would justify application of a custodial preventive measure. It is to be noted that existence of detention as a measure to prevent commission of a new crime, provided in the law, cannot unconditionally serve as a basis for application of detention against an alleged offender. Such an approach would mean that bringing a charge against any person is *per se* a valid ground for application of detention, which is inadmissible and offends the standards of the Convention.

Notably, this ruling was rendered by the court after the enactment of the new Criminal Procedure Code. The purpose of the new criminal procedure law is to establish a system fully based on the principle of equality of arms and respect for the rights of the accused. However, the above judicial decision falls short of these standards.

By the judgment of the Tbilisi City Court, communicated to the Public Defender by the defence party, L.Ch., D.SH., A.Z., R.M., G.G., J.G., and Sh.A. were convicted for hooliganism, i.e. the action grossly violating public order and

[138] Resistance, threat or violence against police or other state agents

displaying disrespect for the public, committed with violence or threat of violence by a group (offence under Article 239, Para 2, subparagraph "a" of the Criminal Procedure Code of Georgia).

In the judgment the court pointed out the evidence that led it to find the defendants guilty of the offence, though it stated in very general terms that they had committed an act of violence, without specifying the action committed by each of the convicted persons.

When convicting a person, the court is under an obligation to evaluate the evidence both individually, i.e. in respect of each offender, as well as in their totality. A person cannot be convicted based on a general reference to the available evidence. The analysis of evidence should be followed with a proof of each individual incriminated fact. Different signs of the *corpus delicti* should be established both separately and in community with the other evidence. The judgment as formulated by the court is based on an overly simplified approach – the court referred to a specific body of crime and limited itself to a general phrase that the crime was proved based on the available evidence.

The cases referred to in this section of the Report, together with other facts described in the Report of the Public Defender for the 2nd half of 2009, demonstrate convincingly that the problem of inadequate reasoning of court decisions persists, and oftentimes leads to violation of the rights guaranteed by the European Convention on Human Rights and Fundamental Freedoms, and the domestic law.

Protection of human rights alongside with the protection of other natural rights is the priority goal of the state, whereas adequate reasoning of the court decisions, particularly where they concern restraint or deprivation of liberty, is an important precondition for the attainment of this goal. By failing to reason adequately its decisions, the court risks to erode democratic values. It might well be that a person's conduct is socially deviant, but this can in no way justify any abuse of his/her rights. Proper observance of human rights by courts is a necessary condition for justice.

RETROACTIVITY OF THE LAW

In the reporting period of 2010, the Public Defender's Office examined a number of judicial decisions exposing the problem of retroactivity of the law. Analysis of the examined cases shows that on a number of occasions the court retroactively applied the law, thus toughening the penalty, which led to violation of Article 42 of the Constitution of Georgia, Article 3 of the Criminal Code of Georgia, and Article 7 of the European Convention on Human Rights.

Article 42 of the Constitution of Georgia establishes the fundamental right for a person not to be punished under the retroactive law (the *Nullum Crimen Sine Lege Praevia* principle) and provides, in conjunction with the respective articles of the International Covenant on Civil and Political Rights, for retroactive application of the norms that mitigate the responsibility (the *Lex Mitior* principle). The relevant constitutional provision is made up of two sentences:

- "No one shall be held responsible on account of an action which did not constitute a criminal offence at the time it was committed. The law that neither mitigates nor abrogates responsibility shall have no retroactive force."

Under Article 2, Para 1 of the Criminal Code of Georgia, the criminality and punishability of the action shall be determined under the criminal law, which was applicable at the time of committing this action. This norm reflects the standard set out in Article 42 of the Constitution. Article 3, Para 1 of the Criminal Code states:

- "The criminal law which nullifies criminality of the action, improves the condition of the offender shall be retroactive. The criminal law, which lays down the criminality of the action, toughens punishment or otherwise aggravates the condition of the offender, shall in no way be retroactive".

Before the decision of 13 May 2009 of the Constitutional Court of Georgia, the way the issue of retroactivity of the law was construed both in the legislation and in the judicial practice differed. According to one interpretation, retroactivity of the criminal law did not apply to the norms contained in the general part of the Criminal Code. Some

of the judgments rendered by the courts before 2009 contained explicitly unconstitutional provisions. However, since the decision of the Constitutional Court cannot serve as a basis for reopening the proceedings[139], these judgments are not reviewed, which leads to the punishment under a more stringent law than the one that was in force at the time the crime was committed.

● Imposition of Deprivation of Liberty with Violation of Prohibition of Retroactive Application of the Law

The Public Defender's Office examined the criminal case of G.F. evidencing the problem of misinterpretation of the provision on retroactivity of the law. In this case, the law aggravating the responsibility was used retroactively.

G.F. was arrested on 17 December 2006 on charges of obstructing the police and attempted murder. He had been wanted since 2002. On 22 December, the old and the new criminal cases were combined and proceedings were opened on the combined case.

On 17 December 2006, G.F. resisted the police, and fired several shots at police officers at the time of his apprehension. In 2002, too, he fired a gun at a person targeting his head area. By the decision of the Batumi City Court of 17 July 2007, G.F. was found guilty and convicted under Article 19, 108, Article 236 Para 2 (two episodes) and Article 19, 109 Para 1 (a, d, g) and Para 2 (a) (attempted murder of two or more persons for the purpose of covering other crime, committed in connection with the official activity of the victim with the means threatening the life of other persons). The punishment imposed on G.F. was established under Article 19, 108 (7 years of deprivation of liberty), Article 236, Para 1 (fine in the amount of 2000 GEL), Article 236, Para 2 (fine in the amount of 3000 GEL) and Article 19, 109 (18 years of deprivation of liberty). Under Article 59, Para 1 of the Criminal Code the judge cumulated the sentences and meted out the sentence imposing 25 years of deprivation of liberty and the fine of 5000 GEL. G.F. started servicing his sentence on 17 December 2006. The Court of Appeal left the decision of the Batumi City Court unaltered. The Supreme Court of Georgia dismissed the case.

Article 42, Para 5 of the Constitution of Georgia establishes a general rule, under which the criminal justice shall apply those norms setting out the responsibility which were applicable at the time of an action/omission. It is prohibited to apply retroactively the law establishing or aggravating the responsibility for an action. The law implies both general provisions concerning the responsibility, and specific bodies of crime. According to the Constitutional Court of Georgia:

- "The main purpose of the General Part of the Code manifests itself in the qualification of specific offences and assignment of penalties, though this by no means implies that the norms contained in the General Part do not provide for one another. Prohibition of retroactive application is the guarantee provided for the criminal law in its totality as an organic unity of the norms, and not for one part alone. With regard to retroactivity of the law, it is the whole body of the norms of criminal law that are implied".[140]

Article 56 of the Criminal Code of Georgia stipulates awarding a sentence for an incomplete crime. According to the rule in effect before 29 December 2006, the term or extent of the sentence for the attempted crime could not exceed three-fourths of the sentence prescribed for the respective crime. This rule was abrogated on 29 December 2006. Under the criminal law in effect at the time when G.F. committed the action, the crime under Article 109, Para 3 of the Criminal Code was punishable with deprivation of liberty for the term extending from 16 to 20 years.[141] The maximum term of sentence for attempted crime under the law in force before 29 December 2006 was 15 years of deprivation of liberty, and it was inadmissible to award a tougher sentence. The case law of the Chamber of Criminal Cases of the

[139] Under Article 310 of the Criminal Procedure Code of Georgia (Article 593 in the 1998 CPC), a decision of the court can only be abolished on the basis of the decision of the Constitutional Court that established unconstitutionality of the relevant law. The decision of the Constitutional Court of 13 May 2009 providing interpretation on the issue of retroactivity of general and special provisions of the Criminal Code did not find the law unconstitutional.

[140] Decision of the Constitutional Court No 1/1/428,447,459 of 13 May 2009.

[141] When a person is convicted for one and the same criminal action under several subparagraphs of Article 109, one sentence is meted out.

Supreme Court of Georgia indicates that the measure and extent of sentence for attempted crime committed before 29 December 2006 should not be in excess of three-fourths of the maximum sentence, prescribed for a particular crime.[142]

In contravention of the established norm, the Batumi City Court sentenced G.F. to 18 years of deprivation of liberty, which is a violation of the law and human rights. G.F. has been sentenced to a term that is 3 years longer than the maximum sanction, which is totally inadmissible. Regrettably, the appellate and cassation courts failed to redress this violation despite the Public Defender's complaints clearly indicating the breach.

● Imposition of Fine with Violation of Prohibition of Retroactive Application of the Law

In the above case, apart from deprivation of liberty, the court also meted out for the offender a fine.

Before 28 April 2006, the fine as a form of penalty was set out in the Criminal Code of Georgia differently than it is today. It was calculated on the basis of the daily payment. Article 42, Para 2 of the Criminal Code, as it stood at that time, established a minimum and maximum amount of fine.[143] The court used to indicate in the judgment both the daily payment and the payable amount of fine. Under the present Code, the fine is a pecuniary payment. The Code only sets out the notion of minimum fine[144] and the awarded penalty is indicated in the judgment as the amount of fine to be paid. Actually, the fine - as a penalty for a criminal offence – is made tougher as compared to the respective provisions in the law that was in force before 28 April 2006, since the minimum amount of penalty has increased, the definition of maximum penalty has been abrogated and the procedure of imposition of the fine is more stringent for the persons concerned.

G.F. was convicted for two episodes of the crime under Article 236, Para 2 of the Criminal Code. The first offence was committed on 11 August 2002. For this action, the court awarded the fine of 2000 GEL. The penalty should have been awarded based on the law that was in force at the time when the crime was committed. The judge should not have meted out the penalty on the basis of new rules of awarding the fine, since this led to the breach of an important principle of criminal law according to which the measure and extent of criminal responsibility shall be set out by the law in force at the time when the action is committed. If the previous version of the law had been applied, it would have been possible to impose a lighter penalty, whereas the present provisions of the law that regulate the award of a fine establish 2000 GEL as the minimum amount of fine.

● New Rule for Awarding Sentence in Case of Cumulative Crime

On 23 February 2010 the Parliament of Georgia adopted the Law "On Amendments and Additions to the Criminal Code of Georgia" under which Article 59 was supplemented with Para 1^1, under which in case of cumulative crime, consisting of several offences each one punishable with deprivation of liberty, with exception of the toughest sentence out of the awarded ones, all other sentences should be awarded with the term ranging from half to full term, which will then be aggregated when awarding the final cumulative sentence. Under Article 2 of the said law, this rule applies to persons in whose respect the final judgment has not been meted out.

The law adopted by the Parliament on 23 February 2010 has no real retroactive force, but only retrospective, which means in applies to relations that started in the past and continue at the time when the law is in force. Article 2 of the law stipulates that criminal cases not finalized by the court (on which the court has not rendered a final decision) shall be subject to the new rule for awarding a cumulative sentence.

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142 Ruling No 70 of the Chamber of Criminal Cases of the Supreme Court of Georgia dated 17 April 2007. Ruling No 56 of the Chamber of Criminal Cases of the Supreme Court of Georgia dated 23 January 2007. Ruling No 376 of the Chamber of Criminal Cases of the Supreme Court of Georgia dated 27 April 2007.

143 The Criminal Code set out the maximum amount of daily payment and the respective maximum amount of fine. The minimum amount of fine was 20 GEL.

144 2000 GEL (in special cases stipulated by law – 500 GEL).

The law of 23 February 2010 applies to those cases on which the court has not rendered the final decision. The criminal procedure law of Georgia does not provide a definition of the final decision of the court. The Criminal Procedure Code only contains the notion of the decision entered into legal force, which is relevant for the execution of the sentence and the respective procedural status. The Explanatory Memorandum[145] to the Council of Europe Convention on International Recognition of Court Judgments[146] defines 'the final decision'. This is by far the most authoritative[147] definition known today. The decision is final when it has the force of *res judicata*, i.e. when it cannot be appealed. Impossibility of appeal implies cases when a normal[148] avenue of appeal is no longer available, or has been exhausted by the parties, or else the period for submitting an appeal has elapsed. Hence, the decision is not final until the cassation proceedings are completed.[149]

Para 1^1 of Article 59 of the Criminal Code is a special norm in relation to a general rule established by this article and in case the respective conditions exist[150], the sentence should be awarded with reference to it. It is possible for the sentences to be aggregated in their full term and extent, however, in any case it is necessary to rely on Para 1^1.

The procedure established by Article 59, Para 1^1 enables awarding of a more lenient sentence, which is one of the forms of mitigating responsibility. Such application of the law is guaranteed by the Constitution of Georgia[151], the European Convention on Human Rights and Fundamental Freedoms[152], and Article 15 of the International Covenant on Civil and Political Rights[153].

The Public Defender's Office examined the criminal case of T.K. By the judgment of the Tbilisi City Court of 25 February 2009, T.K. was found guilty under Article 179, Para 2, Subparagraph b) and Article 179, Para 2, Subparagraph a). By the judgment of the Tbilisi Court of Appeal of 28 September 2009, the decision of the first instance court remained unaltered. In October 2009, the sentence was appealed on cassation. The ruling of the Supreme Court of Georgia dated 27 April 2009 found the cassation appeal inadmissible. Thus, the convicted person was deprived of the right to have his case examined under a more lenient law that was in force at the time of the judicial proceedings on the case. In order to have such judicial practice rectified, the Public Defender addressed a recommendation to the Chairman of the Supreme Court of Georgia.

● Prohibition of Double Conviction

The case of G.F. examined by the Public Defender's Office evidenced, apart from the problem of retroactive application of the law, also violation of the constitutional guarantee prohibiting double conviction.

Under Article 42, Para 4 of the Constitution of Georgia "No one shall be convicted twice for the same crime". This article provides for two essential guarantees – prohibition of double conviction and the repeated conviction for the same crime. It prohibits imposing responsibility for one and the same crime twice (*Ne Bis In Idem*) and repeated punishment for the action after conviction (*double jeopardy*). When one action is committed, it cannot be evaluated under two articles, which would lead to aggravating the criminal responsibility[154]. A similar prohibition is contained in Article 16 of the Criminal Code of Georgia[155].

145 Part 1, Article 1, Para 3, http://www.conventions.coe.int/Treaty/en/Reports/Html/070.htm
146 CETS No 070 has entered into force for Georgia since 26 June 2002.
147 For instance, it is often used by the European Court of Human Rights when interpreting Article 3 and Article 4 of the Optional Protocol No 7 to the European Convention on Human Rights.
148 This does not imply judicial proceedings on newly found circumstances.
149 This is corroborated by the case law of the Supreme Court of Georgia, as in the case of examining the case on the merits the court actively applies the new procedure of awarding punishment. For instance, Ruling no 902ap-09 of 14 ay 2010, and Ruling No 308ap-09 of 30 June 2010.
150 I.e. when the sentence is awarded for more than 2 offences.
151 Decision No 1/1/428,447,459 of the Constitutional Court dated 13 May 2009.
152 *Scoppola v.Italy*, the ruling of the European Court of Human Rights of 17 September 2009.
153 In force for Georgia since 3 August 1994.
154 Except for ideal concurrence of infractions (*concours ideal d'infractions*) where one action leads to several offences.
155 "Interpretation of the Criminal Code of Georgia", Otar Gamkrelidze, 2008, page 141 (in Georgian)

Article 236, Para 2 of the Criminal Code of Georgia makes illicit carrying of firearms a punishable offence. It falls within the category of the so-called on-going crime. According to the Criminal Code, ongoing crime is completed upon the termination of the action.[156] The Supreme Court of Georgia elucidated the circumstances that represent termination of action[157] for the purposes of Article 236: seizure, sale, hand-over and loss of firearms. If none of these circumstances is found to occur, it is inadmissible to make a person responsible for cumulative crime, since it is one on-going crime.

G.F. was convicted under Article 236, Para 2 for two episodes. According to the judgment, one episode of crime was committed in August 2002, and the other one on 17 December 2006. Notably, Opinion No 1414/9 of the National Bureau of Expertise, cartridge cases found on the sites of the crime show that in both cases the shots were fired from one and the same gun – a 9mm Makarov pistol. Upon arrest in December 2006, this gun was taken from G.F. The case file contains no indication that in the period between August 2002 and December 2006 there was a let-up in the action, and G.F. was not carrying the said firearm. Hence, the case file evidences one on-going crime, and not two independent crimes. One on-going criminal action committed by G.F. was broke-up into two independent actions and evaluated accordingly, thus leading to violation of the principle under which no one shall be convicted twice for one and the same crime. Two legal evaluations of one action led to double punishment, which means that the constitutional guarantee of prohibition of double conviction was effectively violated in the said case.

ILLEGALLY OBTAINED EVIDENCE

In the reporting period of 2010, several convicted persons informed the Public Defender's Office that they had been convicted on the basis of evidence obtained in contravention of law. PDO examined a number of criminal cases that evidence the problem of illegally obtained evidence.

According to Article 42, Para 7 of the Constitution of Georgia: "Evidence obtained in contravention of law shall have no legal force".

This constitutional provision guarantees a fundamental right, which implies that evidence shall be procured in full conformity with law. This provision does not represent the so-called declarative article[158]; it establishes an essential guarantee according to which the evidence obtained in contravention of law shall not be used against an accused person. The words 'in contravention of law' or 'illegally' should not be construed narrowly and any contradiction with legal provisions should not lead to inadmissibility of evidence. According to Article 72 of the Criminal Procedure Code of Georgia, the evidence is inadmissible if it "essentially contradicts" the provisions of the Criminal Code. This means that not all breaches found to have occurred in obtaining the evidence are seen as impairing the rights of an accused person. For the evidence to be inadmissible, it is necessary for it to lead additionally to an explicit and arbitrary abuse of the regulation.

In contrast to the provisions of the 1998 CPC, the present Criminal Procedure Code does not contain a Numerus *Clausus* list of inadmissible evidence; it sets out a general rule governing inadmissibility of evidence. According to Article 111, Para a) of the Criminal Procedure Code in force before 1 October 2010, the evidence was found to be inadmissible if it was obtained by an official or a body not authorized to gather the evidence.

The Public Defender's Office was addressed by M.K. convicted by the court. Examination of M.K.'s case exposed a number of violations, including institution of investigative action and collection of evidence by a person not duly authorized to do so. The investigation on this criminal case was conducted by investigator K.Ch. who was dismissed

156 Article 13 of the Criminal Code of Georgia

157 Ruling No 178ap-10 of the Chamber of Criminal Cases of the Supreme Court of Georgia dated 5 July 2010; Ruling No 797ap-09 of the Chamber of Criminal Cases of the Supreme Court of Georgia dated 22 February 2010.

158 Otherwise the exculpating evidence obtained illegally should also be considered inadmissible, which leads to formalization of the proceedings. This did not stem from the Criminal Code adopted on 20 February 1998 or form the relevant provision of the Criminal Procedure Code of 9 October 2009. See interpretation of the procedural-legal aspects of the constitutional provision in Decision No 1/1/403,427 of the Constitutional Court dated 19 December 2008.

from office on 17 January 2005.[159] Letter No 10/36-2/2-12974 sent by the director of Establishment No 5 of the Penitentiary Department confirms that on 25 January 2005 investigator K.Ch. visited the said penal establishment in order to conduct an investigative action. By that time K.Ch. had his powers revoked, however he was admitted to the penal establishment and conducted the investigative action. After K.Ch. the investigation was taken over by investigator R.Z. He received the case on 25 January 2005.[160] It is totally incomprehensible how and based on what powers K.Ch. entered the penitentiary establishment to conduct an investigative action. This clearly indicates that investigative actions on the said case were conducted in violation of the law by a person possessing no legal powers to conduct any investigative actions.[161]

The Public Defender examined also the criminal case of M.N. convicted by the court, who is currently serving a sentence for having committing offences under Article 344, Para 1 and Article 362, Para 1 of the Criminal Code of Georgia. M.N. was arrested on 9 September 2009. On 11 September, he was charged with committing a criminal offence. As evidenced by the resolution on instituting criminal proceedings against M.N., the accusation was based on M.N.'s seized passport; however, the passport was admitted as a physical evidence on 16 December 2009, i.e. after the institution of proceedings against the accused M.N.

The Constitution of Georgia contains an imperative requirement for the evidence to be obtained in accordance with the law. Under Article 121, Para 4 of the Criminal Procedure Code effective at the time of the proceedings, physical evidence had to be admitted as such by the resolution of the body carrying out the proceedings, otherwise it could not be considered as a physical evidence. Under Article 282 of the same law, institution of criminal proceedings should have been based on the evidence. Since the basis for accusation brought against M.N was his seized passport, which was not admitted as evidence at that time, such evidence under the Constitution had no legal force. Thus, proceedings against the arrested person were instituted in contravention of the requirements of the procedural law.

Evidence is a means used in the process of proof. It serves to overcome a presumption of innocence and convict the offender. Due a whole array of legitimate purposes,[162] the law establishes numerous legal requirements in respect of evidence. Failure to meet them may lead to denial of the right to a fair trial. The Constitution of Georgia establishes a higher standard from the perspective of human rights and such evidence is considered *a priori* to be illegal, irrespective of whether the right to a fair trial is observed otherwise. Consequently, it is essential to observe legal norms when obtaining the evidence in order to fully meet all procedural guarantees within the Georgian jurisdiction.

CHANGE IN COMPOSITION OF THE COURT

In the reporting period of 2010, the Public Defender's Office examined a number of criminal cases that evidence the change in the composition of the court in the course of proceedings in contravention of the procedural law. The examined cases show that sitting judges were replaced by new ones without any decision to that effect by the chairman of the court.

Unchangeability of judges in the course of examination on the merits of the case is seen as one of the essential guarantees contributing to proper judicial reasoning of a judgment. If evidence is not presented before a judge, or if he/she is not familiar with the materials relating to the case, the decision is *a priori* ungrounded, since in such conditions it is not possible to establish any reasoning underpinning the decision, as:

[159] This is corroborated by letter No 02-6-772 of the General Prosecutor's Office (dated 13 December 2005. Volume 2 of the criminal case, page 133.

[160] Volume 1 of the criminal case, page 140.

[161] Another interesting fact in this case is that the resolution on institution of proceedings against the accused person was compiled by investigator Chubinidze, whose name was later crossed out and instead 'Revaz Chkheidze' was written over it. The handwriting and factual circumstances clearly indicate that the charge against the applicant was brought by Chubinidze, which has to be seen as the ground for discontinuation of legal proceedings. Bringing a charge against a person ensues certain guarantees for an accused person, and if charges are brough in contravention of the law by a person not having due powers, criminal proceedings against the person concerned must be dropped.

[162] Preventing the change of evidence or removal of trace of crime, etc.

1. Familiarization with the materials relating to a case aim to corroborate indisputability of evidence[163], which is stipulated by Article 40 of the Constitution of Georgia.

2. The judge is under an obligation to familiarize himself/herself fully with the materials relating to a case, which *per se* provides for adversarial proceedings and equality of arms, as the court shall be fully aware of the interests of both parties before making its judgment.

3. Judge's obligation to be fully familiar with the materials relating to a case is a precondition for rendering a reasoned decision[164], which is one of the essential elements of a fair trial.

Replacement of a judge in any case requires reopening of proceedings. One exception from this rule is where a standby judge has been appointed to hear a case:

- "The composition of the court hearing the case shall not change. If any of the judges is unable to take part in the hearing, he/she shall be replaced by another judge of the same court and the examination of the case shall start anew, except for cases stipulated in Article 436".[165]

Under Article 436 of the Criminal Procedure Code:

- "By decision of the chairman of the court, it is possible to have a standby judge appointed to hear a case who shall replace a judge withdrawing from the composition of the court, and the hearing of the case shall continue".

Article 435 established the general rule, whereas Article 436 set out an exception from this general rule. Despite the fact that the law did not make an explicit provision, it ensued from the norm that the standby judge shall be appointed before the beginning of a hearing. Otherwise, the norm would open the door for arbitrary application of the norm, which is inadmissible.

In the reporting period of 2010, the Public Defender's Office examined two criminal cases evidencing the abuse of this essential guarantee.

On 13 May 2010, one of the judges of the Batumi City Court started hearing of N.B.'s case, which was then continued from 5 August by another judge of the same court who rendered the judgment. The materials presented to the Public Defender's Office show that the chairman of the Batumi City Court had not appointed any standby judge, which was obligatory under Article 436 of the Criminal Procedure Code in order for the hearing to be completed by a different composition of the court.

The Public Defender's Office examined also the criminal case of M.K., which had been considered in the first instance by the Panel of Criminal Cases of the Tbilisi City Court. One judge of the said panel left office during the examination of the case. Starting from 16 December 2005[166], he was replaced by another judge and the hearing was resumed.

In addition, it is important to note one aspect in M.K.'s case. The materials relating to the case are silent as to when the new judge entered the proceedings. The letter addressed to the Public Defender's Office by head of the Department of Human Resources and Records under the High Council of Justice, dated 20 December 2010 prove that judge D.N. was discharged on 9 December 2009. Hearing of the case continued on 16 December 2009. It is impossible to understand since when the new judge was in a position to look into the materials of the case. The main reason lies in non-existence of a formal document on appointment of the new judge to hear the case.

Consequently, in the criminal cases examined by the Public Defender's Office judicial proceedings that followed after the change in the composition of the court were conducted in violation of the criminal procedural law. It might well be that this had no impact on the judgment delivered by the court, though it was absolutely necessary to provide a certain

163 *Inter alia*, Ruling No 255-ap (dated 24 March 2009) of the Chamber of Criminal Cases of the Supreme Court of Georgia.
164 *Mutatis mutandis*, the ruling of the European Court of Human Rights on the case Kraska v. Switzerland, §31-32.
165 Article 435 of the Criminal Procedure Code.
166 In the materials of the case date (2006) is indicated incorrectly.

formal document pointing out the exact date when the new judge entered the proceedings. In the absence of the formal document the way the proceedings were conducted point to abuse of the right to a fair hearing.

Bearing in mind that the respective articles of CPC have not changed and the Criminal Procedure Code in force since 1 October 2010 regulates the issue of unchangebility of the court basically in the same way, violations of the sort described above are not improbable. It is necessary to prevent such violations in future. Besides, it seems necessary to provide in the law a possibility for the party affected by such an abuse to have his/her case heard again.

In terms of constitutional law, the judiciary is there to protect the rights of individuals in relations with the state and private persons. In terms of protection of human rights, no other state body is vested with powers as broad as the court is. Therefore, its proper functioning is seen as a priority objective, which ensues rigorous monitoring of the judiciary. Any violation in the activity of the courts entails serious consequences, for which reason it is imperative to minimize them. The goal of the reform can only be considered accomplished, if the institution is capable of proper functioning and adequately addressing the challenges the state is confronted with.

RECOMMENDATIONS

- **It is recommended that the Parliament of Georgia introduce legislative changes to enable parties in criminal cases to request revision of judgments concerning them in case these come into conflict with the decisions of the Constitutional Court of Georgia. In this case, it is necessary to take account not only of the operative part of a judgment but also the statements and constitutional norms contained in the reasoning of the judgment.**
- **It is recommended that general courts, when interpreting the norms to be considered in the adjudication on a case, take full account of the rights guaranteed by the Constitution of Georgia (as well as the relevant opinions of the Constitutional Court of Georgia) and interpret the norms in relation to those rights.**
- **It is recommended that general courts, when rendering interim or final decisions, provide adequate reasoning in terms of the facts and the law.**

2010

Enforcement of Court Judgements

Prompt and efficient enforcement of court judgements is one of the essential prerequisites for the realization of the right to a fair trial guaranteed by Article 42 of the Constitution. Public Defender's reports[167] have repeatedly highlighted problems pertinent to the enforcement system of court judgements.

Throughout the 2010 reporting period, the Public Defender received a number of complaints from citizens about the procrastinations in the enforcement of the court judgements made in their favour, together with the violations of their rights. Having studied the applications, we detected a number of problems, which will be considered in the present Chapter. In addition, this Chapter will look into the legislative changes introduced into the Law of Georgia on Enforcement Procedures on 7 December 2010, which may result in an infringement of certain rights.

LEGISLATIVE CHANGES INTRODUCED INTO THE ENFORCEMENT SYSTEM

As noted above, on 7 December 2010, several changes were introduced into the Law of Georgia on Enforcement Procedures that are intended to promote the enforcement of judicial judgements. This part of the present Chapter will look into some of them.

Pursuant to Article 30 of the Law of Georgia on Enforcement Procedures, in case the whereabouts of the debtor are unknown, or if the debtor intentionally avoids his/her obligations, then - based on a substantiated solicitation from the Enforcement Bureau - the judge may issue an order for the retrieval and reconduction of the debtor. This judicial authority to order reconduction was among the newly effected amendments into the law made on 7 December 2010. Not only this change authorises the National Enforcement Bureau to require the police to establish the whereabouts of the debtor but also demand his/her forced reconduction to ensure this latter's participation in the enforcement measures.

Apparently, retrieval and reconduction of the debtor it intended to facilitate the enforcement process and thereby protect the interests of the creditor. These actions are taken in the event the whereabouts of the debtor are unknown and when he/she intentionally eschews his/her obligations. Although, given the fact that reconduction, as an act, presupposes restriction of the constitutional right of an individual to inviolability, this subject is significant enough to warrant elaboration as to what extent this measure is necessary or proportional.

As already noted, retrieval and reconduction of a debtor is applied in the event this latter refuses to comply with the court judgment voluntarily. Meanwhile, Article 17 Para 5 of the Law of Georgia on Enforcement Proceedings provides the list of measures to be applied in the event of forced execution of obligations. These latter include attachment of

[167] Report of the Public Defender of Georgia on Human Rights Situation in Georgia of the 2nd half of 2008, and the 1st and 2nd halves of 2009.

the debtor's property, collection of debt through deductions from his/her salary or other earnings, etc. In other words, reconduction is by no means the only measure to secure forced execution of a court judgement and should rather be seen as a last resort.

Therefore, the legislators should specify the following:

- what concrete circumstances would warrant the use of search, i.e. the cases where a court judgement cannot be practically enforced without the presence of the debtor;
- in what manner the reconduction shall be effected, what will be its duration and what actions may be taken in its course.

Clearly, ascertaining the above will contribute to a prompter enforcement of court judgments and protection of creditors' interests. At the same time, this will help prevent the abuse of authority and will put an end to the improper practice whereby reconduction is used as a regular/punitive measure in the course of forced execution of court judgements.

ENFORCEMENT OF COURT JUDGEMENTS BY THE ORGANIZATIONS FUNDED FROM THE STATE BUDGET

Over many years, the enforcement of court judgements by organizations funded from the state budget has remained one of the most important, as well as problematic issues in the field of enforcement. Typically, the most problematic judgements were those concerned with the repayment of arrears of wages or other indebtedness by such organizations.

The situation with the enforcement of judgements where budgetary organizations featured as debtors considerably improved when the Finance Ministry made assignations into the *Fund for Payment of Accrued Salary Arrears and Enforcement of Judgements* specifically for this purpose.

Pursuant to Article 17, para 3 of the Law of Georgia on the 2010 State Budget, as much as 20 million Georgian lari was allocated for the repayment of arrears accumulated by budgetary organizations in the previous period, and for the purpose of enforcement of court judgements involving such repayments. This fact, in itself, is a positive development.

According to official statistics, in the course of 11 months of 2010, the number of court cases lodged against budgetary organizations was 1491. Out of these, judgements were enforced in respect of 1267 of court cases, and 34 cases were cleared[168] , which comes to the total of 1 301 completed court cases. According to the information supplied by the Ministry of Finance, the total sum recouped through the Enforcement Bureau in 2010 amounted to 3 556 713 Gel. The above statistical data indicate that, in general, the enforcement of such category of judicial judgements is going well. However, there are still a number of issues causing concern.

The applications submitted to the Public Defender's Office attest to a concrete problem. More specifically, over the last year's reporting period, the Public Defender received numerous complaints from individuals to the effect that the court judgement made in their favour remained unenforced. Typically, these complaints pertained to the court judgements involving payment obligations by budgetary organizations in favour of a physical person or a private legal person. In addition, upon studying the submitted applications and analysing the current legal proceedings, together with the applied practice - with a view to facilitating enforcement of this category of judgements - we revealed yet another problem. This relates 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 Judgements* in cases where indebted budgetary organizations have failed to enforce the respective court decisions voluntarily.

Article 17 of the Law of Georgia on Enforcement Procedures of 16 April 1999 prescribes all legal tools and obligations that can be lawfully applied by the bailiff in the course of forced execution of court judgements. Paragraph 5 of the above Article provides that a bailiff is authorized to ensure collection of the debt through seizing and selling the

[168] Cleared cases include the cases completed due to a variety of reasons (withdrawal of the writ of execution by the creditor, referring the execution proceedings to the court, revocation of a court or administrative body decision, etc.).

debtor's property. In the event the concerned property belongs to a state or local government body, the bailiff shall notify of this the respective state authority or the local self-government body. Article 90[4] of the same law provides that forced execution of a court judgement involving monetary compensation in respect of budgetary organizations may not be effected until after the elapse of a one-month period following the serving of a proposition for voluntary enforcement of the judgement on such organizations. Notably, the above Law of Georgia on Enforcement Procedures is silent about what specific legal procedures or means shall be applied by the bailiff upon the elapse of the above noted one-month period in order to carry out the forced execution against the indebted budgetary organization.

The Public Defender's Office brought up this issue before the National Enforcement Bureau of the Ministry of Justice of Georgia (referred further as the National Enforcement Bureau) and requested information regarding the legal regulations pertaining to the procedures and deadlines for the collection of payment. According to the reply provided by the National Enforcement Bureau, the legislation envisages no such procedures or deadlines. The same letter, however, informs that on a practical level there is a mechanism which is normally used to ensure the recovery of money imposed on budgetary organizations by court judgements.

According to the current practice, if within a one-month-period a budgetary organization fails to comply with the court judgement voluntarily, the bailiff imposes an order for the collection of the respective payment from the bank account of the *Fund for Payment of Accrued Salary Arrears and Enforcement of Judgements of the Ministry of Finance* and ensures that these payments are made in favour of the creditor through the respective court decision.

The above-described practice, together with the allocation of respective funds for the collection of payments from indebted budgetary organizations to secure enforcement of court judgements in respect of such organizations is apparently a positive step. However, the legislators so far have approved no legal norms or regulations to underpin this practice of collection of payments from a dedicated state fund account, and until this has been achieved the creditors will still be left in an insecure state. Clearly, the application of adequate measures on a practical level alone, without backing them up by legal provisions, would hardly be enough to ensure an efficient protection of creditors' rights. We deem it necessary to have concrete procedures and timeframes incorporated in the legislation to enable the creditor to request the bailiff to launch the procedure of collection of payment as one of legally applicable enforcement measures in respect of the debtor. And, in the event the bailiff fails to carry out this function which will be vested in him by the law, the creditor should be entitled to hold him liable.

Thus, in order to protect the creditor's rights efficiently, it is essential that the collection of payment from the debtor, together with the respective timeframes, is supported by the pertinent legislation. This will contribute to a prompter and more efficient enforcement of court judgements falling under this category.

OBTAINING REQUISITE INFORMATION FOR THE ENFORCEMENT OF JUDGEMENTS

Another problem revealed while analyzing the complaints submitted to the Public Defender's Office is an unwarranted procrastination in the provision of the information essential for enforcement by budgetary organizations.

Notably, execution of certain court judgements currently referred to the National Bureau of Enforcement for enforcement fully depends on whether or not the budgetary organization in question will supply the bailiff with the requisite information they possess. More specifically, these are court judgements obliging budgetary organization to make payments in favour of physical persons, but without indicating the actual amounts of payment due to the creditor, for certain objective reasons (e.g., a court judgement may require that a budgetary organization should pay salary arrears to a physical person for the period from February 2006 to January 2008, or an amount equal to the individual's estimated lost income). In such cases, the bailiff directs the concerned budgetary organization to calculate the amount it owes the creditor and suggests that it pays this amount voluntarily within a one-month period. In effect, quite often, indebted budgetary organizations tend to ignore this requirement, whilst the legislation provides the bailiff with no

leverage to obligate the disobeying budgetary organization to supply the requisite information, other than sending it a written request.

Article 17, para 1 of the Law of Georgia on Enforcement Procedures provides that fulfilment of the bailiff's requirement is obligatory for all organizations, irrespective of its subordinancy, type of ownership or the organizational-and-legal form. Hence, budgetary organizations are required by the law to calculate the size of indemnification and supply the requisite information upon the bailiff's request. This information is absolutely essential for the bailiff to impose the order for the collection of due payments from the respective bank accounts in cases where organizations have failed to obey court judgements voluntary.

Hence, in the event the indebted budgetary organization fails to calculate the amount of the indebtedness and supply this information to the bailiff, this latter - not knowing the actual amount to be collected - is left in a situation whereby he cannot pursue the forced execution of judgement through the collection of payments from the respective bank account. This, naturally, leads to the postponement of enforcement for an unspecified period and a vexing procrastination of this process, resulting in the infringement of the creditors' rights.

With a view to gaining a further insight into this matter, the Public Defender's Office enquired with the National Enforcement Bureau as to what legal mechanism can be applied in respect of the judgements falling under this category to ensure their enforcement and what is the usual practice in dealing with them.

The reply received from the National Enforcement Bureau explained that there are no mechanism available, either on legislative or practical level, to secure the receipt of requisite information from budgetary organization for the enforcement of judgements in such cases.

Given the above, and with a view to improving the process of enforcement of court judgements, we deem it important that the bailiff is vested with a proper means/leverage on the legislative level to secure the receipt of the requisite information from disobeying budgetary organization by means of obligating these latter to supply the requested information, which is essential to launch the process of forced execution of judgements in cases where the organizations themselves fail to comply with the court decisions.

RECOMMENDATIONS:

- **Respective provisions should be introduced into the Law of Georgia on Enforcement Proceedings in respect of budgetary organizations failing to fulfil their payment obligations under court judgements to contain particular procedures and deadlines for the collection of due payments from a State Budget bank account.**
- **The Law of Georgia on Enforcement Proceedings should incorporate a coercive legal mechanism to secure receipt of the information from the budgetary organizations, necessary for launching the process of forced execution of judgements.**
- **In respect of cases regulated by Article 30 of The Law of Georgia on Enforcement Proceedings, the legislation should determine the following:**
- **Concrete circumstances under which the search can be applied as a measure of forced execution, i.e. the cases where execution of judgements is practically impossible without the presence of the debtor.**
- **The manner of reconduction, its duration and the particular actions applicable in its course.**

Law Enforcement Bodies and Human Rights

Analysis of complaints submitted to the Public Defender's Office in the reporting period of 2010 and the monitoring conducted by PDO shows that degrading treatment and disproportionate use of force by law enforcers remains a pressing problem. Apart from the facts of excessive use of force, there are other problems in the activity of law enforcement bodies that cause violation or restraint of human rights.

This section of the Report addresses the problem of excessive use of force against detained persons, as well as arbitrary arrest and detention. Besides, it discusses such breaches of criminal procedure norms and procedural rights by police and prosecutorial staff as denial of the right to contact the family upon arrest, keeping in custody persons not having the status of a suspect, and denial of the right to appeal refusal to open proceedings on newly revealed circumstances.

● Facts of excessive use of force by police and arbitrary detention

According to Article 17 of the Constitution of Georgia; "Honour and dignity of an individual is inviolable. Torture, inhuman, cruel and degrading treatment or punishment shall be impermissible. Physical or mental coercion of a detained person or a person whose liberty is restricted otherwise shall be impermissible".

Respect for human honour and dignity by police when discharging their duties is guaranteed also by the Law of Georgia on Police.[169]

Regulations pertaining to the treatment of detained persons are contained in national legal norms, as well as in a number of international conventions binding on Georgia. These norms are part of domestic law and as such, they provide a safeguard against unlawful restriction of the right to liberty, as well as against torture, inhuman, cruel or other forms of degrading treatment.

The 2009 Report of the Public Defender stated that inhuman and degrading treatment by police was notable especially in Western Georgia, which was the case in 2010, too. The Public Defender's Office revealed numerous facts of excessive use of force by police during arrest, arbitrary detention of individuals, including minors, as well as inhuman/degrading treatment.

● Excessive use of force by police

The cases examined by PDO in the reporting period of 2010 evidence clearly disproportionate use of force by police and facts of possible excess of powers. It is important to note that police tend to use force both during arrest and upon bringing the arrested persons to a police station.

[169] Article 4, Para 1 of the Law of Georgia on Police

Regulations concerning the use of physical coercion by police are stipulated in Article 11 of the Law of Georgia on Police. Police can use physical coercion to detain an offender in case non-coercive methods do not ensure the execution by police of their duties. Under Article 10 of the same law, the police can resort to physical coercion only with full observance of the principle of proportionality and necessity. This means that even where the use of physical coercion by police is necessary, physical force can only be used proportionately and properly.

The cases examined by the Public Defender's Office evidence that the use of force by police frequently falls short of these principles, and in some cases can be in conflict with the provisions of the law.

In 2010, the Public Defender's Office exposed several facts of excessive use of force by police. As stated above, almost all of them were found to occur in Western Georgia.

On 24 March 2010, representatives of the Public Defender visited the investigative isolation ward in Kutaisi to interview persons, lawyer K.S. and Sh.D., detained by police.

Sh.D. told the representatives of the Public Defender that patrol police officers had ordered him to get out of the car without any introductions. When he got out of the car, he was first verbally, and then physically abused by police. According to Sh.D., he lost consciousness. The fact of physical assault is recorded in the register of persons placed in custody at the temporary detention isolator ward.

The Public Defender addressed a recommendation to the Chief Prosecutor of Georgia requesting to investigate this fact. As stated in the letter of the Chief Prosecutor, the Kutaisi District Prosecutor's Office opened investigation under Article 144[3] of the Criminal Code of Georgia.

On 8 and 12 July 2010 representatives of the Public Defender interviewed N.N. accused of crime, who was arrested in Mestia district. As stated by N.N., when apprehending him, police physically and verbally assaulted him and his daughter. N.N. and his daughter were at home when deputy chief of the Mestia District Department of Internal Affairs and two special squad officers burst into the house and apprehended him using force. He was taken outside and put into a car, again with the use of force, during which process he received bodily injuries. When arresting N.N., police physically affronted also his daughter, and inflicted injuries on her hand and arm. Bodily injuries found with N.N. are recorded in the registers of the Zugdidi temporary detention isolator and Establishment No 4 of the Penitentiary Department.

As mentioned above, police also use force upon bringing the arrested persons to police stations.

On 4 October 2010 the Public Defender was addressed by N.E. In her application N.E. stated that her husband K.G. was arrested at early hours of 27 September by officers of Police Unit No 3 of the Kutaisi City Department of Internal Affairs who physically assailed him.

In his explanatory note, K.G. states that he was apprehended by police in the territory of Kutaisi automotive factory for theft. Immediately upon arrest several police officers started physically and verbally abusing him. K.G. indicates that when being transferred to Police Unit No 3 he felt unwell. He felt strong pain in the face, head, arm and rib area, due to which an ambulance was called for to the police unit.

As stated by detainee K.A., when brought to police he and K.G. were placed in one room, knocked down and physically assaulted in the back, legs, face and head area. K.G. was in 2-3 m from him, and he could hear how K.G. was beaten and verbally assaulted. They were beaten for about half an hour, after which they were both transferred to Police Unit No 3, where they were beaten again for about 10-15 minutes until a duty officer came in.

As stated by K.G., police used force against him both during apprehension and after he was brought to the police station. The applicants indicate that when apprehended, they were beaten by several police officers.

The Public Defender addressed a recommendation to the Chief Prosecutor of Georgia requesting an investigation into these facts. According to the letter from the Chief Prosecutor, the Kutaisi District Prosecutor's Office started investigation under Article 333 of the Criminal Code of Georgia (excess of official powers). The Public Defender

considers that the materials sent by PDO to the Prosecutor's Office furnished a sufficient ground for the investigation to be conducted under Article 144[1] of the Criminal Code.

According to the European Court of Human Rights, when a person who had no injuries before detention displays bodily injuries when released, the state is under an obligation to explain properly the cause of such injuries and furnish adequate evidence to nullify the evidence provided by the victim of physical abuse. Failure by the state to present proper explanation leads to violation of Article 3 of the Convention.[170]

Analysis of the above cases shows that action by police often offends the law, and in some cases may even bear the signs of crime. Even if the use of force by police is necessary, police officers are under an obligation to substantiate as to what caused the need to use physical coercion, whereas the force used should be proportionate.

● Detention of persons with failure to draw up a relevant report

In the reporting period the Public Defender's Office examined cases which evidence failure by police to draw up a custody report or record physical injuries inflicted to suspected offenders through the use of force during their arrest. More specifically, law-enforcement officers often failed to make a record of arrest and inform the arrested persons about their rights, as stipulated in Article 145 of the Criminal Procedure Code of Georgia (1998).

On 4 May 2010, the representatives of the Public Defender's Office in Kutaisi received a telephone call notifying them that police held M.K. for several hours with his liberty restrained. More specifically, on 4 May 2010, at about 15:30 M.K. was staying in the Station Square in Kutaisi where he was waiting for the President of Georgia whom he wanted to hand over a letter. Upon arrival of the President, M.K. was approached by two men in plain clothes, who put hand on his mouth and forced him into a vehicle. According to M.K. he was kept restrained by these two unknown men for two hours. M.K. received a closed head injury and cerebral contusion as a result of the use of force.

It is to be noted that despite the fact that M.K. was subjected to restraint of liberty, no report on his detention was ever filed by the police.

In the case Fedotov v. Russia[171], the European Court of Human Rights observed that since no records of the applicant's arrests were drawn up and the officer in charge of the police station expressly refused the request for a record, that fact in itself must be considered a most serious failing. The Court's traditional view has been that the unacknowledged detention of an individual is a complete negation of the fundamentally important guarantees contained in Article 5 of the Convention and discloses a most grave violation of that provision. The absence of a record of such matters as the date, time and location of detention, the name of the detainee, the reasons for the detention and the name of the person effecting it must be seen as incompatible with the requirement of lawfulness and with the very purpose of Article 5 of the Convention.

According to the Georgian law and the case law of the European Court of Human Rights, detention is a factual apprehension. This means that after a person is apprehened by police, he is considered to have a certain status under the criminal code. Hence, detention has to be recorded accordingly and be reflected in relevant documents. Analysis of the cases examined by the Public Defender's Office warrants a conclusion that the time of factual apprehension differs from the time indicated in the custody record of suspects. This means that in the span between the factual time of apprehension and the time indicated in the custody record detained persons are detained arbitrarily, which naturally leads to the violation of their right to liberty.

● Use of force against minors

As noted above, the reporting period showed cases of arbitrary detention by police in Western Georgia.

[170] Judgment of the European Court of Human Rights on the case *Gohan Ildirim v. Turkey*, 23 February 2010, Case No 31950/05
[171] http://www.echr.coe.int/Eng/Press/2005/Oct/ChamberjudgmentFedotovvRussia251005.htm#_ftn1

The cases examined by PDO evidenced restraint of liberty by police in respect of minors, as well as physical and verbal abuse, but in total absence of any records to that effect. Besides, minors were subjected to physical and psychological pressure to extract confession.

On 11 February 2010, the Public Defender's Office was addressed by minor Sh.K., stating that he was forcibly taken to a police station where he was pressurized by chief of the police unit to make him confess damaging of the wind glass in a vehicle belonging to K.B.

As stated by the minor, upon arrival to the police station he was given a search and his telephone was taken away (and returned to his mother upon his release). Police officers did not draw up any record of detention, search, etc. Consequently, this case may evidence the minor's arbitrary detention.

Additionally, the minor displayed various lesions in the head area. Interestingly, the register of detentions kept in Kutaisi Police Unit No 1 contains no records of Sh.K.'s detention or bodily injuries.

The Public Defender addressed a recommendation to the Chief Prosecutor of Georgia requesting an investigation into the facts. According to the letter from the Chief Prosecutor's Office, the Kutaisi District Prosecutor's Office opened investigation under Article 118 of the Criminal Code of Georgia.

Examination of the complaint submitted to the Public Defender's Office by I.K. evidenced restraint of liberty of minors on 19, 26 and 27 February at Police Unit No 3 of the Kutaisi City Department of Internal Affairs. The minors concerned are D.S. (14 years of age), V.K. (15 years of age), S.Sh. (15 years of age) and G.M. (13 years of age).

Minor D.K. was coerced into confessing the theft of a battery from a vehicle.

In the statement before the representatives of the Public Defender, D.K. indicated that police officers physically assaulted him both in the course of apprehension and at the police station. He was forcibly put into the car and punched to force him to confess. D.K.'s parents state that the minor was unlawfully detained during 9 hours. The police did not inform him about his rights; neither did they provide access to a lawyer or legal representative.

Other minors detained concurrently with D.K. state that they were forced into a car, taken to a police station where the police chief told them to confess the theft. Minor V.K. indicates that he, too, was not given access to a lawyer or legal representative. Moreover, his legal representative, namely, father was forced to leave the police station.

Apart from these minors, S.Sh., too, was coerced to confess the theft. In his statement, the minor points out that police used force against him and kept him at the police station for 9 hours.

The representatives of the Public Defender examined the register of detentions at Kutaisi police unit No 3 and found no records of detention for the above minors.

It was found that Kutaisi Police Unit No 3 had carried out no investigation on the above fact of theft. It can be concluded that the minors were not detained in order to be brought before a competent court, as required by Article 5 of the European Convention.

The European Court observed that if a person suspected of crime is detained not in order to bring him before a competent court, but to obtain general information, such detention is considered arbitrary, which is in violation with the provisions of the convention.[172]

Special caution is necessary in respect of minors. Even where a minor is detained in order to bring him before a competent judicial body, detention shall be seen as a measure of last resort.

According to Article 37, Para 2 of the Convention on the Rights of the Child: "No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time".

[172] Murray v. the United Kingdom

The cases described above evidence that in the reporting period of 2010, excessive use of force and abuse of authority by law enforcers continued. It is to be noted that in respect of each individual case the Public Defender addressed the Chief Prosecutor's Office of Georgia and sent the available materials for follow-up.

It is important to ensure effective investigation into such facts in order to identify the perpetrators, which will help to prevent the failings.

Article 3[173] of the European Convention on Human Rights[174] , Article 7[175] of the International Covenant on Civil and Political Rights[176] and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment imperatively prohibit torture by agents of the state[177]. Any derogation from this right is impermissible.

Apart from negative obligations, the states also have certain positive obligations, including investigation into torture, inhuman or degrading treatment. The case law[178] of the European Court of Human Rights, General Report No 14 of the Committee for the Prevention of Torture (CPT) and other international instruments explicitly provide for an obligation by the state to investigate the facts of torture, inhuman and degrading treatment.

By the standards of the European Court of Human Rights and the Committee for the Prevention of Torture, the investigation shall be effective[179], which implies independence and impartiality on the part of investigators, their competence, thorough and prompt conduct of investigation, involvement of victims and openness of the process.[180]

Thoroughness of investigation is one of the essential guarantees. It implies mandatory hearing[181] of the victim in the process of investigation and carrying out of various investigative actions, including identification.[182] Also, it is necessary to conduct forensic examination and check-up of different documents[183], to interview different persons who might have witnessed torture or can give evidence of its consequences.[184] All collected evidence must be evaluated based on objective criteria.[185]

European standards require that investigation be carried out within reasonable time[186] to enable gathering of evidence, and the perpetrators be brought to account within an adequate period of time.[187]

On 21 September 2010 the European Committee for the Prevention of Torture published the Report on its visit to Georgia[188]. CPT recommended the Government of Georgia to ensure effective investigation in line with the standards set out by the European Court of Human Rights.[189]

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173 ECtHR Ruling of 1 June 2010 on the case *Gafken v.Germany*, § 87

174 In force for Georgia since 20 May 1999

175 General Commentary on the Article, see http:/www.unhchr.ch/tbs/doc.nsf/(Symbol)/6924291970754969c12563ed004c8ae5?Opendocument

176 In force for Georgia since 3 August 1994

177 Implies exercise of powers de facto and de jure. Committee Against Torture, General Comment No 2, CAT/C/GC/2/CRP.1/Rev.4, Paragraph 7

178 Inter alia, the Ruling of the European Court of Human rights of 13 December 2005 on the case *Bekos and Koutropoulos v.Greece*, § 53.

179 Ruling of the European Court of Human Rights of 8 January 2005 on the case *Barabanshchikov v. Russia*, § 54

180 Effective Investigation of Ill-Treatment, *Guidelines on European Standards*, Eric Svanidze, Directorate of Human Rights and Legal Affairs, Council of Europe, p.50

181 Ruling of the European Court of Human Rights of 26 July 2007 on the case *Cobzaru v.Romania*, § 71

182 Ruling of the European Court of Human Rights of 3 June 2004 on the case *Bati and Others v. Turkey*, § 142

183 Ibid. *Barabanshchikov v. Russia*, §59

184 Istanbul Protocol, Para 103. Another mandatory requirement is for the investigation not to rely only on testimonies of those police officers who are addresses of the camplaint. Ruling of the European Court of Human Rights of 29 July 2008 on the case *Gharibashvili v. Georgia*, § 73

185 Opinion of the Commissioner of Human Rights, CommDH (2009) 4, §69, ibid. *Barabanshchikov v. Russia*, §59

186 Ruling of the European Court of Human Rights of 26 January 2006 on the case *Mikheev v. Russia*, § 113, Ruling of the European Court of Human Rights of 27 January 2009 on the case *Ramishvili and Kokhreidze v. Georgia*, § 80

187 Ruling of the European Court of Human Rights of 25 September 1997 on the case *Aydin v. Turkey,* § 63

188 http:/www.cpt.coe.int/documents/geo/2010-27-inf-eng.pdf

189 § 18-21, page 14-16

● The problem of communicating with the family after arrest

When meeting the representatives of the Public Defender, detained persons repeatedly stated that after arrest police officers had prevented them from contacting their family to notify them about detention. Because representatives of law enforcement bodies do not document the exercise by detainees of their right to contact their family, or refusal by police to allow them this right, it is impossible to establish for certain whether the detainees' right to contact their family, as provided for in the Criminal Procedure Code, was abused in reality. In addition, it seems impossible to establish with confidence whether or not the police exercised in good faith their rights and responsibilities in respect of detained persons.

Denial by police of the right of detained persons to contact their family to notify them of arrest was described by the accused V.J. in his meeting with the representatives of the Public Defender. The Public Defender's Office examined the report of V.J.'s arrest and personal search dated 30 October 2010. According to the report, the police informed the arrested person of his right to contact the family, though it is not possible to establish from this record whether V.J. was allowed to exercise this right. It is not possible either to establish from the record or other documents that the detained person voluntarily waived the said right guaranteed by the Criminal Procedure Code, and that his rights were not breached by police.

Since examination of the materials of the case and other documents does not allow to establish convincingly whether the rights of the detained persons were violated, and whether law enforcement officers enabled them to contact their families to inform them of their detention, the Public Defender addressed the recommendation to the Minister of Internal Affairs to have a special form drawn up to document the exercise or waiver by detained persons of their right to notify their family of detention, as provided for by Article 38 of the Criminal Procedure Code, that will also be confirmed by the detained person.

● Detention of persons without the status of a suspect

The reporting period of 2010 saw cases of detention by law enforcers of persons not having the status of a suspect/accused.

One of the applicants addressing the Public Defender's Office stated in his complaint that he had been detained for several hours by police in Kutaisi. He was forcibly brought to Tbilisi where he was first questioned as a witness, after which he was put into custody as a suspect and the relevant record was drawn up.

It is not possible to prove by documents the fact of detention of the witness, though the materials presented by the applicant arouse suspicions: according to the materials inspector-investigator of Police Unit No 3 of the Vake-Saburtalo Division of Tbilisi Main Directorate of Internal Affairs personally handed over to G.K. (who incidentally was in Kutaisi at that time) a writ summoning him as a witness to the said police unit in that same day. After citizen G.K. testified as a witness at 20:30, at 00:20 he was detained under custody.

According to the statements of eyewitnesses, presented to the Public Defender by the defence party, G.K. was forcibly brought to Tbilisi by police, which means that actually he was detained. In their statement eyewitnesses point out that police broke into the house of G.K.'s wife's parents and into the house of one of G.K.'s neighbours and asked about his whereabouts. They inspected the premises and left the location only after one of police officers said that G.K. had already been "captured". According to eyewitnesses, G.K. was thrown near the car with his face down and hands behind his back. According to the taxi driver's statement, a person in plain clothes with a gun in his hand ordered him to stop the car, then ordered his passenger to come out of the car and searched him.

All these statements suggest that G.K. was deprived of his liberty already in Kutaisi and he had been apprehended since that moment. This notwithstanding, in Tbilisi he was questioned as a witness, and only after that he was taken into custody as a suspect.

In connection with detention without a respective status, the Public Defender's Office examined also the case of accused T.Ts. who stated that on 7 April 2010 at 12.00 noon he was in the village of Geguti, near his residential house when police officers arrived, forced him into a car and took him to Kutaisi.

The Public Defender's representatives examined personal files of inmates kept in Kutaisi prison No 2 and the maximum security establishment. According to the arrest and personal search record, T.Ts. was placed under custody after he was questioned as a witness at Police Unit No 3 of Kutaisi City Department of Internal Affairs on 07/04/2010 at 21:50. The time of T.Ts.'s arrival to the police station, as indicated in the record, is 21:45. However, according to T.Ts.'s statement, he was detained by police near his home at 12.00 noon.

● Right to appeal refusal to initiate proceedings on account of newly revealed circumstances

In the reporting period the Public Defender's Office was addressed by defence lawyers stating that they had applied to the Chief Prosecutor of Georgia with a motion to reopen proceedings on account of newly revealed circumstances[190] , however all such motions had been rejected. The refusal was not executed as a resolution; it was an ordinary letter. Defence lawyers appealed all those refusals with the court. In a number of cases[191] the court refused to admit the appeal as the response from the prosecutor's office was not a resolution, but an ordinary letter that cannot be appealed.

Under Article 596 of the Criminal Procedure Code of Georgia[192], proceedings on account of newly revealed circumstances shall be instituted on the basis of a complaint addressed to the Chief Prosecutor who shall refer the case for examination to a lower prosecutor. After the examination of the case, in the event a negative decision is taken, the prosecutor shall issue a resolution on refusal to open proceedings. Such a resolution can be appealed in accordance with Article 242 of the Criminal Procedure Code.

According to Article 21 of the Law of Georgia on the Prosecutor's Office, when exercising his powers the prosecutor is authorized within his competence to draw up the following acts: request, submission, protest, resolution, consent, instruction, complaint, information. This list is exhaustive.

The order of the Tbilisi Coty Court of 17 February 2010 stated that the response sent to the convicted person was an ordinary letter and not a resolution. Such a document can be issued by the Prosecutor's Office under the General Administrative Code. However, when administrative law is applied in relations of criminal procedure a party in legal relations is left unprotected, as in such a situation he is unable to benefit from guarantees stipulated either in criminal law or administrative law. The Public Defender addressed the Chief Prosecutor with a recommendation to review the practice of proceedings.

Since the present Criminal Procedure Code regulates the issue in question in a different way, the likelihood for the prosecutor's office to repeat the above procedural breach is next to zero. However, it is important for law enforcement bodies to carry out their work properly and in strict conformity with the law to prevent human rights violations in future.

RECOMMENDATIONS:

- **In order to eliminate the problems described in this chapter, the Public Defender recommends to the Parliament of Georgia to secure legislative changes to make immediate transfer of a detained person to temporary detention facility mandatory and to rule out his/her transfer to any administrative building other than the court.**

[190] Under the Criminal Procedure Code of 1998, the issue was to be decided by the Chief Prosecutor.
[191] Resolution of the Tbilisi City Court of 17 February 2010
[192] CCP as of 20 February 1998

- **Temporary detention isolators should secure exercise by detained persons of their right to notify their family of detention. To this end, it is necessary to secure legislative changes that would enable a detained person to telephone his/her family to notify them of detention. To secure practical realization of this right, temporary detention facilities shall be equipped with the necessary technical devices, while the fact of communication shall be documented accordingly by duly authorized officers of the temporary detention isolators.**

- **The Ministry of Internal affairs shall take effective steps to prevent excessive use of force against detained persons and arbitrary detention.**

2010

Freedom of Assembly and Manifestations

In Georgia freedom of assembly and manifestations is guaranteed by the Constitution of Georgia and the Law of Georgia on Assembly and Manifestations. Namely, article 25, paragraph 1 of the Constitution of Georgia provides for the following: "Everyone, except members of the armed forces and Ministry of Internal Affairs, has the right to public assembly without arms either indoors or outdoors without prior permission".

Freedom of assembly and associations is also provided by different international documents. Thus, according to article 11 of European Convention on Human Rights and Fundamental Freedoms states: "everyone has the right to freedom of peaceful assembly and associations. . .". The right to peaceful assembly is also provided by article 21 of International Pact".

In the report prepared for the parliament of Georgia for the first half of 2009 the Public Defender of Georgia talked of drawbacks in the legislative framework regulating issues related to freedom of meetings and manifestations. As during 2010 no legislative amendments have taken place, problems covered in the above referred report remain valid.

2010 in the same manner as the second half of 2009 was not active from the standpoint of meetings and manifestations. Despite the fact, that no mass manifestations have taken place in given period, in Tbilisi were still held several manifestations, in the process of which the Public Defender of Georgia has registered several cases of violation of human rights. In given chapter we shall focus on systemic problems, which were identified in the sphere of violation of human rights in the process of assemblies and manifestations.

LEGISLATION IN FREEDOM OF ASSEMBLY AND MANIFESTATIONS

As we have already stated, in the report for the II half of 2009, prepared for the Parliament of Georgia are covered in detail legal drawbacks of the law of Georgia on Freedom of Assembly and Manifestations. The same chapter contained overview of amendments, entered into the legal act, regulating issues related to freedom of assembly and manifestations on July 17 of 2009, as well as conclusions of Venice Commission on given issue[193]. Later, in March 1 of 2010 the Government of Georgia submitted to Venice Commission draft amendments to the Law on Assembly and Manifestations. In March 12-13 the Commission has elaborated interim conclusions on proposed draft amendments.[194]

[193] Comments on the law on Assembly and Manifestations of the Republic of Georgia by mr. Bogdan Aurescu, Opinion no. 547 / 2009, <http://www.venice.coe.int/docs/2009/CDL(2009)153-e.asp>: Comments on the law on Assembly and Manifestations of the Republic of Georgia by Finola Flanagan, Opinion no. 547 / 2009, < http://www.venice.coe.int/docs/2009/CDL(2009)152-e.pdf>

[194] **CDL-AD(2010)009** Interim Opinion on the Draft Amendments to the Law on Assembly and Manifestations of Georgia adopted by the Venice Commission at its 82nd Plenary Session. Venice, 12-13 March 2010

Draft amendments were proposed for the purpose of elimination of whole range of drawbacks that the law contained, which was assessed in the interim conclusions of the Venice Commission as a positive effort.

Despite all the above mentioned amendments submitted to Venice Commission on March 1 of 2010 have not been approved and reflected in the relevant law up to now. Consequently, legislative drawbacks that the Public Defender of Georgia has focused his attention on remain valid presently as well.

In September 7 of 2010 Public Defender of Georgia has filed constitutional suit to the Constitutional Court of Georgia on all disputable norms of the law (#502)[195]. In November 5 of 2010 in accordance with the Law on "Georgian Constitutional Law" the court by its ruling #1-1/2/502 has referred the case for consideration of the Grand Chamber of the Constitutional court of Georgia. The Court considered the case in December 3-4 of 2010. At given stage final decision has not been reached by the Court.

We hope, that legislative drawbacks, that are characteristic to national legal framework regulating issues related to assembly and manifestations shall be gradually eliminated, which shall promote to approximation of Georgian legislation with European standards.

PROBLEMS AVAILABLE IN PRACTICE

As we have already stated, during 2010 manifestations were not so frequent. Despite this were identified whole range of problems, which on one hand were related to no action on behalf of the police in the process of manifestations, while on the other hand were caused by inadequate and unfounded requirements of law enforcement bodies. In given sub-chapter we shall focus our attention on these problems.

- Positive obligations of the state in the process of assembly and manifestations

The Public Defender of Georgia has investigated the case of violation of rights of participants of manifestation held on May 4 of 2010 in Tbilisi, in front of Ilia State University. Namely, on May 4 of 2010 around 17:00 in front of Ilia State University was held a protest action. Participants of manifestation were requiring protection of their right to freedom of expression. It becomes clear from explanatory notes, given to Public Defender as well as video materials reflecting the course of manifestations at around 18:30 to the place where the action was held came several persons, and started parallel manifestation. They were extremely aggressive and were requiring termination of ongoing manifestation. Later on the process went out of control and participants of protest action were insulted verbally and physically. One of participants of protest action, Nikoloz Lutidze received cranial trauma. The fact of physical insult of participants of the protest action is also confirmed by available video materials.

During the incident staff of the patrol police was present, although according to participants of protest action and persons, who were physically abused by a group of citizens state, that representatives of law enforcement organs did not conduct effective measures for prevention of aggressive actions of the group of citizens.

The Public Defender of Georgia submitted materials available to him to the Chief Prosecutor's Office of Georgia for the purpose of further investigation of the incident. The Public Prosecutor's Office responded to us, that on May 7 of 2010 the I division of Vake-Saburtalo Department of the Ministry of Interior of Georgia has initiated preliminary investigation on criminal case #007101246 on the fact of causing physical injury to Nikoloz Lutidze on the basis of paragraph 1 of article 118 of the Criminal Code of Georgia[196]. Later qualification of the criminal case was changed and criminal case was initiated on the basis of violation of article 239 of the Criminal Code of Georgia[197].

[195] Citizens' political union "Movement for United Georgia", citizens' political union "Conservative Party of Georgia, citizens of Georgia Zviad Dzidziguri and Kakha Kukava, Georgian Young Lawyers' Associatoin, citizens Dachi Tsaguria and Jaba Jishkariani and Public Defender of Georgia versus the Parliament of Georgia; suit #502, filed on September 7 of 2010.

[196] article 118 of the Criminal Code of Georgia: intentional causing of minor physical injury, which does not represent risk to life and has not caused damage, provided by article 117 of the criminal Code of Georgia, but causes long-term damage to health of a person or loss of less than one third of working ability.

[197] Article 239 of the Criminal Code of Georgia- Hooliganism, i.e. the action which grossly violates public order or demonstrates open contempt toward the public, committed under violence or threat of violence.

According to information provided by the Chief Prosecutor's Office of Georgia Nikoloz Lutidze and Vasil Gabunia are acknowledged as injured party in regard to given criminal case.

On September 29 of 2010 Rati Maisuradze and Avtandil Zumbadze were charged with committing of act of intentional hooliganism on May 4 of 2010 on the territory adjacent to Ilia Chavchavadze State University. Charges were brought by Collegium of Criminal Cases of Tbilisi City Court and on September 30 of 2010 by ruling of the court as restrictive measure was imposed detention.

On November 17 of 2010 preliminary investigation on case #007101246 was completed and the case and the judgment were referred to Collegium of Criminal Cases of Tbilisi City Court for further investigation. At current stage the Court has not reached final decision yet and the case is being considered.

Despite the fact, that in regard to given violation actions were taken later on we consider it expedient to focus on specific aspects of given case. On the basis of studying of materials of the case we can arrive to conclusion that on May 4 of 2010 during protest action held on the territory adjacent to Ilia Chavchavadze University law enforcement bodies have not applied to effective measures to ensure protection of freedom of assembly and manifestations due to following circumstances:

According to international as well as national legislation the state should serve as a guarantor of the right of expression of position through assemblies and manifestations;

According to article 11 of European Convention on Human Rights and Fundamental Freedoms: "*Everyone has the right to freedom of peaceful assembly and to freedom. . .*". Article 10 of the same Convention guarantees freedom of expression: "*Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."* Article 10 of the convention covers the right to hold opinions, acceptable for the public as well as opinions, which may be insulting and/or outrageous for public.

The European Court of Human Rights has stated on numerous occasions, that effective enforcement of freedom of assembly and manifestations is not limited to obligation of the state of non-interference into realization of this right. The state also has positive obligation of ensuring effective implementation of the right of assembly and manifestation[198]. Given obligation is especially important for those persons, who have non-traditional opinions or belong to some minority groups.

Consequently, during protest action of May 4 of 2010 representatives of law-enforcement bodies should have conducted all necessary measures for ensuring unimpeded use of the right of assembly and manifestations for participants of the protest action.

On one hand can be considered, that on the territory adjacent to Ilia Chavchavadze State University were conducted two parallel actions held by groups of citizens having incompatible opinions, which later on grew into physical confrontation.

Despite the fact, that events that occurred on May 4 of 2010 can be described as confrontation between two groups of private persons, the state had positive obligation of applying to effective measures for ensuring, that both groups of citizens had opportunity of expressing their protest and opinion without any confrontation or violence.

In regard to the case "Doctors for life versus Austria" the European Court of Human Rights has stated, that protest manifestations and demonstrations may insult those persons, who do not share opinions, expressed at such demonstrations. Despite this participants of demonstrations should have ability of conducting of protest actions without fear, that they may become victims of physical violence. Such fear may hinder minority groups to express their opinion publicly.

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198 *Wilson & the National Union of Journalists and Others v. the United Kingdom*, nos. 30668/96, 30671/96 and 30678/96, § 41, ECHR 2002-V, and *Ouranio Toxo v. Greece*, no. 74989/01, 20 October 2005, § 37

In regard to given case the court has stressed, that implementation by the state of only its negative obligation is not in compliance with requirements of article 11 of the Convention. In certain cases article 11 of the Convention requires from the state fulfillment of positive obligations and in certain cases, undertaking of such positive measures in case of interactions between individual citizens[199].

Positive obligation does not imply attaining by the state of some specific results. It requires from state bodies to conduct all necessary measures for avoidance of violation of rights or prevention of the risk of such violations.

Hence, the state should apply to all measures available to it to ensure, that several protest manifestations, that are conducted at the same time and the same place and which by their content are different from each other, should be held in peaceful manner and no violence shall occur.

According to paragraph 1 of article 1 of the law of Georgia on Police: *"Police of Georgia is the system of law enforcement, specialized, police and military institutions, which within the competence, assigned to them by legislation of Georgia are responsible for ensuring public order and security and protection of human rights and freedoms from encroachment"*. Given provision clearly and comprehensively defines main role and functions of one of the organs of executive power of the state.

As we have already stated at the time of protest action held on May 4 of 2010 on the territory adjacent to Ilia Chavchavadze University were present staff of patrol police. In given case the staff of police, as representatives of executive power had positive obligation of maintaining peace in the process of protest action and prevent any unlawful actions.

According to obtained explanations and video materials despite the fact, that staff of the patrol police saw how participants of demonstration were insulted physically, they have not conducted effective measures for lifting of tensions and prevention of confrontation and they applied to no measures for avoiding of clash even when there was the real need of interference.

According to Nikoloz Lutidze (injured party) representatives of the patrol police refused to help him and advised him to escape from the scene of incident. According to his explanations the person, who was insulting him physically was removed from the territory by the patrol police, although several minutes later he returned and continued physical abuse of participants of the protest.

Due to the fact that staff of the patrol police did not apply to all possible measures for ensuring peaceful conducting of parallel manifestations, none of the groups of citizens had opportunity of expressing their opinions.

In the event, if representatives of the patrol police applied to all necessary measures, the incident could have been averted.

- Lawfulness of requirements of representatives of law-enforcement bodies in the process of assembly and manifestations

The Public Defender studied the fact of breaking up of a rally at the memorial to heroes, who perished in the war, located on the Hero Square, which was held on January 3 of 2011 by war veterans. We considered it important to cover this case in the report despite the fact that the incident occurred in January of 2011.

Participants of conflict for territorial integrity of Georgia, that occurred in 1992-1993 and 2008 started permanent protest manifestation on the Hero Square in Tbilisi on December 27 of 2010. Within the framework of given protest group of veterans announced hunger strike at memorial to heroes of war. On December 24 of 2010 veterans filed application to Tbilisi City Hall on their intention on conducting of protest manifestation on the territory of Hero Square. Veterans were planning to finish hunger strike on January 6.

On January 3 of 2011 to Hero square came representatives of patrol police with requirement of termination of protest action. According to information provided by veterans persons, dressed in civilian clothes visited them with the same requirement.

[199] X and Y v. the Netherlands judgment of 26 March 1985, Series A no. 91, p. 11, § 23.

In the process of breaking of protest representatives of law enforcement bodies have detained participants of the protest Malkhaz Topuria, Amur Revishvili, Zaza Germanozashvili, Levan Asatiani, Levon Astariani, Shota Iamanidze, Valerian Dzebirashvili, Shota Zghudadze, Leonid Ekhvaia, Ilia Chiloshvili and Sergo Dvali. In the protocols of administrative detention of above mentioned persons was stated, that as basis for administrative detention served article 166 (minor hooliganism) and article 173 (failing to obey to legitimate requirements of representatives of law enforcement organs and member of military services).

On January 4 of 2011 the detained were found guilty in committing of administrative offence by resolution of Collegium of Administrative Offences of Tbilisi City Court and administrative penalty was imposed in the amount of 400 GEL.

For the purpose of examination of given issue on January 3 of 2011 representatives of the public Defender's Office met participants of the above mentioned protest action and collected from them relevant information and explanations. On the basis of examination of information made available to us, namely relevant documentation, video materials aired by TV company 'Caucasus" and published by „interpressnews.ge" we can conclude, that right of participants of manifestation to freedom of assembly and manifestations was violated. In given case representatives of law enforcement bodies unlawfully intervened in the rights of manifestants, guaranteed to them by the constitution. Namely:

a. Location of manifestation

It is established on the basis of obtained materials, that protest was held in full compliance with requirement of the Law of Georgia on "Assembly and Manifestations".

Namely, according to the law on "Assembly and Manifestations" it is mandatory apply to local bodies of self-governance in written form in the event, if manifestation is planned to be conducted in the location, used by pedestrians or passageway for transport.

According to article 7 of the same law citizens, who want to express their standpoint publicly by use of posters, slogans, banners or other visual means, application to local bodies of self governance is not obligatory, although they have no right to conduct such protest at the entrances of buildings, staircases, bloc roads or hinder movement of transport or pedestrians.

As manifestation was not conducted in the manner, that it would block movement of transport or pedestrians there was no need to apply to local bodies of self-governance and to given case would be applicable article 7 of the law of Georgia Assembly and Manifestation.

Despite all the above mentioned participants of manifestation filed application to local body of governance, i.e. Tbilisi Municipality. As a response the Municipality notified them, that in case of violation of requirements of the law they shall be held liable.

Article 11 and 11^1 of the Law on Assembly and Manifestations contain listing of actions, which are prohibited in the process of conducting of manifestations. Namely, participants of manifestations are prohibited from deliberate creation of impediments for transport. Namely, blocking of roads and highways is prohibited unless this is caused by large number of people, participating in manifestation. Also, roads and passageways cannot be blocked by cars or other constructions or objects.

As a result of examination of materials of the case it was established, that participants of manifestation held at the memorial to heroes of war have not blocked the road and during the protest they were located on the territory of the memorial. The form, location and time of protest were in compliance with requirements of the law.

b. Tents

On the same day of breaking of the protest the ministry of Interior has published official statement on the incident. According to the statement participants of the protest had installed tents at the place of manifestation and they did not obey to orders of representatives of law enforcement bodies, who were requiring dismantling of the tents, showed resistance to police and insulted policemen verbally, due to which later they were detained.

It is noteworthy, that according to explanations provided to the Public Defender by manifestants, they dismantled the tent when this was required by the police. From video materials it becomes clear that at the time, when staff of the patrol police started detention of participants of the protest there were no tents on the territory of memorial.

It should be stressed, that even if there was tent installed on the territory of memorial, requirement of representatives of the law enforcement bodies on dismantling of the tent and breaking of the protest was groundless, as the tent was located on the territory of memorial and was not blocking the road and impeding the transport.

As we have already stated article 11^1 of the Law of Georgia on Assembly and Manifestations prohibits blocking of roads by constructions and different objects, consequently, as none of this happened in the process of manifestation, participants of the protest have not violated requirements of the law. According to the same article if the road or sidewalks are blocked by manifestants only authorized representatives of local bodies of governance have the right to apply to participants of the protest action to free the road and allow unimpeded movement of transport and pedestrians, which did not happen in this particular case.

c. Persons dressed in civilian clothes

According to information, obtained by us in the process of manifestation along with representatives of law enforcement bodies there were also persons, dressed in civilian clothes. These persons were physically abusing and detaining participants of manifestation. One of persons, dressed in civilian clothes insulted physically a lady, Eka Matiashvili, who was participating in the manifestation. According to explanations of manifestants these persons have not presented to them documents, confirming their authority, due to which it was impossible to identify them.

Article 246 of the Administrative code of Georgia defines the list of those organs, which are authorized to conduct administrative detention. According to given article representatives of organs of the Ministry of Interior have authority of administrative detention for petty hooliganism, offences committed in the process of rallies, demonstrations, assemblies, failure to obey legitimate orders of representatives of law enforcement and military organs.

According to paragraph "n" of article 8 of the Law of Georgia on Police responsibility of police is prevention of administrative offences. According to article 28 of the same law policemen should wear uniform, as provided by the law.

Consequently, it is clear, that in the process of raiding of above referred manifestation requirements of above mentioned provisions of the law were violated.

d. Physical assaulting of participants of manifestation

As we have stated above, in the process of raiding of manifestation persons dressed in civilian clothes were insulting verbally and assaulting participants of manifestation. It is clearly evident from video materials how these persons were battering one of the ladies, Eka Matiashvili, who was participant of the protest.

Among detained participants of manifestation two of them, namely Malkhaz Topuria and Shota Iamanidze had injuries, which were also described in the protocols of visual examination of preliminary detention facility of the Ministry of Interior. It is noteworthy, that entries on the bodily injuries of these two detainees were not made in the protocols of administrative detention.

e. Articles, on the basis of which charges were brought against detainees

according to protocol of administrative detention, drawn by Chief Department of Police Tbilisi and Mtskheta-Mtianeti of the Ministry of Interior participants of manifestation were detained on the basis of article 166 (petty hooliganism) and article 173 (insubordination to legitimate orders of law enforcement and military organs) of the Code of Administrative Offences of Georgia.

On the basis of explanations, provided to the public Defender's Office, as well as video materials of TV company "Caucasus" and materials published on internet portal „interpressnews.ge" we can state, that participants of manifestation have not violated requirements of articles 166 and 173 of the code of Administrative Offences of Georgia.

At the time, when representatives of the patrol police came to the place of conducting of manifestation participants of the protest were sitting on the territory of memorial to heroes located at the Hero Square. According to official statement of the Ministry of Interior[200] detained persons organized protest action on the territory of memorial for heroes, perished in war for territorial integrity of Georgia, where they have erected a tent. Participants of the protest did not obey orders of police to take down the tent, showed resistance to patrol police and insulted officers verbally, which served as basis for their detention.

Documentation and other materials available to us do not confirm the fact of resistance by participants of protest action and violation of article 166 of the Code of Administrative Offences of Georgia. According to given article as petty hooliganism is qualified verbal abuse and use of defamatory language in public places, insult of citizens and other similar actions, which undermine public order.

On the basis of available materials we can state, that manifestants have not committed any of the above referred offences. It is evident from published video materials that public disorder started after persons dressed in civilian clothes came to the location, where the protest was conducted and started verbal and physical insulting of manifestants.

As to application of article 173 of the Code of Administrative Offences of Georgia, in given case patrol police has brought charges on the basis of given article in absolutely unsubstantiated manner. It is clear from video materials, available to us that detainees have not showed any resistance to the law enforcement bodies.

We consider it expedient to focus our attention on one more issue, which is application of articled of the Code of Administrative Offences of Georgia. According to information, published by the Ministry of Interior patrol police was requiring from manifestants dismantling of a tent, that they have erected there. It is not clear why actions of the manifestants were qualified as violation of article 166, when article 174^1 of the Code of Administrative Offences of Georgia is the provision, which is applicable to violations committed in the process of rallies and manifestations.

In regard to given incident the Public Defender of Georgia addressed recommendation to the General Prosecutor's Office and the Ministry of Interior, in which he requested these organs to undertake relevant measures and initiate criminal proceedings against those persons, who violated requirements of legislation of Georgia.

On January 5 of 2011 the Ministry of Interior published statement, according to which member of their staff Otar Gvenetadze, who participated in breaking up of the protest held on January 3 of 2011 in Tbilisi, at the Hero Square by the war veterans, was dismissed from his position for infringing of ethical norms while fulfilling his duties.

According to information, officially provided to us the Anti-corruption Department of the chief Prosecutor's Office has started investigation on the fact of deliberate causing of minor injury to health of Eka Matiashvili, Malkhaz Topuria and Shota Iamanidze during the protest action, held on January 3 of 2011.

Public Defender of Georgia assesses this decision as a positive step and considers, that investigation shall proceed and undertaken measures shall be adequate.

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[200] <<http://police.ge/index.php?m=8&date=2011.1&newsid=1937>>, 23.02.11: 18:44

Active interference of persons, dressed in civilian clothes has also occurred during the protest action, held on October 21 of 2010 on Lilo market (open air market for small traders). In given case in the same manner as during the protest action organized by veterans several persons, who came to the place of protest, were dressed in civilian clothes. According to official information territory of the Lilo market was guarded by representatives of Ltd "Elsavako", private company of security guards, working on the territory of Lilo Market and representatives of security police of the Ministry of interior.

Uniform and equipment of the staff of security police of the Ministry of Interior is specified in resolution No1633 (December 28 of 2007) of the Minister of Interior on "Uniform and equipment of the staff of security service of the Ministry of Interior". As majority of the staff of Security Department of the Ministry of Interior was not wearing uniform, defined by above referred resolution it was impossible to identify them.

It is noteworthy, that the right of the journalists of TV channel "Caucasus" was violated as well, which we shall cover in detail in the chapter dedicated to freedom of expression.

PROBLEMS RELATED TO ADMINISTRATIVE PROCEEDINGS

In the Public Defender's report for the second half of 2009, submitted to the Parliament of Georgia problems related to administrative proceedings were covered in detailed manner.[201]

We have analyzed several resolutions, adopted by Collegium of Administrative Cases of Tbilisi City Court in regard to administrative offences, committed in the reporting period. It becomes clear, that problems that have been covered in the report for the second half of 2009 remain valid.

The Public Defenders' Office has analyzed resolution, reached in regard to persons, detained for offences, committed in the process of protest on January 3 of 2011, held at the hero square. Namely, the detained Levan Asatiani, Levon Astariani, Ilia Chiloshvili, Malkhaz Topuria, Amur Revishvili, Leonid Ekhvaia, Shota Zghudadze, Zaza Germanozashvili, Valerian Dzebirashvili, Shota Iamanidze and Sergo Dvali.

Also, according to resolution of Collegium of Administrative Cases of Tbilisi City Court, adopted in June 12 of 2010, adopted in regard to detention of Natia Maisuradze, Irakli Shonia and Inga Sikharulidze in the process of protest action, conducted on June 11 of 2010 in front of the State Chancellery by political parties of Georgia and organization "Round Table. According to given resolution the court found Natia Maisuradze, Irakli Shonia and Inga Sikharulidze guilty in committing of administrative offence and imposed as sanction administrative detention for the term of 10 days to Irakli Shonia and to Natia Maisuradze and Inga Sikharulidze administrative detention for the term of 5 days.

As a result of analysis of both resolutions adopted by the court the Public Defender identified following problems and violations:

a. Insufficiency of evidence

According to article 230 of the Code of Administrative Violations of Georgia: *"Task of administrative proceedings is: timely, effective, objective and circumstantial investigation of administrative cases . . ."* Consequently, the court should establish the fact of occurrence of administrative offence and impose proportionate sanction in case of confirming of committing of such.

According to article 236 evidence confirming committing of administrative offence is all factual information, on the basis of which relevant organ can establish the fact of committing of administrative offence or negate such fact, in accordance with requirements of legislation of Georgia, as well as establish culpability of a person in committing of offence or his innocence, as well as other circumstances, related to the case. **The fact of committing of offence or non-existence of such offence should be established not only on the basis of protocol of administrative**

[201] Report of the Public Defender for the second half of 2009: the right to fair trial, page 108.

offences, but on the basis of explanations, provided by the charged persons, testimony of injured party, witnesses, video materials, photo-materials or some other documents.

In motivation part of court resolution of January 4 of 2011, reached on the case of veterans is stated, that on the basis of consideration of materials of the case and hearing testimony of the parties the court came to the conclusion, that Levan Asatiani, Levon Asterian, Leonid Ekhvaia, Shota Zghudadze, Zaza Germanozashvili, Amur Revishvili, Valerian Dzebisashvili, Ilia Chogishvili, Shota Iamanidze and Sergo Dvali have committed administrative offence, provided by article 166 and 173 of the administrative Code of Georgia. Namely: *„petty hooliganism, swearing and use of defamatory language in public place, which undermines public order",* and they did not obey legitimate orders of representatives of law enforcement organs, *„namely, on January 3 of 2011 in Tbilisi, on the Hero Square at the place of public gatherings the above mentioned persons were using bad language and did not obey legitimate orders of police to stop actions, undermining public order".* The court established legitimacy of charges on the basis of administrative protocols, explanations of patrol police and materials of the case.

We see the same formulations in resolution of January 21 of 2011 of Tbilisi court of Appeal, according to which the court came to conclusion on the basis of administrative protocols, explanations of patrol police and materials of the case. Namely, on January 3 of 2011 the staff of the patrol police detained above mentioned persons on the territory of Hero Square for undermining of public order and failure to obey police orders and stop such actions.

According to the above mentioned resolution *„after examination of materials of the case the court of Appeal considers, that actions committed by* Levan Asatiani*, Levon Asterian, Leonid Ekhvaia, Malkhaz Topuria, Shota Zghudadze, Zaza Germanozashvili, Amur Revishvili, Ilia Chogishvili, Shota Zghudadze, Valerian Dzebisashvili, Shota Iamanidze and Sergo Dvali* contain *elements of offence, provided by articles 166 and 173 of the Code of administrative Offences of Georgia".*

In the both resolutions, namely in its motivation part the court referrers to materials of the case, although it is not clear as to specifically on the basis of which evidence did the court come to conclusion that the fact of administrative offence has occurred. It is noteworthy, that none of the above referred court resolution does not contain substantiation of arrived decision by the court and indication, whether "materials of the case" were sufficient to arrive to such decision.

b. Unavailability of guarantee to defense

according to protocol of the court session, held on January 4 of 2011 defense attorneys of Levan Asatiani, Levon Asterian, Ilia Chigoshvili Malkhaz Topuria, Amur Revishvili, Leonid Ekhvaia, Shota Zghudadze, Zaza Germanozashvili, Valerian Dzebisashvili, Shota Iamanidze and Sergo Dvali for the purpose of establishment of factual circumstances of the case have filed solicitation to the court 4 times with request of attaching to materials of the case as evidence video materials filmed by TV company "Caucasus" and video materials, filmed by independent journalist with the purpose of demonstration of this evidence at the court session. The court rejected the above referred solicitations.

The court did not substantiate why it was groundless to attach video materials to materials of the case as evidence and demonstrate them to the court.

Along with rejection of solicitation on acknowledgement of video materials as evidence, the court did not take into consideration explanations, provided by the charged persons and testimony of witnesses (Eka Matiashvili and Irakli Batiashvili). According to explanation, provided by the court "the above mentioned statements and materials do not contribute to establishment of factual circumstances of the case and the only purpose of such materials and testimony is avoidance of confirmation of administrative charges and holding liable". Despite this conclusion the court did not duly substantiate it.

c. Problem of sufficiency of reasoning and justification of decision

According to article 264 of the Code of administrative Offences of Georgia *„Organ (or public official) who is in charge of consideration of administrative violations is responsible to establish the following:*

a) *Was administrative offence committed or not*

b) *Is the person, charged with administrative offence guilty in its committing*

c) *Should administrative responsibility be imposed on him*

d) *Are there aggravating or extenuating circumstances related to the case*

e) *Whether material damage was caused".*

As we have already stated above, according to article 230 of the Code in the process of administrative proceedings the court should ensure timely, effective, comprehensive and objective examination of all circumstances of the case. According to article 237 of the Code "*the organ (public official) has to assess evidence related to the case in adherence to requirements of the law, his inner conviction and base his judgment on thorough examination of all circumstances related to the case".*

According to above referred articles the court in the process of examination of available evidence should also base its decision on inner conviction (i.e. should examine whether administrative offence has occurred or not). At the same time decision adopted on the basis of inner conviction should be substantiated by all other factual circumstances and they should be studied in meticulous and objective manner. The adopted decision should be substantiated and refer to all circumstances and facts, on the basis of which the court reached such decision.

Despite this the City Court in its resolution of January 4 2011 arrives on decision on validity of charges on committing of administrative offence without any reasoning, substantiation and the resolution talks on imposition of administrative disciplinary actions without any justification or explanation of reasoning, standing behind such decision.

The Chamber of Administrative Proceedings of Tbilisi Court of Appeal in the same manner as the Collegium of Administrative Cases of Tbilisi City Court has established the fact of committing of administrative offence by charged persons without reflecting any legal assessments and due examination of factual circumstances of the case.

Despite the fact, that resolution of January 4 of 2011 was adopted in regard to 11 persons, motivation part of court decision consists of only two passages. The court does not reason on the basis of which evidence did it establish the fact of administrative offence, does not talk of the essence and form of offence, what was meant by minor hooliganism, or failure to obey legitimate orders of police.

The court also does not explain what particular requirement representatives of the law enforcement bodies had in regard to participants of the protest. This is especially important taking into consideration the fact that explanations of representatives of patrol police in regard to their requirements were substantially differing from each other. In several cases policemen were stating, that their requirements were preventive measures. Namely, according to explanations of one of the policeman they requested participants of the protest action to move away from the roadway. According to explanations of the same policemen participants of the protest may not have any plans of crossing or blocking the road but they just gave them preliminary warning.

According to the protocol of the court session in several cases staff of the patrol police was stating, that their requirement was not breaking of the protest but they were requiring dismantling of the tent, but none of them state, that the tent was standing in the location, prohibited by the law. They explain their requirement of dismantling o he tent by the fact, that it was standing very close to the memorial.

Unfortunately, as we have already stated above neither the Collegium of Administrative cases of Tbilisi city Court, nor the Chamber of Administrative Cases of Tbilisi court of Appeal have explained grounds for their decision. Both courts found charged persons guilty of committing administrative offence and imposed penalty in the amount of 400 GEL on the basis of protocols of offence, drawn by staff of Patrol Police.

d. Failure to obey legitimate orders of representatives of law enforcement bodies

In the report of the Public Defender for the second half of 2009 along with all the above mentioned problems attention was focused on independent application of article 173 of the Code of Administrative Offences of Georgia. Given article provides for imposition of administrative sanctions for failure to obey legitimate orders of representatives of law enforcement organs or member of military service issued in the process of implementation of their duties.

The same problem was identified in resolution of the Collegium of administrative Cases of Tbilisi city Court, reached on June 11 of 2010 in regard to participants of protest action, conducted by representatives of organization "Round Table" in front of State Chancellery on June 11 of 2010, namely Natia Maisuradze and Inga Sikharulidze, detained during the protest action.

As becomes clear from available documents, protocols of administrative detention and court decisions, on June 11 of 2010 members of "Round Table" Natia Maisuradze, Irakli Shonia and Inga Sikharulidze were conducting protest action in front of State Chancellery. Several minutes later members of patrol police came to the place of conducting of protest action and detained participants of the protest Natia Maisuradze, Irakli Shonia and Inga Sikharulidze.

Protocols of administrative detention drawn in regard to all three detainees are referring to violation of requirements of article 173 of the Code of Administrative Offences.

None of the documents state specifically what kind of offence was committed by the charged, what served as basis for the staff of law enforcement organs to issue certain orders and what was meant by failure to obey legitimate orders of law enforcement organs.

Consequently, it is not clear what legitimate orders were not fulfilled by participants of the protest action while at the same time the protocol of administrative actions is referring only to article 173 of the Code of Administrative Offences.

As a conclusion we can state, that above referred examples are clear confirmation of the fact, that in the process of considering of cases of persons detained as a result of their participation in protest actions courts still have problems with qualification of offences, detailed, objective and thorough examination of materials, safeguarding right to defense and substantiation of reached decisions. There are also certain problems from the standpoint of application of the law on assembly and manifestations by representatives of law enforcement organs and securing the rights of manifestants.

RECOMMENDATIONS:

- **I recommend the Parliament of Georgia to ensure conformity of the Law of Georgia on Assembly and Manifestations with standards, prescribed by the European Court of Human Rights. In given regard the Parliament should take into consideration requirements, reflected in the lawsuit filed by the Public Defender of Georgia to the Constitutional court of Georgia.**

Freedom of Speech and Expression

Examination of status of affairs in Georgia from the standpoint of freedom of expression is one of the main priorities of work of the Public Defender. Throughout the accounting period was identified whole range of issues and drawbacks, which were characteristic to the previous years as well and generally we can say, that problems in given area were identified in 2010 as well.

In the same manner as during previous years there were cases of interference in professional activities of journalists, impeding of their work and on several occasions assaulting them physically. Apart from this there were several incident and confrontation between the citizens related to the right of freedom of expression.

Position of media in Georgia has always been under close scrutiny in international non-governmental organizations. 2010 was no exclusion in given regard as well. All well-reputed international organizations have stated in their reports, that situation from the standpoint of diversity of media has improved in Georgia.[202] Despite this, according to survey conducted by Freedom House Georgia still remains a semi-free state.

OSCE ODIHR has prepared assessment of elections of local self-governances of Georgia held in 2010, according to which media environment is diversified in Georgia, although it is divided according to political views and most of media organs and journalists are under strong influence of the owners. It is stated in the same report, that the issue of transparency of ownership of media organs remains an issue.

In given chapter we are going to provide overview of cases of infringement of the right to freedom of expression that occurred in 2010. We shall also focus our attention on facts of exertion of pressure on journalists and provide brief overview of legislative amendments, initiated in 2010.

LIMITATION OF RIGHT TO FREEDOM OF EXPRESSION

In 2010 occurred several incidents of limitation of the right of expression of several citizens.

The Public Defender of Georgia has studied the incident that occurred in august 14 of 2010 at the crossing of George Bush and Leh Kachinski streets. During this incident representatives of law enforcement bodies have detained Irakli Kakabadze, Aleksandre Chigvinadze and Shota Dighmelashvili on the basis of article173 of the Code of Administrative Offences[203].

[202] "Freedom in the World, the Authoritarian Challenge to Democracy", selected data from Freedom House's annual survey of political rights and civil liberties, Freedom House, 2011, p. 7.

[203] The Code of Administrative Offences of Georgia, article 173 – failure to obey legitimate orders of representatives of law enforcement of military servicemen".

Above referred persons were requiring renaming the street of George Bush. They were holding banners, where their opinion was stated and were reading poems.

Later Tbilisi City Court found Irakli Kakabadze, Aleksandre Chigvinadze and Shota Dighmelashvili guilty in committing the offence. According to court resolution the above mentioned persons have violated requirements of article 173 of the Code of administrative Offences, namely they were violating public order, were standing on the roadway, near which George Bush bill-board was erected and were blocking movement of traffic. They were also covering the bill-board with paint and when police legitimately required from them to keep order, they did not obey the police and showed resistance.

It is evident from materials, broadcasted by TV companies "Caucasus" and "Maestro" that Irakli Kakabadze and other persons participating in the protest action were not blocking movement of traffic. They were standing on the so called "safety island" and were reading poems. Given activities were in no way violating requirements of the law.

It is also clear from the video materials, that participants of the protest did not show any resistance to representatives of police in the process of detention and obeyed their orders.

Article 24 of the constitution of Georgia safeguards freedom of expression of every citizens of Georgia, which implies that every person is entitled to "*free expression of his views verbally, in written form or through other means*". As the right to freedom of expression does not belong to absolute rights, the law also provides for certain limitations of this right. Hence, the right of expression of a person or a group of persons may be restricted only in such cases, when 1. The law provided for such restriction of given right; 2. Such limitation serves legitimate purpose; 3. Is necessary for democratic society; 4. When such restriction so proportionate to attaining of objective.

According to legislation of Georgia the right to freedom of expression *„may be limited by law in such conditions, which are necessary for ensuring state security in a democratic society, territorial integrity or maintaining of public order, for avoidance of crime, for protection of rights and dignity of other persons, for avoidance of disclosure of confidential information or for the purpose of ensuring independence and integrity of the court*[204] *"*.

As we have already stated Irakli Kakabadze, Aleksandre Chigvinadze and Shota Dighmelashvili have not violated requirements of legislation of Georgia on August 14 of 2010. They have not hindered movement of traffic and views expressed by them were not directed towards undermining of state security, independence and/or constitutional order. Neither were they promoting violence or animosity on any grounds. At the same time they have not expressed such views that would undermine important public and/or individual interests. As in given case the need of restriction of the right of expression of above mentioned persons is devoid of legal grounds, we can conclude, that representatives of law enforcement bodies have unlawfully restricted their right to freedom of expression.

Public Defender of Georgia would again like to indicate to problems, characteristic to administrative proceedings, which are related to application of article 173 of the Code of Administrative Offences[205]. As we have already covered this problem in detail in the report for the second half of 2009 and second half of 2010, we shall not provide detailed overview of this aspect in given chapter again.

LIMITATIONS TO THE RIGHT OF FREEDOM OF EXPRESSION AND OFFENCES

In the period under consideration attention of public was focused on confrontation of two groups, which had different opinions and values.

Members of one group were proclaiming that their religious beliefs were insulted by statements of specific persons, while the other group was acting for protecting of their right of freedom of expression.

[204] Constitution of Georgia, article 24, paragraph 4.

[205] See report of the Public Defender of Georgia for the year 2010, submitted to the Parliament of Georgia; chapter "Assembly and manifestations".

In May of 2010 process acquired intensive character. Protest actions of both groups were held on permanent basis. Given process ended with physical assault of the second group by members of the first group and the latter broke into a private TV company.

On May 4 of 2010 in front of Ilia Chavchavadze University around 17:00 was held a protest action. Participants of the protest were requiring protection of their right of expression. Members of opposing group including representatives of the Union of Orthodox Parents and People's Orthodox Union came to the place, where the protest was held. They assaulted several persons from the group that was holding protest action[206]. As given incident is covered in detail in the report of the Public Defender of Georgia for the year 2010, submitted to the Parliament of Georgia, namely in the chapter "Assembly and manifestations", we shall not cover this incident in detail in given chapter of the report.

On May 7 of the same year TV Company Caucasus was broadcasting live debates on given issue. Participants of the talk show "Barrier" have expressed opposing views, as a result of which their opponents broke into the TV studio. General Director of TV company Caucasus David Akubardia and 5 operators were insulted verbally and physically.

This event became the focus of special attention of the Public Defender of Georgia. He applied with a special statement to relevant organs and required adequate response to given fact.

It should be assessed positively, that the state has conducted adequate measures in regard to incident that happened in front of Ilia Chavchavadze State University, as well as in regard to the fact of breaking into TV Company. At the same time it should be noted, that the state did not respond immediately to the incident, which occurred at Ilia Chavchavadze State University, which in our opinion promoted to occurrence of the second incident, namely breaking into the TV Company.

In the process of analysis of given facts we come to conclusion, that in both cases actions of the first group, related to protection of their beliefs and position went beyond limits, admissible by the law and violated the rights and freedoms, guaranteed by the Constitution, international Law and legislation of Georgia, namely infringed the right of expression and assembly and manifestations.

Freedom of expression according to international law is not an absolute right. Main conventions on the human rights safeguard the right to freedom of expression,[207] although at the same time provide for certain grounds for limitation of this right, including the need to respect rights of other persons.[208]

According to article 20, paragraph 2 of UN International Pact on Civil and Political rights, adopted in 1994, to which Georgia is a party any promotion of discrimination, animosity or violence on national, racial or religious grounds should be prohibited by law.

In the same manner as international Pact of 1996, International Convention on Elimination of any Forms of Racial Discrimination, signed by Georgia in 1999 obligates all signatories of the Convention to condemn any propaganda, aimed at promotion or justification of racial hatred and discrimination in any form.

According to article 4 of the Convention States Parties to the Convention condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one color or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form.

Another case, which can serve as example of intolerance to viewpoints of a specific individual is the fact of intimidation of Paata Sabelashvili. In 2010 on the social network Facebook was created a group. Members of the group were publishing articles of homophobic character. This caused debates between individual persons in electronic media. After

206 See report of the Public Defender of Georgia for the year 2010, submitted to the Parliament of Georgia; chapter "Assembly and manifestations".

207 International Pact on Civil and political Rights, 1966, article 19, paragraph 2.

208 International Pact on Civil and political Rights, 1966, article 19, paragraph 3.a; European Convention on Protection of Fundamental Rights and Freedoms, 1950, article 10 (2).

statement of opposing views by Paata Sabelashvili he started receiving on his personal email letters containing threats from citizen Vazha Aptsiauri, where he was threatening to kill him or injure him.

On April 13 of 2010 III Division of District Inspectors of Tbilisi Chief Department of the Ministry of Interior started preliminary investigation in regard to given case[209]. Paata Sabelashvili was acknowledged as injured party. Presently investigation of the case is still ongoing.

Facts covered by given chapter are clear examples of how the right of expression can violate other person's rights and grow into offence. In case of identification of such violations the state should conduct effective measures to prevent such offences and reduce their frequency.

THE RIGHTS OF JOURNALISTS IN THE PROCESS OF IMPLEMENTATION OF THEIR PROFESSIONAL ACTIVITIES

In 2010 in the same manner as in 2009 rights of journalists and owners of TV companies were infringed quite frequently as a result of pressure exerted by state organs, cases violence, as well as their inactivity.

As we have already stated the role of press and media is extremely important for democratic processes. Media is the guarantor of sound democracy, as it ensures public consideration of decisions, reached by the state, its actions or inactivity and promotes to involvement of public in decision-making process.

According to paragraph 1 of article 10 of European Convention on Fundamental Human Rights and Freedoms everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. Paragraph 2 of the same article provides for restriction of this right only in cases, provided by the law and is required in democratic society. The European Court of Human Rights has stated on numerous occasions, that article 10 of the Convention protects not only content of ideas and information, but the forms of their expression as well. Case law of the court provides broad protection for journalists, including their programs, publications, preparatory work, journalist's surveys and investigation (Sunday Times v UK (No 2) A 217 (1991), Dammann v Switzerland (2006) Para 52). This also implies obtaining of information at the place of incident for the purpose of its coverage.

In Georgia freedom of media is guaranteed by article 24 of the Constitution of Georgia, according to which *"mass media is free"*. Consequently, interference in any form in the activities of media is prohibited. Safeguards are also provided in article 154 of the Criminal Code of Georgia, according to which interference and hindering of professional activities of a journalist is prohibited.

To ensure, that journalists objectively and exhaustively reflect processes ongoing in the country, they should be free from any pressure. Although, as it was established as a result of examination of cases, made available to the Public Defender's Office, facts of exerting of pressure or interfering in activities of journalists and media owners remain frequent. Another issue is that state is not conducting relevant measures when third parties are directly interfering in activities of representatives of media.

Along with obligation of non-interference in professional activities of journalists, the state is assigned positive obligation of ensuring freedom of work to journalists as well. Any unlawful action, which is hindering work of journalist should be effectively investigated.

a. Physical assaulting of journalists/media representatives by representatives of state organs

As we have already stated freedom of expression implies free access to information and its dissemination without any pressure or instructions from other persons. It is clear, that in conditions, when media is under pressure from the state existence of free media is impossible.

[209] Preliminary investigation was initiated on the grounds of article 151 of the Criminal Code of Georgia (Threatening)

Obligation of the state is to ensure that every journalist has opportunity of implementing his professional activities. I.e. the state is responsible to conduct relevant actions to ensure physical inviolability of journalists. In case of identification of facts of persecution and violence committed towards journalists the state should undertake all relevant measures related to timely and objective investigation of such cases and establishment of the truth. Physical insulting of journalists and media owners by representatives of law enforcement bodies is even more unacceptable.

The Public Defender of Georgia studied the fact of physical insulting of General Director of TV Company Trialeti, located in Gori, which occurred on October 7 of 2010.

According to explanations provided by Jondo Nanetashvili on October 7 of 2010 representatives of patrol police Tariel Sarauli and Ilia Gavashvili insulted him physically.

Jondo Nanetashvili submitted to the staff of the Public Defender's Office certificates issued by two medical institutions. According to certificate of health status issued by military hospital of the Ministry of Defense on October 8 of 2010 Jondo Nanetashvili was diagnosed with the following: closed injury in the cranial area, concussion, partial injury of vertebra in the neck area, traumatic cervicalgia, excoriation of both forearms. According to certificate, issued by Kareli Hospital in honor of Zaza Panaskerteli, issued on October 7 of 2010 as a result of examination of the patient had bruises in the area of chest and neck, excoriations of forearms and concussion.

On October 8 of 2010 Mtskheta-Mtianeti District Prosecution started criminal investigation on case #082108025 on the fact of abuse of power by the staff of Shida Kartli and Samtskhe-Javakheti Chief Departments of Patrol Police of the Ministry of Interior on the grounds of article 333, paragraph 1 of the Criminal Code of Georgia. Currently investigation is still ongoing.

b. Failure to act in the process of violation of rights of representatives of media

Throughout 2010 the Public Defender of Georgia has identified cases of violation of rights of journalists by representatives of law enforcement bodies, as well as cases, when representatives of the law enforcement organs committed acts of negligence and failed to implement their duties.

Namely, on June 24 of 2010 in Gori Municipality was dismantled monument to Stalin, which was filmed by journalists of TV Company Trialeti Vladimir Bichashvili and cameraman Imeda Gogoladze. Around 8 persons dressed in civilian clothes approached them. They covered the camera with their hands, pushed Vladimir Bichashvili and his operator to the ground and insulted them physically. According to explanations provided by Vladimir Bichashvili and Imeda Gogoladze at the place of incident were present the head of Shida Kartli District Office of the Ministry of Interior Vladimir Jugheli and the head of Gori District Office of the Ministry of Interior Mikheil Kandelaki. Despite the fact, those journalists were assaulted and were hindered form implementation of their duties representatives of law enforcement organs did not undertake any measures.

According to explanation of Vladimir Bichashvili after he returned to the TV Company he called Vladimir Jugheli, who informed him that his video camera shall be returned. Vladimir Bichashvili also states, that when the camera was returned to TV Company from the tape were deleted scenes, reflecting the incident.

On July 9 of 2010 investigative department of Mtskheta-Mtianeti District Prosecution started criminal investigation on case #082108014 on the fact of abuse of power by the staff of Shida Kartli Chief Department of the Ministry of Interior on the grounds of article 333, paragraph 1 of the Criminal Code of Georgia. Currently investigation is still ongoing.

The Public Defender of Georgia has also examined incident, that occurred on October 21 of 2010 the territory controlled by Ltd Elsavako (so called Lilo market). Namely, on October 32 of 2010 the crew of cameramen of TV Company Caucasus was filming the event organized by "National Forum".

According to explanations of Tamar Togonidze on the territory of Lilo Market tensions started rising between participants of the protest action and representatives of security guards of ltd Elsavako, operating under the Ministry of Interior, after which representatives of Police Department of the Ministry of Interior and staff of Ltd Elsavako insulted physically participants of the protest action. According to Tamar Togonidze staff of security company was trying to take away video camera from the crew and despite the fact, that at the place of incident were present representatives of law-enforcement bodies that did not respond adequately to actions of representatives of staff of security company.

Public Defender of Georgia sent video materials, reflecting this incident to Chief Prosecutor's Office for further investigation, although the later has not provided to Public Defender any information on the follow-up measures or reached decision during the period that present report covers.

Apart from facts of physical insulting and intimidation and threatening in 2010 also occurred facts of physical assaulting of owners of media means. Thus, in October 26 of 2010 building of Chokatauri Office of newspaper "Guria News" was broken into.

Despite the fact, that in regard to all above mentioned facts of violation investigations are proceeding, at current stage final decision has not been reached in regard to any of them.

We consider that each above referred case needs to be investigated in prompt and effective manner to ensure physical safety of journalists and establishment of adequate working environment for them.

LEGISLATIVE INITIATIVES

At current stage of development of democracy in Georgia it is necessary to ensure strengthening of civil society and promotion of formation of free and independent media means. This can be achieved through adoption of such norms and regulations, which on one hand shall ensure complete independence of media, while on the other hand promote to their transparency. Citizens should have opportunity of obtaining information on owners of means of media. Without sound legislative framework formation of free media, which the society would trust is impossible.

Current law on Broadcasting is reflecting the fundamental principle of transparency regarding ownership of means of media, although at the same time given norm contains certain efficiencies, which allow for concealing of real ownership from the society.

In 2010 in the period following closing of Parliamentary sessions two groups of parliamentarians came p with initiative of legislative amendments to the law on Broadcasting.

Before these groups submitted their draft amendments the Chairman of the Parliament made a statement on the need of further improvement of legal framework regulating media environment.

Public Defender studied both packages of proposed draft amendments to the law. Both of them contain provisions on regulation of transparency of license holders of media means, although the draft amendments proposed by the initiative group is much more extensive and proposes revision of issues, related to publicity of information, conflict of interests of members of National Commission for Telecommunication, as well as issues related to concentration of media assets within certain owners.[210]

The Public Defender of Georgia submitted to both initiative groups his views and comments in written form. Authorized representatives of the Public Defender's Office took part in whole range of meetings, dedicated to consideration of proposals related to amending of the law.

It is important, that initiative groups reached consensus, according to which companies registered in offshore zones shall not be allowed to be beneficial owners of media means, thus having the right to keep the ownership of the

[210] Authors of the draft amendments are: Lasha Tughushi, Vakhtang Kmaladze, George Chkeidze, Nino Danelia and Eliso Chapidze.

company undisclosed. We would like to note here, that it would have been expedient if offshore company would retain the right to be the owner of media means, although information on beneficial owners should have been public in the same manner, as in case of other legal persons.

As a conclusion we can state, that for the purpose of attaining of transparency of media, proposed amendments should comply with following minimal requirements:

1. Information on license holding entity, or its direct or indirect owner, should be public;
2. Information in the managing persons of the owner of the license or his indirect or direct owner should become public;
3. Financial transparency should be ensured;
4. There should be clear delimitation of public interests in regard to transparency of media means and private interests of owners of media means and their right to confidentiality and the right balance needs to be found. In other words, norms adopted for the purpose of ensuring transparency of media should not require excessive publicity and requirements should be proportionate to set objective. Confidentiality of commercial and personal information should be ensured as well.

RECOMMENDATIONS:

- **The Parliament of Georgia should adopt amendments and additions to the Law of Georgia on Broadcasting, which would comply with above stated principles in a timely manner;**
- **In the "Guiding Principles of Criminal Law Policy" approve d by the minister of Justice of Georgia should be reflected adequate mechanism of response on unlawful restriction of the right of expression (offences provided by articles 161, 153 and 154 of the Code of Criminal Offences).**

2010

Freedom of Information

In the reporting period the Public Defender of Georgia was addressed on numerous occasions by natural and legal persons on the issue of problems in obtaining of public information, maintained by state organs. As a result of examination of these applications it becomes clear, that problems with free access to information continue to remain unchanged. Quite often state entities violate requirements of the law on ensuring access to public information. This is mainly expressed by refusal to provide public information or violation of deadlines for its provision.

Principle of free access to public information is a universally acknowledged principle and it is guaranteed by international, as well as national legal acts.

Article 19 of the UN Universal Declaration of human Rights, adopted on December 10 of 1948 and article 10 of the European Convention of Human Rights provide for freedom of expression, as well as the right of every person to apply for, obtain and disseminate information and ideas through any media notwithstanding the borders and without interference of the state.

On June 18 of 2009 Council of Europe has adopted Convention on Access to Official Documents, which defines following: subjects authorized to have access to official documentation; subjects, where the right to access to official documentation can be implemented; possible limitation of the right of access to official documentation; cost of access to official documentation and other regulations for states, signatories of the Convention related to effective implementation of given right.

As of today Convention on Access to Official Documents, adopted on June 18 of 2009 has been signed by three EU member states, Georgia among them. According to paragraph 3 of article 16 the Convention shall enter into force on the first day of the month, following three month period from the date, when 10 EU member countries shall express their agreement to mandatory character of the Convention by its ratification, adoption or approval. It is noteworthy, that up to now Georgia has not ratified the Convention.

As to national legal acts, framework legal act, guarantying the right of freedom of information and access to information is the supreme law of Georgia – the Constitution. Article 24 of the Constitution of Georgia states, that any person has the right of free access of information and its dissemination, free expression of his ideas in verbal, written or other form.

Article 41 of the Constitution grants to every citizen the right to obtain his personal information, maintained by state bodies in accordance with rules, provided by the law, as well as have access to official documentation, unless they contain state, professional or commercial secret. At the same tine article 37 of the Constitution provided for right of every citizen to obtain complete and objective information on status of environment.

For the purpose of ensuring effective implementation of the principle of free access to information Chapter III of General Administrative Code of Georgia established terms and conditions of provision of public information by state organs and institutions.

According to stipulations of paragraph 1 of article 37 of the General Administrative Code of Georgia any person is entitled to requiring public information[211] notwithstanding physical form of such information and method of its storing and he is authorized to select the form, in which he would like to obtain information, in cases, when it is maintained in several different forms, as well as has the right to acquire information from getting acquainted with the original.

Article 40 of the General Administrative Code obligates public institutions to immediately issue public information, or in case of some objective circumstances issue it no later than within 10 days. According to paragraph 1 of article 41 of the General Administrative Code immediate issuance of information also implies obligation of state institutions in case of refusal to provide information to immediately notify the applicant regarding such decision. It is also noteworthy, that within 3 days from refusal to issue public information public institution has to explain to the applicant in written form his rights and rules of appealing of decision, as well as indicate structural division or public institution, with which consultations were held in the process of reaching of decision on refusal of provision of information.

As a result of analysis of applications, submitted to the Public Defender's Office during 2010 (applications related to failing of obtaining of public information) we can conclude, that main problem was failure by state bodies to provide public information or violation of deadlines for provision of public information. According to article 40 of General Administrative Code of Georgia public institution is obligated to immediately issue public information. In the process of issuance and dissemination of public information its timely provision, i.e. provision of information within deadlines established by the law is of crucial importance, as delays may cause loss of value of information.

Another problem is elated to violation of requirements of article 41 of the General Administrative code of Georgia by public institutions. Namely, in some cases administrative organs fail to provide to the applicants justification of refusal to provide information and don't fulfill their obligation to explain to the applicant rules of appealing of such decision.

As a result of analysis of applications, filed to the Public Defender's Office during 2010 on the issue of free access to public information we have identified those public institutions, which violated requirements of the Constitution and General Administrative code of Georgia, namely their obligation to ensure access to public information.

We have established facts of violation of above mentioned requirement of General Administrative Code of Georgia on the basis of examination of applications of citizens T.B. and I. D. In given case National library in honor of Ilia Chavchavadze functioning in the Parliament of Georgia has infringed requirements related to free access to public information and deadlines of provision of information. Namely, the library did not provide public information requested by the applicants in written form. In regard to given violation Public Defender of Georgia applied with recommendation to the National library in honor of Ilia Chavchavadze functioning in the Parliament of Georgia.

The Public Defender's Office has also established the fact of violation of requirements of legislation of Georgia on the basis of consideration of applications filed by citizens Z. K. and G. K. In given case the Ministry of Defense of Georgia did not ensure provision of personal information, maintained by it on citizens Z.K. and G.K. within established deadlines. After detailed examination of materials of the case Public Defender of Georgia issued recommendation to the Ministry of Defense on issuing of personal information.

The Public Defender's Office has examined application filed by Ltd "Sh. XXI century". We have established the fact of infringement of legitimate right of above mentioned legal person to obtain public information. Namely, Tbilisi City Hall has violated requirements of article 37 and 43 of the General Administrative Code of Georgia and did not provide to Ltd "Sh. XXI century" requested public information.

[211] According to the sub-paragraph "l" of the Para 1, Article 2 of the General Administrative Code of Georgia, "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."

Taking into consideration all the above mentioned we can conclude, that in specific cases administrative organs in violation of requirements of the Constitution of Georgia and General Administrative Code infringe the safeguarded right on freedom of information and access to public information.

RECOMMENDATIONS:

- **Relevant organs should undertake steps towards initiation of procedures of ratification of Convention of the council of Europe on Access to Official Documentation;**
- **The Parliament of Georgia should initiate legal amendments, which shall ensure that public institutions shall submit report to the Parliament of Georgia and President of Georgia on December 10 of every year as provided by article 49 of General Administrative Code.**
- **General courts in the process of consideration of disputes related to publicity of information should take into consideration explanations, elaborated by the constitutional Court of Georgia in regard to application of article 41 of the Constitution.**

Freedom of Religion and Tolerance

The present chapter focuses on the processes pertaining to religious minorities, protection of their rights as well as the positive trends and problematic issues in the field of tolerance observed in 2010.

A number of important facts can be outlined in the context of improving tolerance environment and eliminating manifestations of intolerance. Apart from the topics related to ethnic minorities, the thematic of religious minorities was more visible in the discourse and symbolic actions of the Georgian authorities. The President of Georgia highlighted religious tolerance issues in his public speeches on numerous occasions. The President, the Prime Minister, the members of the Parliament and government, the Mayor of Tbilisi congratulated the Catholics, the representatives of the Armenian Apostolic Church, the Muslim and Jewish communities living in Georgia on the occasion of their religious holidays. The historical monastery complex in Akhaltsike on the Rabat territory was returned to the Catholic Church and is currently under construction and renovation. The Protestant-Evangelistic Pentecostal Church held a large scale public gathering in the Sports Palace in the centre of Tbilisi. Such extensive activity of a non-dominant religious association took place for the first time over the last tens of years. It is notable, that during the reporting period, the State took adequate legal measures towards the persons involved in the campaign aimed at cultivating intolerance.

In addition to the above mentioned, a number of important issues related to the rights of religious minorities remained problematic throughout 2010, in particular: inadequate reaction of the law enforcement bodies to the offences related to religious intolerance and procrastinated investigations; restitution of the property confiscated from religious minorities in the Soviet period; the tax regime which is placing non-dominant religious groups in unequal position compared to the majority religion; exercise of the freedom of religion in the penitentiary institutions by the inmates representing religious minorities; discriminative environment in public schools; The fact that some religious minorities still refuse to register in accordance with the existing legislation remains problematic as well.

It should be mentioned that the first half of 2010 was marked with escalation of intolerance. Xenophobic and racist statements were observed during the public gatherings as well as in the media.

VIOLENT ACTS COMMITTED ON THE GROUNDS OF INTOLERANCE

In the beginning of 2010, the Orthodox Parents' Union, claiming to be acting as a defender of the orthodox religion, became quite active. In addition, a new organization "People's Orthodox Movement" was established. The leaders of the mentioned organizations were often resorting to xenophobic statements and threats. In May 2010, the representatives of the youth wings of these organizations, supported by the clergy, attacked the protest action in front of the Ilia State University. This action was held by around ten activists with the aim to protest against intolerance and support freedom

of expression. The response of the police was limited to parting the protesters and their attackers. However, later on the investigation into the mentioned fact was opened[212].

Two days later, the debates on the above mentioned issues were held and broadcasted by the TV company "Kavkasia". During the debates the head of the TV company, the anchor of the programme, other staff members and guest speakers of the TV programme were verbally and physically assaulted. This case became subject of the Public Defender's special attention. The Public Defender addressed the law enforcement bodies calling for adequate reaction to the facts of violence on the grounds of intolerance and interference in the journalists' work. The attack on the TV station, intolerance and extremism was condemned by the President of Georgia and the Ambassador of the United States to Georgia. Later on, eight members of the "Orthodox Parents' Union" and the "People's Orthodox Movement," were found guilty by the court of attacking the TV Company "Kavkasia" and committing hooliganism. By the end of 2010, two persons out of the above mentioned eight convicts were brought before the court for attacking the protest action in front of the Ilia State University and beating two activists.

To a certain extent, such actions were indirectly encouraged by inadequate response of the law enforcement bodies to the crimes committed on religious grounds in the past years, as well as inappropriate qualification of infringements and procrastinated investigations. Consequently, the number of such infringements has increased over the last three years. These problems were highlighted in the Parliamentary Reports of the Public Defender on numerous occasions.

In 2010, seven violent actions committed on the grounds of religious intolerance were reported to the Public Defender. In six cases, according to the information submitted by the complainants, the Jehovah's Witnesses were attacked, interfered with dissemination of their religious belief and persecuted. One fact pertained to the attack on the Evangelic-Baptist church in the village Akhalsopeli of Kvareli district. Except for the attack on the Baptist church, investigations were opened into all other facts in accordance with the Article 156 of the Criminal Code of Georgia (religious persecution). This can be considered as a step forward, as during the past three years similar violent actions were, as a rule, qualified as hooliganism or infringement of property rights instead of religious persecution and interference with a religious ritual. The need for addressing this problem was underlined on numerous occasions in the recommendations of the Public Defender and international organizations. Despite of this positive trend, in 2010, as in the past years, the investigations were often procrastinated or stopped.

Below are the cases, studied by the Public Defender based on the complaints received:

1. According to the complaint of Jehovah's Witnesses, a citizen L.J. was periodically attacking Jehovah's Witnesses in Martvili district. The attacks became permanent in May. On 12 October 2010, in response to the Public Defender's letter, the Chief Prosecutor's Office of the Ministry of Justice of Georgia provided the following information: the preliminary investigation was launched on 6 October 2010, in accordance with the paragraph 1, Article 156 of the Criminal Code of Georgia, into the fact of persecution of Jehovah's Witnesses Z.V., M.G., M.A., K.G., A.G., K.TS. and M.S in the village Didi Chkoni, Martvili district. The investigation was not completed during the reporting period.

2. On 13 April 2010, the Jehovah's Witnesses B.T. and G.G. visited a citizen in Lanchkhuti for handing over religious literature to him/her. However, as B.T. and G.G. reported, they were met by four young persons and verbally and physically assaulted by them. The investigation was opened into the mentioned fact in accordance with the paragraph 1, Article 156 of the Criminal Code of Georgia.

3. The similar fact occurred on 29 April 2010. Two Jehovah's Witnesses E.Z. and N.B. were in the village Atsana, Lanchkhuti district. According to them, two strangers verbally and physically assaulted them on religious grounds. Although they informed the patrol police on the above mentioned fact, the law enforcement officers did not come. E.Z. and B.B. addressed the Atsana local police officer, who stated that punishment of the attackers would be limited to taking receipts from them. The preliminary investigation was opened into the mentioned fact in accordance with the paragraph 1, Article 156 of the Criminal Code of Georgia.

[212] See the Chapter on Freedom of Assembly.

4. On 13 January 2010, a citizen K.TS., a member of Jehovah's Witnesses, addressed the Public Defender with a complaint. According to the complaint, on 13 December 2010 on Boboti Bridge in Martvili, strangers requested K.TS. and TS.S to leave the district and verbally and physically assaulted them on the grounds of their religious belief. K.TS. noted that he recognized the presumable attackers Z.B., B.K and M.S. According to K.TS. one of them was the representative of the Civil Registry Agency of Martvili, another person was the representative of the Mayor's office and the third attacker worked in the district court. The preliminary investigation was opened into the above mentioned fact in accordance with the paragraph 1, Article 156 of the Criminal Code of Georgia. According to the information provided by the Chief Prosecutor's Office, the complainants K.TS. and TS.S. were interrogated. During the interrogation they requested the law enforcement officials to leave their complaint (dated 13 January 2010) without reaction and denied the fact of physical assault from the side of the persons indicated in the complaint. According to the Prosecutor's Office, the investigation bodies nevertheless examined K.TS's complaint. The preliminary investigation did not confirm the fact of persecution on religious grounds and the investigation was closed.

5. On 9 June 2010, the members of the religious organization "Jehovah's Witnesses", D.D. and T.TS. addressed the Public Defender with a complaint. According to the complaint, on 3 June 2010, they were in the village Dzveri, Terjola district to disseminate their religious belief, when the Gamgebeli of Dzveri verbally assaulted them, asked to stop talking and threatened them with a knife. The Chief Prosecutor's Office of the Ministry of Justice of Georgia informed the Public Defender, that the preliminary investigation was opened into the mentioned fact in accordance with the paragraph 1, Article 156 of the Criminal Code of Georgia. However, on 30 June 2010, the preliminary investigation was closed due to absence of the signs of a crime.

6. On 27 September 2010, the Public Defender was approached by a member of the religious organization "Jehovah's Witnesses", M.KH. According to M.KH., on 22 September 2010, M.KH. and N.K. were in the village Tsagveri, Borjomi district to disseminate their religion. The village inhabitant O.B., physically assaulted M.KH and N.K after having learned that these people were Jehovah's Witnesses. The preliminary investigation was opened into this fact in accordance with the subparagraph a, paragraph 2, Article 156 of the Criminal Code of Georgia.

7. On 19 November 2010, unidentified persons broke the windows of the Baptist church and destructed the room of the Sunday school in the village Akhalsopeli, Kvareli district. The school belongings and equipment were thrown on the floor and trampled. Part of the items were scattered in the courtyard. The Kvareli regional police department was informed about the case immediately and the investigation was launched. The group of investigators visited the church building, took photos and interrogated the neighbors living near the church. Results of the investigation are unknown till now.

Despite the fact that the number of violent acts committed on the grounds of religious intolerance decreased in comparison with the previous years, the problem of effective reaction from the side of the law enforcement bodies persists. A certain "tolerant" attitude towards the above mentioned type of offences is still obvious. As a rule, investigations on these facts are opened; however, they are often either procrastinated or stopped. In 2008-2010, up to 40 violent acts and violations of rights were recorded: attacks on the buildings and illegal break-ins, physical assaults, raids, religious persecution and discrimination. Verbal or written notifications of the perpetrators, negligent attitude towards religious violence or disdain towards the victims of violence from the side of the law enforcement bodies have become the usual practice. As a result, the violence on religious grounds has become systematic and the areas of permanent violence have been created (for example violence is systematic towards Jehovah's Witnesses in Lanchkhuti, Samtredia, Martvili, Kaspi).

TAX REGIME

Since January 2011, a new Tax Code is in force in Georgia. The new Code similarly to the previous one does not qualify activities of the religious organizations as economic activities, therefore they are exempt from a range of taxes. However, this rule does not equally apply to all religious organizations.

According to the Article 2 of the Tax Code of Georgia "the tax legislation of Georgia comprises the Constitution of Georgia, international treaties and agreements, the present Code and by-laws adopted in compliance with the mentioned acts." While this provision does not list the Constitutional Agreement between the State of Georgia and the Apostolic Autocephalous Orthodox Church of Georgia as part of the tax legislation, the Agreement still forms part of the latter. The Agreement provides for a different tax regime for the Apostolic Autocephalous Orthodox Church of Georgia and defines taxes from which the Orthodox Church is exempt.

This chapter is not aimed at discussing the appropriateness of tax benefits envisaged by the Agreement between the State and the Apostolic Autocephalous Orthodox Church of Georgia. However, the similar tax benefits should equally apply to other religious organizations as well, this issue could be regulated by a legal act of a lower hierarchy than the Constitutional Agreement[213].

The Tax Code of Georgia links the **profit tax** with the economic activity of a person. In compliance with the Georgian legislation, a non-profit legal entity is not the profit tax payer, except for the cases when it runs an economic activity. The paragraph 1, Article 9 of the Tax Code defines an economic activity as any activity aimed at receiving profit, income or compensation, despite of the results of such activity, unless provided otherwise by the law. In accordance with the paragraph 2, Article 9 of the Tax Code, a religious activity is not considered as an economic activity.[214]

The Tax Code defines religious activities as activities carried out by entities registered as religious organizations (a religious organization is an organization established for carrying out religious activities and is registered as such in accordance with the legislation)[215], and not as activities carried out by any entity. At the same time, it is noteworthy that the organizational-legal form of the Apostolic Autocephalous Orthodox Church of Georgia does not fit into the mentioned definition, as the Apostolic Autocephalous Orthodox Church is a legal entity of the public law [216] and not a non-profit (non-commercial) legal entity. Nevertheless, based on the Constitutional Agreement, the Apostolic Autocephalous Orthodox Church of Georgia should be considered as a religious organization registered in accordance with the legislation.

According to the Tax Code, only non-economic activities (religious activities) of religious organizations are exempt from the profit tax. Therefore, religious activities of any religious organization are not economic activities and are exempt from the profit tax.

At the same time, it is notable that according to the Tax Code [217] any person, receiving profit from selling of crosses, candles, icons, books and calendars used for religious purposes by the Patriarchy is exempt from the profit tax.[218] The above mentioned provision of the Tax Code is discriminatory by its nature. It sets a benefit (advantage) for those subjects, who produce the above mentioned items for the Patriarchy, while the same benefits are not applied in the cases when the same items are produced for other religious organizations. For example, if an entrepreneur produces candles to be used by the Patriarchy for religious purposes and produces the same product for another religious organization,

213 Including by the Tax Code of Georgia

214 The Tax Code of Georgia, Article 11, Religious Activities

1. Religious activity is an activity carried out by a religious organization (association), registered in compliance with the legislation, aimed at dissemination of belief and confession, including by a) organizing and conducting religious ceremonies, prayers and other worship activities b) giving possibility to believers to have or use chapels or ritual buildings, for satisfying religious demands individually or collectively. C) Organizing meetings and departures of religious delegations, pilgrims, representatives of different confessions, organizing national and international religious conferences, conventions and seminars, providing event participants with hotels (accommodation), transportation, meals and cultural activities. D) Maintenance of monasteries, monastery churches, ecclesiastic–educational institutions, teaching students and listeners of ecclesiastic-educational institutions, maintaining charity (hospitals, organizations, shelters, institutions for the elderly and disabled persons) and carrying out other similar activities deriving from the canonic rules.
2. The activities of enterprises of religious organizations (associations) producing religious (worship) literature or religious items, the activities of organizations (associations) or their enterprises, related to selling (dissemination) of religious (worship) literature or religious items, also usage of profit from the mentioned services for religious activities, are equaled to religious activities.

215 The Tax Code of Georgia Article 33.

216 The Constitutional Agreement between the State of Georgia and the Apostolic Autocephalous Orthodox Church of Georgia, Article 1, paragraph 3.

217 The Tax Code of Georgia, paragraph 1, subparagraph d, Article 99.

218 The term" the Georgian Patriarchate" is not defined by the Tax Code of Georgia, although logically it implies the Apostolic Autocephalous Orthodox Church of Georgia.

he/she will have to pay the profit tax (amounting to 15% of the profit) only in the second case. Obviously, this is reflected on the price of the respective item.

One more tax, related to economic activity is the **Value Added Tax** (VAT). Similarly to the regulations pertinent to the profit tax, in this case as well, activities of the religious organizations are not considered as economic activities and such organizations shall not pay VAT. Consequently, a person carrying out religious activity shall not pay VAT while supplying respective items (for example candles, icons or selling other items of the similar type).

At the same time, the Tax Code of Georgia provides the VAT exemption for: a) supply of crosses, candles, icons, books and calendars by the Georgian Patriarchate used exclusively for religious purposes;[219] (b) Construction, restoration and painting of the monasteries and churches, when such services are carried out for the Georgian Patriarchate.[220]

The above mentioned provision envisages the VAT (18 % of the value) exemption for the supply (supply of goods implies transfer of property rights on goods from one person to another without or with payment (including selling, exchange of goods, compensation by salary or in kind)) of crosses, candles, icons, books, calendars or other religious items by the Georgian Patriarchate. The logic behind the legislation is quite doubtful, namely, it is unclear why the legislation envisages the VAT exemption for the Georgian Patriarchate, while the Georgian Patriarchate is not a subject of economic activities and accordingly is not a VAT payer.

In addition, the issue of construction, restoration and painting of the monasteries and churches, carried out for the Georgian Patriarchate is also quite important. The Tax Code of Georgia exempts any person from the VAT payment, provided that the above mentioned works are carried out for the Georgian Patriarchate. Here again, the law places other religious organizations in unequal position. If other religious organizations order the mentioned works and the service provider is a VAT payer, he/she will have to pay VAT and this will be reflected on the final price of the service. If the Georgian Patriarchate orders construction of immovable religious property, the Patriarchate will have to pay the amount without VAT, while other religious organizations will have to pay VAT (18 % of the value) in addition to the service price. It is obvious that this kind of tax benefit creates discriminative conditions for other religious associations.

As regards the **property tax,** which is a local tax, the Tax Code of Georgia defines property as a taxable property or land. An individual as well as enterprises/organizations are the property tax payers. For the purpose of the Tax Code, a legal entity of the public law[221] is also considered as an organization. In compliance with the Georgian legislation, the Patriarchate has the status of the legal entity of the public law, [222]consequently, like other religious organizations, it is also regarded as a property tax payer. Hence, the Georgian Patriarchate along with the other religious organizations, has an obligation to pay the property tax. At the same time, it should be noted that in compliance with the Constitutional Agreement, the products manufactured by the Church for clerical services – their production, import, supply and donation, as well as property and land used for non-economic purposes are tax exempt. While the Tax Code of Georgia does not envisage similar provision for the property tax (thus creating certain inconsistency with the Constitutional Agreement), it is obvious that the Constitutional Agreement, as a normative act of a higher hierarchy, has direct force and the Orthodox Church of Georgia is exempt from the property tax.

As for the other religious organizations, according to the Tax Code they are exempt from the property tax only in respect of the property used for non-economic purposes.[223]

Consequently, all religious organizations, except for the Georgian Patriarchate, shall pay the land tax before 15 November of each year.

[219] The Tax Code of Georgia, subparagraph f) paragraph 1, Article 168.
[220] The Tax Code of Georgia, subparagraph b) paragraph 2, Article 168.
[221] The Tax Code of Georgia, Article 30.
[222] The Constitutional Agreement between the State of Georgia and the Apostolic Autocephalous Orthodox Church of Georgia, Article 13.
[223] The Tax Code of Georgia, subparagraph e), paragraph 1, Article 206

PROPERTY-RELATED PROBLEMS

The reports of the Public Defender have outlined on numerous occasions that the restitution of the religious property confiscated from some religious associations during the Soviet period remains problematic over the years. A certain part of this property is in a deplorable condition. Due to the fact that this problem is unsettled, it is impossible to carry out restoration works required for preservation of the property. At this stage the Armenian Apostolic church claims the return of six religious buildings (currently nonfunctional) from the State. It is notable, that those buildings, out of which five are located in Tbilisi and one in Akhaltsikhe, are under the threat of collapse. Two buildings (in Tbilisi) are already nearly destroyed. The Muslim Community claims the return of 18 historical mosques (currently nonfunctional). At the same time, the Adjarian Muslims demand that four mosques in Adigeni district and three mosques in Adjara are either returned to the Muslim Community or cleaned up and restored (one of these mosques is located in the village of Mukhaestate, this mosque had been used by the police previously, it was destroyed in 2010 and a new police building was built on that place). Over the years the Catholic Church has been requesting the return of five catholic temples currently owned by the Orthodox Church. It should be noted, that in 2010 the former catholic temple in the historic precinct of Rabati in Akhaltsikhe was returned to the Catholic community. The temple is currently under restoration and renovation.

Finally it should be highlighted that resolution of this problem, on the one hand, requires the consensus between the State, the Patriarchy of the Georgian Orthodox Church and the above mentioned religious associations and, on the other hand, the State shall timely address this issue based on the principle of equality in order to restore the historic justice.

RELIGIOUS FREEDOM IN PENITENTIARY INSTITUTIONS

In 2010, the exercise of religious freedom in the penitentiary institutions by the representatives of religious minority groups still remained problematic. According to the existing practice, the access of the clergy of various religious groups to the penitentiary institutions required special permission from the Patriarchy. This practice was discriminatory and unacceptable for religious associations. The Public Defender and the Council of Religions under his auspices raised this issue with the relevant State institutions on numerous occasions.

In the reporting period, the work aimed at the resolution of the mentioned problem was launched. It should be noted that on 30 December 2010, the Minister of Corrections and Legal Assistance of Georgia signed an Order (N187) on "Exercise of the Rights of the Accused/Convicted Persons to Participate in Religious Rituals and Meet with the Clergy", regulating the access of the clergy of various religious associations to the penitentiary institutions, based on the preliminary agreement between the respective religious organizations and the penitentiary institution. The Ministry of Corrections and Legal Assistance took the commitment to create relevant conditions for ensuring exercise of these rights. We hope that this Order will be implemented adequately to ensure equal possibilities for all religious groups to participate in religious rituals and meet with the respective clergy.

EDUCATION SYSTEM

The Law of Georgia on General Education explicitly prohibits usage of educational process for the purpose of religious indoctrination, proselytism or coercive assimilation[224] as well as display of religious symbols on the territory of public schools for non-academic purposes[225]. Despite the detailed legislative regulation, adherence to the provisions of the law at public schools still remains problematic. Hence, ensuring equal environment at public schools is an issue that requires further attention.

It is noteworthy that over the last two years the Tolerance Centre at the Public Defender's Office, in agreement with the Ministry of Education and Science of Georgia, has been conducting quizzes for pupils in a number of Tbilisi and

[224] The Law of Georgia on General Education, Article 13
[225] The Law of Georgia on General Education, Article 18

regional public schools in order to increase awareness on religious and ethnic diversity. The quizzes are carried out on the basis of the encyclopedia "Ethnics and Religions in Georgia" published by the Tolerance Centre in 2009. The aim and the result of these educational initiatives is enhancing tolerance culture through increasing awareness of school students.

MEDIA AND TOLERANCE

The coverage of religious minorities and cultivation of tolerance by media can be conditionally divided into three directions:

1. Ignoring religious minorities and tolerance issues by TV media can be considered as an already established practice. However, a number of programmes of the Georgian Public Broadcaster can be identified, where discussions pertinent to tolerance, religious freedom and religious minorities were held on several occasions during the year. Provision of information on religious minorities in radio broadcasting is also quite limited. The only radio channel periodically focusing on the situation of religious freedom in Georgia is "Radio Tavisupleba."

2. During the recent two years, the printed media turned more diverse in covering religious tolerance. In this regard, four publications – the magazines "Liberali," "Tabula," "Tskheli Shokoladi" and a newspaper "Batumeli," were especially remarkable in 2010. In addition, the internet media publication "netgazeti.ge" launched active work in this area. Despite the above mentioned, media coverage of religious minorities in Georgia can be considered as one of the serious means for cultivating intolerant attitudes. Quite often print media covers religious minority-related issues in a stereotyped, xenophobic way, using hate speech or publishing xenophobic rhetoric of the respondents without any journalistic or editorial comments.

3. So called "new media", can be considered as the third direction. Internet in Georgia is free of any taboos and religious censorship. Discussions on religion, religious minorities and tolerance are frequently held on popular forums and social networks. There are blogs whose authors are representatives of religious minorities or where religious minorities have the possibility to write and analyze the issues related to religious freedom and tolerance. However, especially acute cases of intolerance and hate speech are also observed in the so called "new media".

FREEDOM OF RELIGION – INTERNATIONAL ASSESSMENTS

• U.S Department of State, Bureau of Democracy Humans Rights and Labor, International Religious Freedom Report 2010[226]

On 17 November 2010 the U.S Bureau of Democracy Humans Rights and Labor, published its annual report on Religious Freedom in Georgia. The 2010 report covers the period of 1 July 2009 to 30 July 2010. The report highlights the positive steps taken by the State as well as problems related to religious freedom. On a number of occasions, the report underlines the activities of the Public Defender's Office and the problems highlighted in the Parliamentary Reports of the Public Defender. It is noted that in the reporting period the government's focus largely concentrated on national security challenges and the implementation of policies relating to religious freedom slowed.

The report mentions positive steps taken by the Georgian authorities and different entities, including: On 21 March 2010 the President of Georgia declared Nowruz-Bairam as national holiday; Sulkhan-Saba Orbeliani Institute of Philosophy, Theology, Culture, and History owned by Catholic Church received reaccreditation, which had been delayed since its original application in 2007. In addition, the report highlights commemoration of the "International Day of Tolerance"

[226] http://www.state.gov/g/drl/rls/irf/2010/148936.htm

by the Public Defender's Office, where the Council of Ethnic Minorities and the Council of Religions, under the auspices of the Public Defender's Office, honored several domestic NGOs and individuals with the title of "Advocates for Tolerance" for their contribution towards advancing tolerance in Georgia.

Quite extensive part of the report concerns the issue of registration of religious groups. The report states that according to the law, religious groups, other that the Georgian Orthodox Church, may register as noncommercial entities of private law. Majority of religious groups expressed dissatisfaction with having to register as such an entity; however some religious groups pass registration to receive legal status and tax benefits. The religious groups, which refuse to register by the existing method, face a number of property-related problems. The report cites the facts related to restriction of religious freedom, which have been subject of continuous attention and reaction from the Public Defender. These facts include: difficulties related to the historic buildings of various religious groups as well as difficulties in obtaining permission to construct new buildings, access of minority religious clergy to their parish in the penitentiary institutions, facts of harassment and violence towards various religious groups, the acts committed by fundamentalist orthodox groups in May 2010 in front of the Ilia State University and at Kavkasia's television studio during the programe "Barieri," (Barrier), the cases of violation of the requirements of the Law on General Education in secondary schools, the attitude of media towards religious minorities and other problematic issues.

● European Commission against Racism and Intolerance (ECRI) 2010 report on Georgia[227]

On 15 June 2010, the European Commission against Racism and Intolerance published its third report on Georgia. The report covers problems related to ethnic and religious minorities as well as positive steps taken by the State. Furthermore, ECRI recommends that the authorities take particular measures for eliminating existing problems.

ECRI report reads as follows: "The Georgian Ombudsman (hereinafter the Public Defender) continues to play a significant role in defending the rights of minority groups in Georgia, especially ethnic and religious minorities, and in combating discrimination, including through the activities of its Tolerance Centre as well as of the Council of Ethnic Minorities and the Council of Religions under his auspices." The report also states that the Council of Ethnic Minorities and the Council of Religions have become major partners of the government and public authorities in matters related to ethnic and religious minorities. The importance of the Tolerance Centre's role and its activities is also highlighted. ECRI evaluates positively reports produced by the Public Defender (focusing regularly on problems faced by ethnic and religious minority groups) and his recommendations addressed to the authorities. Given the key role of the Public Defender in combating racism and racial discrimination, ECRI recommends that the Georgian authorities continue to support this institution and to heed the Public Defender's recommendations.

The report states that the Georgian authorities have made efforts to combat manifestations of religious intolerance and to pursue their dialogue with religious minorities. However, despite of the steps taken by the State, the report mentions existence of the stereotypes, prejudice and misconceptions towards ethnic and religious minorities in particular by politicians and in media. Population remains insufficiently sensitive to the problem and is unaware of the culture of ethnic and religious minorities. ECRI notes that cases of harassment and verbal and physical abuse against persons belonging to religious minorities have continued to be reported. Such cases generally target non-traditional religious minorities and in particular Jehovah's Witnesses, but there seems also to be an increasing number of cases where Muslims are victims of this type of harassment. Over the recent period, the reaction of judiciary and prosecution service to manifestations of religious intolerance has continued to progress. The report also states that the recent reports of the Public Defender and other sources indicate that the outcome is less positive as regards the response by the police to instances of religious intolerance. The report underlines that the Public Defender plays a positive role in drawing the attention of the police to specific cases which qualify as violence on religious grounds. ECRI urges the Georgian authorities to pursue and reinforce their efforts to combat violent manifestations of religious intolerance.

The report covers the issue of freedom of religion in public schools. ECRI evaluates positively the steps taken by the State in this direction, including new law on general education, which provides an elective course on religion in

[227] http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/georgia/GEO-CbC-IV-2010-017-ENG.pdf

public schools. The course cannot concern only one particular religion, it should inform the pupils about the diverse religions existing in the world. While progress has been achieved in terms of religious neutrality in the curriculum and the legislation clearly prohibits any form of discrimination on the grounds of religion and the displaying of religious symbols in public schools, the problem of harassment of the pupils who do not belong to the majority religion by teachers still exists. It is also noted that the Tolerance Centre at the Public Defender's Office is "closely monitoring all issues related to possible human rights abuses in the field of freedom of religion at school." ECRI recommends that the Georgian authorities monitor the respect of freedom of religion in schools and ensure respect for religious diversity in each public school.

The report refers to other issues raised by the representatives of religious minorities, such as the existence of obstacles due to unnecessary bureaucracy to building a place of worship, the issues related to restitution of property to some religious associations, the problem of status of religious associations.

ECRI evaluates positively the role of the Council of Religions under the auspices of the Public Defender and recommends that the Georgian authorities pursue their dialogue with the representatives of religious minorities, in particular in the framework of the cooperation with the Council of Religions.

RECOMMENDATIONS

- **The law enforcement bodies shall pay special attention to violent acts committed on the grounds of religious intolerance and ensure timely, effective and adequate reaction, including through comprehensive examination of cases and completing investigations in reasonable timeframes. This would contribute to preventio n of the above mentioned facts, safeguarding religious freedom and establishment of the equal environment.**
- **"Guidelines of the Criminal Law Policy" approved by the Minister of Justice of Georgia, shall specify adequate and effective reaction mechanisms in response to violent acts committed on the grounds of religious intolerance.**
- **The Parliament of Georgia shall launch the work aimed at improvement of the tax legislation to ensure equal tax regime for all religious organizations in accordance with the principle enshrined in the Article 14 of the Georgian Constitution.**
- **The condition of the religious minorities' historic buildings owned by the State shall be studied immediately and the urgent repair works shall be carried out to ensure their conservation. In parallel, relevant measures for defining owners of the disputable buildings and transferring property shall be taken.**
- **It would be desirable for the Public Broadcaster to make more efforts aimed at supporting religious tolerance in the country. In this direction, it would be useful to draw more attention to preparation of educational, scientific programmes covering religious culture and diversity in Georgia and worldwide, analyzing global and local processes as well as existing challenges in this field.**

Rights of National Minorities and Support to Civic Integration

In 2010, in the framework of the National Concept and Action Plan for Tolerance and Civic Integration, the state institutions (sometimes in active cooperation with the non-governmental organizations) carried out a number of programmes aimed at protection of the rights of national minorities and their civic integration.

It is worth mentioning, that the rule for passing the unified national exams by non-Georgian speaking school leavers was significantly simplified and access to higher education improved compared to the previous years. At the same time, active work was carried out to solve problems related to translation of textbooks for non-Georgian schools, rehabilitation and computerization of schools, effectiveness of State language teaching.

The rehabilitation of road infrastructure plays an important role in the process of civic integration. In this regard, the construction of Tbilisi-Tsalka-Akhalkalaki highway was of special importance in 2010. The construction of Karsi-Akhalkalaki-Tbilisi railway should also be considered as an important step forward, as functioning of the railway will have positive impact on the development of Samtskhe-Javakheti region as well as solution of the employment problem for local population.

In 2010 development of state agencies' institutional capacities was carried out in the context of supporting civic integration. Effective model of cooperation was established between the state institutions, the Tolerance and Civic Integration Council under the President of Georgia and the Council of National Minorities under the Public Defender's Office to monitor the implementation of the National Concept and Action Plan for Tolerance and Civic Integration. It should be mentioned that the Office of the State Minister on Reintegration and the State Interagency Commission played an important role in the coordination of various institutions' activities.

Despite the afore-mentioned positive processes, a number of systemic problems still persist, thus requiring further enhancement of the activities by relevant state institutions, allocation of more resources and time. Serious challenges for civic integration still include: ensuring participation of minorities in political, social, cultural and media processes, knowledge of the native and state languages, advancement in carrier, employment, access to education and information for national minorities. In some cases, the majority-minority attitudes towards each other also create impediments for integration. The attitude of the majority representatives towards ethnic minority groups is frequently filled with negative and xenophobic stereotypes. This can be observed in the daily life as well as at the "cultural" level, in media and rhetoric of public figures. On the other hand, the minorities also have stereotyped attitudes towards the majority population and minority participation in the country's life. A significant number of minorities (to some extent due to the events that took place in the beginning of 90ies), with or without objective grounds still have the feeling of being "secondary citizens". In general, national minorities still feel unprotected and rejected. All the above mentioned obviously creates serious barriers for the civic integration process, which implies mutual, majority-minority approximation and consolidation on common civic values.

Over the recent years, the Public Defender's Office received nearly no complaints related to discrimination on ethnic grounds. At this stage it is difficult to assess this fact straightforwardly. On the one hand, it is extremely positive, that there are less concrete examples of unequal treatment on ethnic grounds in Georgia, however on the other hand, the above mentioned might be caused by cautiousness of minorities to disclose information concerning discrimination on ethnic grounds.

ACCESS TO EDUCATION

In 2010, a number of important reforms aimed at civic integration of national minorities were continued and innovations were introduced in the education system. In this regard, several directions can be underlined: improvement of access of national minorities to higher education system; translation of textbooks into minority languages; training of teachers; development of specialized state language learning programmes; introduction of bilingual education; improvement of school logistics.

HIGHER EDUCATION

Until 2010 the problem of national minorities' access to higher education was of a great concern. The rule for passing the Unified National Exams did not take into consideration the problems faced by minorities (namely the level of knowledge of the Georgian language among school leavers in the areas densely populated by minorities as well as other problematic issues). As a result, non-Georgian speaking school leavers (apart from some exceptional cases) were not able to pass the Unified National Exams due to the language barrier. Motivation to continue studies in the Georgian higher education institutions was also very low. In 2005 only three persons from Javakheti and 17 from Kvemo Kartli passed the unified national exams. In 2006 this number increased – 25 persons from Kvemo Kartli and 31 from Javakheti overcame the entry threshold. In 2008 the school leavers had to pass the general skills test in their native language. Accordingly, the index improved slightly, however the overall picture still remained unsatisfactory – only a few persons from the areas densely populated by ethnic minorities were able to enter the higher education institutions of Georgia. In 2009 the Law of Georgia on General Education was amended. According to the amendments, Azerbaijani, Armenian, Ossetian and Abkhazian speaking school leavers will be able to enter higher education institutions only by passing the general skills test in their native language. After enrolling in the higher education institutions, students will study the Georgian language for a year and then start mastering relevant profession. In 2010 this rule became effective for Azerbaijani and Armenian speaking entrants. Around 550 representatives of national minorities expressed willingness and registered in the National Exams Centre to pass the Unified National Exams, out of which around 300 were enrolled in different higher educational institutions of Georgia. It is also noteworthy, that the motivation of these students to study the Georgian language is quite high.

In 2010, during the meeting with the representatives of the Council of National Minorities under the Public Defender's auspices, the students from Samtskhe-Javakheti and Kvemo Kartli noted that they are willing to find jobs in Tbilisi after having graduated from higher education institutions. Several years ago, the willingness of the Kvemo Kartli and Samtskhe-Javakheti inhabitants to come and live in Tbilisi or other regions of Georgia was quite low. The national minorities were linking the above mentioned to their ethnic origin. The cardinal change in the attitude of a significant number of students in such a short period of time can be considered as a positive sign and trend for civic integration.

TRANSLATION OF TEXTBOOKS

One of the main challenges for the civic integration process was provision of non-Georgian public schools with textbooks published in minority languages in line with the standards of the Georgian education system. Over the recent years the translation process of textbooks into minority languages has been launched. By the end of 2010, tens of textbooks had been translated and published in the Armenian and Azerbaijani languages for school pupils of different ages.

However, according to the information provided by teachers, parents and non-governmental organizations, problems related to the quality of translation and in some cases to the contents of the textbooks are still persistent (this problem is mostly relevant for translation of textbooks into the Azerbaijani language). To ensure the timely solution of the above mentioned problem, it is desirable to improve the quality verification mechanism of the translation process and translated textbooks, prior to their publication. It is possible to involve the representatives of the Council of National Minorities under the Public Defender's auspices or other experts in this process.

Besides, it should be mentioned that in several non-Georgian schools of the regions densely populated by minorities (in particular in the villages), the textbooks imported from other countries are used. These textbooks do not comply with the National Curriculum of Georgia.

PRESCHOOL AND PRIMARY EDUCATION

Most of the national minorities living in Kvemo Kartli, namely ethnic Azerbaijani population, want their children to receive education in Georgian. However, in some cases, the Azerbaijani speaking pupils face particular problems in the Georgian schools. Quite often there are significant differences in the level of the Georgian language knowledge between the Azerbaijani speaking and the Georgian speaking pupils. Hence, in the same class, the requirements set for studying a subject is considered as inadequately difficult by a certain number of the pupils, while for the others, the level of teaching of the relevant subject is inadequately low. This factor has undesirable effects on the quality of learning and stimulates negative attitudes among the parents and children. Furthermore, the teachers in Georgian schools do not speak minority languages. Although there is no such requirement envisaged in the respective professional standards, the above factor impedes communication between a teacher and a pupil, thus negatively reflecting on the quality of the lesson and a pupil's ability to learn. Due to the above mentioned problem teachers are not able to communicate with non-Georgian speaking pupils.

Implementation of relevant reforms in the pre-school education system would contribute significantly to improvement of the Georgian language knowledge among the school-age children. Initial steps have already been taken in this regard, the State has developed a programme "Enhancement of the Georgian language learning at the stage of pre-school education in non-Georgian regions", however the programme is not fully functional. It is desirable to extend this programme widely in the regions densely populated by national minorities and to ensure its effective implementation.

NON-GEORGIAN PUBLIC SCHOOLS

Throughout 2010, similarly to previous years, a number of non-Georgian schools were renovated, computerized and provided with school equipment. However, the human resources related problem is still persistent. The fact that the teachers for minority schools are not specifically prepared in the Georgian educational institutions might be one of the causes of the above mentioned problem. The heads of the higher education institutions claim that the students themselves (including the representatives of national minorities) are not willing to go through respective educational programmes. After having passed the Unified National Exams, students prefer to master so-called prestigious and well paid professions.

The young people from Kvemo Kartli and Samtskhe Javakheti, who have gone to the neighbouring counties for receiving education there, in most of the cases, are trying to find employment opportunities in those countries. Consequently, the non-Georgian public schools might face serious human resources problem in the nearest future. To address this issue, the Ministry of Education and Science should develop and implement special programmes.

LEARNING OF THE GEORGIAN LANGUAGE IN PUBLIC SCHOOLS

For a number of years already we have been emphasizing the necessity of the quality teaching of the Georgian language in non-Georgian schools. A large number of the schools in the regions densely populated by national minorities still do not have qualified Georgian language teachers. According to the information obtained by us, in a number of public schools the Georgian language teachers cannot even speak Georgian.

In 2010, tens of the Georgian language teachers were sent to Kvemo Kartli and Samtskhe Javakheti schools. This initiative was implemented in the frame of the programme "qualified Georgian language specialists in the schools of the regions populated by ethnic minorities" carried out by the Ministry of Education and Science. Implementation of this programme is an important step forward for pupils and in some cases for local teachers. However, irrespective of a high demand, the programme does not fully cover the schools in Kvemo Kartli and Samtkhe Javakheti.

Among the changes made in the sphere of the general education, increase in the number of hours allocated for the Georgian language teaching (from 3 to 5 hours) deserves a special mention. The representatives of the Council of National Minorities under the auspices of the Public Defender have been requesting implementation of such changes for several years already. At the same time, the number of hours allocated for the national minorities' native language teaching was decreased (from 5 to 3 hours per week) in non-Georgian public schools. A certain part of the national minorities consider that the above mentioned is caused by the increase in the number of the hours allocated for the Georgian language teaching, they think that this initiative is aimed at assimilation and therefore have negative attitude towards this change. Stemming from above, it would be desirable that the increase in the number of the hours allocated for the Georgian language teaching does not have negative impact on the number of hours allocated for the minorities' native language teaching.

Another positive trend should be underlined: the Ministry of Education and Science has been actively establishing bilingual education programmes in 40 schools located in Tbilisi, Kvemo Kartli, Samtskhe Javakheti and Kakheti for a number of years already. This initiative contributes to learning of both the State and native languages by minority representatives. However, the issues pertinent to the quality of textbooks, teaching methodology and education of bilingual teachers remain problematic.

LEARNING OF THE GEORGIAN LANGUAGE BY YOUTH AND ADULTS

The number of persons willing to learn the Georgian language has increased significantly in the regions densely populated by national minorities. The above mentioned trend is one of the most important indicators for the civic integration process. Various non-governmental organizations have implemented a considerable number of programmes related to the Georgian language teaching over the years. However, lack of knowledge of the State language among the national minorities can still be identified as one of the crucial problems. The issue of providing free language courses is still pertinent for encouraging learning of the State language. So called "Language Houses" are functioning in Akhalkalaki and Ninotsminda, where the population is taught the Georgian language, however, it is desirable to enlarge this programme so that it covers other cities and villages of Kvemo Kartli and Samtskhe Javakheti regions. In order to enhance the civic integration process it is important to provide each interested citizen with the possibility to be enrolled in the Georgian language teaching programme.

LEARNING OF THE NATIVE LANGUAGE BY NATIONAL MINORITIES

The situation pertinent to learning of their native language by national minorities varies according to the different regions of Georgia. There are almost no difficulties in this respect in Kvemo Kartli and Samtskhe Javakheti, although problems are revealed in Tbilisi and other cities. In this context, situation of small ethnic groups deserve special mention. A certain part of such groups settled the problem of learning their native language through Sunday schools, through receiving the financial support from the embassies of their historic ethnicity countries (Greece, Ukraine,

Latvia, Poland etc.). However, the issue remains challenging for Kurds, Assyrians, Udines, who can neither benefit from the assistance provided by diplomatic missions nor learn their native language in the frame of the Georgian education system. Notwithstanding the above mentioned, a certain number of minority representatives in several Georgian public schools (in Tbilisi and regions) are willing to learn their native language and therefore are requesting allocation of special hours for this purpose. For the time being, the problem remains unresolved. It would be desirable, that the Ministry of Education and Science and public schools draw more attention to this issue.

ZURAB ZHVANIA PUBLIC ADMINISTRATION SCHOOL

The Zurab Zhvania Public Administration School was closed in 2010 due to the renovation of the building. A number of problems pertinent to this school have been revealed over the recent years. Lack of qualified professors and appropriate study programmes can be identified among the above mentioned problems. Since 2005 many representatives of national minorities have gone through the study programme in this school, where they have been provided with the possibility to learn the State language.

At the same time it should be mentioned, that inadequate expectations emerged towards the employment perspectives for the graduates of this school, in most of the cases graduation was associated with automatic guarantees for employment. However, the reality was different.

Due to its mandate and functions, the Zurab Zhvania Public Administration School plays a crucial role in preparation and capacity development of qualified human resources both for the regions densely populated by national minorities and other regions of Georgia.

ACCESS TO INFORMATION AND MEDIA

The Georgian Public Broadcaster (GBP) and several regional TV companies ensured provision of information in national minority languages during the reporting period. The number of news programmes produced in minority languages has been increased. The daily 10-minute news programmes, produced and broadcasted by the GPB in Azerbaijani, Armenian, Ossetian and Abkhaz languages were also broadcasted by Kvemo Kartli, Samtkhe Javakheti and other regional TV stations. Notwithstanding the positive developments related to broadcasting of the news programmes on a daily basis, limited accessibility of information on the developments occurring in the country is still visible in the regions densely populated by national minorities. At the same time, the news programmes produced in the national minorities' languages by the GPB were covering mostly national or international developments, however they hardly covered the topics pertinent to national minorities- including developments occurring in the regions densely populated by them. It should be mentioned that such information is of particular interest for national minorities.

At the same time, the population of Kvemo Kartli and Samtskhe Javakheti, as well as a certain part of local non-governmental organizations and representatives of State agencies were quite often not informed on the fact that the daily news programmes produced in minority languages by the GPB were being broadcasted by the regional and national TV channels. Furthermore, provision of information to the population of the above mentioned regions is hindered due to the fact that the GPB TV signal does not fully cover Kvemo Kartli and Samtkhe Javakheti regions.

The Georgian Public Radio transmits news programmes in minority languages on a daily basis. However, the radio waves of the Public Radio do not cover most of the districts in Kvemo Kartli and Samtkhe Javakheti regions. Consequently, the resources of the national radio remain still unused in terms of provision of information to the local population.

It is obvious, that the system for provision of information to the population of Kvemo Kartli and Samtskhe Javakheti regions requires further improvement, both from the perspective of the frequency and contents of the information, and extension of the scope of the TV and radio coverage.

Provision of the objective information on the developments occurring in Georgia to national minorities in the language understandable (native) by them is crucial for the civic integration process. As it was already mentioned, particular progress can be noted in this direction, although the measures taken are not sufficient for addressing the problem. Resolution of this issue requires more active utilization of the capacities available at the regional TV stations along with the capacities of the GPB.

It is also important to involve the representatives of national minorities in the nationwide media processes and to support their initiatives in this area. One more vital problem deserves a special mention: similarly to the previous years, in 2010 the representatives of national minorities were mostly invited as respondents for particular TV programmes or newspapers in respect of the issues concerning national minorities, as for the discussions pertinent to other topics, involvement of minority representatives remained limited. The above mentioned indicates to an important shortcoming in the process of civic integration and deficiency of the tolerance culture.

CULTURE AND IDENTITY

A number of problems related to the protection of the cultural heritage monuments of national importance and preservation of the identity elements for national minorities remain unresolved. A full inventory of the national minorities' cultural monuments has not been carried out yet, the condition of various monuments needs to be studied and the issue of their inclusion in the list of the cultural heritage sites needs to be addressed. At the same time it is obvious that a significant number of monuments require rehabilitation. According to the Law of Georgia on the Cultural Heritage, the Ministry of Culture and Monument Protection shall carry out the inventory of the cultural heritage monuments and sites.

Particular steps have already been taken to make the inventory list of the national minorities' cultural monuments – about 50 monuments of the Armenian Apostolic Church, 10 mosques of the Muslim community, 5 synagogues of the Jewish community have been recorded in the list. However, the measures taken in this regard are not sufficient, a number of different monuments still need to be registered, for instance there are several mosques in Kvemo Kartli, which have not been evaluated and included in the inventory list by the Ministry. The members of the Council of National Minorities under the auspices of the Public Defender have provided the Ministry with the detailed information on the mosques in Kvemo Kartli.

Such cultural sites as the Heidar Alyev Azerbaijani State Drama Theatre, the Petros Adamyan Armenian State Drama Theatre, the Griboedov Russian State Drama Theatre, the Mirza Patali-Akhundov Azerbaijani Culture Museum, the David Baazov Historic Ethnographic Museum etc. play an important role for the preservation and development of the national minorities' cultural identity. However, most of these buildings are in the hazardous condition and require rehabilitation. Taking into consideration the unique character and role of the so-called "Sirotski Dom" belonging to the Dukhobor community located in the village of Gorelovka in Ninostminda, particular attention needs to be paid to this cultural site. The above monument was included in the list of the Georgian cultural heritage monuments by the Ministry of Culture, however (irrespective of the efforts made by the Public Defender, the Office of the State Minister on Reintegration, the European Center for Minority Issues and the Council of National Minorities under the auspices of the Public Defender) the local municipality and the Ministry of Culture have not implemented adequate measures to protect and preserve the monument.

Special programmes aimed at getting majority and minority groups acquainted with each other's culture, achievements, traditions and values can play significant role in the civic integration process. It is essential that the ethnic minority representatives regularly participate in the various festivals, exhibitions and other cultural events. In order to protect and promote the national minorities' cultural heritage, it is important to support the ensembles of folk songs and dances and other art groups. It should be noted that the music schools and cultural houses existing in the regions densely populated by minorities are particularly important for preserving and developing the cultural identity of minorities and their activities need to be supported as well.

EMPLOYMENT AND CIVIL-POLITICAL PARTICIPATION

● Employment

The General Administrative Code of Georgia prohibits collection, processing, storage or transfer of the personal data pertinent to the ethnic origin by the public agency. Therefore, it is impossible to obtain exact statistical data on the national minority representatives employed in the public service. However, particular conclusions can be drawn from the information provided by the minority representatives and general observations.

Notwithstanding the fact that in 2010 two representatives of national minorities held political offices (the Minister of Education and the State Minister on Reintegration), the level of the national minorities' employment in the public service (excluding the regions densely populated by national minorities) is still low. In 2010, the Office of the State Minister for Reintegration was an exception in this regard. Although the heads of different institutions expressed their willingness to recruit minority representatives, this issue still remains problematic due to the lack of qualified human resources and insufficient level of the State language proficiency, along with a certain level of alienation.

In general, it should be mentioned that national minorities are represented in the public service and hold high level positions basically in the regions densely populated by them.

● Participation in electoral and political processes

Over the recent years the important initiatives aimed at strengthening political participation and encouraging civic activism by national minorities have been undertaken. Electoral documentation, education material and Public Service Announcements have been translated, printed and disseminated in minority languages.

However, the "non-pluralistic" nature of the political culture in the regions densely populated by national minorities is still evident. Political parties are less active in these regions. Neither ruling nor opposition parties are remarkable for long-term political activism in these areas. According to the information provided by the local population, for 2010 local self-government elections, apart from the National Movement only the Christian Democratic Party was carrying out small scale pre-election campaigns in Kvemo Kartli. As regards Samtskhe Javakheti, the National Council was the only election subject to run a slightly competitive campaign compared to the National Movement. As a result of the monitoring carried out by the Council of National Minorities under the auspices of the Public Defender, it was revealed that during the pre-election campaign for 2010 local self-government elections, opposition political parties did not even use the time allocated for free political advertisements by local TV stations in the regions densely populated by minorities.

In order to analyze the national minorities' political participation, it should be mentioned that for 2010 local elections, the representatives of national minorities were on the political party lists only in the regions densely populated by minorities. As for the capital and other regions of Georgia, national minorities were not included at all or were underrepresented in the party lists for local Sakrebulo elections. The national minorities' representation in the Parliament of Georgia is a concerning issue as well. In comparison with the composition of the last two Parliaments, the representation of national minorities has reduced significantly in the legislative body elected for 2008-2012. There were 16 national minority representatives in the Parliament elected for 1999-2004, 12 MPs in 2004-2008 Parliament, their number was reduced to 6 in the Parliament elected for 2008-2012. Notwithstanding the fact that the total number of MPs in the legislative body has been reduced, the decrease in the number of minority representatives can still be considered as a negative feature for the civic integration process.

Furthermore, it is problematic that national minorities either do not participate in the events of national importance (civil, social or political processes and cultural events, as well as in the discussions on the above issues) or their participation is quite limited. Their interest and activism is mostly visible in relation to the issues directly linked to the national minorities. For the time being, the above mentioned can be evaluated as one of the most important challenges for the civic integration process.

SITUATION RELATED TO THE RIGHTS OF ETHNIC ROMA

Roma settled in Georgia in the 19th century.[228] Their number was changing from time to time. According to the 2002 national census carried out by the National Service of Statistics of Georgia, there are 472 Roma in the country. Notwithstanding the above mentioned, the official data is not precise and the real number of the Roma population is far above the official data provided by the National Service of Statistics.[229] According to the survey carried out by the European Center for Minority Issues (ECMI), unofficial number of Roma in Georgia is around 750 persons.[230]

The Roma living in Georgia are divided into two branches – Krim and Vlakh. The Krim branch is made of by the Muslim Roma coming from the Crimea, South Ukraine and South Russia,[231] the Vlakh branch is made of the Christian Roma coming from the Ukraine and Russia.[232]

The Roma settlements can be found in different regions of Georgia – in Samgori district in Tbilisi, in the village of Gachiani in Gardabani district, in the village of Leninovka in Dedoplistkaro district, in Telavi, in Avangard district of Kutaisi, in Batumi and Kobuleti. The Kobuleti settlement is quite interesting given that the Roma settled there belong to the parish of the Evangelistic Church.[233]

The surveys carried out in Georgia prove that the Roma in Georgia are one of the most marginal ethnic groups in terms of their education, employment, legal protection, political and civic activism and health protection.

Notwithstanding the measures taken by the State, it is obvious, that the existing policy can not ensure the participation of Roma in the political and civil life, this can entail Roma isolation not only from the majority of the population, but from other ethnic minorities as well.[234]

The low level of awareness on the issues pertinent to the Roma community among the society and public officials, along with the lack of interest towards integration (both on the part of the Roma and the public at large) and existing stereotypes can be considered as causes for the marginalization of Roma.

● Language and cultural identity

According to Article 5 of the Framework Convention for the Protection of National Minorities, Georgia shall promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.

The native language of the Roma living in Georgia is the Romani language with Krim and Vlakh dialects. [235] The knowledge of the Georgian language by Roma depends on the place of their settlement.[236] The ethnic Roma have good proficiency in the Russian language.[237] Therefore Russian is the language of communication between the two Roma branches.[238]

228 „Roma and Moldovan Ethnic Groups in Georgia – Problems of Integration and Civic Participation“, Giorgi Sordia, University of Georgia, 15 September 2010, p. 6.

229 A part of the Roma population in Georgia do not have ID cards and permanent residences. This fact hinders the process of their identification in the official population census.

230 „Roma and Moldovan Ethnic Groups in Georgia – Problems of Integration and Civic Participation“, Giorgi Sordia, University of Georgia, 15 September 2010, p. 9.

231 Ibid , p. 18.

232 Ibid

233 „Is there a way out? The primary steps taken for resolution of the Roma problems in Georgia”, Giorgi Sordia, ECMI, report #21, May 2009, p. 10.

234 Ibid pp. 29–30.

235 Ibid p 21.

236 Ibid, the Roma population in Kutaisi and Tbilisi Samgori district have a good proficiency in Georgian. The same can be mentioned in respect of the Roma living in Kobuleti, however, they cannot read and write in Georgian. In the villages of Gachiani and Leninovka only the young people have a limited knowledge of the Georgian language.

237 Ibid

238 Ibid

In compliance with the Framework Convention for the Protection of National Minorities, the language of a particular minority group and preservation of this language is one of the core elements of its identity.[239] The Romani language is spoken in Georgia merely by Roma, only a limited part of the society is aware of the existence of such language – these are mostly the persons employed by the organizations working on the Roma problems.

Recognition of the importance of the Romani language and measures aimed at preservation of this language within the ethnic Roma groups is essential, given that loosing of the native language is a precondition for creating threat to the identity for the minority group.

At the same time the Roma culture is not being popularized in Georgia. The majority of the population is not informed on the culture and traditions of Roma and their knowledge pertinent to this ethnic group is limited to the existing stereotypes.

In the conversation with the representatives of the Public Defender's Office the Head of the non-governmental organization "Roma" functioning in the village of Leninovka in Dedoplistkharo district mentioned that the Roma are gradually loosing their culture and traditions. This can lead to the complete assimilation of the above mentioned group.

Consequently, it is essential for the State to take measures aimed at preservation of the Roma culture and traditions. This would be a step forward in the field of maintenance of the ethnic Roma culture and would facilitate integration of the Georgian Roma within the society, thus ensuring compliance with the commitments taken by Georgia in accordance with the Framework Convention for the Protection of National Minorities.[240]

● Education, employment and social-economic situation

Education is essential for inclusion of people in the political, economic and social life and for ensuring their participation.

The right to education is enshrined in the core human rights international instruments.[241] The importance of this right is so high that it is envisaged both in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, thus indicating the positive obligation of the States to secure this right.[242] The obligation of the State to take special measures aimed at securing the right to education for vulnerable groups is also envisaged in the Limburg principles.[243]

The ethnic Roma face many important problems in terms of receiving education. The level of illiteracy is quite high in the Roma community and the number of illiterate persons is increasing. They are not enrolled in preschool educational institutions, do not receive secondary and higher education. The main sources of income for the majority of Roma are trade, begging or fortune-telling. They have almost no information on the education programmes. Begging is the common activity mostly for children in one of the Roma settlements located in the village of Leninovka in Dedoplistkaro District.[244]

In most of the cases the above mentioned is caused by the fact that parents do not acknowledge the importance of education and therefore prefer their children to be involved in trade of begging in order to have some income. Quite often this is caused by the difficult social conditions of Roma. Among other issues, lack of the identification

[239] The Framework Convention for the Protection of National Minorities, Article 5.
[240] The Framework Convention for the Protection of National Minorities, Article 5.
[241] The International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; Convention for the Protection of Human Rights and Fundamental Freedoms.
[242] The Sub-Commission on Prevention of Discrimination and Protection of Minorities, reports of the Special Rapporteur on the realization of economic, social and cultural rights, Mr. Danilo Tьrk UN docs. E/CN.4/Sub.2/1989/19; E/CN.4/Sub.2/1990/19; E/CN.4/Sub.2/1992/16.
[243] The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights , 6 June 1989, UN doc. E/CN.4/1987/17, Annex, 35-41.
[244] „Roma and Moldovan Ethnic Groups in Georgia – Problems of Integration and Civic Participation", Giorgi Sordia, University of Georgia, 15 September 2010, pp. 9–10

documents, textbooks, as well as the existing social conditions are hindering their access to education, even if Roma are willing to receive education.

The ECMI role is very important in the area of access to education for Roma. ECMI has provided assistance to 17 children from the village of Leninovka in Dedoplistkaro District and 30 ethnic Roma in Kobuleti for getting enrolled in the public school.[245] At the same time, it should be noted, that to facilitate access to education for the ethnic Roma children in Leninovka, a special bus line was assigned by the Ministry of Education and Science of Georgia.

Notwithstanding the measures taken, the level of attendance and quality of learning by the ethnic Roma children at schools is quite low. Inadequate choice of the parents, lack of birth certificates, begging and early marriage are among the factors significantly hindering the education process. At the same time, the number of the Roma parents willing their children to be educated is quite low.

The ethnic Roma face difficulties not only in the field of education but from the perspective of employment as well. According to the 2002 data of the Georgian Statistics National Service, 125 out of 472 Roma individuals living in Georgia are employed.

Irrespective of the attempts of Roma to be active from the economic perspective, their employment rate is low. The majority of the Roma in urban settlements get income from trading and begging, as for the Roma population living in rural areas, their major occupation is agricultural activity. Due to the lack of the relevant education and qualification, they are not employed either in the public or in the private sectors. The above mentioned circumstance is one of the causes of the Roma marginalization and vulnerability.

● Registration

Lack of birth certificates and identification documents is an important problem for the ethnic Roma.

One of the causes for the above mentioned is the fact that the Roma women give birth to their children at home. At the same time Roma are not informed on the necessity of registration and the procedures necessary for the legal identification of their existence.

Therefore, it is impossible to include Roma in the long-term, targeted medical programmes. They do not receive state pension and social assistance envisaged in the legislation and lack social protection. Apart from the barriers related to their participation in the social and economic life, lack of documentation hinders their participation in civil and political life as well.

Particular steps have been taken by the State to solve problems related to these documents. Majority of the ethnic Roma living in the village of Leninovka in Dedoplistkaro district, in Samgori district of Tbilisi and in Kobuleti have the necessary documents for their identification. However, the Roma living in other settlements (in the village of Gachiani in Gardabani District, Telavi, Kutaisi and Batumi) either do not have ID cards or the number of the population with ID cards is very low.[246]

In order to address the above mentioned problem it is desirable to increase the level of awareness among the Roma population and interest of relevant State institutions in respect of this issue.

● Civil and political activities

Inclusion of the ethnic Roma in the country's civil and political life is another important problem. Roma do not have information on their rights. At the same time, the presence of the organizations working on the Roma problems is quite limited in Georgia.

245 Ibid p.15.

246 „Roma and Moldovan Ethnic Groups in Georgia – Problems of Integration and Civic Participation", Giorgi Sordia, University of Georgia, 15 September 2010, p. 16.

The role of the ECMI deserves a special mention in this regard. Two Roma non-governmental organizations were established in Georgia in 2009-2010 with the assistance from the ECMI. One of them was created in the village of Leninovka in Dedoplistkaro district and the other - in Kobuleti.[247] The organizations are led by the persons with the status of leaders within their communities. [248] They carry out educational activities as well.[249]

For instance, the goals of the non-governmental organization "Roma" in the village of Leninovka are the following: protection of the Roma rights, education and civic integration of Roma, preservation of their cultural heritage.[250]

Participation of Roma in elections is problematic as well. Lack of education and information, as well as the language barrier and lack of documentation often prevents Roma from participation in elections or making a free choice. During the electoral processes the ethnic Roma are often instructed for whom they have to vote.[251]

● The society and existing stereotypes

The ethnic Roma are isolated from the society. This is caused not only by their way of living but also by the public attitude towards them.

Existence of stereotypes towards Roma is still persistent within the society. Roma are often called "Tsigans". Furthermore, according to the perceptions spread in the society, begging is the main occupation for the majority of Roma. All the above mentioned strengthens negative attitudes towards this group. Though, in most of cases Roma are not engaged in begging, they are involved in trade, fortune-telling and agricultural activities.[252]

In the conversations held with the representatives of the Public Defender, the Head of the non-governmental organization "Roma" noted, that the newly enrolled Roma pupils in the public school of Dedoplistkaro were facing the problems related to xenophobic attitudes expressed by other pupils, teachers and parents. They were called "Tsigans" at school and the attitude towards them was quite negative. However, according to the Head of the non-governmental organization, enrollment of the ethnic Roma children in the school resulted in their integration within the rest of the pupils, as well as the improvement of the relationship between the Roma and other parents.

Hence, in order to ensure integration of the ethnic Roma within the society, it is necessary to support the enrolment of Roma in the education institutions, along with increasing the level of public awareness on the Roma habits and tradition. The above mentioned will significantly contribute to the eradication of negative stereotypes towards them and will encourage Roma to participate more actively in the civil life of the country.

RECCOMENDATIONS:

- **The State institutions shall implement the programmes aimed at provision of Roma with ID cards and birth certificates;**
- **The State shall undertake all relevant measures to facilitate access to appropriate quality education for the ethnic Roma pupils;**
- **The State institutions shall take into consideration the needs of the Roma community and reflect them in their programmes and action plans pertinent to minorities;**
- **The educational activities related to the Roma community and their culture shall be carried out to raise public awareness;**
- **The infrastructure in the areas densely populated by Roma shall be improved.**

247 Ibid p. 17.
248 Ibid pp. 17– 18.
249 Ibid pp. 18.
250 Kakheti Information Center, http://ick.ge/ka/rubrics/main-news/62-bnews/790-2010-03-31-08-02-34.html, 17 January, 2011.
251 Magazine "Liberali", 13 July 2010.
252 „Roma and Moldovan Ethnic Groups in Georgia – Problems of Integration and Civic Participation", Giorgi Sordia, University of Georgia, 15 September 2010, p.18.

ACTIVITIES OF THE COUNCIL OF NATIONAL MINORITIES UNDER THE AUSPICES OF THE PUBLIC DEFENDER

Creation of preconditions for active participation of national minorities in the public and State life is essential for enhancement of the civic integration process. Apart from electoral participation (exercise of active and passive electoral rights) and employment in public institutions, it is important to ensure wider consultative and monitoring participation by minorities in order to achieve their inclusion in the decision making. The fundament for such participation was laid in 2009, when the Memorandum of Cooperation was signed between the Tolerance and Civic Integration Council under the auspices of the President of Georgia and the Council of National Minorities. In order to implement the National Concept and Action Plan for Tolerance and Civic Integration (approved by the government of Georgia on 8 May 2009) the Council of National Minorities under the auspices of the Public Defender signed Memoranda of Cooperation with the following entities : the Ministry of Justice (29 January), the Ministry of Internal Affairs (4 February), the Ministry of Regional Development and Infrastructure (15 March) and the Ministry of Culture and Monument Protection (30 April). According to the Memoranda, the authorized representatives of the Ministries shall meet with the Council members on a regular basis, provide them with the information on the activities carried out in the frame of the National Concept and Action Plan for Tolerance and Civic Integration, as well as the on programmes pertinent to national minorities planned and implemented by respective Ministries.

After the signature of the Memoranda, several working meetings were held between the Council of National Minorities and the management of the above mentioned Ministries. During these meetings the representatives of the Council were provided with the information on the activities implemented and planned in respect of national minorities. The minority representatives raised particular problematic issues and discussed them with the representatives of the Ministries. During the reporting period, the Council met with the leadership of the Georgian Public Broadcaster and the Central Election Commission, the Vice Speaker of the Parliament, the members of the Constitutional Commission etc.

It should be mentioned, that the Council of National Minorities under the auspices of the Public Defender has been formed as a body, which has a quite successful experience in ensuring dialogue and cooperation between the civil society and the State institutions. It is remarkable, that the State institutions pay particular attention to the activities of the Council and are trying to take into consideration its recommendations.

MONITORING OF IMPLEMENTATION OF THE NATIONAL CONCEPT AND ACTION PLAN FOR TOLERANCE AND CIVIC INTEGRATION

In 2010 the Council of National Minorities under the auspices of the Public Defender carried out monitoring of the implementation of the National Concept and Action Plan for Tolerance and Civic Integration. The activity was implemented with the support from the United Nations Association of Georgia (within the framework of the National Integration and Tolerance in Georgia Programme supported by the U.S. Agency for International Development), the ECMI and UNDP Georgia.

The monitoring targeted Tbilisi, Kvemo Kartli, Kakheti and Samtskhe javakheti. The experts of the Council held 66 meetings with the leaders of the minority communities, non-governmental organizations, teachers, representatives of the State institutions, local-self government bodies, media and other groups, around 300 persons were interviewed as a result of these meetings.

Based on the results of the monitoring, particular recommendations were developed by the Council in order to ensure that the Concept and Action Plan are fully reflecting the opinions of the national minorities and problems faced by them. The recommendations encompass the following directions: 1. Education and the State language (facilitating access to pre-school education for the national minority representatives, facilitating access to secondary education for the national minority representatives, improving access to higher education for the national minority representatives). 2. Social and regional integration (professional trainings and support to employment for the national minority

representatives). 3. Culture and preservation of national identity. 4. Media and access to information (ensuring access to national broadcasting in the regions densely populated by national minorities). 5. Political integration and civic participation.

It should be mentioned that various State institutions have already taken into consideration a certain part of the above mentioned recommendations in 2010. In particular, the number of the Georgian language teachers has significantly increased in the regions densely populated by national minorities; the media campaign was carried out to select the bilingual teachers for non-Georgian language schools; the number of hours allocated for the Georgian language teaching increased in the public schools in the regions densely populated by national minorities; the rehabilitation works of the buildings of the Mirza Patali-Akhundov Azerbaijani Culture Museum and the Tbilisi Heidar Aliev Azerbaijani State Drama Theatre were launched.

ECRI REPORT ON GEORGIA

On 15 June 2010, the European Commission against Racism and Intolerance (ECRI) published the third report on Georgia. The report covers the following issues pertinent to the religious and ethnic minorities in Georgia: legislative framework; problems in the field of education; Roma issues; refugees and internally displaced persons; migrant workers; stereotypes and xenophobic rhetoric in politics, public discussions and media. The report covers the situation up to 18 December 2009. The report states that since the publication of ECRI's second report on Georgia (13 February 2007), progress has been made in a number of fields. ECRI welcomes the enactment of the National Concept and Action Plan for Tolerance and Civic Integration by the Georgian authorities on 8 May 2009.

Particular emphasis is made on the activities of the Public Defender, it is noted that "the Georgian Ombudsman continues to play a significant role in defending the rights of minority groups in Georgia, especially ethnic and religious minorities, and in combating discrimination, including through the activities of its Tolerance Center as well as of the Council of Ethnic Minorities and the Council of Religions under his auspices."[253] ECRI welcomes opening of the regional branches by the Public Defender in the places mainly inhabited by ethnic minorities. ECRI recommends that the "special care should be taken to consult the Public Defender as well as the council of Religions and the Council of Ethnic Minorities under the institution's auspices, and to co-operate with it fully, in particular by heeding its recommendations."[254]

[253] http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Georgia/GEO-CbC-IV-2010-017-GEO.pdf
[254] http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Georgia/GEO-CbC-IV-2010-017-GEO.pdf

Right to Property

According to paragraph 1 of Article 21 of the Constitution of Georgia "The property and the right to inherit shall be recognized and guaranteed. The abrogation of the universal right to property, of the right to acquire, alienate and inherit property shall be impermissible." This specific clause on the one hand recognizes the right to property, which entails that an individual while realizing his/her right to property shall be protected from the state interference; and on the other hand it provides that the State has a positive obligation to guarantee the full enjoyment of the property rights. Moreover, Article 1 of the first Protocol to the European Convention on Human Rights and Fundamental Freedoms (hereinafter Convention), guarantees that every natural and legal person is entitled to the peaceful enjoyment of his/her possessions. According to the Convention no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by the law and by the general principles of international law.

The given chapter will highlight all those problematic issues that were identified during the reporting period with regards to protection of property rights. Chapter will analyze how the state is protecting and realizing all relevant international and national norms.

REVENDICATION OF A THING FROM ILLEGAL POSSESSION AND DEMAND FOR PUTTING AN END TO THE DISTURBANCE OF OWNERSHIP

During the reporting period number of citizens applied to the Office of Public Defender of Georgia regarding the violation of the right to property. After the careful examination of the complaints filed by the citizens to the Office of Public Defender, it became evident that there were the facts of illegal possession of immovable property. More specifically, Public Defender of Georgia had the cases when the property of individuals was illegally occupied by Internally Displaced Persons (IDPs), which became the reason for disturbance of ownership.

Civil Code of Georgia gives two options for ending the disturbance of ownership, in particular paragraph 2 of Article 172 of the Civil Code of Georgia elaborates the following "if infringement on or other disturbance of the right of ownership occurs without seizure or dispossession of the thing, then the owner may demand that the disturber put an end to such an action. If the disturbance continues, the owner may demand putting an end to the action by filing a lawsuit in the court."

Paragraph 3 of the same article determines that "if infringement on or other disturbance of the right to ownership occurs, the owner may demand that the disturber puts an end to such an action. If the disturber continues the same action, then the owner may apply to the relevant law enforcement body without having a court decision by presenting the documents of ownership."

It is the responsibility of the law enforcement bodies to vacate the property from the disturber. The following is regulated by Decree No 747 of the Minister of Internal Affairs of Georgia (hereinafter MIA) dated on May 24, 2007 "On Approving the Rules for Curbing the Encroachment on or other Interference in an Immovable Property Object."

The given Decree provides special protection guarantees for the internally displaced persons, which is necessary considering the status and special needs of IDPs. Paragraph 4 of Article 1 of the Decree determines the responsibility of the Ministry of Internal Affairs of Georgia to notify the Ministry of Internally Displaces Persons from Occupied territories, Accommodation and Refugees (hereinafter MRA) of Georgia regarding the fact of IDP interference in an immovable property of an owner. Ministry of Internal Affairs of Georgia is responsible to notify MRA in writing regarding each and every such occasion and ask whether it is feasible to evict the IDPs residing in the building.[255] Ministry of Internal Affairs of Georgia is not allowed to start the eviction process, unless they get an official reply/ confirmation from MRA, in the meantime the process is suspended.

Problem in practice is related to the delayed administration of eviction process, which is caused by the fact that neither the MRA nor the MIA provides the authorization for undertaking the eviction process. In some cases process is pending for several years, thus the owners are deprived of the right to peacefully enjoyment of their possessions. It has to be emphasized once again, that this specific section considers only those occasions when IDPs are illegally residing in the immovable property of the owner.

It is obvious that there are two types of interests at stake: firstly the right to property of the owner has to be protected, at the same time, IDPs should be provided with adequate alternative housing in a timely manner by the relevant state authorities.

In order to analyze what type of activities are supposed to be undertaken for protecting the legitimate interests of the both parties, it is important to analyze all those protection mechanisms that are provided in Georgian legislation.

It is beyond doubt that the IDPs shall enjoy special protection guarantees. It is the responsibility of the state to provide them with adequate housing. Thus, the purpose for the adoption of Decree #747 of the Ministry of Internal Affairs of Georgia was to refrain from leaving the IDPs without the alternative housing and the Decree itself is the guarantee for the protection of their rights. However, despite all the aforesaid it is equally unacceptable to violate the property rights of owners while protecting the rights of IDPs. When the owner of the property presents to the Ministry of Internal Affairs of Georgia the proof of ownership (in this case it is the letter from the Public Registry) and when it is identified that an IDP is not residing in the accommodation lawfully (meaning that the address given in the IDP card is not the same as his/her factual place of residence), MRA shall undertake all the necessary actions in order to provide IDPs the adequate alternative living space, which will give the owner of the property possibility to enjoy his/her possession, consequently the rights of the both parties will be protected.

It is even more dramatic, when there is the Court judgment in favor of the owner. As stated above another way of putting an end to the action of disturber is filing a lawsuit in the court.[256]

Number of complaints filed within the office of the Public Defender concern the given problem. There are cases when even after the judgment of the court to evict the IDPs (those ones who are illegally residing in the property of the private owner) there are the problems related to execution of judgments.

Due to the fact that IDPs are mentioned in the documentation and represent the party of the case, National Bureau of Enforcement of the Ministry of Justice of Georgia notifies MRA regarding the possible eviction of IDP[257] and requests the Ministry to provide IDPs alternative housing solutions.

Ministry of Internally Displaces Persons from Occupied territories, Accommodation and Refugees requires extensive period of time in order to satisfy the IDPs with alternative accommodation, it can be stated that as a rule MRA does

[255] The letter of Isani- Samgori Police Department, Ministry of Internal Affairs of Georgia, dated 1 December 2009, №27/13/3–42–5744.

[256] Para 3, article 1 of the Decree of the Minister of Internal affairs "on Revandication of the thing from its possessor and putting and end to the disturbance of ownership", dated to May 24, 2007.

[257] Letter from Regional Supervisory Service within the National Bureau of Enforcement, Ministry of Justice of Georgia, dated 7 June 2010, №20/03–1096.

not undertake any action in that regard. In many occasions National Bureau of Enforcement receives the standard letter from MRA explaining the timeframe and procedures envisioned by the State Strategy and Action plan. Usually the letter refers to the Decree #403 of the Government of Georgia, issued on 28 May 2009, on the "Adoption of the Action Plan for the Implementation of the State Strategy on IDPs during 2009-2012," which envisages the improvement of living conditions of IDPs and providing them with durable housing solutions during appropriate stages of the implementation of the Action Plan.

Due to the above stated facts the execution of judgments are delayed. Which in itself violates not only the rule of effective and immediate execution of court decisions, but also lawful interests of the owners to enjoy their possessions without interference.

Another important point that also needs to be noted is the double standard that is applied by the Ministry. Eviction/re-allocation process of IDPs that took place in August 2010 and later in January 2011 was widely discussed among the society. During that process IDPs were evicted/re-allocated from the state owned building. The problems identified during the eviction/re-allocation process is another very important issue that is discussed in further details in the chapter on Human Rights Situation of Internally Displaced Persons in Georgia. It is unclear why the Ministry of Internally Displace persons from Occupied Territories, Accommodation and Refugees of Georgia is not equally interested in providing the IDPs with alternative living space when they reside in the privately owned buildings, especially when there are court rulings proving the illegality of the acts.

Pursuant to all the aforementioned, we consider that the MRA has to undertake effective measures in order to provide IDPs with alternative living space, which in itself will serve as a guarantee for protecting the interests of the legitimate owners.

DELAYED INVESTIGATIONS AND PROPERTY RIGHTS

Public Defender of Georgia has raised the issue of delayed investigations in his previous reports. The number of complaints to the Office of Public Defender indicates that the problem is still acute. The applications/complaints filed to the office and monitoring undertaken in the field shows that investigative authorities delay the preliminary investigation on criminal cases and therefore the initiation of prosecution against concrete persons is also delayed. Public Defender's reports usually touch upon those cases where the investigations continue for years and initiation of criminal proceeding towards the individuals does not take place. Worth mentioning that in many cases the delayed investigation in criminal cases results in restrictions on other human rights and in some cases even in violation of the rights at stake. Case in point is limitations on property rights. After the consideration of vast number of complaints by the office of the Public Defender, it was identified that delayed investigations into the criminal cases by relevant investigative authorities resulted in unreasonable limitations of property rights and even in violation of property rights in certain cases. The same tendency is detected in most of the mentioned cases – due to the ongoing investigations certain limitations over the property rights were in place and there was an interference with the rights of individuals with no due justification.[258]

New Criminal Procedural Code entered into force in October 1 of 2010. According to Article 103 of the Code "investigation shall be conducted within a reasonable time, but without exceeding the legislative statute of limitations for criminal prosecution set forth for a specific crime." The same formulation was made in the 1998 edition of Criminal Procedural Code.

Unlike the tenure of investigation, Criminal Procedural Code of Georgia regulates the status of the victim in a different way. According to the criminal procedural code currently in force, victim is not considered as a party to the case, he/she is considered as a witness. Participation of the victim is only granted based on the examination of the procedural aspects of the case – it is discussed together with the examination of the procedural violation related to the promptness in the context of an effective investigation.[259] In all the rest of the cases timeframe for undertaking the

[258] It is resulted from the fact that during the investigation process, the legal checking whether the limitation of the rights of a person takes place (not of the persons under criminal prosecution).

[259] Articles 2, 3 and 4 of the European Convention on Human Rights provides these guarantees. *inter alia,* judgment of 26 June 2006 of ECHR on case *Mikheev v. Russia*, judgment of 7 June 2010 on the case *Rantsev v. Cyprus and Russia.*

investigation is stirctly limited by article 71 of the Criminal Code of Georgia.[260]

Ongoing investigations can possibly become the reason for limitation of certain rights of individuals, which is not related to the accused. In many cases during the criminal proceedings certain objects are seized/removed from the individual which in itself is the interference with property rights, the reason is that the object removed[261] during search[262] is kept till the end of criminal proceedings. [263]

Moreover, whenever it is authorized to seize the property, based on article 151 of the Criminal Procedural Code of Georgia several aspects of property rights are restricted – right to sell once property and right to use it.[264] Given restrictions are in place till the execution of judgment or till the end of the criminal investigation.[265]

Search, seizure and all other measures/acts are related to the tenure of investigation. In case of delayed investigation limitations on the right to property continues for several years. Limitations in this case are expressed in restrictions placed on the owner to enjoy the property without interference, also to sell the property. In case of limitations on property rights sometimes the problem for the owner is to get certain benefits from the property, which can be a very severe limitation in nature, due to the individual character of the object. Georgian legislation does not contain any guarantees for the individuals whose property is under seizure; Despite the fact that individuals do not have the right to apply to the court for scrutinizing the legality of the specific act, they cannot even file a complaint, due to the fact that according to article 95 of the Criminal Procedural Code of Georgia, only parties to the process have the right to file a motion to request the revision of the decision.

During the reporting period Office of the Public Defender of Georgia considered two cases – Z.M and T.M. After the careful consideration of the case it was identified that in both cases the ongoing investigation did limit the property rights. In first case, applicant stated that his property was granted on lease to one of the private companies. Criminal proceedings were instigated with regards to the lessee (in this case the company mentioned above) and the property of the Z.M was sealed up for several years. During the given period applicant was deprived of the possibility to enjoy the property rights and receive any type of income from the property. In the second case, applicant bought the property with all due procedures, including registering the property at the public registry agency. For the investigation purposes, investigative authority removed some materials from public registry, among them the documentation attesting the property rights of the applicant over the mentioned object. Due to the fact that investigation continued for a period of two years, and documentation was not returned to the public registry, applicant could not enjoy the property rights.

After the careful assessment of both cases, Public Defender of Georgia determined that there were certain limitations of property rights and addressed the appropriate agencies with specific recommendations, more specifically Public Defender requested relevant authorities to examine whether the proportionality test was passed and whether the limitations of property rights of the two individuals were justified. It is worth mentioning that Public Defender's recommendation on the case of Z.M was taken into consideration and seal was removed from the property of the owner.

Article 21 of the Constitution of Georgia guarantees the right to property. The same right is protected by Article 1 of the first Protocol to the European Convention on Human Rights and Fundamental Freedoms. Interference in peaceful enjoyment of possessions can be justified in case of 'pressing social need,' which is defined by the Constitutional Court of Georgia in following manner:

- "Pressing social need" is defined by the relevant authorities on case by case basis. "Pressing social need" does not necessarily mean that the specific action is undertaken in order to avoid some type of unavoidable negative impact on the society. Legitimate authorities may act using the argument of "pressing social need" even in those cases when it strives to achieve positive results. Furthermore, there is no need for the authority

260 Article 103 of the Criminal Code of Georgia.
261 See decision of the Constitutional Court of Georgia #2/6/264, II-3 of 21 December 2004.
262 Paragraph 1 of article 119 and paragraph 25 of Article 3 of the Criminal Procedural Code of Georgia determines that the object removed/seized *per se* is the evidence.
263 Article 81 of the Criminal Procedural Code of Georgia.
264 Article 152 of the Criminal Procedural Code of Georgia
265 Article 158 of the Criminal Procedural Code of Georgia

to indicate in the norm what is the specific "pressing social need" at stake. Existence of "pressing social need" can be identified by thorough analysis of the specific norm."[266]

One of the public interest of the society is justice[267] – implementation of criminal proceedings.

In any case the evidence, as well as object, can be transferred to the investigative authority. One of the main reasons for this is the fact that limitations of property are made in order to pursue legitimate aim. [268] European Court of Human Rights defines that interference within the meaning of second sentence of Article 1 of Protocol 1 of the Convention – notion of "Public Interest"[269] gives the national authorities margin of appreciation, which also includes fight against criminality.[270] Subsequently, interference with the property rights is justified. However, one of the necessary guarantees when there is the state interference with the rights of the individuals, is to have appropriate means which will enable the individual to protect his/her rights. Article 13 of the European Convention on Human Rights requires that when rights are violated everyone shall have an effective remedy before a national authority, in the other words, in order to have rights protected there shall be effective remedies in place.

The owner shall have the right/means to periodically verify whether the interference with the property rights are truly in public interest. Without existence of such means the owner is not protected, and interference can be permanent in nature, especially considering the fact that based on Georgian criminal legislation interference with property rights can last for years. Existing criminal legislation does not give any guarantees in that directions, subsequently it results in violation of property rights of persons, in those cases when investigation process is considerably delayed. It is within the competence of state to undertake investigation, however when such process interferes with the human rights of citizens, then it is absolutely necessary to have some protection guarantees and limit the interference to the minimum. It is extremely important that legislation and practice establish special protection mechanisms which enable state authorities to balance the legitimate public interests with the rights of the individuals.

It is true that the recommendation of the Public Defender of Georgia on case of Z.M was taking into account by the relevant authority, however this was just singe act and did not include any relevant legislative amendments or any other general measures on government side. It is vital that the Georgian legislation gives this specific group of persons right to appeal, so that the real investigation takes place and interests of the individuals are evaluated and solved by independent body. It is important to focus attention on legitimacy over the restrictions of property rights, balancing the interests of the public and individual and employee the proportionality test.

State has the right to make a decision regarding interference into the property rights of individual by using justification of "pressing social need," however it is crucial that such interference is proscribed by law, is proportional and necessary in a democratic society.

WAGE ARREARS

During 2010 the Office of Public Defender of Georgia received number of complaints from Georgian citizens regarding the wage arrears that were accumulated during the past years. Accordingly the following sub-chapter will discuss the issue of paying off the wage arrears by the state institutions.

In order to analyze the problem, it is necessary to identify the nature of wages and its place in human rights system. It is crucial to identify what is the human right that is linked to the interest of the individual to request payment of wage arrears and what are the international and national protection mechanisms in this particular case.

266 Judgment of the Constitutional Court of Georgia, N2/1-370,382,390,402,405, II-15, of 18 May 2007.
267 *mutatis mutandis*, Judgment of the Constitutional Court of Georgia #2/1/415, II-19 of 6 April 2009.
268 *mutatis mutandis*, Judgment of the European Commission on Human rights (application no #8819/79)of 19 March 1981 on case *X and Y v. Federal Republic of Germany*. Commission declared that interviewing persons for several hours did not violate applicant's rights to liberty and security, as it was in public interest.
269 The definition of the term could be found in a case of Hutten-Czapska v. Poland, p 164-169, ECHR Judgment of June 19, 2006.
270 Case of *Handyside v. United Kingdom*, ECHR judgment of 7 December 1976, p. 62; *Raimondo v. Italy*, judgment of 22 February 1994, p. 29.

Article 1 of Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms guarantees the protection of property. European court of Human Rights considers that for the purposes of the court: "Possessions" can be either "existing possessions" or assets, including claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining effective enjoyment of a property right."[271]

European court of human rights has an interesting approach regarding protection mechanisms in those cases when the legitimate expectations of the salary claims are at stake. "Convention organs have consistently held that income that has been earned does constitute "possession" within the meaning of article 1 of Protocol No1 to the Convention."[272]

As for the national system, it is worthwhile to discuss the approach of the Constitutional Court of Georgia regarding the right at stake and the legal protection standards used. Court explained that "generating particular income from the labor (right to obtaining income that has been earned) is not protected under article 30 [273] of the Constitution… right to obtain income is guaranteed by the right to property. Right to property has autonomous meaning and does not only include rights over the physical subjects, some other types of property and assets, including claims, in respect of which the applicant can argue that he or she has at least a legitimate expectation of obtaining effective enjoyment of a property right, thus it shall be considered as a property and enjoys the appropriate protection."[274]

Therefore, right to obtaining income that has been earned (salary) is protected both at national and international level, as it is linked to property rights.

In order to undertake a thorough assessment of the mentioned topic, Public Defender of Georgia requested information from the Ministry of Finance of Georgia regarding the wage arrears and the possible state pay off. Based on the information provided by the Ministry of Finance, all those state budgetary organizations that have wage arrears of previous years were paying off the wages from the budget funds approved. Despite that wages were paid from state budget special funds and the fund of the execution of court judgments.[275]

Information provided showed that in the fiscal year of 2010, amount allocated from state budget for paying wage arrears was 13 067 531 GEL, out of the total amount 9 510 817 GEL was coming from the assets of the budgetary organizations. Remaining 3 556 713 GEL is the amount allocated from the National Enforcement Bureau and special fund for execution of court judgments.

As stated above, number of citizens applied to the Public Defender of Georgia complaining about the wage arrears from state funded organizations. According to the information provided by the citizens, they usually were refused by state institutions to issue the wages. Mainly the justification used by the state institutions was that budget did not allocate enough funds for paying off the wage arrears. Using that justification state institutions were postponing the process for paying the debts to their former employers. This type of attitude cannot be considered adequate, since inadequate funding from the state budget cannot discharge the state funded institutions from their responsibility.

It is worth mentioning that mostly individuals who addressed the office of the Public Defender were the former employees of the Ministry of Internal Affairs and Ministry of Defense of Georgia.

According to the clarifications of the Constitutional Court of Georgia, Article 21 of the Constitution of Georgia "firstly means that the right to property is recognized and guaranteed equally for every individual despite of the nature of the property – whether it is the right over the physical object or the right to argue property rights over the earned income."[276] Consequently state has the responsibility to provide authorized individual with adequate and fair compensation of wage arrears.

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271 Case Of Cazacu v. Moldova §37. №40117/02, judgment of 23 January 2008.
272 Case Of Lelas v. Croatia §58. №55555/08, Judgment of 20 August 2010.
273 "the given article provides the protection of labour rights".
274 Citizens– Otar Kvetadze and Izolda Rcheulishvili vs Parliament of Georgia, №1/5/489–498, 20 July, 2010.
275 According to article 20 of the Law of Georgia on „2010 State Budget" 20 million GEL was allocated for the fund.
276 Joint stock companies – "Sakgazi" and "Anajgupi" vs Parliament of Georgia, №1/14/184,228, July 28, 2005.

One of the best options for making the state budget funded organization pay the wage arrears is to appeal to the court. If the court judgment is in favor of the applicant then there are higher guarantees for the citizen (creditor) to acquire the property by using the enforcement mechanisms, which is proved by the statistical data provided below. Of course there are also some problems with execution of court judgments, discussed in further details in appropriate chapter.[277]

Based on information provided by the Ministry of Finance, the most of the cut made in 2010 by the Bureau of enforcement was the following: Ministry of Finance (1 556 974 GEL), Ministry of Internal Affairs of Georgia (347 105 GEL) and Ministry of Defense (324 878 GEL). Meanwhile the funds allocated from the state budget for covering the wage arrears amounted 252 517 for the Ministry of Finance, 165 730 for the MIA and Ministry of Defense has not received any funds for this particular purposes.

It is obvious that those citizens who have not applied to the court with the case have much less guarantees for getting compensated. We consider that when the state institutions accept the liability for the wage arrears, citizens should not have to go to the court to obtain the legitimately earned income. It is important that the relevant state institutions provide the Ministry of Finance with all the relevant figures required for clearing off the existing wage arrears in order for the Ministry to allocate enough funds in the state budget and pay off.

RECOGNITION OF PROPERTY RIGHTS

Number of citizens filed a complaint in 2010 to the Office of Public Defender regarding the violations of the rights enshrined in the Georgian legislation by the State Property Recognition Commissions. Citizens indicate in their applications/complaints that the state Property Recognition Commissions ignore the requirements established by law while discussing the cases of property recognition, which results in violations of citizen's rights. Given chapter discusses those illegal actions of the Property Recognition Commission which were identified by the office of the Public Defender during assessment of the specific complaints brought by the citizens.

On 11 July 2007, Georgian Parliament adopted a law on "Property Rights on Land Plots under the Natural and Private Law legal Person's ownership (usage)" it was followed by the Decree #525 of the President of Georgia on "Approving the rules for recognition of Property Rights on Land Plots under the Natural and Private Law legal Person's ownership" which regulates those rules, conditions and procedures for the recognition of the rights of property in case of those persons who have land plots under authorized use or have illegally occupied it,[278] or the recognition of property rights over the other organizational structures determined by law.

The above mentioned legislative acts determines which state owned property, which agricultural or/and non-agricultural land plot can be[279] or cannot be[280] recognized as a property.

Thereby, given legislative acts establish the list of those persons – on the one hand interested persons,[281] who were given a right to apply to the relevant bodies for the recognition of their property rights over the land which was either an

[277] Execution of Court judgments.

[278] Law of Georgia on "Property Rights on Land Plots under the Natural and Private Law legal Person's ownership (usage)" dated 7 December 2010 was amended and accordingly new article 7^4 was added, according to which, starting from 1 January 2012 all the Natural and Legal persons loose the right to recognition of ownership. After the expiration of the given deadline, Legal entities will only be able to obtain the right to ownership through the processes envisaged by privatization process.

[279] According to paragraph 'a' and 'c' of the article 3 of the Decree #525 of the President of Georgia on "Approving the rules for recognition of Property Rights on Land Plots under the Natural and Private Law legal Person's ownership" adopted 15 September 2007 determined that the recognition of property rights applies to both agricultural and non-agricultural land plots both who had it under the authorized or unauthorized possession.

[280] Paragraph 2 of article 3 of law of Georgia on "Property Rights on Land Plots under the Natural and Private Law legal Person's ownership (usage)" defines the full list of the categories of land plots that cannot fall under the recognition of property, due to the fact that they have the special importance for the state.

[281] Paragraph e of article 2 of the Law of Georgia on "Property Rights on Land Plots under the Natural and Private Law legal Person's ownership (usage)."

authorized usage or illegal tenancy of the land and on the other hand those bodies,[282]who represent state in the process of recognition of property rights and is entitled to officially recognize the rights of the interested persons in case if they fulfill all those requirements that are put forth in Georgian legislation.

Main recommendations made by the office of the Public Defender during the reporting period of 2008-2009 covered the following aspects of the State property Recognition Commission dealing with the property Rights on Land Plots under the Natural and Private Law legal Person's ownership (usage): delay of examination of applications for unreasonably long time; rights of the interested persons to freely express the opinion; issuing notification of date and place of hearings to the interested persons; declaration/publication of the adopted decisions according to the procedures determined by the law.

It has to be noted that the problems related to recognition of property rights has significantly changed in 2010, which is seen from the complaints received by the Office of the Public Defender. If the main complaints of the 2008-2009 reporting period was related to the aspects of the State property Recognition Commission dealing with the property Rights on Land Plots under the Natural and Private Law legal Person's ownership (usage) mentioned above, the complaints received from citizens in 2010 mainly questioned the legality of decisions made by the State property Recognition Commission.

Several very important cases were processed by the office of the Public Defender of Georgia, which mainly dealt with the actions of the State Property Recognition Commission contrary to the existing legal norms.

For the sake of clarity two cases will be brought as an example. In first case, State property Recognition Commission dealing with the property Rights on Land Plots under the Natural and Private Law legal Person's ownership declared the property rights of the father in May 2008 and issued the appropriate certificate. Later in December 2008 State Property Recognition Commission nullified its previous decision on recognition of property rights of the father and invalidated the documents attesting the property rights of the father over the land.

According to the testimony presented to the office of the Public Defender, State Property Recognition Commission considered the letter of relevant investigative body, according to which decision of the Commission dating back in May 2008 required further inspection. Investigative body addressed the Commission saying that it was misleaded, more specifically criminal proceedings were instigated and investigation was underway. According to the clarifications of the Commission, the aforesaid facts became the reason for invalidating documents attesting the property rights.

According to the second case, in 2009 State Property Recognition Commission refused the interested individual to recognize his property rights over the land plot due to the fact that Commission considered recognition of property rights unreasonable. 2009 State property Recognition Commission dealing with the property Rights on Land Plots under the Natural and Private Law legal Person's ownership (usage) determined in its Protocol that the main reason for refusing to recognize the property of the person was the contract of 1992, attesting that the land plot was under the temporary usage.

Based on the cases discussed above it can be concluded that the rights of the citizens were violated due to the following:

State Property Recognition Commission is required to take into consideration and be guided by the law on "Property Rights on Land Plots under the Natural and Private Law legal Person's ownership (usage)," by the Decree #525 of the President of Georgia on "Approving the rules for recognition of Property Rights on Land Plots under the Natural and Private Law legal Person's ownership" dating back in September 15, 2007 and General Administrative Code of Georgia while declaring its decisions on the specific cases, at the same time Commissions are obliged not to undertake any act contrary to the legislation.[283]

[282] According to paragraph 1 of article 5 of the Decree #525 of the President of Georgia on "Approving the rules for recognition of Property Rights on Land Plots under the Natural and Private Law legal Person's ownership" adopted 15 September 2007, the local self government body is entitled to recognition of property which is undertaking its functions through permanent commission, as for recognition of the property rights over the land the responsible authorized agency is National Public Registry (hereinafter agency) of the Ministry of Justice of Georgia, which undertakes its functions according to the rules established by law.

[283] Paragraph 1 of Article 5 of the General Administrative Code of Georgia.

Thereby, according to the Decree #525 of the President of Georgia on "Approving the rules for recognition of Property Rights on Land Plots under the Natural and Private Law legal Person's ownership" dating back in September 15, 2007,[284] Commission adopts its decision within the framework of its authority, which is an administrative act, an individual act issued by an administrative agency[285] issued pursuant to Administrative law.

Despite the binding character of the General Administrative Code,[286] State property Recognition Commission dealing with the property Rights on Land Plots under the Natural and Private Law legal Person's ownership (usage) went in contrary to the provisions of the General Administrative Code of Georgia.[287] State property Recognition Commission when issuing the individual administrative act (decision on refusal for recognition of the property rights) is responsible under the provisions of administrative code to undertake the following:[288] "During an administrative proceeding, an administrative agency shall investigate all important case-related circumstances and render the decision through the evaluation and comparison of those circumstances." Furthermore according to the requirements of General Administrative Code of Georgia,[289] Commission was not eligible to ground its decision on the circumstances, facts, evidence, or arguments that have not been examined and analyzed during the administrative proceeding.

During the issuance of an administrative decree an administrative agency shall act within its discretionary authority, the written justification shall include reference to all factual circumstances that were substantially important for the issuance of the decree.[290] Subsequently, State Property Recognition Commission shall have written all those factual circumstances which were substantially important for issuance of the administrative decree (which in this particular case was not done by the Commission), since the Commission was acting within its discretionary authority.

Regarding the first case mentioned above, the argumentation of the Commission was the letter from the investigative body which addressed the Commission saying that it was misleaded, more specifically criminal proceedings were instigated and investigation was underway. However this fact did not unfetter the Commission from undertaking the actions envisaged by the law (make a decision taking into consideration all the relevant aspects of the case), especially if we consider that there was no official decisions of the court proving the guilt of the interested person in this specific criminal case, which would give the Commission possibility to adopt the decision based on court judgment that would have a prejudicial character for the decision of the Commission.

Except for the aforesaid, it is noteworthy that according to the General Administrative Code[291] of Georgia: "an empowering administrative act may not be nullified if an interested party shows reasonable reliance upon the administrative decree, except when the decree substantially undermines the lawful rights or interests of the State, public or any person." In the given case Commission did not consider whether there was an exception provided in the General Administrative Code,[292] in other words whether by recognition of property rights there was a violation of lawful rights or interests of the State, public or any other person. It is worth mentioning that commission while nullifying administrative act did not investigate those grounds and/or acts, which proved that interested party acted in contrary to the law (presented the forged documents to the administrative body).

In second case scenario, if the Commission undertook the obligations determined by law (made a decision taking into consideration all the relevant aspects of the case) there would not be the decision (refusal to recognition of property rights in 2009), especially if we consider that there are only two grounds when interested person can be refused to recognition of property rights:

1. If the provisions of the law on "Property Rights on Land Plots under the Natural and Private Law legal Person's ownership (usage)," and the Decree #525 of the President of Georgia on "Approving the rules for

[284] First paragraph of Article 10 of the 15 Sep 2007 decree of President of Georgia on "Approving the rules for recognition of Property Rights on Land Plots under the Natural and Private Law legal Person's ownership."
[285] Subparagraph 'd' of first paragraph of article 2 of the General Administrative Code of Georgia.
[286] Paragraph 1 of Article 5 of the General Administrative Code of Georgia.
[287] Paragraph 1 of article 5, paragraph 1 and 5 of article 53, paragraph 1 of article 96 of the General Administrative Code of Georgia.
[288] First paragraph of article 96 of the General Administrative Code of Georgia.
[289] Paragraph 5 of article 53 of the General Administrative Code of Georgia.
[290] Paragraph 4 of article 53 of the General Administrative Code of Georgia.
[291] paragraph 4, Article 601 of the "General Administrative Code of Georgia"
[292] Fourth paragraph (second sentences) of article 60^1 of the General Administrative Code of Georgia

recognition of Property Rights on Land Plots under the Natural and Private Law legal Person's ownership" dating back in September 15, 2007 are not met;

or

2. If the documents attached to the application does not prove the unauthorized usage of the property.

In the given case, commission excluded the first ground for refusal and considered that the contract of 1992, attesting that the land plot was under the temporary usage of interested person was the appropriate ground to believe that the land was not under the unauthorized usage. Public Defender of Georgia believes that the decision of State property Recognition Commission dealing with the property Rights on Land Plots under the Natural and Private Law legal Person's ownership (usage), the individual administrative act, did not respond the requirements established by law, which is rather obvious from the following:

1. Commission did not consider all the relevant aspects of the case (individual was possessing, using the land plot since 2005 without any authorization) and issued a decision without making any appropriate reasoning (legality of the individual administrative act is to be questioned).

2. The given decision on recognition of property rights, which is individual administrative act, did not correspond in content with its legal grounds, it did not respond to the requirements set forth in the law of Georgia on "Property Rights on Land Plots under the Natural and Private Law legal Person's ownership (usage)," [293] and the Decree #525[294] of the President of Georgia on "Approving the rules for recognition of Property Rights on Land Plots under the Natural and Private Law legal Person's ownership" dating back in September 15, 2007. The documents attached to the application did not attest the unauthorized usage of the land. The circumstance that interested person did not have the documents attesting the authorized usage of the land since 2005 did automatically mean the unauthorized occupancy of the land (legality of the individual administrative act is at stake).

Considering all the aforesaid, considering both factual and legal aspects of the both above mentioned cases, it was apparent that the while the State property Recognition Commission dealing with the property Rights on Land Plots under the Natural and Private Law legal Person's ownership (usage) was making decisions, meaning adoption and publication of individual administrative acts, the requirements of the national legislation were ignored and violated, [295] which based on the general Administrative Code of Georgia is the ground for nullifying both individual administrative acts.

Consequently Public Defender of Georgia considers that the decision of December 2008 of the State property Recognition Commission dealing with the property Rights on Land Plots under the Natural and Private Law legal Person's ownership (usage) (first case) and case of 2009 was adopted and issued in violation of the General Administrative Code of Georgia, which at the same time violated the rights of the interested citizens.

Due to the fact that the violation of the property rights were identified the Public Defender of Georgia addressed State property Recognition Commission dealing with the property Rights on Land Plots under the Natural and Private Law legal Person's ownership (usage) with the specific recommendations and requested that the Commission adopts the appropriate, legally justified decisions with regards to the complaints examined by the office.

Based on all the aforesaid, during the issuance of the administrative decree by the Commission, all the relevant aspects of the case have to be reflected, it has to be shown what are the grounds for adoption of that specific decision (refusal to recognize the property rights or the nullification of the decision recognizing the property rights of the individual) that would rule out the possibility of issuance of unsubstantiated decision, otherwise it will be a violation of the General Administrative Code of Georgia[296] and will result in the nullification of an administrative decree.

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293 Paragraph 7 of Article 5^1 of law of Georgia on "Property Rights on Land Plots under the Natural and Private Law legal Person's ownership (usage)."

294 Paragraph 1 of the Article 16 of the Decree #525 of the President of Georgia on "Approving the rules for recognition of Property Rights on Land Plots under the Natural and Private Law legal Person's ownership" adopted 15 September 2007.

295 First and second paragraphs (second sentences) of article 60^1 of the General Administrative Code of Georgia.

296 First and second paragraphs (second sentences) of article 60^1 of the General Administrative Code of Georgia.

RECOMMENDATIONS:

- **Parliament of Georgia shall make certain amendments and supplements to the Georgian Legislation so that it is possible for the citizens of Georgia to apply to the court in case if certain limitations on property rights are in action (seizure, removal, and etc);**
- **Investigative authorities shall undertake the investigation within a reasonable time. During the investigation process, which concerns the third parties (search, seizure, removal and etc) it is crucial to identify whether there is a pressing social need to undertake the specific action and whether it is proportional to the aim sought to be achieved;**
- **We recommend the Parliament of Georgia to adopt a law on "Property legalization," which parliament has adopted by the first hearing;**
- **State authorities shall undertake all necessary actions in order for the Ministry of Finance to be able to finalize the overall amount of the wage arrears. Based on the information collected, short term plan has to be adopted which will give the Ministry of Finance possibility to take into account the existing financial needs and foresee it in the state budget;**
- **After the application of the interested persons, State property recognition Commission shall carefully examine all the factual circumstances that were relevant to the case, decision shall be made (either recognizing the property rights of the individual, or refusing the recognition) in written, administrative act shall make the reference to all substantially important details of the case.**

2010

Right to Adequate Housing

Report of the Public Defender of Georgia, second half of 2009, described in details the problems related to adequate housing. It is regrettable that all the issues mentioned in the report of 2009 remained problematic in 2010. The issue of inclusion of homeless persons in the State Program for Social Aid remains to be problematic in 2010, like it was in 2009,[297] Social Service Agency (hereinafter SSA) does not possess the unified database of the homeless persons, furthermore there are not enough municipal housing resources. Accordingly, all those recommendations given in the report of the Public Defender of second half of 2009 remains the same.

Due to the aforesaid, we will not discuss the same issues in further details; we will briefly summarize the updated data.

Number of complaints filed within the office of the Public Defender of Georgia shows that the problem is very acute and has not changed much after the last reporting period.

Public Defender of Georgia has applied to local self-government bodies several times, requesting them to provide the homeless persons with shelter. Unfortunately, despite the fact that Law of Georgia on Social Security obliges the local self-government bodies to provide the homeless with housing,[298] the answers received from them is usually identical refusals. In all the correspondence local authorities use an excuse that they have no housing resources, thus it is impossible to satisfy the needs of the beneficiaries.

One of the most successful projects for the homeless persons in Georgia is the joint project "Social Housing in Supportive Environment," implemented by Swiss International Development Agency together with Tbilisi Mayor's Office, Ministry of Labor, Health and Social Welfare of Georgia and Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia. Purpose of the project is to provide the most vulnerable, socially excluded and homeless persons, also IDPs and local population with durable housing solutions and social protection. The mentioned project was implemented in five cities of Georgia: Tbilisi, Batumi, Kutaisi, Zugdidi and Gori. Social Housing was constructed and beneficiaries moved in.

One of the most problematic issues is lack of unified database of homeless persons, which is one of the main drawbacks for creation of state policy in that direction.[299] According to the answer of the SSA dated 11 May, 2011, Agency does not keep records of all those homeless persons who are registered within local self-government bodies, the reason is that local authorities have not provided the SSA with the mentioned information.

In order to identify how problematic is the issue of shelter for the homeless persons, and whether there is any progress in that direction, the Office of the Public Defender of Georgia requested the following information from – Tbilisi, Kutaisi, Batumi and Zugdidi self-government bodies:

297 "Right to adequate housing" – Report of the Public Defender of Georgia, second half of 2009, p.204.

298 Law of Georgia on "Social Aid," article 18.

299 Paragraph 'd' of article 17 of Law of Georgia on Social Aid: Social Service Agency is responsible 'to record the data of all the homeless persons, provided to them by the local self-government bodies'

1. How many individuals applied to local self –government bodies during 2010 with the request of shelter;
2. How many families were provided with shelter in 2010;
3. Do the local self-government bodies have the municipal housing resources;
4. Are there any set selection criteria;
5. In case of providing the shelter to homeless what type of procedures are in place for transfer of shelter to the beneficiaries.

According to the information provided by Tbilisi City Hall, the agency which deals with the shelter applications is the Office of the Social Service and Culture. During 2007-2010, 4884 applications were officially registered.

24 families were provided with shelter in 2010, among them 14 are IDP families, 10 local families. 26 families will be provided with shelter in 2011.

According to the information provided by the Kutaisi City Hall, in 2010 Memorandum of Understanding was signed by the Swiss Government, UNHCR and Kutaisi City Hall and the project "Social Housing in Supportive Environment" was implemented. Within the framework of the project, two housing units were constructed (14 apartments in total), and accordingly 14 beneficiaries were selected.

351 persons filed request for shelter in Kutaisi City Hall, out of that number 3 socially vulnerable citizens were provided with temporary accommodation.

Based on information provided by Kutaisi Mayor's Office, it is apparent that the city does not have municipal housing resources. It was impossible to identify the free space in the city, which is the reason why it is almost impossible to allocate any housing to the most vulnerable.

As far as Batumi Mayor's Office is concerned, they received 90 applications for shelter allocation in 2010. Among that, 78 applications were the request towards the Mayor's Office to provide them the housing within the framework of the project "Social Housing in Supportive Environment," 7 citizens asked for the allocation at "Saint Catherine's quarters'. Upon request, all seven of them were given shelter in the mentioned place.

As for the "Social Housing in Supportive Environment," only 14 families were provided with housing. Among them 8 were IDPs, and remaining 6 were local vulnerable families in need of protection.

According to the information provided by Zugdidi Municipality, within the framework of aforementioned project it was envisaged to construct two apartment blocks with total of 14 apartments (7 apartments for IDP families and 7 for local homeless familieis). Zugdidi Municipality provided Swiss International Development Agency the list of 53 homeless persons. Out of that number only 15 families were given housing – seven IDP families and 8 local socially vulnerable homeless families.

The information discussed in the given chapter demonstrates that the problem is very severe and it needs further attention. It is important to develop the common vision, in order to make it possible to satisfy the needs of potential beneficiaries and solve those problems that exist nowadays. As stated above, since all those recommendations that were made in the second half of 2009 were not taken into consideration by the government, they remain the same in 2010.

RECOMMENDATIONS:

- **Local Self government bodies shall undertake all appropriate measures in order to provide the data pertaining to the homeless persons to social aids agencies, as prescribed by the law of Georgia on Social Aid;**
- **Local self government bodies shall take into consideration the responsibilities deemed upon them by the Law of Georgia on Social Aid and make appropriate arrangements while drafting the municipal budgets with consideration of creation of municipal shelter and other type of targeted assistance to the group of homeless persons**.

Right to Social Security

GENERAL OVERVIEW

In 2010, the index of addressing the Public Defender of Georgia on social issues was high. One of the most important problems in this sphere remains assessment of the welfare status of those persons who live temporarily on the premises of other people and desire to get enrolled in the state program of social assistance to people below the poverty line. Another problem is utilization of social benefits by homeless persons. Correspondingly, the given chapter, in addition to the general overview of the social protection system, will focus on the above-mentioned problems.

The report of the second half of 2009 gave an overview of the international and national legislation pertaining to the social assistance sphere in Georgia.

Georgian law on Social Aid envisages the following forms of monetary social assistance:

- Subsistence benefit;
- Utility subsidy;
- Reintegration benefit;
- Tutorship upbringing allowance;
- Family care for an adult allowance [300]

In the given sphere the main sub-normative legal act is the Georgian government's decree #145 of July 28, 2006, which defines: the amount of social assistance to destitute and poor families registered in the unified database of socially vulnerable families; the procedure and basic principles of financing measures and disbursement; the competent body administering social assistance and the basic principles of rendering social assistance within a program; the amount of reintegration benefit and adoption (tutorship upbringing) allowance; procedures for financing monthly benefits for IDPs and refugees. [301]

According to the December 2010 data on the website of the Social Service Agency of the Ministry of Labor, Health, and Social Affairs of Georgia, 545 619 families (1 773 294 citizens) are registered in the unified database of socially vulnerable families of the Social Service Agency; out of those, 144 877 families (408 367 citizens) receive monthly monetary subsistence benefit. The Social Service Agency disburses every month about 11 million GEL for monetary subsistence benefit recipients.

[300] Article 6 of the Georgian Law on Social Aid, December 29, 2006
[301] Article 1, Decree of the Georgian Government on Social Assistance # 145, July 28, 2006

Health insurance state program is used by 901 285 citizens; out of those, 885 325 citizens are persons below the poverty line; 12 848 –IDPs residing in collective centers; 2 150 – children in need of care; 175 – People's Artists, and Rustaveli Prize laureates; 232 – beneficiaries of homes for persons with disabilities and elderly; and 555 – beneficiaries of boarding schools.

835 901 State pension recipients are registered in the unified database of pensioners of the Agency; out of those: 662 288 are pensioners by age; 138 614 are persons with disabilities; 32 120 – family members who lost their providers; 2 539 – victims of political repression, and 340 – pension recipients due to the years served. The Agency disburses every month about 71 million GEL for state pension recipients.

In addition to state pension recipients, the Agency registers 20 289 recipients of state compensation and 1 917 recipients of state academic scholarship. [302]

The state program of social assistance to families below the poverty level (hereinafter referred to as "the program") is considered to be one of the most important programs in Georgia. It is implemented by the Social Service Agency – legal entity of the public law of the Ministry of Labor, Health and Social Affairs. The Social Service Agency according to the current legislation ensures allocation, disbursement, termination, calculation, suspension, and restoration of subsistence benefit to the families seeking subsistence benefit, as well as resolution of other related issues.

The previous reports of the Public Defender, based on ascertained flaws and problems basically pertaining to the family assessment methodology revealed as a result of analysis of concrete cases, repeatedly highlighted the need of systemic reconsideration of the assessment methodology envisaged in the Decree of the Georgian Government # 126, of August 4, 2005 on Approving Methodology of Assessment of Socio-Economic Status of Socially Vulnerable Families (Households).

At the end of 2009 and during 2010, methodology of assessment of socially vulnerable families was revised, and consequently a number of new regulatory normative acts was adopted which invalidated the acts existing in this sphere.

Namely, Decree of the Georgian Government # 39, of March 10, 2010 on Approving Methodology of Assessment of Socio-Economic Status of Socially Vulnerable Families (Households) defined the revised methodology and consequently invalidated Decree of the Georgian Government # 126, of August 4, 2005 on Approving Methodology of Assessment of Socio-Economic Status of Socially Vulnerable Families (Households).

Decree of the Georgian Government # 126 on Reduction of Poverty Level in the Country and Improvement of Social Protection of Citizens was passed on April 24, 2010; it invalidated Decree of the Georgian Government # 51, of March 17, 2005 on "Reduction of Poverty Level in the country and Improvement of Social Protection of Citizens".

Application forms for the unified database of socially vulnerable families were elaborated and subsequently approved by the Order of the Minister of Labor, Health and Social Affairs # 140/n of May 20, 2010, "on Approval of Regulations on Receipt and Registration of the Application Form for Registration and Cancellation of Registration in the Unified Database of the Socially Vulnerable Families, and re-assessment of the Socio-Economic Condition". The given order also invalidated:

- Order # 120/N of April 27, 2010 of the Minister of Labor, Health and Social Affairs "on Approving the Regulations for the Acceptance, Registration and Processing of Application Forms for Registering in the Unified Database of the Socially Vulnerable Families";
- Order # 47/N of February 15, 2007 of the Minister of Labor, Health and Social Affairs on "Approving the Regulations for the Acceptance, Registration and Processing of Application Forms for Re-assessment of the Socio-Economic Conditions of Families Registered in the Unified Base of the Socially Vulnerable Families";
- Order # 34/N of February 3, 2006 of the Minister of Labor, Health and Social Affairs on "Approving the Form and Issuance Regulations of the Certificate of the Family Registered in the Unified Base of the Socially Vulnerable Families".

302 http://ssa.gov.ge/index.php?id=69&mid=1170&lang=1

The implemented changes improved the system and the program coverage. At the same time the quality of communication between the Office of the Public Defender of Georgia and the Social Service Agency under the Ministry of Labor, Health and Social Protection should be noted. Due to effective cooperation, rendering assistance to concrete individuals and their inclusion in the social assistance program became possible.

SPECIFIC FEATURES OF THE ASSESSMENT OF WELFARE STATUS OF PERSONS UTILIZING THE PROPERTY OF OTHERS

Despite implemented changes, it should be noted that the rate of addressing the Public Defender on the above issues in 2010 was high. The complaints mostly pertained to the assessment of the families below the poverty line.

Namely, the Public Defender is often addressed by individuals who request help in getting included in the program. Most of them state that due to poor social conditions, they temporarily reside in the apartments of their relatives/ friends, or in some cases – are renting an apartment. Apparently, families are assessed according to their place of residence - temporary or permanent.

According to a number of regulating acts of social assistance programs, the family, which may become the program beneficiary, is defined as a group of individuals united by blood-relation or non-blood-relation links, who permanently live on a separated living space and are engaged in household activities. [303]

Consequently, when a person finds a temporary shelter in the house of a relative, or lives together with the family of the friend/relative, in order to get included into the program, he/she indicates the address of the factual residence of his/her family. The social agent then arrives to the indicated address and alongside other factors, assesses the premises where the family lives. Applicants, in such a situation, usually argue that the conditions of the host family and not the real conditions of the applicant family are assessed in fact.

Notably, the IDPs accommodated in the private sector often appeal to us with such problems. A certain category of IDPs living in the private sector is still obliged to rent an accommodation or live with the relatives and periodically change their place of residence. Consequently, there is a risk that a certain part of these individuals, who might be in need of assistance, are left without it.

The currently applied system of assessment does not envisage consideration of such cases.

Another extremely significant problem is the absence of possibility to include into the program persons without address/homeless people.

According to Article 4, sub-paragraph (i) of the Georgian Law "on Social Aid", social assistance is any type of monetary or non-monetary benefit which is designed for persons with special needs, poor families, or homeless persons.

According to sub-paragraph 'j' of the same Law, the system of social aid is a unity of measures financed and organized by the state, and/or carried out under the supervision of the state, which is designed to improve socio-economic conditions of persons with special needs, poor families, or homeless persons.

The above-mentioned Law defines a homeless person as a person without a permanent, definite place of residence, who is registered in the local self-government body as a homeless person.

Inclusion of persons of the given category in the program is impossible, since as we have already noted, the family which may become the beneficiary of the program should be registered at a definite separate place of residence;

[303] Decree of the Georgian Government # 51 on Reduction of Poverty Level in the country and Improvement of Social Protection of Citizens", March 17, 2005;
Order # 120/N of April 27, 2010 of the Minister of Labor, Health and Social Affairs on "on Approving the Regulations for the Acceptance, Registration and Processing of Application Forms for Registering in the Unified Database of the Socially Vulnerable Families";
Order # 1-1/1024 of the Minister of Economic Development on "Approving the Regulations for Assessing the Socio-Economic Status of Socially Vulnerable Families", September 29, 2005.

consequently, homeless people who do not have a place of residence, cannot be included into the program of social assistance to families below the poverty line.

There is no special assistance system or program envisaged within the state system of social protection that would cover this vulnerable group.

At the same time it is noteworthy that that a number of assistance programs are related to exactly this system and to the rating points attributed to the family within this system. Consequently, those persons who are deprived of the opportunity to get included in the program due not to their material conditions, but due to the non-existence of a specific scheme or a program, are deprived of all the assistance forms that are exclusively linked to the above program, including the opportunity of benefiting from social housing. The Public Defender reviewed this problem in detail in the Parliamentary Report of the second half of 2009, in the chapter on Right to Adequate Housing.[304]

The Public Defender realizes that at this point inclusion of the group of the given category in the ongoing project for population below the poverty line might be related to specific objective difficulties. Moreover, the issue that the assessment system of the social conditions of a family is based on a complex arithmetic formula, requires even more consideration, however, we believe it necessary for the relevant bodies to review the above-mentioned issue, so that such families are rendered due assistance in case of need.

RECOMMENDATIONS:

- **The Ministry of Labor, Health and Social Affairs shall elaborate and submit to the government draft on changes and amendments to the methodology of assessment the socio-economic conditions of a family that would enable homeless families and families temporarily living with other families or residing in houses owned by other people, to receive assistance in case of need;**
- **The Government of Georgia shall approve with a decree draft changes and amendments to the methodology of assessment the socio-economic conditions of a family, elaborated by the Ministry of Labor, Health and Social Affairs, which would enable homeless families and families temporarily living with other families or residing in houses owned by other people, to receive assistance in case of need.**

2010

[304] Report of the Public Defender of Georgia of the Second Half of 2009, Right to Adequate Housing, p. 160

Right to Work and Public Service

RIGHTS OF PUBLIC SERVANTS

In the reporting period, citizens often addressed the Public Defender regarding dismissal from public service without any justification. Analysis of complaints revealed that like in previous reporting periods of the Public Defender, the problem remained unchanged – relevant authorized officials of the state and local self-government (budgetary) agencies dismiss public servants illegally, without any justification and with violation of legislative requirements.

The right to work, amongst social-economic rights, is recognized as one of the fundamental human rights. In Georgia, the right to work is affirmed by the supreme law of Georgia – the Constitution, the organic law - The Labor Code of Georgia, the Georgian Law on Public Service, the Georgia law on General Education[305]. and other sub-normative legal acts and international treaties,[306] to which Georgia is a signatory and the normative labor-related regulations of which are binding for Georgia.

Therefore, work-related rights (amongst them, one of the components of the right to work – employment rights[307]) are formulated as legally binding in the above-mentioned acts, although the analysis of complaints carried out by the Office of the Public Defender of Georgia in the reporting period of 2010 shows that the rights guaranteed by the given acts with regards to protection of the right to work, in certain cases are grossly violated by authorized officials of the state and local self-government (budgetary) agencies.

It is noteworthy that in connection with one of the components of the right to work, the right to protection of employment, the majority of complaints submitted to the Public Defender's Office in the reporting period of 2010, pertained to the lawfulness of dismissal of public servants from the state and local self-government (budgetary) agencies on the grounds of non-compliance with work responsibilities (disciplinary errors).

Analysis carried out by the Public Defender's Office of essential circumstances referred to in the letters of complaints regarding dismissal of public servants shows that in the process of dismissal of public servants from the state and local self-government (budgetary) agencies, the rights of public servants are violated due the following factors:

Out of the abovementioned domestic acts effective in Georgia, the Georgian law on Public Service regulates work-related legal relations of public servants. [308] It is the Georgian law on Public Service that attributes public legal competence to

[305] Law of Georgia "on General Education" regulates labour-related legal relationships between administration and teachers.

[306] The UN Universal Declaration of Human Rights; the UN International Covenant on Economic, Social and Cultural Rights; European Social Charter; International Labor Organization Conventions.

[307] "The essence of the right to protection of employment basically implies - preclusion of voluntary or unfair dismissal proceeding from labour relations stability and other aspects defining inviolability. In this connection, see Krzysztof Drzewicki "The Right to Work and Rights in Work", Right to Protection of Employment.

[308] According to Point 1 of Article 14 of the Georgian law on Public Service, Georgian labor legislation pertains to public servants taking into consideration the specific features defined by the given law. While according to Point 2 of the same Article, the relationship related to public service which is not regulated by the given law, is regulated by relevant legislation.

public servants [309]and at the same time defines the concepts of public service[310] and government (budgetary) agencies[311], the status of the public servant [312] – the subject of the given law, and the rights and guarantees for public servants.

According to the effective legislation, dismissal of a public servant is possible only under existence of the lawful basis and the decision of an authorized official. Chapter X of the Georgian Law on Public Service defines the legal basis, according to which an authorized official of the state and local self-government (budgetary) agency can dismiss a public servant from his/her position. At the same time, Article 93 of the Georgian law on Public Service defines that the decision on the dismissal of a public servant can be made by only the official or the body authorized to hire a public servant for the given position.

Thus, a public servant is appointed to and dismissed from the given position by an authorized official of a public administration agency or an agency, which in accordance with the General Administrative Code of Georgia, represents an administrative body[313] and consequently, when passing a specific decision (decision on appointing or dismissing a public servant from a given position) releases an individual administrative-legal act [314] on the basis of Georgian legislation.

Proceeding from the above, when considering lawfulness of an individual administrative-legal act on the dismissal of a public servant, correspondence of the concrete administrative- legal act with the requirements stipulated by the norms of the General Administrative Code of Georgia, the Georgian Law on Public Service, and the organic Georgian Law - Labor Code of Georgia should be checked.

It is noteworthy that an authorized official of a public service agency in order to resolve the issue of dismissing a concrete public servant, is attributed a discretionary power, but at the same time, he/she is obliged to implement the attributed power within the boundaries set by the law, taking into consideration the principle of proportionality of public and private interests; in other words, an authorized official of a public service agency, when implementing discretionary power is obliged, in accordance with the first part of Article 96 of the General Administrative Code of Georgia, to reflect the decision (dismissal from the position), passed on the basis of assessment and reconciliation of circumstances pertinent to the case, in an individual-legal act and, pursuant to part 4 of Article 53, indicate in the written justification all the factual circumstances which had essential significance for releasing the administrative-legal act.

In connection with the above, it is important to mention the explanatory note released by the Supreme Court of Georgia regarding case #BS-835-797 (K-07) of February 5, 2008, according to which: "the legal obligation of providing justification in the individual-legal act is preconditioned by the premises to set legal boundaries for an administrative body and place it within the framework of self-control, as adoption of a decision shall be based on concrete circumstances and facts, assessment of which leads the administrative body to a given decision, namely, it is the very concrete facts and circumstances pertinent to the case that determine the juridical consequences of the decision and not vice versa".

[309] According to Point 1 of Article 4 of the Georgian law on Public Service, "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.

[310] According to Point 1 of Article 1 of the Georgian law on Public Service, "public service is activity carried out in the state and local self-government (budgetary) agencies –bodies of public authority.

[311] According to Article 2 of the Georgian law on Public Service, "government (budgetary) agency is an agency created by the state budget, the republican budget of the autonomous republic, or the budget of the local self-government entity and financed by the budget, the main goal of which is to carry out public authority."

[312] According to Point 1 of Article 6 of the Georgian law on Public Service, "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."

[313] According to Point 'a' of the first part of Article 2 of the General Administrative Code of Georgia, "an administrative body is any body or an organization of the state or local self-governance and governance."

[314] According to Point 'd' of the first part of Article 2 of the General Administrative Code of Georgia, " individual administrative-legal act is an individual legal act released by an administrative body on the basis of the administrative legislation, which establishes, changes, terminates , or affirms the rights and responsibilities if a person, or a limited group of persons . An individual administrative-legal act is also considered to be a decision passed by an administrative body on rejecting approval of an applicant's request within its competence, as well as a document released or affirmed by an administrative which may entail administrative consequences."

Despite the fact that the first part of Article 5 of the General Administrative Code of Georgia contains an imperative request for the administrative body to implement its power on the basis of the law [315], the Office of the Public Defender of Georgia, in a number of reviewed cases on the dismissal of public servants, revealed both, the neglect of the above principle, as well as violation of the formal and/or material lawfulness[316] of the administrative-legal act (order on dismissal), which in its turn, according to the first part of Article 60' of the General Administrative Code of Georgia, is a basis for invalidation of the individual administrative-legal act.

As a result of the review of complaints, filed with the Office of the Public Defender of Georgia, it may be asserted that in a number of cases the bodies of public administration violated the requirements of the law.

In 2009, public servant T.M. was dismissed from the position of the Chief of Staff of the Gori Municipality on the basis of Sub-point 'a' of Point 3 of Article 43 of the organic Georgian Law on Local Self-governance, and Point 3 of Article 99 of the Georgian Law on Public Service. Following review of the circumstances of essential significance for the case and submitted evidence, Public Defender of Georgia considered that in the process of preparation and release of the individual administrative-legal act pertaining to dismissal of T.M., requirements envisaged by the law were not met. That is, the formal lawfulness of the administrative-legal act (order on the dismissal) was violated, namely: the administrative body failed to carry out administrative processing and did not explore the factual circumstances of the case, did not provide for the realization of the right of the interested party to express his opinion. The written form of the individual administrative-legal act does not contain justification, it does not indicate the legal and factual premises which constituted the basis for the adoption of the given decision.

In 2009, public servant I.Z. was dismissed from the position of the Head of the Cultural, Education, Sports and Monuments Protection Service of the Kharagauli Municipality on the basis of Points 1 and 2 of Article 99 of the Georgian Law on Public Service. Following review of the circumstances pertaining to the case, the Public Defender of Georgia arrived to a conclusion according to which, in the process of preparing and releasing the individual administrative-legal act on the dismissal of I.Z., the Gamgeoba (administration) of Kharagauli Municipality violated the requirements envisaged in the legislation, namely, the formal lawfulness of the administrative-legal act (order on the dismissal) was violated. The administrative body, when implementing administrative processing, did not explore the factual circumstances pertaining to the case, did not provide for the realization of the right of the interested party to express his opinion. The individual administrative-legal act does not contain in its written justification the list of all the factual circumstances, which served as the basis for the order on dismissal of I.Z.

Proceeding from the above it is clear, that in separate cases administrative bodies, when reflecting their decisions on dismissal of public servants in administrative-legal acts, ignore the requirements envisaged by the law, while according to the explanatory note of the Supreme Court of Georgia on the case #BS – 835-797 (K-07) of February 5, 2008: adhering to the procedure established by the legislation for releasing an act is significant, since the degree of justification and lawfulness of an individual administrative-legal act, released in an unbiased manner, on the basis of comprehensive and objective exploration of circumstances pertaining to the case, is much higher, while adhering to the established processing procedure for releasing an administrative-legal act attributes a defining significance to the lawfulness of the act.

[315] According to the first part of Article 5 of the General Administrative Code of Georgia, an administrative body is prohibited to carry out any action in contradiction with the legislative requirements.

[316] "Out of the criteria of lawfulness of the individual administrative-legal act – admissibility, formal and material premises of lawfulness – non-compliance with any single one, as well as application of the legal norm following a flawed review of the circumstances of the case, may become grounds for its unlawfulness," see P. Turava, N.Tskepladze, "Manual for General Administrative Law," lawfulness and unlawfulness of the individual administrative-legal act.

The Right to Protection of Health

The right to health is defined in the preamble of the Constitution of the World Health Organization, according to which, health is "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."[317] This definition entails considerable conceptual and practical significance. It underscores the interdependence and inseparability of the right to health and its contiguous rights. To achieve the highest attainable standard of health, inseparability of the right to health and the rights to discrimination prohibition, autonomy, access to information and education is essential.

According to Article 12 of the International Covenant on Economic, Social and Cultural Rights, everyone has the right to the highest attainable standard of health, which ensures the individual's dignified life conditions. The formulation of the Para 2 [318] of Article 12 highlights the fact that the right to health includes a wide spectrum of social-economic factors, which create conditions for healthy lifestyle and envisage the following basic factors of health protection: food and diet regime, accommodation, access to healthy potable water and appropriate sanitary conditions, safe labor conditions and healthy environment.

The right to health protection originates responsibilities both on international level, to a certain extent obligatory to states, and the national level. This is a right both in the broad and the narrow sense. In t he broad sense, it is protected by covenants and World Health Organization definitions, and in the narrow sense – by the actual implementation of the national legislation.

Legal obligations are essential for achieving the highest attainable health standards. On the national level, the healthcare system should have the national healthcare plan, social programs for the vulnerable, minimal healthcare packages, effective referral program, involvement of beneficiaries in the decision-making process, respect for cultural differences, etc.

OVERVIEW OF THE HEALTHCARE SYSTEM OF GEORGIA

The reform of the healthcare system of Georgia has been going on for 20 years and according to the latest changes, it is moving towards the "completely private" system. "Channeling public health financing through private health insurance companies" is one of the four priorities of the strategy, which was termed by the World Bank in 2006 as the

[317] http://www.who.int/governance/eb/who_constitution_en.pdf

[318] The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
(b) The improvement of all aspects of environmental and industrial hygiene;
(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

"major reform of the health sector". [319] Under existence of the private system, medical services are provided by the private sector (insurance companies and medical organizations), which implies market-based approach to healthcare. Existence of healthcare system based on a free market principles obviously indicates towards "market approach" to the healthcare right. This is not a utilitarian or paternalistic approach, although it does include elements of the latter, and all the more, it is not a "right-based" approach, which proceeds from the individual and is focused on his or her wellbeing.

According to the experience of other countries, market-based approach is least oriented towards universal accessibility of healthcare and necessitates more regulation from the state. Consequently, national legislation should contain legal acts prohibiting in the insurance process discrimination by all features – by sex, one of the forms of which could be regarded discrimination based on pregnancy, by 'person with disability' status, by age, and by genetic heritage (diseases – Alzheimer, breast cancer or diabetes). Discrimination based on psychiatric diseases and general health status should also be prohibited. It is desirable to have legislation regulating insurance premiums.

According to the study conducted by the Transparency International- Georgia, [320] "what World Health Organization describes as the Ministry of Health's 'stewardship functions' need to be looked at." These functions are "vital in ensuring that purchasers act in the best interests of the population." Moving healthcare services into the private sector does not exempt the state from executing obligations related to the health protection right.

In accordance with the health reform recently carried out in Georgia, the market-based approach towards healthcare issues dominates over the "right-based" approach. The market-based approach views healthcare as a "consumer good" which should be sold, and not as a "public good" which should be distributed equitably. The major part of international legal acts was ratified at the initial stage of the reform. Therefore, the course of the health policy, characteristic for the earlier period of the reform implementation, corresponded to most of the provisions of these acts. At the same time, the current national health legislation pertains to the stage of the reform, when the source of centralized financing existed in healthcare. Consequently, the health legislation does not correspond to the current health policy. From that respect, a number of legislative acts need to harmonized and revised; namely, the Georgian Law on Healthcare, the Georgian Law on the Medical Activity, and the Georgian Law on the Rights of Patients. The latter is already very hard to implement given the reality of the country and the existent healthcare system. Often, the right of the patient to address a desirable medical organization and a medical doctor is violated.

INFRINGEMENT ON THE RIGHT TO CHOSE INSURANCE COMPANY

Amendments to the Georgian government's decree # 218, of December 9, 2009 – " On Defining Measures for Health Insurance of Population within the Framework of State Programs and Terms of the Insurance Voucher" – made in 2010 (Georgian government's decree #85 of March 30, 2010), considerably changed the rules of state programs for healthcare financing.

Until 2010, a citizen (from a target group) could chose an insurance company on his/her own decision and would receive a voucher-based insurance policy, providing medical insurance financed by the voucher. According to the changes, recently made to the program, on the basis of the insurance voucher, the subscriber concludes an insurance agreement with the insurance company (insurer), which in accordance with the residence area of the subscriber, has been designated on the basis of a tender in one of the 26 medical districts. [321] At the same time, in accordance with the Para 1 of Article 19 of the Georgian Law on Healthcare, state funded medical services are provided to a target group in accordance with the Law on State Acquisition, or by means of a voucher, while state funded personal insurance of a target group is carried out through a voucher. A voucher is personalized and it can be owned by an individual or a group of individuals. In accordance with the terms of the voucher defined in the Para 5 of Article 19 of the same law, its owner has the right to exercise a free choice of a medical service provider or an insurance company. Consequently,

[319] "The GEL 5 Health Insurance Scheme: An Appraisal", Transparency International - Georgia, 2009

[320] Ibid

[321] Georgian government's decree of December 9, 2009, #218, Point 2 of Article 5 – "The subscriber on the basis of the insurance voucher concludes an insurance agreement with the insurance company, which has won a selection competition in the region pertaining to the residence area of the beneficiary.

a citizen (from the target group) no longer has the right to chose an insurance company and his/her right to freely chose an insurance company has been replaced by a mandatory relationship with a specific company, which constitutes a direct violation of the law. Complaints submitted to the Public Defender's Office show that part of the population is dissatisfied with the given change. Citizens state that they wish to undergo medical treatment in the facilities for which they have trust and confidence in the improvement of health.

ACCESS TO HEALTHCARE

Pursuant to the Para 1 of Article 37 of the Constitution of Georgia, "everyone shall have the right to enjoy health insurance as a means of accessible medical aid." Medical insurance is guaranteed by the Constitution, as an accessible means of healthcare. Medical insurance is a mechanism for managing catastrophic expenses incurred by illness. Today about 15 licensed insurance companies are functioning in Georgia. Health insurance private market is developing at a relatively slow pace. According to a study conducted in 2009, [322] only 24.5% of the population of Georgia used any form of medical insurance. Most of them were insured by the state. According to April, 2010 data, medical insurance has been provided to 954 966 citizens below the poverty threshold, which makes up approximately 25% of the entire population of Georgia. These figures indicate to low insurance culture and inadequate accessibility of healthcare.

Often, illness of even one family member becomes the cause of bankruptcy of a Georgian citizen. Healthcare system is unable to ensure health outcome equity and improvement of health, if it levies inadequate financial burden on those who are least capable of handling it. Strong healthcare system ensures treatment for everyone, irrespective of their income level. Results for this dimension are of great concern due to the amount of cash payments made by people directly at the places of receiving medical treatment, and payments made by families for healthcare exceed their disbursement abilities. [323]

Healthcare state programs, defined by the second sentence of the Para 1 of Article 37 of the Constitution of Georgia, envisage (co-) funding of equal, though specific medical service packages for the entire population of Georgia – every citizen. Today 26 state programs are functioning in Georgia. Most of them are designed for certain target groups and do not cover the entire population. Under conditions of limited resources characteristic for developing countries, services provided by the programs contain restrictions in accordance with age groups and are mostly implemented through co-financing. Target groups are basically divided into age categories and the majority of services are allocated for children and adults above 60 years of age. Only some of the state programs, including psychiatric, phtiziatric, HIV/AIDS early diagnosis and treatment, and urgent medical assistance, cover the entire population.

With regards to realization of obligations related to the HIV/AIDS program, according to the Para 1 of Article 37 of the Georgian Law on the HIV Infection/AIDS, the state ensures timely and continuous care for the infected and diseased. Several citizens with the HIV/AIDS diagnosis have addressed the Public Defender's Office. According to them, in October of this year, they failed to receive the medicines envisaged by the program. They also did not receive information as to when the process of supplying the medicines would be resumed. Meanwhile, the process had been suspended for more than a month, and thus the right of the HIV/AIDS patients to the timely and continuous treatment was violated, and the obligation undertaken by the state was not met.

From the point of view of accessibility, creation of the database of the poorest population and introduction of the medical insurance program for the population below the poverty level can be considered as a positive tendency in the healthcare development. Medical insurance for the population below the poverty level should be carried out by private companies extremely carefully and against the background of relevant regulations, with clear definition of responsibilities and rights of all sides involved.

According to 2010 legislative amendments, a new component was added to the insurance package – expenses for medicines (annual limit of 50 GEL and 50% co-funding). The 1-year agreement between the insurer and the insured

[322] Health System Performance Assessment, World Health Organization, 2009, p. 76
[323] Health System Performance Assessment, World Health Organization, 2009, p. 16

was replaced by the 3-year agreement, which in itself is also a positive tendency. Although taking into consideration the rising prices, the given assistance is much lower than the minimal standard.

The functioning of healthcare market in Georgia is suffering from many flaws and the government has to play a major role in addressing them. Consequently, we believe that the regulatory mechanisms of the state should be enhanced and the legislative base of the medical insurance should be improved. It is essential for the state to bolster the information campaign, so that beneficiaries have better understanding of their rights and right-protection mechanisms (e.g. the mediation service). The research [324] revealed that transferring medical insurance of the population below the poverty level to private companies was basically preconditioned by political considerations and views of the interested parties were not really taken into account. It is noteworthy that the government did not take into consideration not only the results of the studies conducted by other organizations (or experts), but also those conducted by the Ministry of Health. Such unilateral decisions (not founded on solid, research-based indicators), in the long term, may create problems for the program implementation.

According to the same research, 55% of the respondents indicate that they have not chosen an insurance company, but have been assigned to certain one. Only 56% indicate that it has been explained to them in the insurance company what is covered by their insurance policy. Based on the quantitative analysis it has been revealed that the ratio of the expenses for medical services and medicines in the overall expenses is high – it exceeds the limit of the so called catastrophic medical expenses and approximately constitutes 19%. According to the research, monthly expenses even only for medicines for 41% of the beneficiary families exceed 10% of the overall monthly expenses, i.e. the "catastrophic" limit. As a special, acute problem the respondents name the accessibility of medicines and additional examinations. At the same time, 29% indicate that they have paid the sum officially at the cashier's, 19% say that they have paid directly to the doctor (on the average 61 GEL). 19% of the respondents also indicated a long distance to a medical facility, that is for a certain part of Tbilisi residents a medical facility is geographically inaccessible.

According to the results of the obstetric services study, [325] women whose families are registered in the "unified database of socially vulnerable families," but whose rating point is over 70 000 cannot participate in the state program, which in some cases leads to the impoverishment of their families. The research has shown that referring to women's consultation centers starts at the early stages of pregnancy and the referring rate is high. Proceeding from that, the maternal and infant mortality indicators should be quite good. However, in this respect, the overall situation in Georgia is not superior. According to the Ministry of Health data, in 2009 the maternal mortality indicator (52.1 – 100,000 live-born infants)[326] is very high and significantly exceeds the indicator in European countries.

HEALTHCARE ACCESSIBILITY
(poor and not poor population from 3 to 60 years of age)

Part of the population, which was not targeted by any of the state funded programs, from 2008 for one year was covered by the health insurance scheme co-founded by the state – the so called "5 GEL Insurance." The offered package comprised the main risks and consisted of three parts – urgent hospital and outpatient service, and medical service necessitated by accidents. Financing of the scheme was stopped one year later due to implementation problems. According to the conducted study[327], primarily it was necessary to expand the insurance package, especially in terms of the routine hospital service and primary healthcare service. Since the offered package was very limited, it did not generate much interest. Encouragement of the population to chose broader and more expensive packages would serve one more important goal – attraction of additional resources into the system, which would be especially significant given the lack of adequate state funding of the health sector.

From the perspective of healthcare accessibility and population coverage, the 5 GEL insurance scheme was a step in the right direction. After one-year existence, termination of the scheme funding left a major part of the Georgian population without access to healthcare.

[324] Monitoring of the Results of the Program of Medical Insurance of the Population Below the Poverty Level, Welfare Foundtation,2010
[325] Monitoring of the Accessibility of the Quality Obstetric Service, Welfare Foundation, 2010
[326] http://www.ncdc.ge/W1/cnobari2009.htm
[327] "The GEL 5 Health Insurance Scheme: An Appraisal", Transparency International - Georgia, 2009

As transpired from the complaints submitted to the Public Defender's Office, the instances of violation of the right to healthcare are frequent in the segment of the population which is not below the poverty level and the age of which ranges from 3 to 60 years. The similar problem is encountered by the population which is registered in the database of the population below the poverty level, but the points attributed to it are in the range from 70 000 to 100 000. Health insurance of people who pertain to this category and who reside in Tbilisi is provided by the Tbilisi municipality, but residents of the regions are left without insurance, which places people of the same status in unequal conditions.

QUALITY OF MEDICAL SERVICE

Quality of medical service is also problematic. Conducted research[328] revealed priority problems: inadequate contracts between the insurance company and the medical facility, problems of request administration and non-standard management of cases. Consequently, it is important to ensure adequate contracts between insurance companies and provider clinics, installation of reliable information systems, and administration of treatment by a standardized approach (guidelines). Obligatory use of protocols and guidelines elaborated by the Ministry is especially important, since one of the significant components of quality management is case-based medicine and not treatment based on personal views.

The research,[329] the purpose of which was to determine the extent of the use of national recommendations (guidelines) by newly retrained doctors, showed that 44.7% of doctors use national recommendations (guidelines); 40.4% use them partly, and 14.9% of the respondents do not use them at all. Approximately the same percentage indicators were determined with regards to the use of the guidelines for medicine selection, which shows that when administering treatment, doctors base their choices on personal medical experience and not on international standards reflected in national recommendations (guidelines). The above lowers the quality of medical service. At the same time, the Ministry of Labor, Health and Social Security has provided very few national recommendations, which is one more obstacle in ensuring quality medical service.

INFORMED CONSENT

Study of the complaints submitted to the Public Defender's Office revealed that when administering medical service, the right to the informed consent is often violated. Violation of this right is especially acute if the patient is underage. According to the study of one case, when administering vaccination to an underage patient the principle of the patient's autonomy was violated and an informed consent from the parent was not obtained, which is envisaged by the Georgian law on Healthcare, and which became the cause of a faulty, repeated vaccination of the underage patient. Since universal immunization programs to a certain extent infringe on the civil and political rights of citizens – especially the right of physical and personal life inviolability, the state should approach implementation of such programs with extreme carefulness, and especially if it refers to underage patients. In every specific case, the balance between the public health and personal interests should be maintained, since the right to health is inherently of individual and not of public nature. When administering vaccination by epidemiological indications, Para 1 of Article 45 of the Georgian law on the Medical Activity should be adhered to, that is when administering medical services to underage patients a written consent should exist. In the given case, existence of such a consent would avert a dispute between the provider of the medical service and the lawful representative of the patient and will reduce to the minimum the occurrence of a mistake due to a flaw in the medical documentation. In response to the Public Defender's recommendations, the Ministry of Education and Science of Georgia relayed the Public Defender's recommendation through resource centers to all general educational institutions of Georgia, while the Ministry of Labor, Health and Social Security of Georgia determined that in the given case the responsibility lies with the educational institution and also noted that "the Ministry's relevant agency within its competence will carry out measures to ensure in the process of vaccination carried out in the educational institutions maximum familiarization with the requirements envisaged in the law by the relevant

[328] Adequate Medical Service – the Right of the Patient, 'Open Society Georgia' Foundation
[329] Survey of Family Doctors With Regards to Guideline Use, Welfare Foundation, 2010

educational institution and the provider of the medical service, through providing them methodological instructions in various forms."

RIGHT TO URGENT MEDICAL AID

Amongst significant violations, negligent approach of the medical personnel towards patients should be noted. As an illustration, in the reception of the Iashvili Pediatric Clinic, the nurse on duty only listened to the complaints expressed by the patient's mother and despite serious health condition of the child, she did not inform the doctor so that the latter could examine the child and provide primary medical aid. During examination of this case, a flaw was revealed which refers to the implementation of Article 38 of the Georgian Law on Healthcare. According to sub-paragraph"b" of Para 1 of the given Article, the doctor is obliged to provide medical assistance to the patient and ensure its continuity, if the patient needs urgent medical assistance at the workplace of the doctor. To look into the matter, we addressed the State Regulatory Agency for Medical Activity, since it is responsibility of this agency to exercise control of the quality of medical assistance provided to patients by legal and physical entities and to ensure consideration of citizens' statements (complaints) within the framework of the current legislation. However, as it transpired, if the medical personnel did not make a record on the patient in the registration journal, there is not any empowered body, which will determine whether the medical personnel failed to meet the legal obligation on the urgent medical aid.

RECOMMENDATIONS:

- **Due to transition of the healthcare of Georgia towards private insurance system, regulatory mechanisms from the side of the state should be enhanced and the legislative base related to the medical insurance should be perfected. National legislation should envisage prohibition of discrimination in the insurance process;**
- **Georgian legislation should be revised to ensure correspondence and adequacy of the healthcare reform with the national legislation. Restriction on the right to choose the insurance company contradicts the current legislation;**
- **Information campaign to raise the insurance culture of the population should be enhanced;**
- **In order to increase accessibility of healthcare, an effective system should be created, which would eliminate the accessibility problem when purchasing insurance, as well as facts of unequal treatment, especially in the group from 3 to 60 years of age and in the population of rural regions;**
- **The program of medical insurance for the population below the poverty level should be perfected, from the perspective of covering expenses for medicines;**
- **In order to raise the quality of medical services, more national recommendations (guidelines) should be elaborated and their application, to a certain extent, should become obligatory;**
- **Awareness of medical personnel should be raised in terms of informed consent, confidentiality, urgent medical aid and other rights of the patient. When these rights are violated, the issue of professional responsibility of the medical personnel should be raised.**

Rights of the Consumers - Food Safety

Every consumer has a right to demand a certain good - work, trade or other form of service - of an appropriate quality in accordance with the set standard[330]. The given chapter considers the legal aspects of the consumer rights protection in Georgia in terms of use, acquisition and ordering of safe and quality food in the year of 2010.

Food safety and quality control system is attributed cardinal significance in the world from the perspective of ensuring health and safety of consumers.[331] According to Rome Declaration on World Food Security, everyone has the right to safe food, which includes protection of the individual's life and health from food-related hazards.[332]

On April 16, 1985, the UN General Assembly adopted Guidelines for Consumer Protection.[333] The purpose of the given guidelines is to assist countries in achieving or maintaining adequate protection for their population as consumers;[334] The document defines the main principles of the consumer rights protection. [335] Namely:

- Right to safety;[336]
- Access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs;[337]
- Availability of effective consumer redress;[338]

One of the goals of the Food and Agriculture Organization of the United Nations (FAO) and World Health Organization (WHO) is strengthening of the food control national systems.[339]

The given organizations elaborated Codex Alimentarius. [340] The Codex Alimentarius Commission was established in 1963. It represents an intergovernmental body and today unites 168 member-states, including Georgia. Committees existing within the Commission framework elaborate food standard programs, one of the goals of which is to ensure consumer rights protection.

330 Georgian law on Consumer Rights Protection, Article 2
331 Food and Agriculture Organization of the United Nations, World Health Organization: "Assuring Food Safety and Quality: Guidelines for Strengthening National Food Control Systems", Preamble, p. 1
332 1996, Rome
333 United Nations Resolution of April 16, 1985 # A/RES/39/248; expanded in 1999.
334 Guidelines for Consumer Protection, paragraph 1
335 Guidelines for Consumer Protection, paragraph 2
336 Guidelines for Consumer Protection, paragraph 2, point (a)
337 Guidelines for Consumer Protection, paragraph 2, point (c)
338 Guidelines for Consumer Protection, paragraph 2, point (e)
339 Food and Agriculture Organization of the United Nations, World Health Organization: "Assuring Food Safety and Quality: Guidelines for Strengthening National Food Control Systems", Introduction, p.2 See: http://www.mfa.gov.ge/index.php?sec_id=461&lang_id=ENG
340 See: http://www.codexalimentarius.net/web/index_en.jsp

According to the statements made at the FAO and WHO international conference,[341] accessibility of adequate and safe food is the right of every individual. Therefore, food safety should be given attention by the state, as well as entrepreneurs and consumers.

Generally, control over food is explained as an obligatory regulation carried out by the national or local government, which pursues the aim of ensuring food safety and, consequently, protection of the consumer rights.[342] The given concept includes control over issues of adequacy of food safety and quality, as well as supervision over labeling regulations envisaged by the law.[343] In many countries, the reason for ineffective food control system, alongside with legislative flaws, is considered to be non-existence of monitoring and implementation mechanisms.[344]

Cooperation over food safety is one of the priorities of European neighborhood policy of "partnership and cooperation."[345] It implies implementation of primary measures by Georgia to ensure harmonization with the EU general principles and standards of food safety. The EU-Georgia Action Plan calls on Georgia to increase food safety quality for better protection of consumers.[346]

The given issue is also considered in the conclusion prepared in January 2010 by the European Committee of Social Rights,[347] which refers to the situation in Georgia from the perspective of adhering to Article 11 of the European Social Charter.[348] The Committee states that in order to achieve correspondence with the Charter, it is essential to determine binding hygiene standards. At the same time, a relevant mechanism for supervision over correspondence with the standards should be established, and preventive measures should be systematically implemented and revised, for instance through labeling. Monitoring over food-induced disease should be also established. It is the request of the Committee that the next report contain information on the abovementioned issues.[349]

Consumer rights in Georgia are guaranteed by the Constitution of Georgia[350], para 2 of Article 30 which states that consumer rights are protected by the law. Legal, economic and social fundamentals of consumer rights protection on the territory of Georgia are defined by the Georgian Law On Consumer Rights Protection of March 20, 1996.[351] According to the given law, every consumer has the right to receive a product meeting a determined standard, to be provided with safe food, and to have accurate information on the quantity, quality, or assortment of the product. If the consumer is provided with the product of inadequate quality, or with the product which poses threat to his/her life and health, the consumer acquires the right to demand compensation for incurred damage. At the same time, the consumer is authorized to defend his/her rights in the court or a state agency of relevant competency, and join consumer unions or associations.[352]

Health, life and economic interests of the consumers are also protected by the Georgian Law on Food Safety and Quality.[353] Although the Law was adopted on December 27, 2005, practically it is still not operating. The state policy in the food safety and quality sphere is determined by the Ministry of Agriculture.[354] In the sphere of food safety, concrete powers are also attributed to the Georgian Ministry of Labor, Health and Social Security,[355] namely: defining

341 1992, Rome
342 Food and Agriculture Organization of the United Nations, World Health Organization: "Assuring Food Safety and Quality: Guidelines for Strengthening National Food Control Systems", 3.1 Food Safety, Quality and Consumer Protection, p. 3
343 Food and Agriculture Organization of the United Nations, World Health Organization: "Assuring Food Safety and Quality: Guidelines for Strengthening National Food Control Systems", 3.1 Food Safety, Quality and Consumer Protection, p. 3
344 Food and Agriculture Organization of the United Nations, World Health Organization: "Assuring Food Safety and Quality: Guidelines for Strengthening National Food Control Systems", Introduction, p.1
345 Went into force in Georgia on November 14, 2006, following approval of the Georgia-European Union Cooperation Council.
346 See: http://www.mfa.gov.ge/index.php?sec_id=461&lang_id=ENG
347 See: http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/Georgia2009_en.pdf
348 European Social Charter, the Right to Protection of Health , Article 11
349 European Committee of Social Rights Conclusions 2009 (GEORGIA) Articles 11,12 and 14 of the Revised Charter, p.11.
350 Adopted on August 24, 1995
351 In accordance with the Georgian law on "Consumer Rights Protection," the consumer is a person who for personal need uses, acquires and orders a good, work, service or has an intention to do so.
352 Georgian law on "Consumer Rights Protection," Article 2
353 Georgian law on "Food safety and Quality," Article 1
354 Ibid, Article 25.1
355 Ibid, Article 27

the parameters and characteristics of food safety; elaboration of policy on healthy diet and nutritional value of food; working on perfection of the policy regarding children diet and improvement of legislation.

According to the Georgian Law on Food Safety and Quality, state control over food safety can be implemented through inspectors, taking samples according to the established procedure, administering cited laboratory tests, inspection of documents confirming personnel hygiene, inspection of documents and data, and inspection of defined records.[356] At the same time, according to the same law, state control also envisages activities carried out by the state agency within the jurisdiction of the Ministry of Agriculture – National Service of Food Safety, Veterinary and Plant Protection, the purpose of which is to determine the correspondence of human or animal food to the requirements of the given law, or eradication of revealed discrepancy.[357]

Within the inspection framework, the state is obliged to inspect the venue of food production, operating conditions of the enterprise, offices, adjacent territory, transportation means, hardware and equipment.[358] The process of inspection also envisages inspection of products required for food production, detergent and disinfection means used by producers and distributors.[359] One of the elements of inspection is also inspection of stages of food production, processing and distribution, and food labeling.

According to the law, the dates for enforcement of the given mechanism differ for different enterprises. For those enterprises which carry out export to the EU, the inspection mechanism entered into force on January 1, 2001. For the enterprises producing high risk food, the date is determined to be January 1, 2013, while for all other food producing enterprises - January 1, 2015.

Article 14 of the Georgian law on Food Safety and Quality regulates registration of an entity as a human/animal food production enterprise and/or distributor. According to this Article, registration should happen in accordance with the rules and terms determined by the Georgian legislation. According to the provisional clauses of the same Law, the given Article on producing enterprises and distributors entered into force on January 30, 2010. According to the information provided by the National Service of Food Safety, Veterinary and Plant Protection on March 25, 2010, the process of registration of an entity as a human/animal food producer and/or distributor was suspended from July 2007 through January 30, 2010.

According to para "j" of Article 31 of the Georgian Law on Public Registry, registration of the entity as an enterprise producing and/or distributing human/animal food, which also includes registration as an enterprise the activities of which are related to processing, realization and preparation of human/animal food, and making changes to, or terminating registration, is carried out by the Public Registry at the Ministry of Justice of Georgia.

Office of the Public Defender of Georgia addressed with an official letter the Public Registry of the Ministry of Justice of Georgia and requested information on the process of registration of the above enterprises. According to the information provided by the Service of Registration of Entrepreneurs and Non-commercial Legal Entities of the National Agency of Public Registry at the Ministry of Justice of Georgia, the number of entities the activities of which are related to human/animal food production, processing, distribution, realization and preparation constitutes 16 677.

Provisional clauses of the Georgian Law on Food Safety and Quality envisage possibility of inspection on the basis of the request of the entrepreneur. According to the information provided by the National Service of Food Safety, Veterinary and Plant Protection, in the years of 2007, 2008, and 2009, on the basis of entrepreneurs' request, inspection was carried out in 19 enterprises, while in 2010, on the basis of entrepreneurs' request, inspection was carried out in 5 enterprises.

On January 26, 2011, Office of the Public Defender of Georgia addressed with an official letter the National Service of Food Safety, Veterinary and Plant Protection-- the state agency of the Ministry of Agriculture, requesting information on basic violations and problems identified by the Service.

356 Georgian law on "Food safety and Quality."
357 Georgian law on "Food safety and Quality," Article 3, point Q.
358 Ibid, Article 22
359 Ibid

On February 9, 2011, the Agency submitted the report on the results of state control of human/animal food for 2010, which reflects in detail the measures carried out in 2010.

The report indicates that a targeted state program on laboratory inspection of food products was carried out in 2010. According to the results of laboratory tests on the parameters of safety and quality of food (including potable water) samples, out of 474 samples, 51 did not meet the established requirements. After determination of discrepancies, the Agency carried out concrete measures, namely: city and regional sub-agencies of the Agency sent to entrepreneurs 51 notifications on inappropriate use of given food products for human food (beverage) purposes and prohibition of marketing of the products. In order to eradicate non-correspondence of the potable water quality to the established standard, recommendations were sent to relevant entities. According to the report, from the point of view of the potable water, the most unsatisfactory situation was found in the Zugdidi region.

The report also indicates that for laboratory tests on pesticide residues, qualitative analysis was carried out on 154 samples of fruit and vegetables taken from the retail network; quantitative analysis was carried on 60 out of the above 154 samples. Analysis revealed inadequacy in 28 samples.

In 2010 facts of violation of the labeling regulations were also revealed. In accordance with Article 154 of the Administrative Code of Georgia, the National Service issued the administrative violations protocol and 16 entrepreneurs/distributors were fined.

In 2010, the Agency carried out state control in 51 enterprises exporting food products to the EU. According to the report, no critical discrepancies were found. With regards to the discrepancies, recommendations were issued and reasonable time-frames were set for their eradication.

As noted above, the right of the consumer to receive quality and safe food is important from the health protection perspective. According to the information provided by the National Center for Disease Control (CDC), 23 cases of intoxication with food and potable water were registered in 2010, while the number of the diseased persons made up 108.

The Agency report indicates that special attention should be given to the establishment of internal systems for hazard disclosing and control in enterprises. For this purpose, it is necessary to provide relevant consultations, recommendations and seminars for entrepreneurs and personnel. Improvement of the material-technical base of the Agency itself is of no less importance as well.

With regard to food safety issues, Transparency International prepared a report which considers steps taken by Georgia to achieve the standards established by the European Neighborhood Policy Action Plan.[360] According to the report, the main reason for ineffectiveness of the mechanisms envisaged by the law is cited the danger that in case of enactment of the law, a major part of entrepreneurs will be unable to meet the determined standards and, consequently, will be forced to terminate operations.[361]

Instilling of certain standards in the given sphere obviously requires additional financial and human resources. However, it is essential for the state to carry out all required measures, so that by the time the law becomes operational, the enterprises are able to meet the relevant standards. Without implementation of various measures by the state, the law, despite its enactment date, will not deliver desirable results. Consequently, as noted earlier, the state should carry out temporary measures, which would facilitate stage-by-stage adaptation of entrepreneurs to international standards.

RECOMMENDATION:

- **The Ministry of Agriculture of Georgia, taking into consideration the interests of consumers and entrepreneurs, should take effective steps to ensure that by the time -frames defined by the transitional clauses of the Georgian Law on Food Safety and Quality, the Law becomes operational in an effective way.**

360 Transparency International – Food Safety in Georgia http://www.amcham.ge/res/Bullets_on_1stPage/TI_Food_Safety.pdf.
361 Transparency International – Food Safety in Georgia http://www.amcham.ge/res/Bullets_on_1stPage/TI_Food_Safety.pdf.

Rights of Internally Displaced Persons in Georgia

Considering the existing reality in Georgia, work on the rights of internally displaced persons (hereinafter IDPs) was and still remains to be the main priority of the work of the Public Defender of Georgia. Publication of the special report in 2010 on the Human Rights situation of internally displaced persons and conflict-affected individuals in Georgia was the clear demonstration of the aforesaid.[362] The special report of 2010 described the results of monitoring of human rights situation of IDPs throughout Georgia. Report presented all those problems that IDPs encounter in their everyday life and underlined systemic problems that were detected during the implementation of the state policy. No major steps were undertaken by the government in order to address all those problems that were emphasized in the special report; however there are some positive developments. For example, Municipal Development Fund managed to do the rehabilitation of the new cottage-type settlements.[363] Special report gave a considerable attention to the problems detected in terms of construction quality of cottages. One of the recommendations of the report was to correct all those defects that were described in the report. Thus, the initiative of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia (hereinafter MRA) to undertake the construction works in the new settlements, has to be considered as a positive development.

Despite the positive developments after the publication of the special report, new types of problems were exposed, which mainly relate to the eviction process that took place in Tbilisi.

Given chapter will not provide a detailed analysis of those problems that were already discussed in the special report of 2010. Main focus will be on those problems that came to light in the second half of 2010. More specifically, it includes the analysis of those problems that were detected during eviction/re-allocation process in Tbilisi. The chapter will also present the results of small scale research/profiling of the situation of IDPs in private accommodations.

PROCESS OF EVICTION/RE-ALLOCATION OF IDPS IN TBILISI

Public Defender of Georgia made number of statements on the issue of eviction/re-allocation of IDPs from different buildings located in Tbilisi. The office of the Public Defender and the project staff was actively involved in the monitoring of eviction process. Accordingly all the analysis and conclusions made in the present chapter is based on monitoring results. For the purpose of clarity, it is crucial to discuss the two waves of evictions, the first one that took place in July-August 2010, and the second wave that started in November 2010 and finished in January 2011.

The main emphasis of the statements of Public Defender and of the special report of 2010 was inaccurate planning and implementation process, especially procedural violations that were found during the evictions of IDPs. Based

[362] The report was prepared within the framework of the project "Support to the office of the Public Defender (Ombudsman) to Enhance its Capacity to Address the Situation of IDPs and Other Conflict Affected Individuals." The project is funded by the Council of Europe Commissioner for Human Rights. Starting from January 2011 project is co-funded by the UNHCR.

[363] See: <http://www.mdf.ge/georgian/tender(old).php?id=1282974981>

on the monitoring, most of those buildings, from which IDPs were evicted/re-allocated, were not official collective centers (hereinafter CCs) (monitoring was conducted in the following buildings: former printing house Samshoblo, 9 Tamarashvili Street, 8 Machabeli str., 24 Mosashvili str., 3 Sandro Euli str.). According to the statement of the MRA, none of those buildings were CCs and those IDPs who resided there were not officially registered in those locations, hence, IDPs could not enjoy those protection mechanisms that are guaranteed by Georgian law to their counterparts who live in officially registered CCs.

During the eviction process of July-August 2010 several problematic issues were identified, which will be discussed in further details below.

One of the main problems was absence of special regulations that would govern the eviction/re-allocation process. Most of the IDPs stated that they did not have reasonable time to prepare for eviction. E.g. IDPs of Mosashvili street mentioned that they were notified about the upcoming eviction the day before and the only notification they got from government representatives, was just an oral statement.

Another concern was the lack of information regarding the alternative accommodation offered to IDPs. More specifically, IDPs entitled to alternative housing had no information with regards to alternatives. They were informed about possible alternatives on the actual day of eviction. Consequently, it can be concluded that IDPs did not have a chance to make a well-informed decision.

According to the IDPs, the eviction process in certain cases was very insulting. In several cases IDPs were subject to physical abuse. IDPs who were evicted from Kostava Street were mentioning that they were ill treated and in some cases their property was damaged.

Some problems were identified in case of those IDP families who occupied the buildings while waiting for monetary compensation in lieu of cottages that they applied for. Based on monitoring results, it was identified that several IDP families were evicted from the buildings before they received compensation amounts. Thus, those IDPs had to stay with relatives while waiting for government solutions.

Given the situation described above, the Public Defender of Georgia addressed the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia with specific recommendations. Recommendations emphasized that prior to eviction/re-allocation, MRA should provide IDPs with accurate information on measures planned with regards to them; displaced persons should be given the opportunity to visit alternative accommodation in advance and make an informed decision; prior to the transfer of IDPs into alternative accommodation it should be ensured that given accommodation is in compliance with the minimum standards established by the Steering Committee.[364]

Representative of the Secretary–General on the human rights of internally displaced persons, Walter Kalin, highlighted the issue of evictions of July-August in his follow up report of 2010.[365] As professor Kalin mentions, evictions, as such, are not illegal under international human rights law. In some cases, evictions are inevitable where IDPs refuse to leave their accommodation voluntarily and the owners insist on regaining possession. Nonetheless, evictions should be carried out in full compliance with international standards and, at the same time, not be undertaken without offering the persons concerned viable alternatives as regards housing, livelihoods and access to basic services such as health and education.[366]

August evictions were critically assessed by number of international organizations. 20 August 2010, Amnesty International made a statement stressing out that evictions carried out by Georgian authorities apparently failed to meet international standards. In particular, the authorities did not carry out a genuine consultation process with the displaced people; they failed to provide reasonable advance notice and failed to provide adequate alternatives.[367]

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364 Special report of the Public Defender on the Human Rights Situation of Internally Displaced Persons and Conflict-affected individuals in Georgia, p.73-74.

365 Report of the Representative of the Secretary-General on the human rights of Internally displaced persons, Walter Kalin, follow-up mission to Georgia, A/HRC/16/43/add.3, 23 December 2010.

366 *ibid*, para.11-13.

367 Amnesty International, Urgent Action: Thousands Forcibly Displaced in Georgia, 20 August, 2010, <http://www.amnesty.org/en/library/asset/EUR56/005/2010/en/3dfa62dc-3a08-421d-bd5a-17d8e5c38563/eur560052010en.pdf>.

Same types of problems were emphasized by Human Rights Watch. In particular they noted that government failed to provide adequate alternatives to IDPs, in some cases IDPs were sent to homes in remote regions (some of which had damaged roofs or lacked electricity or gas).[368]

According to existing international standards, "evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the state party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available."[369]

Such an active involvement of the civil society and international community became the reason for MRA to declare moratorium on evictions/re-allocation of IDPs.

Second wave of eviction/re-allocation of IDPs started in November 2010. 'Standard Operating Procedures for Vacation and Re-allocation of IDPs for Durable Housing Solutions' (hereinafter SOPs) was adopted.[370] The aim of the SOPs is to regulate the process of eviction/re-allocation of IDPs, however it is not a legally binding document. SOP clarifies that government agencies should secure physical safety and security of IDPs. According to the document, homelessness of IDPs as a consequence of the eviction/re-allocation should be prevented, confidentiality of the affected persons should be respected. Government agencies should ensure that living conditions of the durable housing offered in place of relocation meet the standard requirements approved by the Steering Committee, and right to family unity shall be resprected. Another major point made in the document is that IDPs shall have access to clearly determined appeal mechanisms in cases when they deem the durable housing offered as not adequate. Furthermore government agencies shall ensure that IDPs have aunimpeded and immediate access to effective monitoring mechanisms.[371]

In order to analyse whether the principles enshrined in the document were implemented, it is important to clarify what were the procedures envisaged by SOPs and what were the responsibilities of the involved government agencies.

According to the document, Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia has the responsibility to clarify whether the building in question has the CC status before the eviction/re-allocation takes place. The Ministry should assess, on the basis of individual data verification and profiling exercise, whether alternative housing solutions had been or can be offered to an IDP family. One of the main duties of the MRA is to notify IDP families about upcoming eviction/re-allocation and provide them with individual notification letters.[372] Another main duty of the Ministry is to oversee an effective implementation of the re-allocation of IDPs and coordinate the physical re-allocation of IDPs, including transfer of their personal belongings.

One of the important aspects of the document is timeline of the eviction/re-allocation. Based on SOPs, after profiling is complete, the MRA officials shall personally deliver a written notification stating that building will be vacated by the police not earlier than in 10 days.

As for the responsibility of the Police, based on SOPs, executive measures will only be undertaken once the SOPs has been concluded. Police is obliged to issue warning letters according to the Decree N747, Annex 1.[373]

After the adoption of the document by the Steering Committee, MRA started undertaking all those activities that were envisaged by SOPs. Following organizations were involved in the monitoring process of the implementation of SOPs: EUMM, DRC, NRC, GYLA. Process was coordinated by the UNHCR office in Georgia.

It was known from the very beginning that the evictions would take place in mid December,[374] however due to some objective factors the process was postponed. Eviction process resumed from 20 January 2011. According to the

368 Human Rights Watch, World Report 2011: Georgia, <http://www.hrw.org/en/world-report-2011/georgia>

369 Right to adequate Housing (art11.1): forced evictions, CESCR General Comment 7, 05.20.1997, para.16.

370 SOP was developed by the Technical Expert group (TEG included number of international organizations, such as: UNHCR, DRC, NRC) and was adopted by the Steering Committee.

371 SOPs, chapter 5, p.5.

372 Based on the findings of the profiling exercise, 8 different types of individual notification letters will be developed. Out of those 8 categories, 4 IDP family categories will not be offered any kind of alternative solutions, see SOPs p.9-11.

373 Decree N747 of the Ministry of Internal Affairs of Georgia.

374 Dates for Eviction/re-allocation of IDPs originated from SOP deadlines.

currently available data 20 buildings out of the list of 22 are already vacated. Dates of eviction of remaining 2 buildings are unknown.

Despite the fact that special guidelines and norms were developed for the smooth implementation of the eviction/re-allocation process, number of serious problems were identified during January 2011. Namely the following:

Individual notification letters were distributed to IDPs according to the standards provided in SOPs. Notification letters stated that eviction shall take place 10 days after the handover of the documents. Considering the fact, that notification letters were distributed among IDPs in December, and the process was postponed for over a month, we consider that it was absolutely necessary to provide IDPs with the updated information about upcoming eviction date. Based on the monitoring, undertaken by the office of the Public Defender and the project, in most cases IDPs were notified about upcoming eviction just few hours before, which cannot be considered as a reasonable time in order to prepare for eviction/re-allocation.

Another serious problem, which was identified by all the monitoring organizations, was related to the access to monitoring sites. According to the statements of the monitors, none of them were allowed to enter the building during the eviction process. Project monitors had a limited access to IDPs. Despite the fact that according to SOPs all IDPs should have 'aunimpeded and immediate access to effective monitoring mechanisms,' it did not work out in practice. Main challenge was coming from the police representatives. After a conversation with law enforcements, it became apparent to the project monitors that none of them were aware of existence of SOPs. As was mentioned above, the main purpose of the document was to have transparent and fair procedures in place. Hence, depriving monitors from accessing the eviction sites left the main objective of the document unachieved.

Serious problems were identified regarding the monetary compensations in exchange of cottages. During the monitoring it became apparent that number of IDPs who applied for specified amounts were left without compensation.[375] One of the serious problems during August evictions was re-allocation/eviction of IDPs without providing them with monetary compensation. Due to the identified problem, SOPs contained a special clause, which stated that those IDP families, who are entitled to monetary compensation, should be granted the financial assistance before vacation of the building. Despite the aforementioned, we identified a problem that needs to be studied in further details.

During the eviction/re-allocation process some of the problems related to monetary compensation became very problematic. It is evident that the given topic is still an issue to consider. Number of IDP families state that they were left without financial assistance, which is a serious problem. It is absolutely necessary to issue the compensation amounts to those families who are eligible for it.

IDP families very often refer to the problem that relates to the unification of family registration numbers and issuing one monetary compensation amount to the several IDP families, which in itself is a serious problem. In order to address the mentioned complaints of the IDPs, the office of the Public Defender addressed the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia and requested information on number of issues.[376] Specifically, which legislation and by-laws regulate the norms for issuing monetary compensation in exchange of cottages for those IDPs who suffered from 2008 Russia-Georgia conflict,[377] what are the normative acts that are used as a legal ground for unification of IDP family registration numbers. The office also requested information regarding the legal basis for creation of so called 'compensation commission', and asked what are the criteria for accepting or denying the request of the family for compensation, and most importantly, also asked if the commission issues any type of normative act, which reflects the decision of the commission on the case.

It is unfortunate that the Office of the Public Defender has not received formal answers to any of the above listed questions.

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375 This issue was raised by the IDPs with the project monitors during the monitoring process. The other monitoring agencies also have the similar information.

376 Letter N: 1542/04-3: sent on 23 December 2010.

377 The only document that relates to the issue of compensations is government decree N534 of 24 July 2009; however this decree does not specify any details except for the compensation amount.

Another very important issue is the offered alternative housing. During the monitoring process it became evident that MRA was offering IDPs alternative housing at the following locations: village Bakurtsikhe, Gurjaani District; villages Zumi, Lesitchine and Potskho-Etseri, Chkorotskhu District; villages Chkadua and Narazeni of Zugdidi District, village of Abashispiri, Abasha Distrct; and village Torsa-Dgvaba, Khobi District.

Project monitors undertook the monitoring in all of the offered alternative accommodations. Based on monitoring results, it can be concluded that by re-allocating IDPs to the given locations, none of them will have any livelihood opportunities. Most of the settlements are rather far from the administrative centers (e.g. Potskho-Etseri is around 50 kilometers away form Zugdidi). Despite the fact that most of the buildings visited by monitors are rehabilitated, IDPs are not satisfied with the quality of rehabilitation works. The problems are similar everywhere. Almost all houses have visible cracks and damp stains on the walls. Long term stay in such living quarters might become a cause of the onset of various deceases. Significant problems were spotted in terms of development of local infrastructure. E.g. IDPs living in Potskho-Etseri have to travel to Jvari to buy medications, since there is no drug store in the settlement; except that, Potskho-Etseri does not have a medical center, IDPs have to travel to Zugdidi to get medical care, which requires additional costs (cost of return travel from Potskho-Etseri to Zugdidi is around 5 GEL, considering the monthly income of the IDPs, it does not give them the opportunity to travel to administrative center frequently).

In Abashispiri, school children have to walk 2 kilometers, since village does not have a school and there is no bus running to transport children to school every day. Villages Torsa-Dgvaba and Abashispiri have water related problems.[378]

At this stage it is unknown whether any livelihood projects will be implemented in the regions or not. Another problem that was highlighted by IDPs during the monitoring is related to agricultural land plots. Despite the fact, that MRA made a statement about transferring the land plots into ownership of IDPs, the promise is not fulfilled to date. The only positive exception is Tsintskaro, where IDPs were given the agricultural land plots. However, now their problem is the inability to cultivate the land due to the absence of necessary agricultural equipment.

On 28 January 2011, monitoring was conducted in Gurjaani, village of Bakurtsikhe, where 6 IDP families were re-allocated after the eviction. The building is newly rehabilitated, however, like other collective centers IDPs are not satisfied with the quality of rehabilitation works. The most problematic issue raised by IDPs was lack of employment opportunities, and agricultural land plots. Monitors were informed that in order for IDPs to cultivate the land they have to apply to the local municipalities to transfer the land temporarily under their possession. However, IDPs request that the lands are given to them not temporarily but under ownership. According to the statements of IDPs, they have applied to the local municipalities with the request, but have not received any specific answers yet.

The issue of agricultural land plots is also problematic for IDPs living in western Georgia.

In order to achieve the durable solutions for internally displaced individuals and increase their economic independence, it is absolutely necessary to implement different livelihood projects, provide IDPs with suitable agricultural land and assist them in cultivation. All of the mentioned activities will enable them to generate income and support the needs of their families. IDPs made it clear to the project monitors that in case the government does not implement any livelihood projects in new places of re-allocation and if government does not support them at the initial stage, they will refuse to sign the privatization documents.

According to international standards, within many states increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. "Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement."[379]

Hereby, it should be noted that after the second wave of eviction/re-allocation of IDPs (November-January) it became clear that none of the IDP families who were offered an alternative accommodation in western Georgia accepted the

[378] Despite the fact that the water pipes are already installed in the building in Abashispiri, water is not brought to the building and the only water tap is located outside the building.

[379] The Right to Adequate Housing (art.11(1)):13/12/91, CESCR General Comment 4, para.8(e).

government offer.[380] Some of the families agreed to move to Bakurtsikhe. It is noteworthy, that during the eviction process MRA offered IDPs other new alternatives. In particular, village Tsintskaro in Tetritskaro region (government purchased individual houses for the IDPs) and Gardabani became such new alternatives.

12 IDP families resettled to Tsintskaro. Most of them are displaced from Kodori Gorge. Project monitors visited Tsintskaro on 18 February 2011. Monitoring results show that IDP houses require a proper rehabilitation. Most of the houses were abandoned for several years, in some cases roofs are damaged, windows lack glasses, floors and water sewage system is damaged.[381] The main problem of the village is water supply, drinking water is running with a special schedule, as for the irrigation water, village is totally deprived of it.

It is important to make some conclusions based on November-January evictions/re-allocations; it is also interesting to outline what are the statistics of acceptance of offered alternatives by IDPs. According to the statistics provided by the MRA, only 21 IDP families accepted the alternative housing arrangement provided by the government. This makes it evident that most of the IDPs preferred to live in a private accommodation (most of them rented apartments or stayed at relatives houses) rather than to accept the government provided alternatives. Based on the data provided by the Ministry, 534 families were evicted/re-allocated during November-January, among them 68 families received monetary compensation in exchange of cottages, 131 IDP families returned to their CCs, former place of registration, 21 families accepted government provided alternative housing, 193 families refused to accept the alternative accommodation in regions and stayed in private accommodation in Tbilisi.

This type of results demonstrate that offered alternatives were not acceptable for IDPs due to its location, that is the reason why most of the IDPs stayed in private accommodation waiting for the government to provide better alternatives. This kind of approach will become a serious challenge for the government, as decision of IDPs to refuse government offers will significantly increase number of IDPs in PA,[382] and it is absolutely plausible that the expectations of IDPs will not meet the government offers in the future as well and this might bring the implementation of the Action Plan in a deadlock.

It is clear that re-allocation is a very painful process for the IDPs. It is technically impossible to provide all IDPs with housing solutions in Tbilisi. However, the main priority for the state should be the creation of the minimum necessary living conditions for IDPs. Adequate living conditions do not include only an adequate living space. There are also other aspects that should be taken into account. Adequate housing must be habitable. It must be in a location which allows access to employment options, health care services, schools, child-care centers and other social facilities.[383] Right to adequate housing should not be interpreted in a narrow or restrictive sense, 'it should be seen as the right to live somewhere in security, peace and dignity.'[384] Framework on Durable Solutions for Internally Displaced Persons[385] emphasizes the importance of livelihood opportunities and employment. Document underlines that there might be a need for positive preferential measures to help IDPs in acquiring new professional knowledge, adapting to new livelihoods and acquiring new skills.[386] Thus it is important that MRA focuses on those locations with employment possibilities.

Number of international organizations made recommendations on the same issue. UNHCR office in Georgia recommended the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, that IDPs who have been relocated and may have lost access to livelihood, should be referred to available services and assistance programs, including vocational training opportunities and income generation projects.[387] Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kalin recommends the government to give more attention to the creation of employment and livelihood opportunities for IDPs.[388] Number of states addressed Georgian government with similar type of recommendations. Governments

380 This specific information was verified by the regional representative of MRA.

381 Serious problem was identified in case of one IDP family. Family refuses to live in the house since the building is wrecked.

382 According to the MRA statistics total number of IDPs in private accommodation constitutes 60% of total IDP population in the state.

383 *Supra* note 17, General Comment 4, para.8(f).

384 *Ibid.* para.7.

385 Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kalin, Addendum – Framework on Durable Solutions for Internally Displaced persons, A/HRC/13/21/Add.4, 29 December 2009. http://www2.ohchr.org/english/issues/idp/docs/A.HRC.13.21.Add.4_framework.pdf

386 *Ibid.*

387 UNHCR observations on the resumption of the IDP relocation process, UNHCR Tbilisi, February 2011

388 *Supra* note 4, para.34.

recommended Georgia to ensure that evictions are carried out in full compliance with the guarantees required by the international human rights law and those who are evicted are provided with adequate housing and work, access to health services and education.[389]

However when we analyze the compliance of the eviction/re-allocation process in Tbilisi with the standards provided by SOPs, we should hereby mention that SOPs were absolutely ignored during the eviction/re-allocation of IDPs from Gogoli Street in Batumi, in February 2011. According to the official information of the MRA, the 6 families who resided in the building since 2007 were occupying the space illegally. IDPs received notifications from police. Representative of Samegrelo office of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia notified IDPs orally about the upcoming eviction and promised that in exchange of vacation of the building they would receive official letters guaranteeing that after the completion of construction works in Adjara they will be provided by the accommodation. It is imperative that the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia guarantees that their regional representatives are aware of the standards provided in SOPs. The actions of MRA local representatives shall be guided by the same standards, SOPs is not created only for Tbilisi, it is equally applicable to the regions of Georgia.

'IDP STATUS SEEKERS' – CONFLICT AFFECTED INDIVIDUALS WITHOUT IDP STATUS

2010 special report discussed the problems related to granting IDP status to those individuals who are displaced from so called uncontrolled territories/adjacent villages of the conflict zone (Zardiantkari, Gugutiantkari, Akjali Khurvaleti, Zemo Nikozi). Some of them are housed in the premises of kindergartens in Gori, without any status, since the government has yet to determine what type of status should be granted to those individuals. Despite the fact that it has already been 2 years since the conflict of 2008, government position on the given issue is still very vague.

One of the cases that was discussed in the special report concerned Mr. Vaniev's family, who is displaced from Akhali Khurvaleti. Issue of granting this individual an IDP status is still pending. Ministry of Internal Affairs of Georgia notified Mr. Piruz Vaniev that the houses he owns are located on the territory which is not under the Georgian jurisdiction. Despite the fact that Mr. Vaniev presented the mentioned letter to the MRA, he has not been granted the status. The office of the Public Defender of Georgia addressed the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia with an official correspondence on the matter, but has not received any reply.[390]

On 27 October 2010 the Office of the Public Defender received a similar type of complaint from the individuals residing in Gori kindergarten.[391] According to the complaint, these persons were forced to leave the place of their original residence due to the lack of security guarantees in the village Zardiantkari (Gori municipality). Based on the statement of the families, it also became clear, that they are not getting any state support, they do not have an IDP status and state is not planning to seek a durable housing solution to this particular group of people. The Office of the Public Defender of Georgia addressed the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia and requested information on the future plans of the government towards the improvement of the social and economic situation of this specific group. However we have not received any specific answer on the matter.

Worth mentioning, that MRA is planning to start the eviction/re-allocation process of IDPs from the kindergartens located in Gori. The process will be undertaken according to the standards provided in SOPs, which entails the profiling exercise. However, it is reasonable for the MRA to make a decision about the future status of this particular group of individuals before starting the procedures envisaged by SOPs.

389 Human Rights Council, A/HRC/WG.6/10/L.9, draft report of the Working Group on the Universal Periodic Review, Georgia, 3 February 2011, Recommendations 105.91 (Greece), 105.92 (Switzerland), 105.93 (United Kingdom), 105.94 (Spain), 105.95 (Netherlands).

390 Letter N: 2609/04-11/0639-10; 3661/04-11/0639-10; 78/04-11/0639-10.

391 IDPs addressed the Office of the Public Defender on 27 October 2010, letter N#3655/04-9/1635-10.

It has to be mentioned that using the existing international standards, namely UN Guiding Principles on Internal Displacement, this particular group of individuals easily fit in the definition of an IDP. The Guiding Principles provide the following definition: 'internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a **result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights** or natural or human-made disasters and who have not crossed an internationally recognized state borders.'[392]

According to the article 1 of the law of Georgia on Internally Displaced Persons, "Internally displaced person is the citizen of Georgia or stateless person residing in Georgia, who was forced to leave the place of his/her habitual residence and was displaced (within the territory of Georgia) as a result of threat to his/her family member's life, health or freedom due to the aggression of foreign country, internal conflicts or mass violations of human rights."

Hereby, it should be emphasized that being an internally displaced person is directly linked to the realization of the right to return. Despite the fact that technically most of the families displaced from the adjacent villages do have a possibility to return to their habitual places of residence, pre-conditions for the voluntary return are not met. These individuals talk about security problems. For the realization of the right to return, competent state authorities have the primary duty and responsibility to establish conditions, which allow internally displaced persons to "return voluntarily, in safety and with dignity to their homes or places of habitual residence."[393] In case if state cannot ensure that all the conditions necessary for return is met, displaced population has a right to ask for granting of the IDP status.

Taking into account all the aforesaid, it is imperative that the government makes a decision regarding granting the status of IDPs to those individuals who are displaced from the villages adjacent to the conflict zone.

IMPLEMENTATION PROCESS OF THE ACTION PLAN FOR THE STATE STRATEGY ON IDPS IN 2009-2012[394]

One of the most problematic issues discussed in the special report was the slow implementation process of the activities envisaged by the Action Plan for the State Strategy in 2009-2012. Report made a recommendation to MRA to ensure that privatization-rehabilitation process of collective centers is accelerated. Given issue is still problematic. Despite the fact that representatives of the government usually refer to the fact that rehabilitation process is underway and different accommodations throughout Georgia is being transferred into ownership of IDP families, the slow pace of the process does not meet the time frame already defined by the Action Plan. According to the official information of the Ministry, out of 1600 CCs, only 544 CC turned into durable housing solution (hereinafter DHS). Future of most of CCs is yet to be determined. 1044 CCs are still not rehabilitated and not privatized, it is also not decided whether there is any possibility that those CCs turn into DHS.[395]

According to the MRA figures 596 CCs have a possibility to become DHS, 446 CCs are supposed to be vacated and closed. The main reason for closing CCs is either that the buildings are in private ownership, or are in such a dire condition that there is no possibility for rehabilitation and they have to be vacated as a matter of urgency.[396]

There are number of construction works underway throughout Georgia, mostly it is apartment blocks in Poti, [397] Tskaltubo,[398] also it is planned to start the construction of new apartment blocks in Batumi. However, even if the construction of these apartment blocks finishes in a very fast pace, number of apartment will not be enough for satisfying the needs of all the IDPs waiting for DHS.

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392 United Nations Guiding Principles on Internal Displacement, E/NC.4/1998/53/ADD.2, Introduction, para.2.

393 *ibid.* principle 28.1.

394 Decree N403 of the government of Georgia, May 28, 2009. Decree N575 adopted on May 28 2010 on revision of the Action plan of the state strategy.

395 IDP Housing Strategy and Working Plan, 2010 Government of Georgia, Ministry of IDPs from Occupied Territories, Accommodation and Refugees of Georgia, Annex 7- The Structure of CCs, p.46-47.

396 *ibid.*

397 32 apartment blocks will be constructed in Poti, total of 1168 apartments.

398 10 Apartment blocks will be constructed in Tskaltubo, total of 352 apartments.

It is obvious that in case of lack of financial resources, implementation of the activities given in the Action Plan will be brought to a deadlock. Worth mentioning that the activities foreseen by the Action Plan for IDPs in so called private sector has not started yet. Proceeding with the activities foreseen for the IDPs in private accommodation requires differentiated approach. The survey report given below, aims to present some of the needs and challenges of IDPs in private accommodation.

SURVEY REPORT ON PRIVATELY ACCOMMODATED IDPS IN GEORGIA

2010 special report of the Public Defender on Human Rights of IDPs and conflict-affected individuals in Georgia was mainly developed on the basis of facts elicited during the monitoring of the situation of those internally displaced persons who live in different collective centers located throughout the territory of Georgia. Special report made it clear that due to number of difficulties, undertaking the monitoring of the situation of IDPs residing in private sector was unfeasible. In the end of 2010 decision was made to start a small scale profiling/monitoring exercise of those IDPs who live in private sector in Georgia, the main purpose of this exercise was to have more accurate information on the situation of the IDPs residing in PA. Thus, all the information presented in this sub-chapter is based on monitoring results.

In order to have a comprehensive analysis of the situation of privately accommodated IDPs it was decided to survey them throughout Georgia. Consequently, the statistical data provided in the report is based on the interviews of 279 privately accommodated IDP families.

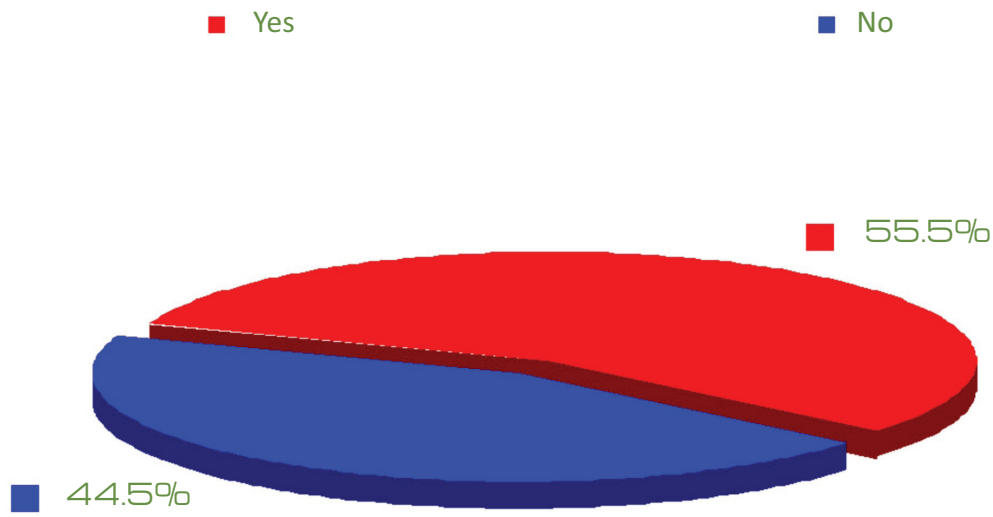
At the initial stage of the monitoring the Office of the Public Defender of Georgia requested from the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia the list of privately accommodated IDPs (list was randomly selected, considering the equal regional representation). By the beginning of November 2010 MRA provided the Office of the Public Defender with the part of the database of the IDPs residing in PA. Monitoring was undertaken in the following cities: Tbilisi, Gori, Kutaisi, Zugdidi and Batumi.

One of the major goals of the monitoring was to identify the needs of the IDPs. Also an attempt was made to evaluate the database of the Ministry to see whether it is accurate or not. Project monitors tried to identify what are the social needs of IDPs, whether they are employed or not, whether they are part of the social assistance programs, what are the main challenges they face, etc.

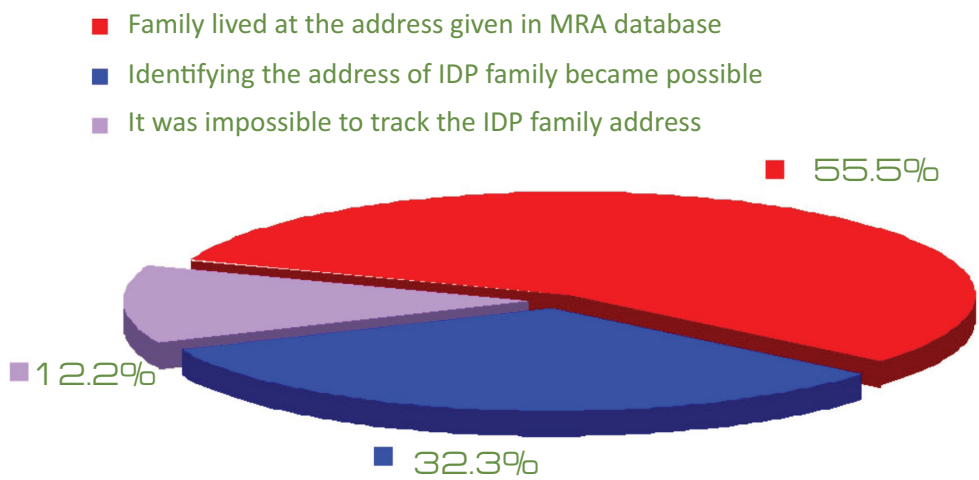
It is a regrettable reality that in most cases interest towards the situation of the IDPs in PA is relatively low. IDPs living in CCs get more attention. Thus, monitoring undertaken by the project was an attempt to collect all the relevant information regarding the needs and challenges of this group of IDPs. During the monitoring we tried to identify whether IDPs are informed about the activities that are supposed to be undertaken according to the Action Plan of the State Strategy, whether they are aware when it is foreseen by the government to satisfy their needs and what are the main activities to be undertaken with regards to different categories of IDPs residing in PA.

Project monitors encountered number of difficulties during the monitoring process. Most serious challenge of the profiling was to locate the selected households according to the registered address of residence given in the MRA database (this is the 44% of the IDP families profiled by project monitors). It became apparent that most of the addresses given in the Ministry database are outdated and not accurate. Database sometimes contained only the street number or just number of the apartment block. This type of incomplete data made it very difficult for monitors to find the IDP families. There were cases when monitors found out that no IDP family has ever lived in the household provided in the database. There were cases when database included the addresses that do not exist in reality (e.g. database of Gori municipality included the streets, apartment blocks and flats that do not exist). Despite all the challenges, project monitors tried to identify the factual addresses of IDPs.

Considering all the aforesaid, the answer on our first question is not surprising. We received the following response:
Does the IDP family live at the address given in MRA database?



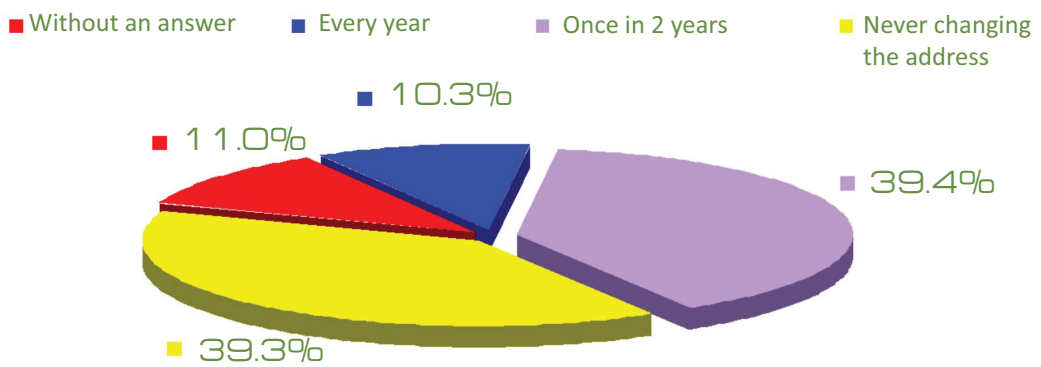
As was mentioned above, in case project monitors could not find an IDP household they tried to track the family's actual location. In some cases attempts were successful, as neighbors, relatives, or other IDP families were helpful and provided the needed information to project monitors. Also, in some cases the regional offices of MRA were very supportive. Out of the 279 IDP households, we have received the following data:



Percentage significantly differs among the cities. 72.5% of interviewed IDP families in Tbilisi do not live in the same address given by the MRA database; percentage is also high in Gori – 64%. Situation is different in Zugdidi, 60.3% of privately accommodated IDP families live in their actual place of registration. Kutaisi has relatively high percentage as well, 48% of IDP families live in the place of their registration.

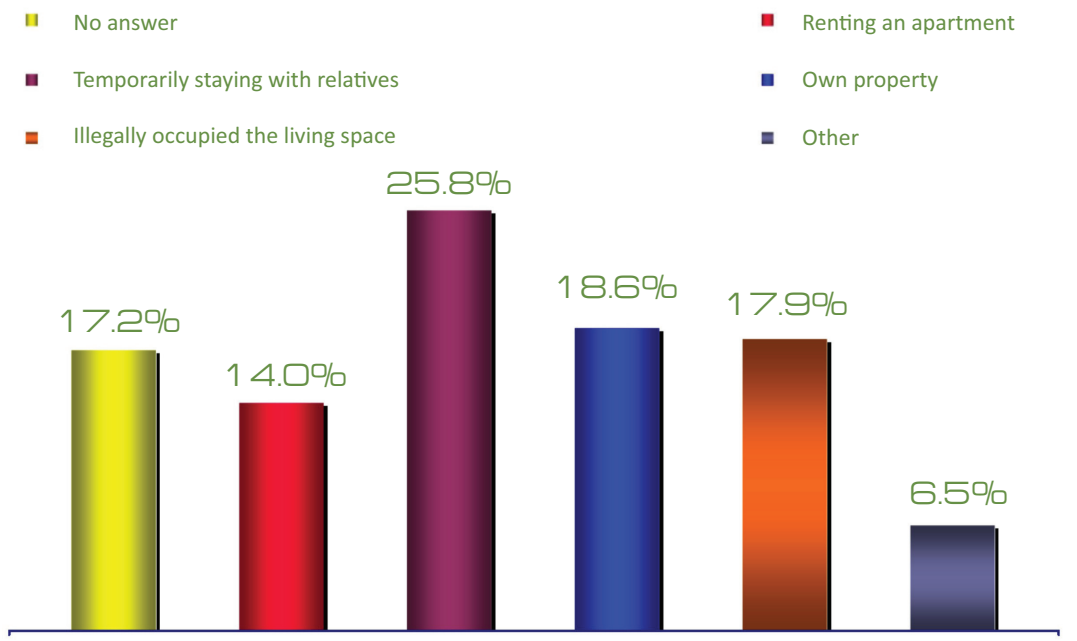
The fact that most of the IDPs live in different place of residence, rather than their registration address, is mainly caused by the frequent movement of IDPs from one accommodation to another. Project monitors identified that in most cases IDPs do not notify the Ministry about the move and accordingly do not ask MRA to change their registration address.[399] We tried to identify what is the frequency of changing the accommodation among the IDPs of PA and received the following response:

[399] 72.2 % of IDP families responded that they have not applied to the MRA to be re-registered.



One of the main reasons for frequent movements is inability to pay the rental fees stably. According to the interviewed IDPs they are not capable to pay rent due to insufficient or unbalanced income. Thus, those IDP families, who do not have stable jobs, have to move out from the rented apartments. There are some cases when IDPs change their residence due to positive developments, such as purchasing a private apartment. However, the percentage of this type of answers was relatively low. Due to economic hardships, significant part of privately accommodated IDPs live in the accommodation, owned by their relatives, or occupy the empty space in different buildings (the latter category was mainly found in Tbilisi).

On our question to IDPs - what is the status of their stay at their factual places of residence, we received the following answer:



Second stage of the Action Plan for the Implementation of the State Strategy on IDPs during 2009-2012 foresees activities that will improve the living conditions of those IDPs who refused to privatize living spaces in the CCs and also it will target IDPs living in the private accommodation. The Action Plan foresees the given activities to be implemented from 2010 onwards. However, due to the fact that privatization process is not finalized yet, ministry has not undertaken any specific steps in order to satisfy the needs of privately accommodated IDP families. Revised Action plan of May 2010 divided IDPs living in the so called private sector into 4 different categories:

2010

a. IDPs who own real estate/private accommodation;

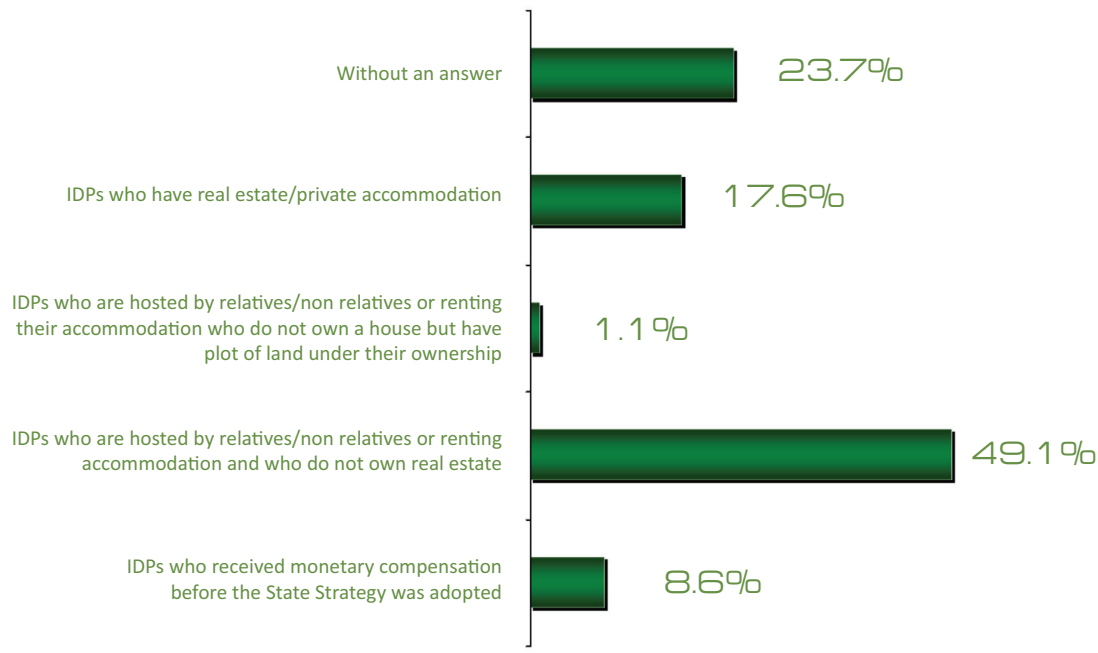
b. IDPs who are hosted by relatives/non relatives or renting their accommodation who do not own a house but have a plot of land under their ownership;

c. IDPs who are hosted by relatives/non relatives or renting accommodation and who do not own a real estate;

d. IDPs who received a monetary compensation before the state strategy was adopted but who did not use the amount of monetary compensation for the purchase of real estate property.

Such differentiation of IDPs is to be welcomed, however, there are certain difficulties associated with the creation of this type of database. In order to obtain a detailed record, it is essential to do the re-registration of privately accommodated IDPs. Furthermore it is necessary to establish a special working group who will be responsible for creation of detailed action plan of the activities that are supposed to be undertaken in relation to IDPs in PA.

During the monitoring process we tried to identify which category of IDPs among the given four categories is in majority and what is the expectation of each group. Hereby, it has to be clarified that project monitors did not have any mechanism to check whether the IDP family in fact belonged to any of the given categories or not. For the purposes of this survey this issue did not have a decisive importance; however, it will be crucial for the government when it starts the activities foreseen under the second stage of AP implementation. It will be vital to strictly define which IDP family belongs to which category.



It is apparent from the statistical data that out of those families interviewed by the project monitors, almost half of the families belong to category – C (IDPs who are hosted by relatives/non relatives or renting accommodation and who do not own a real estate). This group of IDPs do not own any real estate. 17.6% of privately accommodated IDPs own real estate and this fact has to be welcomed. Percentage of IDPs under category – B (IDPs who are hosted by relatives/non relatives or renting their accommodation who do not own a house but have a plot of land under their ownership) is relatively low. Except for identifying the percentage of groups, we tried to clarify what are the expectations of each of the mentioned category of IDPs.

The first category of IDPs (category 'a' - IDPs who own real estate/private accommodation), who represented 17.6% of interviewed households, were asked what type of assistance they require from the government. Most of them, around 30.6% answered that the property restitution is their major requirement, there is a relatively small number of IDPs of 'a' category who asked for the housing and some household items, there is also group of IDPs who asked for the construction materials or financial assistance for the rehabilitation of the dwelling they own. During the interview process, project monitors explained what are the activities foreseen for those IDPs who fall under that 'a' category. It is noteworthy, that in most cases interviews were followed by an aggressive attitude from IDPs, as they consider that they are in the most disadvantaged position. During the whole period of displacement these particular group of IDPs had to take care of all their problems independently and the only support they received from government was IDP allowance that amounted to 28 GEL. Except for the allowance there was no other state benefit for them. Thus, 'a' category of IDPs consider the provisions given in the Action Plan as unfair, since providing them with financial resources or the construction materials for rehabilitation of their dwellings is not enough. Once again the monitoring results show that there is a need for the government to clearly explain to the IDPs that the purpose of the State Strategy and the Action Plan is to improve their living conditions and not to deal with the property restitution, which is a separate topic.[400]

In case of IDPs falling under category 'c', the main question was regarding the location of DHS. Majority of the interviewed IDPs state that they want government to provide the DHS only in those cities/municipalities where they currently live (98.4% of IDPs living in Tbilisi, 90.9% of IDPs in Gori, 52.9% of IDPs in Zugdidi responded this way,[401] as for responses received in Batumi and Kutaisi, 100% of interviewed IDPs of category 'c' asked from the government to provide DHS in their current location).

IDPs falling under category 'd' are the ones who received a monetary compensation before the state strategy was adopted, but who did not use the amount of monetary compensation for the purchase of real estate. This group was mainly identified in Adjara, their evictions took place in 2006. Despite the fact that these families received a monetary compensation, due to the inaccuracies related to family registration numbers and inadequate amounts, most of them were not able to purchase real estate. Thus they are asking government to provide DHS.

Point 2.2.2 of the Action Plan is very vague with regards to the activities foreseen for IDPs falling under category 'd'. Despite the fact that the provision talks about the possibility to lodge an individual complaint that will be thoroughly investigated by MRA, it does not give a clear definition what is meant by 'appropriate measures' that will be taken in case a complaint is well-founded. It is reasonable to have a clearly defined definition and, by doing this, try to avoid raising high expectations among the IDPs. At this stage 95.8% of interviewed IDPs, who belong to 'd' category, are asking government to provide DHS.

Monitoring results show that housing remains to be the most challenging issue for the IDPs residing in PA. Of course there are unemployment related problems, difficult social and economic situation, property restitution issues and etc. however, despite all the other challenges they still consider housing as the most problematic issue.

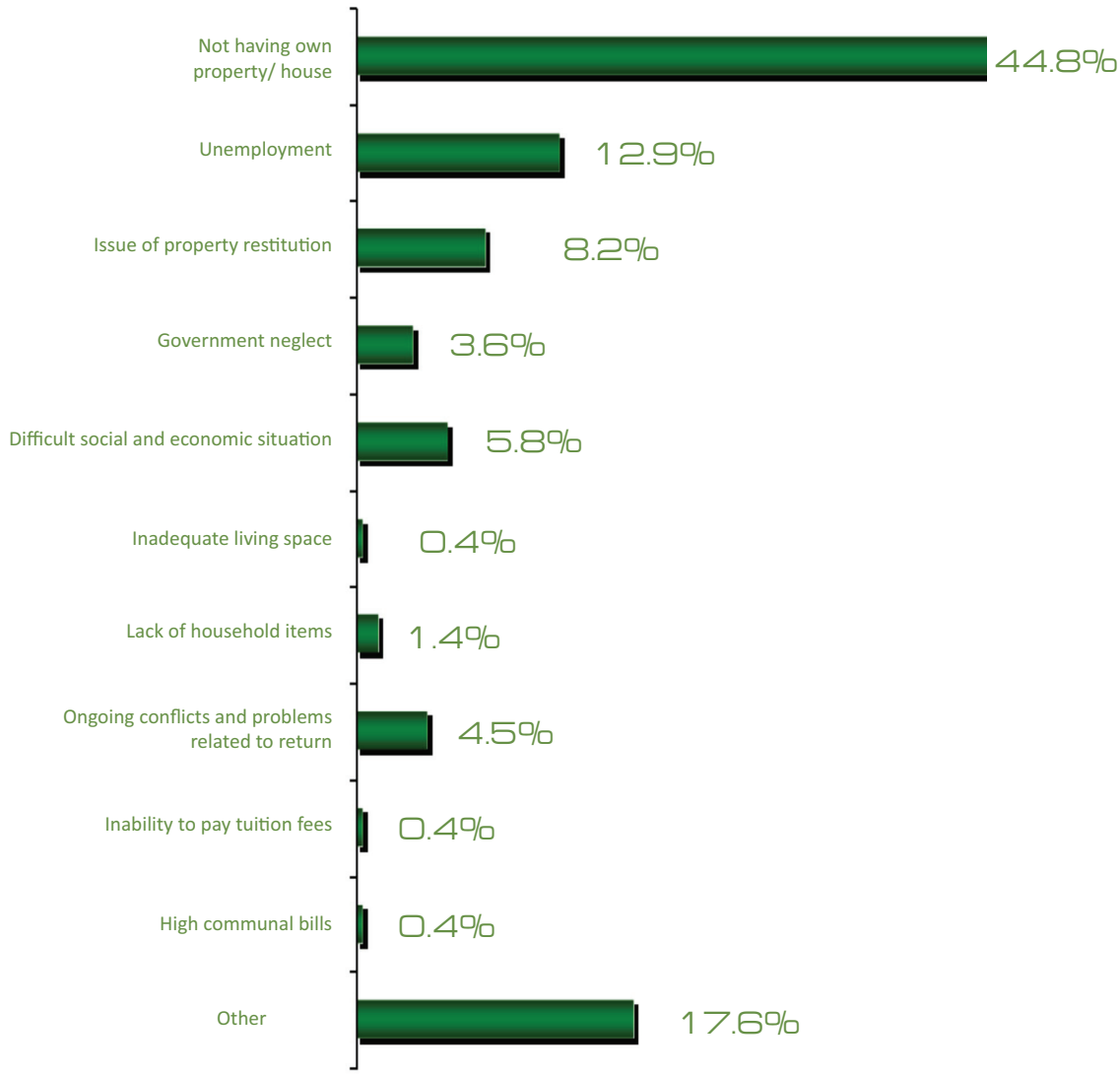
The aforesaid can be confirmed by the chart provided below. We asked IDPs what do they consider as their major concern/challenge,[402] and hereby are the answers received:

2010

[400] The issue of property restitution was discussed in 2010 Special report, where it was emphasized that it is essential for the state to establish a special property resolution mechanism involving international expertise, which would decide all existing property disputes, p.70-71.

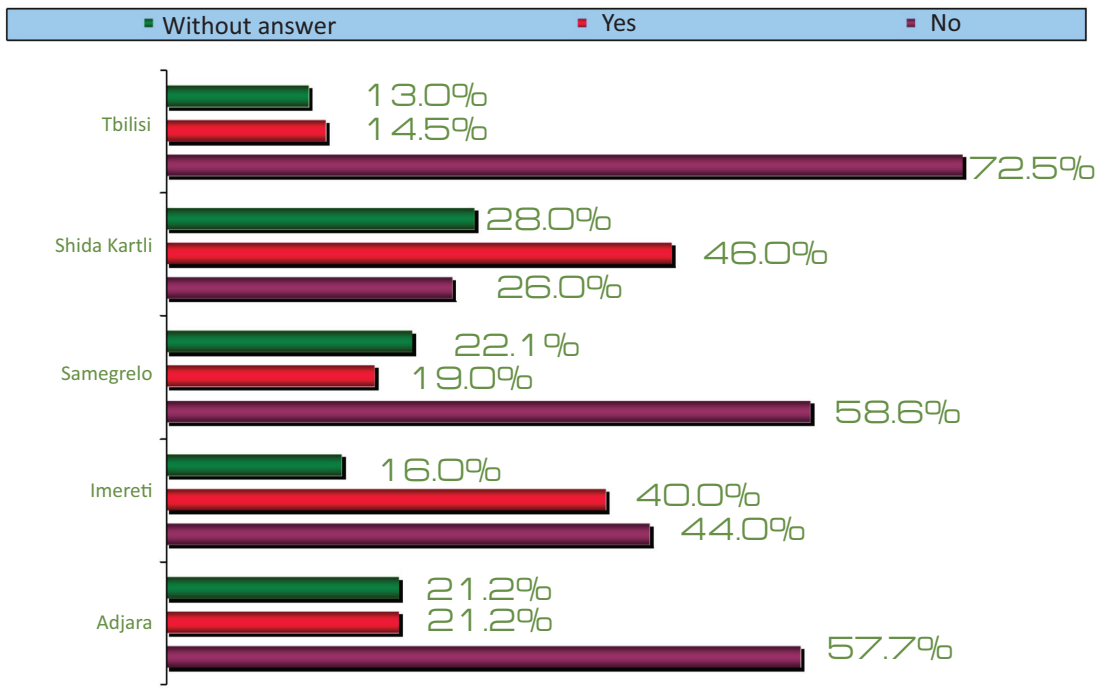
[401] In case of Zugdidi, IDPs consider Poti and Senaki as an alternative.

[402] It has to be clarified that it was an open question and IDPs were not limited with answers.



The issue of employment of IDPs in PA is one of the significant problems. In case of IDPs living in CCs in Georgia there are some opportunities to get a job, due to the fact that there are various non-governmental organizations currently implementing vocational training programs for IDPs, in some occasions granting small loans and etc. These types of initiatives are not accessible for the IDPs in PA. Creation of livelihood opportunities has a vital necessity for IDPs in PA. Only 26.9% of interviewed IDPs are employed, which is rather critical.

Are you employed? The data is divided according to the regions:

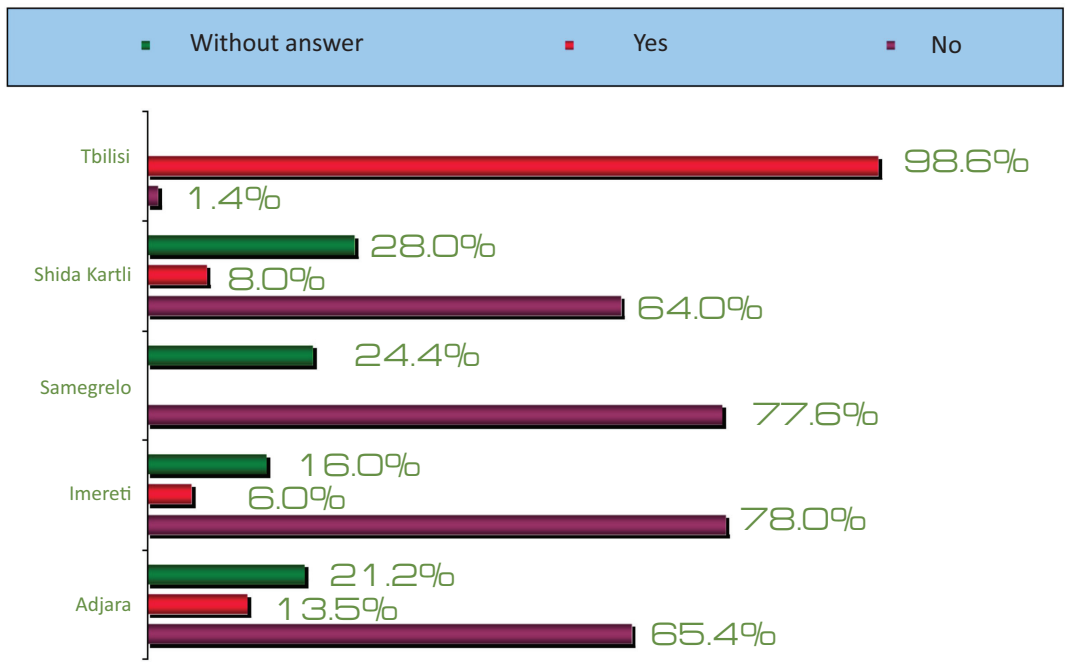


IDP healthcare is also an acute issue. Most of the privately accommodated IDPs state that they have addressed the MRA for one time cash assistance and in some cases the Ministry has granted it to the most vulnerable IDPs. However, one-time cash assistance is not a proper solution for those IDPs who suffer from chronic diseases. It is also important that significant number of IDPs in PA are not benefiting from the social assistance programs; accordingly, they do not have a free medical insurance. The main reason for not being included in the social assistance programs is that the IDP families are usually assessed by social agents at their relatives' houses or at the rented apartments and in most cases they get high scores and are not benefiting from the program. In some cases the reason of non inclusion is the fact that social agents are unable to find the IDP families who are systematically changing the residence, thus they are incapable to assess the family. The situation is analogous in case of those privately accommodated IDPs who have the indication "without an address" on their IDP card. In general, it is extremely challenging to track those IDPs and to monitor their human rights situation.

Another very important topic that we tried to focus our attention during the monitoring process was the issue of communication between the IDPs in PA and the MRA. Monitoring results show that 58.4% of interviewed IDPs have applied to the Ministry at least once. Mainly IDPs address the Ministry with the request of housing allocation (71.2% of interviewed IDPs provided this answer), one-time monetary assistance, requests for the support to find a job and etc. We also tried to assess the level of awareness among the IDPs about the processes that are foreseen for the second stage of implementation of the Action Plan related to IDPs in PA. The answers were very interesting, since it showed that IDPs in Tbilisi are better informed than the ones in the regions, where the lack of information is rather obvious.

2010

Do you know which stage of IDP AP foresees activities targeting IDPs in private accommodation and when it is supposed to be implemented?



It can be concluded that IDPs residing in private accommodation are suffering from the same hardships as those ones living in collective centers. Some of them might even be in a worse economic situation, since they are not getting any communal subsidies (subsidies on electricity, gas and etc.). Also due to some technicalities it is not possible to include the IDPs in social assistance programs. However, housing remains to be the most challenging issue. Considering all the aforesaid, it is imperative that government starts implementation of the activities foreseen for the IDPs in PA in an accelerated manner. As it is shown by the survey - most of the addresses provided by the MRA are inaccurate - it is important for the Ministry to undertake the re-registration of IDPs. As for dividing the IDPs of PA in four different categories, government shall set up special technical working group that will work on the creation of accurate statistical data. It is also crucial to have Criteria for the Durable Housing Solution for the IDPs in PA,[403] which will guide the process and will determine the special procedures of who shall be given a priority while making a decision on providing DHS.

RECOMMENDATIONS

In accordance with all the above, the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia should implement the following:

In relation to eviction/re-allocation of IDPs:

- **In case of eviction/re-allocation of IDPs from different buildings, all the provisions of the 'Standard Operating Procedures for Vacation and Re-allocation of IDPs for Durable Housing Solutions' shall be implemented;**

[403] The Criteria for IDPs Durable Housing has already been adopted, but it is developed for the IDPs who live in CCs. Given criteria determines who will be given a priority in case of competing applicants.

- **Prior to the transfer of IDPs to alternative accommodation, it should be ensured that given accommodation is in compliance with minimum standards established by the Steering Committee;**
- **Prior to eviction/re-allocation of IDPs from different shelters, all those families who are waiting for monetary compensation in lieu of cottages shall be granted compensation amounts according to the standards specified in SOPs;**
- **Government shall ensure that IDPs who have been evicted/re-allocated have access to livelihood opportunities and employment. Local infrastructure in the regions shall give IDPs possibility to generate income and have their basic social and economic needs satisfied;**
- **IDPs re-allocated in the different regions of Georgia shall be granted agricultural land plots; different livelihood projects shall be implemented;**
- **Government shall make a decision in a timely manner, regarding granting the status of IDPs to those individuals who are displaced from so-called adjacent villages of the conflict zone,**

In relation to privatization-rehabilitation process:

- **Ensure that privatization-rehabilitation process of collective centers is accelerated in order to provide IDPs with adequate housing in the shortest possible period of time;**
- **Legal status of rehabilitated collective centers shall be determined in an accelerated manner; all IDPs shall be provided with relevant documentation certifying ownership;**
- **Government shall make a decision regarding the future of some of the Collective Centers (1044 CCs still not rehabilitated and not privatized, since it is still not decided whether there is any possibility that those CCs turn into DHS)**

In relation to privately accommodated IDP families:

- **Government shall set up special technical working group that will make a detailed analysis of all the activities that are supposed to be undertaken in relation to IDPs in PA;**
- **Re-registration of IDPs in PA shall be undertaken in an accelerated manner and the Ministry with close cooperation with the Public Registry Agency and local municipalities shall make a categorization of the privately accommodated IDPs.**

2010

Rights of Refugees and Asylum Seekers

INTRODUCTION

The legal status of refugees and asylum seekers in Georgia, its granting, termination and deprivation of and legal, social and economic guarantees of refugees are defined by the Constitution of Georgia, universally recognized principles of International Law, International agreements ratified by Georgia and Law of Georgia "on Refugees".

According to the para 2, Article 47 of the Constitution of Georgia: "In accordance with universally recognized rules of international law, the procedure established by law, Georgia shall grant asylum to foreign citizens and stateless persons."

According to the October, 2010 data of the Ministry of Internally Displaced persons from the Occupied Territories, Accommodation and Refugees of Georgia, the legal status was granted to 692 persons, and 48 persons are registered as the refugee-status-seekers[404].

In spite of the numerous positive steps taken by the state in the given field, currently the substantial part of the resources spent on the improvement of the legal status of the refugees and asylum seekers in Georgia, are donated by International and non-governmental organizations.

DOMESTIC LAW OF GEORGIA RELATED TO THE REFUGEES AND ASYLUM SEEKERS AND ITS COMPLIANCE WITH INTERNATIONAL LEGISLATION

In International law, the right and guarantees for the refugees and seekers of the status are regulated by the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. 1951 Convention and its 1967 Protocol establish universal norms and principles; their protection and application in the domestic law is obligatory for all States Parties of the Convention and it refers to Georgia as well that joined the Convention and its 1967 Protocol on 28 May, 1999 according to the # 1996-II resolution of the Parliament of Georgia.

The 1951 Convention on the Status of Refugees is not limited only to general principles, it offers extremely detailed definition of the rights of refugees and asylum seekers; this very fact itself broadens the spectrum of obligations undertaken by Georgia as a result of joining the given convention.

According to the Convention, the rights of the refugees should be protected by the states on the same degree and of the foreign citizens. A refugee has a right to apply to a court, to be engaged in wage-earning employment, receive education, to have accommodation and food in the same terms as accorded to the nationals of the country and/or

[404] Ministry of Internally Displaced persons from the Occupied Territories, Accommodation and Refugees of Georgia, http://mra.gov.ge/main/ENG#index/1

foreign citizens.[405] Further, the Contracting states should issue identity papers[406] for the refugees in order to facilitate the definition of status, expulsion of a refugee should be regulated by law[407] and the state shall as far as possible facilitate the assimilation and naturalization of refugees.[408]

Moreover, prohibition of expulsion or return (refoulement) represents of main principles of the Convention. According to this principle, Georgia as a signing state has an obligation not to expel or return a refugee to the frontiers of territories where his/her life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.[409]

In the domestic law of Georgia, the status of refugees is regulated by the 1998 "Law of Georgia on Refugees".

In spite of the fact that according to the Para 2, Article 6 of the Constitution of Georgia, the "Law of Georgia on Refugees" should correspond to universally recognized principles and rules of International law as well as to International treaty or an agreement that Georgia is a part of, the given law does not comply with international standards. The mentioned problem has been repeatedly underlined in the parliamentary reports of the Public Defender of Georgia, though there haven't been any changes yet.

Article 1 of the Law of Georgia on Refugees defines the term "refugees": "A refugee is a person who entered the territory of Georgia and for whom Georgia is not his/her country of origin and who, owning to a well grounded fear to become a victim of persecution for reasons of race, religion, membership of a particular social group or political opinion, left the country of his nationality or permanent residence, entered the territory of Georgia and cannot or, due to this fear, does not want to enjoy protection of his country."

The given definition limits the circle of the persons that could be granted the status of refugees as far as it requires the existence of persecution as such and excludes granting of the refugee status only on the ground of just fair of persecution.

Though, the 1951 convention on the Status of Refugees, besides the prosecution factor, considers as well the well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion as a prerequisite for granting a status of refugee. This implies from the State to consider the subjective side – apprehension of a person of his condition, as well as the objective side.

As for the procedures of granting the status of refugee, according to Article 4 of the Law of Georgia "on Refugees", the decision of recognising a person as a refugee is taken within 4 months after the registration of the application by the Ministry of Internally Displaced persons from the Occupied Territories, Accommodation and Refugees of Georgia. During the mentioned period, the person enjoys the rank of the refugee-status-seeker.

According to the official letter of the Ministry of Internally Displaced persons from the Occupied Territories, Accommodation and Refugees of Georgia, 57 persons were registered as the seekers of the Status of Refugee, out of them 3 were granted the status. Therefore, because of the fact that the number of the appeals is not high, there are less problems regarding the procedures. Though, there are exceptions, when persons have been seeking for the status of refugee for years. Most of such persons enter the territory of Georgia in 2000. They still do not have the status or refugee. Hence, the process of granting them with the status is prolonged and went out of the deadlines regulated by the law. In spite of the fact that the Public Defender of Georgia has not been addressed with such complaint, the organizations working on these issues stress the existence of the given problems. Therefore, it is necessary to study this problem in detail.

The Law of Georgia "on Refugees" contains only general and vague legal, economic and social protection guarantees for the refugees. They are dispersed in different legal acts. Part of them are presented in the Law of Georgia "on

[405] The 1951 Convention on the Status of Refugees, Articles 17-24
[406] The 1951 Convention on the Status of Refugees, Article 27
[407] The 1951 Convention on the Status of Refugees, Article 32
[408] The 1951 Convention on the Status of Refugees, Article 34
[409] The 1951 Convention on the Status of Refugees, Article 33

Refugees" and other part is defined in the Chapter V of the Law of Georgia "on the Legal Status of Foreigners". The document with the complete list of the rights of refugees does not exist at this stage.

As a result of the analysis of the legal acts, it became evident that the refugees are not fully provided with the guarantees prescribed by the 1951 UN Convention on the Status of Refugees and its 1967 Protocol.[410]

Article 28 of the 1951 Convention on the Status of Refugees provides that the Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory.

The mentioned is provided by 21 March, 2008 changes[411] to the Law of Georgia "on the Rules of Registration and Identity Verification of Citizens of Georgia and Aliens residing in Georgia". The given changes are the step forward towards the improvement of the legislation in terms of the legal status of refugees. The given document with its form and its all requisites does not differ from the other travel documents issued by other States. Despite this, according to the information received from the refugees, they are not able to cross the border. According to the Ministry of Internally Displaced persons from the Occupied Territories, Accommodation and Refugees of Georgia, the reason in such cases is the refusal of the third country to issues the visas. It is evident that the powers of the State bodies cannot overcome the decisions made by third countries in such cases, but, coming from the fact that the problem has not been resolved for years, it is necessary to find out its reasons.

Article 34 of the 1951 Convention on the Status of the Refugees states that the Contracting States should facilitate as far as possible the assimilation and naturalization of refugees. The right of the refugee to gain the citizenship of Georgia is defined by sub-paragraph "b" of article 5 of the Law of Georgia "on Refugees". Namely, "the refugee has the right to address the Ministry of Justice with the application for a Georgian citizenship in accordance with the Georgian Law on Citizenship".

According to the above-mentioned, the Georgian citizenship is granted to the refugees on a basis of general principles of granting the citizenship. Though, the facilitation of naturalization has not been envisages neither by the Law of Georgia "on Refugees" nor by the Organic Law "on Citizenship". The given problem was touched in the parliamentary report of the Public Defender of Georgia for the first half of 2007[412]. However, there have not been any positive changes in this regard.

In order to improve the acts regulating the legal status of refugees, in 2008, Ministry of Internally Displaced persons from the Occupied Territories, Accommodation and Refugees of Georgia prepared draft law "on Refugees and Humanitarian Status". According to the information provided by the Ministry, the draft law has been sent for legal expertise to the Ministry of Justice on 21 January, 2011.

The draft law defines the status of the legal status of the asylum seekers, refugees or the persons of humanitarian status in Georgia, their rights and obligations, legal and social-economic guarantees, grounds and procedures for granting, terminating and annulling the refugee or humanitarian status.

The steps of the Ministry of Internally Displaced persons from the Occupied Territories, Accommodation and Refugees of Georgia towards the improvement of the law on Refugees, should be assessed positively. However, it is not clear why the process has prolonged. Hope that the final version of the draft law will be enacted timely and will be in full compliance with the Intarnational legislation that will eradicate all the drawbacks existing in the current legislation.

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410 The Situation of Human Rights and Freedoms in Georgia, the parliamentary report of the Public Defender of Georgia for the first half of 2009.

411 The Situation of Human Rights and Freedoms in Georgia, the parliamentary report of the Public Defender of Georgia for the first half of 2009

412 The Parliamentary report of the Public Defender of Georgia for the first half of 2007.

THE CRIMINAL CODE OF GEORGIA IN TERMS OF REFUGEES

Article 344 of the Criminal Code of Georgia states that illegal crossing of the state-border of Georgia shall be punishable; article 322[1] of the Criminal Code of Georgia defines the violation of the rules on entering the occupied territories as incriminated act. As far as Georgia is a Contracting State to the 1951 Convention on the Status of Refugees and its 1967 Protocol, the state has an obligation not to punish the persons who crossed the border of Georgia with the aim to seek the asylum[413]. Both mentioned articles of the Criminal Code of Georgia has the note stating that "This article shall no apply to the citizens or persons not having citizenship of a foreign country who enter Georgia and seek sanctuary from the government under the legislation of Georgia, if his/her action bears no other criminal signs."

Therefore, the Criminal Code of Georgia faces some problems regarding the status of refugees that need to be resolved and regulated.

GRANTING THE STATUS OF ASYLUM SEEKER

Article 31 of the 1951 Convention on the Status of Refugees state:

- "The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence."

This article defines 2 important elements: the application should be presented to the authority without any delay and the person should show "good cause" for substantiation of granting the status.

According to the para 7, article 2 of the Order #117 of the Minister of Internally Displaced persons from the Occupied Territories, Accommodation and Refugees of Georgia, issues on 27 September 2008:

- "in case of illegal crossing of the state-border of Georgia, the asylum seeker is obliged within the 3 days period of crossing the border to submit an application to the Ministry of Internally Displaced persons from the Occupied Territories, Accommodation and Refugees of Georgia"

Sub-paragraph 2, Article 2 of the Law of Georgia on Refugees state that the Ministry decides on the registration of the application within three days from the date of application. Therefore, the procedure on the granting the status of asylum seeker might be prolonged for 6 days[414] upon the illegal crossing of the border.

As for the "good cause", the Georgian Legislation does not contain the list of the demands, after the meeting of which the person will be granted with the status of asylum seeker. There are no general proof standards, the meeting of which is necessary in such situations. In such cases, the state has broad powers that is resulted in ineffectiveness of the appellation. Generally, the "good cause" entails the application (with relevant reasoning) that a person is persecuted on any of the grounds and the timeframes, how long a person wishes to stay in the country.[415]

2010

[413] Article 31 of the 1951 Convention. When the Law of Georgia o occupied territories was adopted (as well as the article 322[1] of the Criminal Code of Georgia was introduced), the Venice Commission prepared its opinion where the implementation of the mentioned obligations should be ensured by the Georgian State; http://www.venice.coe.int/docs/2009/CDL-AD(2009)015-e.pdf

[414] According to the articles 3, 4, 5 and 6 of the Law of Georgia on Refugees, the decision could be appealed by administrative and judicial rules.

[415] The Refugee in International Law, Guy S. Goodwin-Gill, Jane McAdam, 3rd Edition, Oxford University Press, 2007, page 265.

THE ISSUE OF CRIMINAL PROSECUTION OF THE PERSONS NOT GRANTED THE STATUS OF ASYLUM SEEKER

According to the notes of the articles 344 and 322[1] of the Criminal Code of Georgia, the person shell not be punished when he applies with the request of receiving the asylum to the Georgian authorities. This principle derives from paragraph 1, article 31 of the 1951 Convention on the Status of Refugees. Paragraph 1 of the same article states:

- "The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country."

According to the mentioned article, it is necessary to give a person the reasonable time and possibility to leave the country. The Georgian legislation does not envisage the rules according to which, the procedures and the timeframes of leaving the country are defined. Therefore, it is necessary to define such regulations in order to prevent punishment of those persons who are not granted the status. First of all the timeframes should be defined during which, the person would be free from criminal prosecution. The following procedures should be determined as well: the rules of deportation, determination of the destination country, cooperation with International Organizations and other important elements. Regarding the mentioned issues, Georgia could share the European legislation that on one hand will promote the process of improvement of the legislation in the country and on the other hand, will ensure the compliance of the Georgian legislation with the European standards.

CRIMINAL RESPONSIBILITY FOR USING THE FALSE IDENTITY CARD AND OTHER OFFICIAL DOCUMENTS

The criminal responsibility is envisaged under the article 362 of the Criminal Code of Georgia for the usage of false identity and other official documents. The given article does not refer to a person if he/her committed the mentioned act while being a victim of a trafficking before being granted the status of a victim of a trafficking. There are no other exceptions defined by the law. As far as, in fact, the seeker of the status is in the same condition as the victim of a trafficking, we consider it inadmissible to impose a criminal responsibility on him/her. In fact, the false documentation is a means of reaching the aim – receiving the asylum – and it should be considered permissible *per se* when the criminal prosecution is not launched upon crossing the border.

CRIMINAL RESPONSIBILITY OF THE SEEKERS OF THE REFUGEE STATUS

Article 25 of the Law of Georgia "on International Cooperation in the Criminal Justice field" states the following:

- "Extradition will not be applied if a person submitted to extradition is granted a political shelter in Georgia or is granted a refugee status in Goergia, except the cases when the extradition is requested by the third, safe state",

The given article does not refer to the seekers of the status. The International case-law defines the the extradition of the seekers of the refugee status by the same standards as of the refugees. According to the document issued by the UN High Commissioner for Refugees on September 4, 2001, "non-refoulment" principle adheres to the asylum-seekers as well.[416] In fact, regarding the extradition, the European Convention on Human Rights and Fundamental Freedoms automatically work as well in Georgia in each case, though, a special rules should be applied towards the status-seekers that would work on the basis of the status *a priori*. Therefore, it is necessary to modify the Law of Georgia "on International Cooperation in the field of Criminal Justice" in a way to apply the same standards for the refugee status-seekers as for the refugees.

[416] http://www.unhcr.org/3b95d6244.html

CRIMINAL PROSECUTION

On November 26, 2010, The Public Defender's Office addressed the Supreme Court of Georgia, Main Prosecutor's Office and Tbilisi City Court and requested the information on number of cases examined by the court under the articles 322[1] and 344 of the Criminal Code of Georgia.[417]

The Head of the Statistics and Standardization Department of the Supreme Court informed the Public Defender by his letter #64 on December 3, 2010, that the following cases have been studied during the year 2010 by general courts:

Under the article 344 of the Criminal Code of Georgia, there were 131 cases in the first instance Court, 21 appellations in the Court of Appeals and 10 cassational appeals in the Supreme Court of Georgia.

Under the article 322[1] of the Criminal Code of Georgia, there were 50 cases in the first instance court, 4 appelations in the Court of Appeals and 2 cassational appeals in the Supreme Court.

Out of the above-mentioned cases, none of the criminal cases have terminated considering the notes to the articles 322[1] and 344.

According to the letter #0553, sent on December 7, 2010, by the Tbilisi City Court to the Office of Public Defender of Georgia, the court examined 31 criminal cases under the article 344 of the Criminal Code of Georgia and 4 criminal cases under the article 322[1]. In none of the cases the criminal prosecution was terminate considering the notes to the articles.

In the letter to Public Defender of Georgia sent by the Main Prosecutor's Office on December 29, 2010, it was mentioned that the Prosecutors office does not maintain the statistical data on the abov-mentioned issues, therefore it was not known to them, whether there were any cases terminated under the articles 322[1] and 344.

GENERAL DYNAMICS OF REQUESTING THE STATUS OF REFUGEE

The Office of Public defender addressed the Ministry of Internally Displaced persons from the Occupied Territories, Accommodation and Refugees of Georgia on May 31, 2010 and requested the information regarding the total number of status-seekers. According to the answer from the Ministry dated by June 7, 2010, 64 persons crossed the state border of Georgia seeking the asylum. Only 8 persons out of them were granted the refugee status. Out of the persons left without the status, 16 persons appealed a complaint on the refusal of the refugee status, though, none of the appeals have been satisfied.

EDUCATION

Article 22 of the 1951 Convention on the Status of Refugee states that the Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education. Furthermore, the Contacting States shall ensure the access to the other forms of education. According to the sub-paragraph "f" of the Article 7 of the Law of Georgia in Refugees, "State agencies and local authorities shall assist the refugees in placing children in day care centers and the educational institutions".

According to the refugees, starting from the October 2009, the Ministry of Education and Science stopped issuing of vouchers for the refugee children studying in the Russian sector. The salaries of the teachers of the Russian sector depend on the vouchers. The given problem, considering he information at our disposal, emerges in the villages Duisi,

[417] According to the Criminal Code of Georgia, only the mentioned articles contain the notes that "This article shall no apply to the citizens or persons not having citizenship of a foreign country who enter Georgia and seek sanctuary from the government under the legislation of Georgia, if his/her action bears no other criminal signs."

Ninubanisi and Jokolo. For the last 4 months, the teachers in the mentioned villages have not received any salary. The problem is very well know to the local resource center as well as to the Ministry of Education and Science.

Moreover, according to the refugees, because of the insufficient number of the pupils, the school in Jokolo might be merged with the one in Duisi. It should be noted that the distance between the villages is about 4-5 km; this very fact might hinder the access to the school for the children.

The Office of Public Defender requested the relevant information from the ministry of Education and Science regarding the above-mentioned problem. According to the official information provided by the Ministry, 247 children with refugee status study in public schools throughout Georgia. Out of them, there are"

- 168 pupils in Duisi public school;
- 22 pupils in Omalo public school;
- 19 – in Dumasturi public school;
- 24 – in Jokolo public school;
- 14 – in Birkiani public school.

It should be noted that in Jokolo public school the children also study in the Chechen Language that should be assessed positively.

Regarding the issue of vouchers, according to the information provided by the Ministry of Education and Science, the Ministry actively works to solve the problem, though does not confirm the fact of hindering the educational process.

When it comes to the high education, the refugees receive financial asnwell as technical assistance from International Organizations. In 2010, UN allocated so-called DAF-funding to ensure the access to high education for the refugees. The funding envisages covering total cost of the study and 4-years stipend. The best students have been chosen on a competition basis, though it is not clear whether the funding will be prolonged in 2011.

As for the state approach towards the mentioned issue, there are no specific grants, fundings or any special programs that would be envisaged for the refugees. The letter of the ministry of Education and Science dated by February 14, 2011, "enrollment in the education programs and issuing grants is not registered considering the refugee status". According to the information provided by the same Ministry, "every year, the Ministry of Education and Science implements the social program for the relevant students who enter the high schools, in compliance with the rules defined by the decree of the Government'.

According to the August 2, 2010 Decree #227 of the Government of Georgia, the persons who have the right to receive the funding fall into 10 categories, and none of the categories envisage full or partly covering of the education costs on a basis of a refugee status.

On October 13, 2010, the Order#107N of the Ministry of Education and Science established "The special state programme for issuing state educational grant to the citizens of foreign countries for 2010-2011 educational year".

The citizens of foreign countries who pass the National examinations in the 2010-2011 educational year and enter the high school, have the right to receive the funding within the framework of the mentioned program. The given program envisages funding of those students as well, who enter the high schools without passing the national examinations, among them of the citizens of foreign countries with which the state has an agreement to ensure the access to high education for their citizens. The refugees fall under the latter category.

Currently the list of the refugees, who are registered in high schools in the Georgian and the Russian sector for 2010 throughout Georgia, is not available to us. In spite of this, it is evident that the refugees face more problems while passing the national examinations than the citizens of Georgia do. Therefore, we consider that the state should take

appropriate measures to ensure the establishment of preparatory courses for refugee students that would give them the possibility to enjoy fair competition.

As for the professional education, the UN finances the students studying in the professional colleges. More than 50 students received funding in 2010 in professional colleges. Most of them study at the Kachreti professional center and in Telavi professional colleges. The students study different professions. The program envisaged to cover the cost of the education, monthly stipend and purchasing the books at the beginning of the year.

DURABLE SOLUTION

According to the International law, the durable solution is a termination of the process of the status of a refugee for a certain person.[418] There are three main durable solutions: (1) voluntary return i.e repatriation – when a refugee returns to the country of his origin; (2) local integration – the country granting the asylum becomes the permanent living place for a refugee; (3) resettlement – that implies the resettlement of e refugee to the third state. At the same time is necessary that the third country should express its willingness to receive a refugee for a permanent residence[419].

In case of **repatriation**, it is necessary to consider the interests of the host country. At the same time, the international legislation ensures the right of a refugee to return to its country of origin[420]. To promote the voluntary repatriation is one of the main functions[421] of the UN High Commissioner for Refugees. The Contracting States of the 1951 Convention on the Status of Refugees are obliged to cooperate with the UNHCR.[422]

The most important element of Repatriation is safe and dignified return.[423] The mentioned entails physical, legal and material security.[424] The legal security envisages the liberation of the repatriation process from all the administrative barriers.

In case of **local integration**, the host country offers the permanent residence to the refugee that entails receiving the citizenship as well. The mentioned durable solution is recognized by the 1951 Convention[425] and the Statute of the UNHCR.[426]

The local integration process entails legal, economic, social and cultural integration. In legal terms, integration means gradual granting the refugees with similar rights as the citizens do have that leads to the citizenship or permanent residence. The aim of the economic integration is to ensure that the refugees are less dependent on the humanitarian assistance from host country or international organizations. The social and cultural integration of the refugees is important as well, that envisages their involvement in the public and social life.

The UNHCR considers that Georgia fully uses the available tools for the integration of refugees.[427]

The Chechen refugees settled in Pankisi Gorge in Georgia were given the possibility of naturalization. The UN High Commissioner on Refugees considers that for the integration of refugees it is necessary to ensure better living conditions, social security and give them the possibility to earn for their living.[428] During 2011 up to 200 refugees, belonging to vulnerable groups will enjoy the assistance from the UNHCR.[429]

418 The July 28, 1951 Geneva Convention of the Status of Refugees, UN General assembly resolution #429(V), article 1(C); Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees HCR/IP/4/Eng/REV.1 Reedited, Geneva, January 1992, UNHCR 1979

419 Ibid

420 Universal Declaration of Human Rights, Covenenant on Civil and Political Rights, Convention on the elimination of all forms of Discrimination.

421 Statute of the UNHCR

422 Article 35 of the Convention on the Status of Refugees

423 UNHCR standards

424 Ibid

425 Article 34 of the Convention on the status of refugees

426 Statute of UNHCR

427 UNHCR Global Appeal 2011 (update) – Georgia, UNHCR Fundraising Reports, 1 December, 2010.

428 UNHCR Global Appeal 2011 (update) – Georgia, UNHCR Fundraising Reports, 1 December, 2010.

429 UNHCR Global Appeal 2011 (update) – Georgia, UNHCR Fundraising Reports, 1 December, 2010

According to the article 9 of the Law of Georgia on Refugees, the refugee receives Georgian citizenship on the basis of the Organic Law of Georgia on Citizenship. Moreover, according to article 10 of the Law of Georgia on Refugees, receiving the citizenship of Georgia or any other country is followed by the termination of the status.

According to the data provided by UNHCR, the number of the refugees seeking the Georgian citizenship increased. [430] In 2010, more than 170 persons received the citizenship of Georgia

Resettlement envisages transfer of a refugee from a shelter country to the third country that would express the willingness to give a refugee permanent residence. Resettlement is used as a safeguarding guarantee when the rights of a refugee are threatened to be violated in the shelter country. Resettlement is considered to be the last resort and is used only in exceptional cases when it is impossible to realize any other decision.

In 2003 – 2004 years, 180 refugees left Georgia and resettled to the third country. Out of them 173 persons were Chechen refugees from the Russian Federation; 4 from Iran and 3 from Yemen. In the first half of 2005, 62 refugees were resettled in the third country. Out of them, 56 were Chechen refugees from the Russian Federation and 6 - from Iran.[431]

On December 12, 2010, the Office of Public Defender addressed Department on migration, repatriation and refugee issues of the Minister of Internally Displaced persons from the Occupied Territories, Accommodation and Refugees of Georgia and requested the information regarding thedurable solutions for refugees.

According to the answer received from the Ministry, by the end of 2010, 666 persons possessing refugee status are registered. During 2010, 57 persons were registered as the status-seekers. Three persons out of them were granted the refugee status. Moreover, up to 130 refugees received the citizenship of Georgia and 28 persons have returned to the country of their origin.

RECCOMMENDATIONS

- **To ensure the timely adoption of the draft-law on "the Refugees and Humanitarian Status" that will eradicate the currently existing drawbacks in the legislation and will bring the national legislation into the compliance with International standards.**
- **To ensure that the Georgian Law on Refugees establishes the proving standars for granting the "refugee status-seeker (together with detailed procedures);**
- **To ensure that the relevant legislation defines the time-frames that give the possibility to leave the country to the persons not granted the status or having the terminated status of refugee status-seeker (with relevant guarantees restricting the criminal prosecution);**
- **To imperatively exclude from the list of incriminated actions the fact of crossing the border by the refugee status seeker with false documentation;**
- **To ensure that the relevant structures undertake the measures to provide effective realization of the access to education for the refugee pupils;**

[430] Information received from the UNHCR.

[431] Information Paper "Resettlement", was issued by the Georgian UN association and UNHCR in 2005; http://www.una.ge/geo/artdetail.php?id=81&group=documents

Human Rights Situation of Conflict Affected Individuals in Georgia

Human rights situation of the individuals residing in the conflict zones has not improved in 2010. Existence of political conflicts in Georgia represents a serious challenge for the realization of the state jurisdiction. In order to achieve progress, it is vital to have some substantial results in peace negotiations. 2009 UN General Assembly Resolution calls upon all participants in the Geneva discussions to intensify their efforts to establish a durable peace, to commit to enhanced confidence-building measures and to take immediate steps to ensure respect for human rights and create favourable security conditions.[432] Council of Europe Parliamentary Assembly resolution calls on Russia and the de facto authorities in South Ossetia and Abkhazia to guarantee the safety and security of all persons under their de facto control, not only in South Ossetia and Abkhazia but also in the occupied territories of the Akhalgori District.[433] Representative of the Secretary General on the Human Rights of Internally Displaced Persons, Mr. Walter Kalin underscores the importance of Geneva discussions and calls on all sides to show more flexibility in agreeing on access routes for the international community, allowing humanitarian organizations to help the most vulnerable to resume normal lives.[434]

Meetings within the framework of Incident Prevention and Response Mechanism (hereinafter IPRM), facilitated by EUMM, represent a positive development, as besides the governments of Georgia and Russia, de facto governments also participate in it.[435] The given mechanism is a forum for negotiations and discussion, however it is very unfortunate that the residents of conflict regions still remain without the legal protection mechanism, which results in violation of their rights. Unfortunately it is impossible to obtain detailed information about the facts of human rights violations, thus the office of the Public Defender lacks the proper means to react upon the situation in conflict zone.

Despite the current political situation, the residents of the breakaway regions shall be protected by number of international norms. First and foremost, the occupant state is under an obligation to respect the internationally recognized rights of the population residing on the given territories. Based on the case law of the European Court of Human Rights, in case if the occupying power exercises an effective overall control over the territory, it has an obligation to secure the entire range of substantive rights set out in the Convention and those additional Protocols which the state has ratified.[436]

At the same time, Georgia has a positive obligation to protect the rights of the population on the breakaway territories. Despite the fact, that Georgian government has lost effective control over the territories of Abkhazia and South

[432] General Assembly Resolution, A/RES/63/307, Status of Internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia, 30 September 2009, para.5, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/506/40/PDF/N0950640.pdf?OpenElement>

[433] Council of Europe Parliamentary Assembly Resolution 1648(2009), The Humanitarian consequences of the war between Georgia and Russia, para.25, <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta09/ERES1648.htm>

[434] UN news, Displaced from Ossetia conflict need more pragmatism, less politics, says U.N. representative, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=9607&LangID=E>

[435] http://www.eumm.eu/ge/press_and_public_information/features/2537/

[436] *Cyprus v Turkey, (application no. 25781/94)*, Judgment of 10 May 2001, para.77.

Ossetia, as separatist regimes are set up "it does not thereby cease to have jurisdiction within the meaning of Article 1 of the Convention."[437] If we refer to the decision of the ECHR in the case of *Ilascu and others v Moldova and Russia* we can conclude that court will consider the obligation of Georgia only in the light of contracting state's positive obligation. Thus, Georgia shall employ all the legal and diplomatic means to continue to guarantee the enjoyment of the rights and freedoms defined in the Convention.[438]

Once again, due to current political reality it is quite difficult to obtain any comprehensive information regarding human rights situation in the conflict zone. For the office of the Public Defender, the main source of information is the reports of those international organizations who have access to occupied territories.[439] Public Defender's 2010 special report on the Human Rights Situation of IDPs and conflict-affected population discussed the situation of the population residing in Gali district. Report emphasized that there are facts of violation of right to freedom of religion of Georgian population in Gali, which was demonstrated by the collective statement of citizens filed to the office of the Public Defender. Another significant issue is medical care for individuals residing in the occupied territories, which remains to be quite acute. One of the most serious problems for the residents of Gali is crossing onto the territory of Zugdidi. Most of them are unable to use the main bridge connecting Gali with Zugdidi, consequently they are obliged to travel on bypass roads, which is associated with serious dangers. The only people, having possibility to cross onto the territory of Zugdidi using the main bridge, are those individuals who have Russian or Abkhazian passports. They can cross the bridge after paying 100 Russian rubles.[440]

SECURITY/KIDNAPPINGS

The principle problem of the population, residing in the so-called adjacent villages of the conflict zone, is the lack of security guarantees and arbitrary detentions. Detention of Georgian citizens on charges of "illegal crossing of borders" is rather frequent. Several cases have been lodged with the European Court of Human Rights against Russia and Georgia raising the same issue.[441] However, decisions on the mentioned cases have not been rendered by court yet, thus it is difficult to predict what will the conclusions be. It is clear that arbitrary detention of Georgian citizens by de facto authorities of Abkhazia and South Ossetia on the charges of "illegal crossing of borders" is the violation of article 18 of the Constitution of Georgia, article 5 of the European Convention on Human Rights, and article 9 of the International Covenant on Civil and Political Rights.

According to the information provided by the Ministry of Internal Affairs of Georgia (hereinafter MIA) a total of 254 citizens were detained by the de facto authorities of Abkhazia and South Ossetia near the occupation line in 2010.[442]The Office of the Public Defender was notified by MIA that it is extremely difficult for them to have an exact database of all detained individuals, since in most cases Russians and de facto Abkhazian authorities detain the bus drivers and passengers while crossing the occupation line. According to MIA detained individuals are released in exchange of money. After the release individuals do not notify the police about the fact of their detention, subsequently it is difficult to keep the precise records.[443]

Families of 3 kidnapped/illegally detained individuals applied to the office of the Public Defender in 2010. In all three cases individuals were detained for the charges of 'illegal crossing of borders.' Family members of the detained persons approached the Public Defender for the support. Circumstances of all 3 cases are the same, only places of arrest are different (one person was detained in Kvemo Nikozi, one – in Ergneti and one – in Akhalgori). The office of the Public Defender notified MIA about the arbitrary detention of the Georgian citizens. According to the information provided

437 *Ilascu and others v Moldova and Russia (application no.48787/99)*, Judgment of 8 July 2004, para.333

438 *Ibid*, para.333.

439 Report of the Representative of the Secretary General Walter Kalin, Report of the Commissioner for Human Rights of Council of Europe; Statement of OSCE High Commissioner on National Minorities and etc.

440 The given information was confirmed (during the conversation with project monitor) by individuals who have crossed into Zugdidi from Gali District.

441 *Mamasakhlisi v Georgia and Russian Federation* (application no.29999/04*), Nanava v Georgia and Russian Federation* (Application no.41424/05) both cases concern arbitrary detention of individual on the ground of "illegal crossing of borders"

442 Letter N12/1/-7 of the Ministry of Internal Affairs of Georgia dated 1 February 2011.

443 *ibid.*

by MIA they were actively involved in all three cases of arbitrary detention of citizens and tried to negotiate their release. MIA also noted that the Georgian government representatives raised the issue of release of detained individuals at the meeting of Incident Prevention and Response Mechanism in 2010. The representatives of Russian and de facto Ossetian governments were asked to release Georgian citizens.[444]

AKHALGORI

Situation in the Akhalgori region is rather unique; it differs from other conflict zones of Georgia. After the conflict of 2008, 5,000 individuals were displaced from Akhalgori district. According to the information of international organizations, today no more than 2,500 ethnic Georgians remain in Akhalgori district after the conflict of 2008.[445] The Office of the Public Defender and the project staff tried to undertake a special monitoring in order to get more detailed information regarding the situation in Akhalgori district. An attempt was made to identify what are the challenges that IDPs face while trying to cross into Akhalgori territory. Monitoring results show that number of IDPs have relatives in Akhalgori, some of the IDPs have left their houses and agricultural land plots that gives them some crop, thus it is one of the main reasons why they want to travel to Akhalgori.

Most of the persons displaced from Akhalgori district try not to travel to Akhalgori, due to the security concerns. However, according to the estimates by international organizations, approximately 300-350 individuals move to and from Akhalgori daily.[446] Most of the former Akhalgori residents try to avoid staying permanently in Akhalgori, due to its social and economic situation.

Monitoring results show that IDPs encounter number of difficulties while attempting to cross the administrative boundary line adjacent to Akhalgori. In some cases people have to queue for several hours while they and their luggage are being checked, and that is rather difficult during the winter season. Report of the Council of Europe Commissioner for Human Rights talks about the fact that in some cases there are certain requirements being imposed on persons wishing to cross to Akhalgori; those are the cases when there have been occasional demand for 'passage fees,' sometimes apparent requirements for notarized translations of identity cards.[447] Aforementioned information is confirmed by the IDPs in private conversations. Knut Vollebaek, OSCE High Commissioner on National Minorities made a statement on 837th Plenary Meeting of the OSCE permanent Council regarding the situation in Akhalgori region. He urged the de facto authorities to refrain from putting additional pressure on the remaining Georgian population in Akhalgori district.[448] As stated by the Commissioner, his main goal was to assess the situation in the Akhalgori district. Core idea of the visit was to assess the situation of ethnic Georgians who remain in the region. According to the Commissioner, the villages of Akhalgori are totally destroyed and remain in ruins with no visible signs of return and habitation. Few Georgians, still remaining in Akhalgori, are concerned about their freedom of movement and security.

It can be concluded that overall human rights situation in the conflict regions of Georgia are rather difficult. At this stage it is crucial that international actors conduct monitoring in the area. One of the best possible solutions, before the conflict resolution is achieved, is the presence of effective international monitoring missions that will guarantee the safety and security of the citizens residing in breakaway regions.

444 1 February 2011 Letter N N:12/1/-8 of the Analytical Department of the Ministry of Internal Affairs of Georgia; 20 December 2010 letter N4385/04-3/1394-10.

445 South Ossetia: The Burden of Recognition, Crisis Group International, 7 June 2010, <http://www.crisisgroup.org/~/media/Files/europe/205%20South%20Ossetia%20%20The%20Burden%20of%20Recognition.ashx>, p. 3.

446 Report on human rights issues following the August 2008 armed conflict in Georgia, by Thomas Hammerberg, Commissioner for Human Rights of the Council of Europe, 7 October 2010, para 10.

447 *Ibid*. para 11.

448 837th Plenary Meeting of the OSCE Permanent Council, Statement by Knut Vollebaek, OSCE High Commissioner on National Minorities, Vienna, Austria 18 November 2010, p.5, <http://www.osce.org/hcnm/73715>

Persons Damaged as a Result of Natural Disaster – Eco-migrants

During the year 2010, the Public Defender of Georgia was frequently addressed by Internally Displaced Persons who were displaced due to natural disasters – eco-migrants. As a result of examination of complaints submitted by these persons, a number of problematic issues were identified, on which we shall focus our attention in the given chapter. The importance of the topic is preconditioned by the fact that according to the data of the Ministry of Internally Displace Persons from the Occupied Territories, Accommodation and Refugees of Georgia[449], number of registered households that suffered as a result of natural disasters is 35 204.

ANALYSIS OF THE LEGISLATION ON ECO-MIGRANTS

On the international level, there is not any obligatory legal document that contains definition of an eco-migrant or measures that the state is obliged to implement in order to ensure social protection of persons of this category. As to national legal framework, none of the available legal acts defines who exactly can be considered as IDP, who was displaced due to natural disaster, i.e. ecomigrant and to which category of persons should this legal status be applied.

While talking about the international legal framework defending eco-migrants, we should especially focus our attention on the UN Guiding Principles on Internal Displacement approved in 1998. Although this document is not obligatory legal document for the states, it should serve as guidelines for them, as far as it reflects fundamental principles of International Humanitarian Law and Human Rights. Consequently, principles of the document should be adhered to and implemented by any official or other persons, notwithstanding the legal status of the document.[450]

UN Guiding Principles on Internal Displacement adopted in 1998 define the notion of IDP. Namely: "For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border"[451].

According to the above definition, it is clear that for the purposes of these Principles term "Internally Displaced Person" implies person or a group of people who were internally displaced due to natural disasters – eco-migrants. Accordingly, all the standards for legal protection stated in the above-mentioned document should apply to ecomigrants as well.

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449 Ministry of Internally Displace Persons from the Occupied Territories, Accommodation and Refugees of Georgia, Letter №04/02–09/8630

450 UN Guiding Principles on Internal Displacement, E/NC.4/1998/53/ADD.2, Article 2 of the Preamble.

451 UN Guiding Principles on Internal Displacement, Article 2 of the Preamble.

We find different method of approach in national legislation. Definition of IDPs is provided in the Law on IDPs and Refugees" of 1996. According to Article 1 of the law: *"as IDP shall be considered a citizen of Georgia or a stateless person, who permanently resides on the territory of Georgia and who had to leave his permanent place of residence and move to another place within the territory of Georgia due to the reason, that the life, health or freedom of this person or members of his family was threatened as a result of aggression of a foreign state, internal conflict of cases of mass violation of human rights".*

In the process of comparison of above referred definitions there is clear incompliance, namely, definition given in national legislation unlike the one given in UN Guiding Principles, does not imply person or group of persons who were internally displaced due to natural or human made disasters.

Because of the fact that eco-migrants are not included in the definition of IDPs, provided by the Law on IDPs and Refugees of Georgia" of 1996, the above mentioned status is not applied to this group of people and they are not able to use mechanisms of legal protection provided by the law. Main purpose of special status is that legislation intentionally and justly puts relevant person or group of persons in legally different condition and ensures their protection by different standards. Therefore, it is important that people who were internally displaced due to natural disasters have relevant status granted to them by national legislation so that they have access to adequate mechanisms of protection.

According to the Resolution #34 of the Government of Georgia on "Approval of the Regulations of Ministry of Internally Displace Persons from the Occupied Territories, Accommodation and Refugees of Georgia" adopted on February 22, 2008, the executive government is responsible for ensuring mechanisms of social and legal protection to IDPs who were displaced due to natural disaster. It is also responsible for ensuring control over migration and their resettlement. According to sub-paragraph "b", Article 2 of the above mentioned resolution, the Ministry of Internally Displace Persons from the Occupied Territories, Accommodation and Refugees of Georgia (hereinafter "the Ministry") is responsible to regulate migration flow caused by emergency situations (such as natural disasters, epidemics and etc.) as well as to organize temporary or permanent settlement, create conditions for adaptation-integration and to ensure protection of IDPs taking into consideration political, socio-economic and demographic conditions.

In sub-paragraph "k", Para 6, Article 7 of the same Resolution, the list of measures is provided that have to be implemented in order to provide protection to eco-migrants. According to the given paragraph, the Ministry is responsible for the following: *"provide forecast of possible migration from regions. Representing high risk zones from the standpoint of occurrence of natural disasters and implementation of resettlement of eco-migrants; elaboration and implementation of programs focused on promotion of adaptation eco-migrants integration in new places of residence; development of data base on eco-migrants".*

Sub-paragraph "f" of Para 4 of Article 42 of the Organic Law of Georgia on "Local Bodies of Self-government" provides for responsibilities of the plenipotentiary representative to periodically report to the Governor (City Mayor) on number of eco-migrants, their status and living and economic conditions. Although. the law does not define purpose of getting this information and it is not clear, what kind of measures are to be implemented by local authorities after receiving above referred information.

According to Subparagraph "l" of para 1 of the Article 82 of the "Tax Code of Georgia" exemption from income tax applies to the houses that were received free of charge by victims of earthquakes or other natural disasters instead of their own houses either in the same or any other settlement. It is clear that legal acts envisage some privileges for eco-migrants and regulate issues related to availability of information on number of eco-migrants, although there is no legal provision or a normative act where the definition of eco-migrants or group of persons to whom the above-mentioned legal status should be applied is provided.

Public Defender's Office of Georgia applied to the Ministry of Internally Displace Persons from the Occupied Territories, Accommodation and Refugees of Georgia on November 2, 2010 (№1346/04–4/Of) and requested official information, whether procedures and mechanisms for protection of eco-migrants were provided in any other normative or legislative act. As a result of examination of the follow-up correspondence (letter №04/02–09/10383) it was revealed that there were not any additional procedures or standards for defending eco-migrants except for the Resolution #34 issued on February 22, 2008 by the Government of Georgia.

The fact that the Resolution #34 issued on February 22, 2008 by the Government of Georgia assigns the state responsibility of safeguarding interests of eco-migrants, and the above mentioned norms include the list of measures (*"forecast of possible migration from regions and implementation of resettlement of eco-migrants; organization of resettlement of eco-migrants; elaboration and implementation of programs focused on adaptation of eco migrants and their integration at new places of residence; development of data base of eco-migrants")* to be implemented to protect the rights of eco-migrants, should be assessed positively. Although at the same time, it should be noted that in order to safeguard interests of IDPs who were displaced due to natural disasters, existing regulatory framework is not sufficient at it is of very general character.

Consequently, in order to provide effective protection for eco-migrants, it is necessary to determine legal status for the persons of this category on the level of national legislation, which should clearly defined to which group of people should this status be assigned. Besides, in order to provide effective protection to persons of this category, procedures and mechanisms of organizing temporary or permanent resettlement, creating conditions for adaptation-integration should be defined in the legal framework as well. It should be noted, that according to existing practice the Government of Georgia provides individual financial assistance to families that have suffered from natural disasters on the basis of the resolution.

CURRENT PRACTICES AND EXISTING DRAWBACKS

Despite the fact, that mechanism of legal protection envisaged by national legal system is quite vague, according to official information received from the Ministry, the system, which more or less regulates problems related to eco-migrants exists in practice, although the above-referred system is not reflected in the legislative framework.

According to existing practice, in case of natural disaster relevant local self-governing authority elaborates document, which contains data on households who suffered from natural disaster within the administrative territory under its jurisdiction and checks the degree of damage caused to the houses by natural disasters. According to official information of the Ministry, the system of assessment of the degree of the damage caused to the houses by natural disasters is divided into categories. There are following categories according to the degree of caused damage:

Category I – house or part of the house is destroyed due to natural disaster;

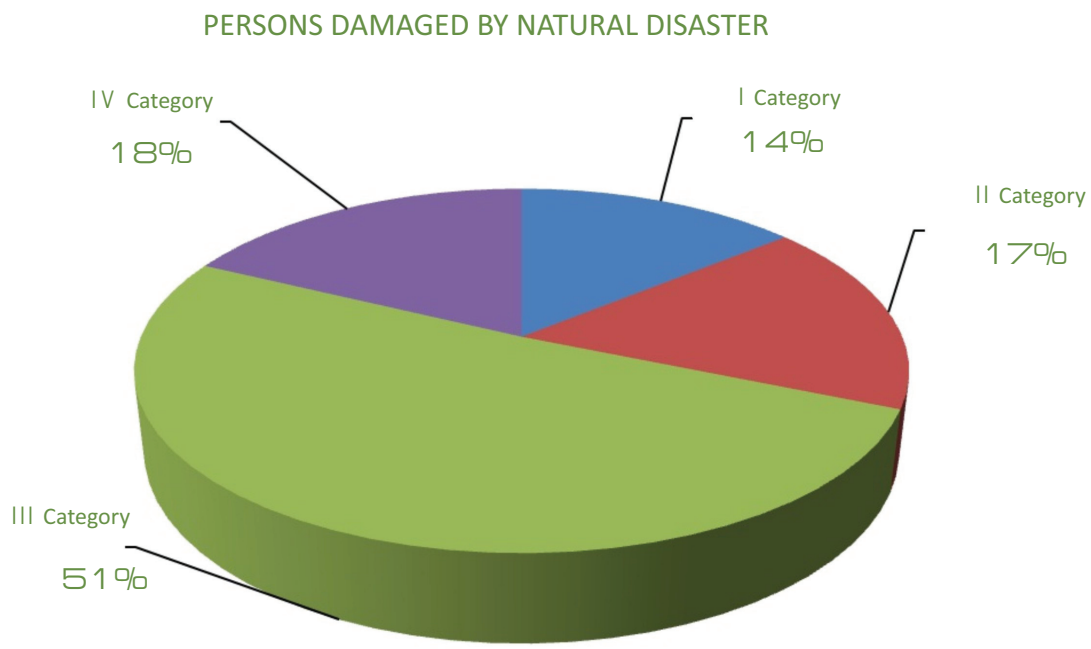
Category II – house is not destroyed, but it is damaged due to natural disaster and is useless for living. The house is not subject to restoration;

Category III – house, where residents are still living, but which is damaged due to natural disaster. The house is subject to restoration;

Category IV – house is suitable for living, but the surrounding territory is damaged due to natural disaster.

After examination of the damage caused to the residence by natural disasters, relevant status is assigned to the families, which have been damaged by natural disaster. Besides, the document (data on families who suffered from natural disaster) compiled by local self-governing authority includes information on number of family members in the households that have suffered from natural disaster and their identification data. The document also states what kind of government assistance (resettlement or financial assistance) beneficiary prefers. The document also reflects whether the family was provided with any kind of assistance by the time of conducting of estimation of caused damage (the above paragraph refers to those eco-migrants whose houses were damaged due to natural disaster in previous years and the degree of damage has not been estimated).

The received data is sent by municipality to The Ministry. The Ministry maintains data-base of persons damaged by natural disasters based on information received from regions. As of 2010, according to official information of the Ministry, number of families damaged by natural disasters, including eco-migrants is 35 204. 4 957 families are assigned to category I, 6050 families - to category II, 17 925 families - to category III and 6272 families - to category IV.



It should be noted that, in the national legislation IDPs who were displaced due to natural disasters are referred to by terms such as ecomigrants[452] and persons damaged by natural disasters[453]. In order to understand the issue in a comprehensive manner, it is necessary to differentiate such notions as person damaged by natural disaster and eco-migrant. Term eco-migrant applies to a person/group of persons who were forced to leave place of their permanent residence and are displaced within the territory of Georgia. Consequently, the factor of displacement is very important in definition of an IDP, while person damaged by natural disaster does not imply displacement.

Persons whose houses were assigned to III and IV category (Category III – house, where households is still living, but which is damaged due to natural disaster; the house is subject to restoration; Category IV – house is suitable for living, but the surrounding territory is damaged due to natural disaster) according to the system of assessment of the degree of the damage caused to the houses by natural disasters, cannot be considered as ecomigrants, as migration factor is not present. Consequently persons assigned to this category are referred to as persons damaged by natural disasters.

The Government of Georgia provides financial assistance or resettlement of families that have suffered from natural disasters on individual basis. According to the existing practice, the Government of Georgia provides individual financial assistance[454] or in some cases transfers land plot into ownership[455] (resettlement) to families that have been left homeless due to natural disaster. According to existing practice, we can conclude that the Government has not got uniform approach to this issue. The strategy does not exist neither on legal nor on practical level, according to which it would be clear in which cases it would be relevant to provide either financial assistance or settlement. Furthermore, no system exists, which would regulate the amount of money that should be provided as financial assistance. In this case, it is necessary to assess the degree of damage caused to houses by natural disasters on individual basis and an expert has to determine the amount that would be corresponding to the level of the damage.

There is no such kind of document, where it would be defined what amount of financial assistance would be adequate compensation to the families assigned to different categories on the basis of estimation of damage caused to their houses by natural disaster. It should also be noted, that there is no uniform approach concerning resettlement of eco-

[452] Subparagraph "f" of Paragraph 4 of the Article 42 of the Organic Law of Georgia on "Local Self-government", Subparagraph "l" of Part one of the Article 82 of the "Tax Code of Georgia"

[453] Resolution #34 of Government of Georgia on "Approval of the Regulation of the Ministry of Refugees, IDPs and Resettlement", Article 1.

[454] Resolution #627 issued on October 24, 2007 by the Government of Georgia

[455] Resolution #111 issued on July 7, 2005 by the Government of Georgia

migrants. There are no specific standards that the houses provided to eco-migrants should comply with. Moreover, there are some problems during the process of providing financial assistance to eco-migrants.

Public Defender's Office has studied the situation of families in Sachkhere district that were left homeless as a result of earthquake that occurred in 1991. After studying the situation, it became clear that on the basis of Government's resolution[456], financial assistance was provided to the families that have been living in railcars and have been left homeless; although. in Sachkhere district there are families that do not live in railcars but live in some depreciated buildings, utility rooms, timber huts, with relatives or rent some space. The above-mentioned Resolution of the Government do not provide for financial assistance for families belonging to this category. It is evident that due to unavailability of uniform approach to this issue, Government has put some of the families into unequal conditions.

According to statistical data of the Ministry of Internally Displace Persons from the Occupied Territories, Accommodation and Refugees of Georgia, during 2004-2010 the Ministry has purchased 1 062 houses in the regions of Kvemo Kartli, Kakheti and Samtskhe Javakheti for the families that have suffered due to natural disaster. Namely:

- Municipality of Tsalka – 594 houses;
- Municipality of Tetritskaro – 2010 houses;
- Municipality of Akhmeta – 89 houses;
- Municipality of Marneuli – 70 houses;
- Municipality of Ninotsminda – 57 houses;
- Municipality of Lagodekhi – 51 houses.

In the process of resettlement, the most problematic issue is implementation of post resettlement measures such as adaptation and integration. The commitment of the state to ensure resettlement implies two stages. First stage is resettlement of the beneficiary and the second stage is implementation of adaptation and integration measures. Resettlement of beneficiary is not sufficient for complete realization of his rights. Implementation of post resettlement measures imply provision of adequate living and social conditions for eco-migrants that helps him in adaptation and settling down.

Paragraph 18 of UN Guiding Principles on Internal Displacement establishes minimum standards according to which the state should be guided while providing assistance to IDPs. According to paragraph 18 of UN Guiding Principles on Internal Displacement, in any situation and without any discrimination the state should provide IDPs with *"necessary food and drinking water, shelter and living space, relevant clothes, urgent medical assistance and sanitary service"*[457]

In 2010, the fact occurred, when families that were left homeless as a result of natural disaster in mountainous Adjara were resettled by the state to village Koreti, Akhmeta district. Due to heavy living and social conditions, several families left houses provided by the state and went back to Adjara[458]. As a result of studying of problems that eco-migrants face after their resettlement it became clear that heavy living and social conditions are caused by several factors: houses that were provided by the state were initially damaged, families had no access to natural gas and drinking water, no school was available in the area, they had no prospects of employment. Besides, as a result of studying of complaints of eco-migrants submitted to the Public Defender's Office on the issue of heavy living and social conditions, it became clear that majority of eco-migrants live under the poverty line and are registered in the data base for socially vulnerable households of the Social Protection Agency of the Ministry of Health, Labor and Social Protection.

Existing situation is indicative to the fact that the Ministry of Internally Displace Persons from the Occupied Territories, Accommodation and Refugees of Georgia does not effectively elaborate and implement programs for

456 Resolution #190 on "financial assistance of persons that were left homeless as a result of natural disaster" dated by May 20, 2005; Resolution #264 "on provision of financial assistance to persons that were left homeless as a result of earthquake of 1991" dated by June 23, 2005

457 UN Guiding Principles on Internal Displacement, Principle 18, Article 2.

458 http://humanrightsge.org/index.php?a=main&pid=8340&lang=geo.

post resettlement period. This state of affairs is further aggravated by provision of Resolution #34 of the Government of Georgia dated by February 22, 2008 "…*elaborate and implement programs for adaptation and integrations of ecomigrants at new place of residence…"*, as this provision is of extremely general character and is not sufficient for complete realization of rights of eco-migrants. As it was mentioned above, in order to solve the problem, it is important to determine on legal level the strategy and procedures of post resettlement adaptation and integration of eco-migrants.

According to analysis of existing practice in relation to IDPs, who were displaced due to natural disasters, i.e. eco-migrants, it is evident that some problems remain that need adequate reaction from the side of the state. First of all, it is important to elaborate unified state approach in relation to implementation of relevant assistance to families that have suffered due to natural disasters. It has to be noted that this issue is completely unregulated and vague, it is necessary to define preconditions on the basis of which adequate financial assistance or land plots will be provided to the families. Programs that have to promote to adaptation and integration of eco-migrants at new places of residence should be implemented more actively. Effective approach of creating adequate social conditions for eco-migrants should be elaborated. It is inadmissible that the only source of income for this category of families is financial assistance received from state social programs.

RECOMMENDATIONS:

- **To establish a definition of an eco-migrant in the national legal framework; to define group of people to which this legal status should be assigned;**
- **To elaborate unified state approach in order to defend rights of IDPs who were displaced due to natural disasters. First of all it implies regulation of the issue on the legal level; to elaborate mechanism and procedures of providing adequate living and social conditions for IDPs who were displaced due to natural disasters;**
- **To elaborate and implement strategy of post-resettlement adaptation and integration of eco-migrants on the legal level.**

2010

Rights of the Child

INTRODUCTION

Global economic crises and Georgia's social and economic situation resulted from 2008 armed conflict with Russia, have adversely affected the legal status of children. According to UNICEF Report on Georgia Welfare[459], published in April 2010, 28% of children and their families fall below the official poverty threshold in Georgia. More than 40% of the interviewed families (households) expressed inability to feed themselves, malnutrition creates a threat to their health. It was revealed that about 37% of children in the country live in such households. About 10% of these households have no access to water, heating and sanitary, and 63% have no access to one of the above utilities. These households are under high risk of material deprivation.

Article 27 of 1989 UN convention on the Rights of the Child provides, that: States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. The results of the above study allow presuming, that about 28% of the children living in Georgia do not enjoy adequate standard of living.

In 2010, the center of child's and woman's rights of Public Defender's office revealed violations of the rights of the child in following spheres (92 cases):

- Violence against children
- Violation of the right to education
- Lack of consideration of the child's best interests

VIOLENCE AGAINST CHILDREN

Violence against children is the most frequent form of violation of the rights of the child in Georgia. As it was mentioned in Public Defender's report for the second half of 2009, the UNICEF study[460] indicated to significant number of cases of violence against the child in Georgia. According to the above study:

Parents admitted subjecting 79.8% of the children to physical discipline and 82.3% to psychological punishments. Cases of physical and psychological punishment from an early age were recorded: 19% of children under 1 year old are subject to physical punishment. The percentage reaches 90% among children aged from 4 to 7 years. The same

[459] How do Georgian Children and their Families Cope with the Impact of the Financial Crisis? Report on the Georgia Welfare Monitoring Survey, 2010

[460] National Study on Violence against Children in Georgia, UNICEF 2007-2008 http://www.unicef.org/georgia/Violence_Study_GEO_final.pdf

percent of children suffer from psychological punishment. Fifty-four percent (54%) of all children reported that they had experienced direct physical violence at home and 59.1% had suffered psychological violence.

● Legal Regulation

On 31 May 2010, three ministers approved Child Protection Referral Procedures.[461] The procedures aim at providing full insurance against the abuse of children both at home and elsewhere in Georgia. The procedures emphasis the necessity for all three agencies – Ministry of Labor, Health and Social Security, Ministry of Education and Science, Ministry of Interior of Georgia - to work jointly to protect children; it sets rules for developing efficient and rapid reaction mechanisms to combat violence against children, rights and duties of competent authorities, cooperation in the field of the child protection.

Cases of violence against the minor is regulated by following legal acts under Georgian legislation: Criminal Code of Georgia provides for responsibility for premeditated offence committed against minor, such as beating[462], violence,[463] as well as premeditated manufacture and sale of pornographic articles depicting the minor[464].

Civil Code of Georgia protects the interests the minor, if a parent or other statutory representative abuses his/her parental rights, systematically evades performance of the duty of rearing the children.[465] The role of custody and care institutions is to reveal and respond to these cases[466].

The Law of Georgia on Preventing Domestic Violence, Protection of and Assistance to victims of Domestic Violence provides for protection of the minor – potential victim of domestic violence[467], in which case custody and care institutions are authorized to undertake activities in support of victims of domestic violence[468]; to seek a court order[469]; to monitor the activities under protection or restraining orders[470]

● The Practice

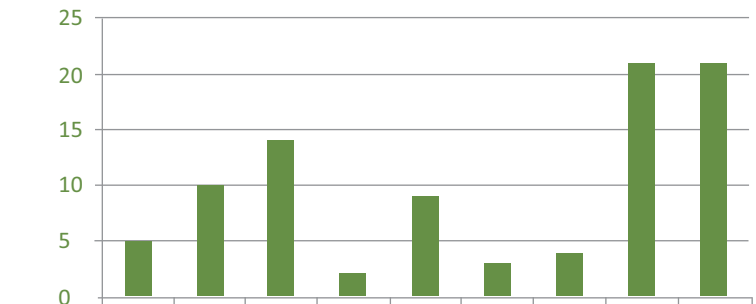
In order to better understand the situation, Child's and Woman's Rights Center of Public Defender's Office requested from "Social Service Agency" statistics of violence against children for the year 2010. According to "Social Service Agency", from January 2010 till November 2010, the following data for violence identification and case management appears:

From 1 January to 30 November (inclusive) 2010:

Total number of notifications on violence against children		89
Notification	By the police	12
	By the school	3
	By the child, the family, different organizations	74
Types of Violence	Physical abuse	33
	Neglect	14
	Emotional abuse	38
	Sexual abuse attempts	4

461 Joint order of Minister of Labor, Health and Social Security, Minister of Interior and Minister of Education and Science of Georgia #152/n-#496-#45/n.
462 Criminal Code of Georgia, Article 125, part 2
463 Criminal Code of Georgia, Article 126, part 2, subparagraph "d"
464 Criminal Code of Georgia, Article 255, part 2
465 Civil Code of Georgia, Article 1206, part 2
466 Civil Code of Georgia, Article 1198[1], part 2
467 Law of Georgia "On Combating Domestic Violence, Protection of and Support to Its Victims" Article 4, p.p."f", "g"
468 Law of Georgia "On Combating Domestic Violence, Protection of and Support to Its Victims" Article 8, p. 2, sub-point "b"
469 Law of Georgia "On Combating Domestic Violence, Protection of and Support to Its Victims" Article 11
470 Law of Georgia "On Combating Domestic Violence, Protection of and Support to Its Victims" Article 8, p.2, sub-point "e"

The data testify to that number of notifications on violence against children have increased in October-November 2010, which could be explained by the increase of identifications rather than the increase of the cases. One of the contributing factors could be the adoption of application procedure, which sets the obligation of the professionals working with children and notification regulations of sending notification; significance of raising public awareness deserves mentioning in this regard.



	February	March	April	May	June	July	Septem-ber	October	Novem-ber
Series 1	5	10	14	2	9	3	4	21	21

THE ROLE OF SOCIAL SERVICE AGENCY IN MANAGING CASES OF VIOLENCE AGAINST CHILDREN

Social Service Agency, in its capacity of Custody and Care Institution has special role in combating violence against children and responding to it. Accordingly, all the information on violence against children for the year 2010, available to Public Defender's Office, was sent to the above agency. The analysis of their case study results revealed the following shortcomings:

In a range of cases, Social Service Agency regional offices staff – social workers – are not competent enough to identify the facts of violence against or mistreatment of children. E.g. in G.N.'s case on alleged violence against 1 month old child by one of the parents, social worker, drafted her conclusion about absence of violence relying only on the parent's story. This is an example of insufficient work of social worker. Social worker should not limit his/her activities to collecting information from only one party but should scrutinize all the evidences.

In G.K's case, social worker assessed the family as adequate and caring environment, whereas the minor lived there with only mother of, allegedly, antisocial and immoral behavior.

In M.Ch.'s case, where the minor was a victim of physical and psychological assault, social worker made a conclusion, "the mother and grandmother may take the child abroad and drag him/her into illegal sexual activities". Though, when the family changed address the social worker showed reluctance to undertake additional follow-up measures on the case.

On the basis of the above mentioned facts it can be concluded that, social service identifies and responds to cases of violence but, in a range of cases does not undertake activities in the child's best interests.

Besides, it should be mentioned that Social Service Agency often fails to comply to Child Protection Referral Procedures – to notify the police on alleged facts of violence against the child, carry out full-fledged assessment, invite experienced psychologist to the case and ensure full psychological rehabilitation of the victim. The above said can be confirmed by number of complaints submitted to the child's and woman's rights center of Public Defender's Office, where applicants seek help. These applicants had had appealed, though without any success, to Social Service Agency.

Specially should be mentioned the problem shortage of social workers. The number of 200 social workers all over the Georgia in 2010 is not enough to solve the problem of violence against children within the framework of child protection referral procedures.

In all the above cases, Child's and Woman's rights Center of Public Defender's Office actively cooperated with Social Service Agency; provided it with information about shortcomings. But, solving singular problems do not ensure systemic approach to the problem of prevention, identification of and response to violence.

RECOMMENDATION:

Public Defender addresses Social Service Agency with recommendation:

- **To ensure high quality identification and management of cases of violence against the child by enhancing monitoring system at Social Service Agency that would study each problematic case and implement systemic changes in order to improve methodology of social workers' activities.**
- **To invite sufficient number of professionals (social workers, psychologists) for participation in the management process of cases of violence against the child, to ensure proper services to the victim of violence (identification of violence, psychological rehabilitation, integration in the society etc.)**

PROTECTION OF THE MINOR AGAINST DOMESTIC VIOLENCE

Child's and Woman's Rights Center of Public Defender's Office came across the problem of applying legal norms to the child protection practice when reviewing statements on violence against the child and response to them. Identification of the case of violence against the minor is especially difficult when the violator is a parent/ parents and/or when the violence has left no physical trace (e.g. psychological abuse). Establishment of the fact of violence in such cases is difficult.

The citizens' appeals testify to that authorized police officers often do not seek restraining orders under the pretext of absence of enough grounds for it. Especially true it is when it comes to psychological abuse without witnesses or any other evidence of the fact. In practice, many police officers think that one of the preconditions to seek restraining order, in case of violence against the minor, is the existence of a witness. This contradicts to the child's best interests, because often representative of appropriate authority (e.g. social worker) can establish the fact of violence even in the absence of witnesses. Accordingly, it is important that the police notifies social service immediately upon receiving the information on the case of violence against the child so that the fact of psychological abuse against the minor could be ascertained on the basis of social worker's conclusion. This would facilitate police officers carry out their duties efficiently. Coordinated activities of law enforcement bodies and social service is important for ensuring the effectiveness.

In 2010, child's and woman's rights center of Public Defender's Office participated in working group[471] drafting the handbook on "Domestic Violence" designed to assist the police. Detailed recommendations on how an official should act act upon receiving information on domestic violence were worked out. The handbook specifies what arrangements should be taken in order to protect the minor from domestic violence:

● Coordinated work of police and social service

Article 16 of the Law of Georgia "On Prevention of Domestic Violence, Protection of and Assistance to Victims of Domestic Violence" provides that in cases of domestic violence the police shall immediately respond and take all

[471] Manual on domestic violence for policemen, 2010, compiled by a group of authors.

legal measures; also, when receiving notification on an act of violence, the police shall immediately arrive at the scene whether notification was received from the victim, a witness of violence or by any other person.

Pursuant to the law when receiving the notification of an act of violence the police shall immediately inform social service agency and, as far as possible, arrive at the scene together in order to facilitate the finding of abuse.

● The role of a witness in issuing restraining order

The authorized police officer, investigating the fact of violence should proceed from the child's best interests, meaning that absence of a witness should not impede the issuance of the order if custody and care institution representative concludes that the minor is alleged victim of abuse. The police is authorized to issue restraining order on the basis of the above conclusion.

● Actors, having right to seek protective order

Where alleged abuser is one of the parents and absence of violence trace does not allow the police officer to issue restraining order, he/she shall inform the other parent and family members, because they are the ones who have the right to seek protective order as provided in Article 11 of the Law of Georgia on the prevention of domestic violence, protection of and assistance to victims of domestic violence. They shall inform the family members or the other parent how to take it into court.

When alleged victim is the minor aged 14 or above, and the factual background does not allow for issuing restraining order, police officer shall explain to the minor his/her rights pursuant to Article 14 of the Law of Georgia on the prevention of domestic violence, protection of and support to the victims of violence i.e. he/she can appeal to the court to protect his/her rights and legal interests. At the same time, the police officer shall explain the minor in details how to appeal to court.

Confidentiality shall be observed when providing this information to the family members and the minor.

These issues shall be reflected in writing in the police protocol or other official documents, which describe the situation on the scene.

Public Defender's recommendations were fully considered by interagency Council on combating domestic violence while drafting its handbook. The handbook covers the issues of protecting the minor's rights against domestic violence.

RECOMMENDATION:

Public Defender recommends to the Staff of the Ministry of Interior, working in the field of domestic violence issues, as well as to representatives of social service agency:

- **To ensure practical implementation of the principles provided in the handbook on managing domestic violence cases in order to protect the rights and best interests of the minor.**

RIGHT TO EDUCATION

Child's and woman's rights Center of Public Defender's Office received the complaints on violation of the child's right to education. Part of the complaints concerned accessibility of education, and the other part – infringement of the child's rights when calling for observance of school discipline.

● Legal regulation

The UN Convention on the rights of the child recognizes the right of the child to education, and a State's commitments with a view to exercising this right progressively on the basis of equal opportunity.[472]

Among other commitments of States are the following: make primary education compulsory and available free to all[473], take measures to encourage regular attendance at schools and the reduction of drop-out rates[474]. At the same time, the school discipline should be ensured in a manner consistent with the child's human dignity and in conformity with the UN Convention on the Rights of the Child.[475]

Georgian Constitution recognizes the right to education; primary education and basic education are compulsory. General education, as prescribed by law, is funded by the state.[476]

General rules and school discipline rules are set by law of Georgia "On General Education". According to the law, disciplinary discrepancy and appropriate disciplinary action shall be governed by the internal routine of school, to be approved by school board of trustees on presentation of the school director. Proceeding from the above, school internal routine, list of disciplinary discrepancies and actions, as well as rules of their application shall differ from school to school.[477]

EXISTING PRACTICE

● Access to Education

In part of the appeals reviewed, parents and students complain on inappropriate educational standards and teachers' low qualification. Low qualification of teachers and noncompliance with established standards[478] hinders the possibility of receiving quality education, which, in its turn is a violation of the right to education.

Ministry of Education and Science of Georgia monitors[479] the compliance with the requirements of the Law "On General Education".

On I.M.'s case, where the appellant complains on low qualification of the teachers at Marneuli region Kasumlo school and other violations, child's and woman's rights center of Public Defenders Office requested Inspection General of Ministry of Education[480] to study the situation. As a result of the monitoring conducted by the Ministry of Education and Science, Kasumlo public school was given a written warning[481]. After more thorough study of the case, one of the school administration members was dismissed[482].

Complaints of citizens also reveal that, in a number of cases, right of the child to education is restricted because of disordered documentation; the children non-citizens of Georgia, as well as Georgian citizens with disordered documentation – certificate of birth, ID or other - face difficulties to receive the school voucher, provided by Georgian legislation. Proceeding from specific cases, after the address of child's and woman's rights center of Public Defender's Office, the Ministry of Education and Science ensured that that this right of the child would not be violated until they put their documentation in order. But, the problem has not been solved systematically – universal regulations or

472 The UN Convention of the Rights of the Child, Article 28
473 The UN Convention of the Rights of the Child, Article 28, p.1, sub-point "b"
474 The UN Convention of the Rights of the Child, Article 28, p.1, sub-point "e"
475 The UN Convention of the Rights of the Child, Article 28, p.2
476 Georgian Constitution, Article 35, p.3
477 Law of Georgia "On General Education", Article 2, 19, 38
478 Law of Georgia "On General Education", Article 2, p. "t¹"
479 Law of Georgia "On General Education", Article 26, p.1, sub-point "u"
480 Letter 2689/08-1/1265-10, 28 July 2010
481 Ministry of Education and Science Order #826, 10 November 2010
482 Letter 1265-10, 01 November 2010

instructions to ensure uninterrupted implementation of the right of the child to education have not been developed. According to Ministry of Education and Science, development of such regulations is underway.

Another problem related to access to education is general education for children living at specialized institutions. In mid school year, children aged 18 shall be legally expelled from residential institution, as Georgian legislation does not provide for stay at the institution until finishing school. Respectively, the beneficiaries who want to get general education and do come from the families, who due to harsh economic and social conditions cannot provide them with appropriate clothing and educational materials, are deprived of such opportunity. In the regions, the practice in most cases is that schools do not operate in the villages where these children live. Accordingly, they cannot receive complete general education if alternative residential area is not offered to them.

● Exceptional situation

Part of the students found themselves in an exceptional situation when passing final exams for 2009-2010 externally. There should have been two final exams in chemistry (compulsory and optional). But the students, who choose chemistry, passed only one exam i.e. they passed only 7 exams instead of 8 (6 compulsory and one optional subjects), and the students who did not choose chemistry, passed 8 exams (6 compulsory and two optional). Proceeding from the above the students, who did not choose chemistry in the XII form appeared in an exceptoinal situation as they had to pass one additional exam.

It is important that "National Curriculum" and "the regulation of certification of external education" rule out the situation when different students enter into exceptional situations.[483]

With regard to 2009-2010 external studies examinations (on the basis of citizens' collective complaint[484] and A.K.'s complaint[485]) child's and woman's rights center of Public Defender's office requested the information from regional resource centers, responsible for external studies examinations. They do not qualify the above fact as creation of unequal conditions to the students. However, according to Order No. 841 of 28 September 2006 by Minister of Education and Science "On Approval of National curriculum" and the "Regulation for certification of external education" (endorsed by Order No.15/n of 5 March 2010 of Minister of Education and Science) final exams for external education students should have been conducted in all compulsory disciplines (6 in total) and two optional disciplines – the same for all students.

● Observance of school discipline

Significant number of the complaints reviewed by child's and woman's rights center of Public Defender's Office concern cases of violence at school. The applicants, mostly parents, indicate to inappropriate treatment of children, oral and physical assault, including abusive language in written recommendation.

This problem was raised in Public Defender's report for second half of 2009, where appropriate recommendations were also developed. Despite the fact, that Minister of Education and Science approved piloting "Safe School" program in February 2010, cases of emotional and psychological violence against children remain relevant. This requires more attention to the facts of so-called "hidden violence" at educational institutions.

Child's and woman's rights Center of Public Defender's Office studied the complaint, where facts of different forms of violence against children were described. Citizen I.Q. complained[486] about verbal abuse of students by tutor. Case study confirmed the information. The School management issued an administrative penalty to the teacher.

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483 "Regulation on certification of external education" Article 14, p. 3
484 1062-10, 16 June 2010
485 0506-09/1, 28 June 2010
486 The application filed 8 June 2010

Citizens G.K.[487], D.L.[488] and I.G.[489], mentioned in their complaints disciplinary proceedings against their children, carried out unfairly. The study of these complaints showed that disciplinary proceedings against D.L's child are not in conformity with provisions of the Law of Georgia "On General Education" and the school internal regulations. Public Defender's Office recommended the school to restore the rights of the child. Public Defender's office did not receive any reply from the school.

Public Defender addresses Minister of Education and Science with the following recommendation:

- **To ensure by the officials in charge, the access to school education for children and their protection from discrimination;**
- **To ensure in the schools the environment promoting the development of sense of dignity and personality among children in order to rule out any kind of violence against children, including disciplinary proceedings.**

EXECUTION OF COURT JUDGEMENTS AND THE RIGHTS OF THE CHILD

During the reporting period, citizens submitted the complaints to the Public Defender's Office raising the problems related to protection of juvenile's interests when executing court judgements. As was clear from the contents of the complaints that often execution of court decision is impeded due to pronounced resistance on the part of the juvenile. None of the cases reviewed involved custody and care institution in order to protect best interests and rights of the child.

LEGAL REGULATION

In accordance with Article 88 of Law of Georgia "On Enforcement Proceedings" (until 15 December 2010), in a case of transferring responsibility over the child, National Bureau of Enforcement will carry out his action with the participation of custody and child-care authorities. National Bureau of Enforcement may get non-governmental organizations to take part in the enforcement proceedings.

THE PRACTICE

On 7 July 2009, A.K. submitted the complaint to the Public Defender's Office, mentioning, that many years ago her child was given up for adoption against her will. According to her, she was out of Georgia at that time - she was a victim of trafficking. After A.K. returned to Georgia, Supreme Court passed the decision to return the child to biological mother. However, the execution of court decision was complicated by the child's unwillingness to return to biological mother. The enforcer ignored the situation and executed court decision in a regular way, which resulted in the minor's severe psychological trauma.

On 31 May 2010, N.M. appealed Public Defender with stating that the court appointed to her ex-spouse days of seeing the child. During three years the ex-spouse, escorted by patrol and executor, visited the child every day. The visits resulted in that the child developed emotional stress, which took neurologist's intervention.

On 29 October 2010, T.B. submitted a complaint to the Public Defender's office mentioning that she had 13 years old child, who did not know the father. In 2010, court decision determined visiting days for the father and the enforcer

[487] The application filed 24 December 2010
[488] The application filed 5 October 2010
[489] The application filed 2 August 2010

started execution of the decision. The child had no desire to communicate with the father; the visits resulted in the child's psycho-emotional stress.

Child's and woman's rights center of Public Defender's Office responds to each case. National Bureau of Enforcement was requested in writing to provide information on how the child's best interests and rights were observed in the process of execution of decisions; was there a possibility to execute the decision in a different way so, that specific approach to the child would be applied.

According to information provided by National Bureau of Enforcement, it is often difficult to execute the decision, but it is the executor's responsibility to overcome all external factors, impeding the execution and to ensure parents' meeting with the child. They believe that such cases should be managed with participation of representatives of Social Service Agency of Ministry of Labor, Health and Social Security, as provided in para 1 of Article 88 of the Law of Georgia "On Enforcement Proceedings". As explained by the Bureau of Enforcement, the executor together with social worker, should monitor the process of relations between the child and the adult. In case the fact of psychological pressure or coercion is observed, they shall immediately eliminate the fact and produce appropriate protocol. If the child refuses to meet with the parent, the execution shall be postponed.[490] Regardless the above mentioned legal provision, case analysis shows that in practice, the role of enforcer in the process of execution is unclear. The letter from Social Service Agency confirms the above consideration[491]. Social Service Agency in its capacity of custody and care institution did not participate in execution of court decisions on the cases mentioned by Public Defender's Office, as the Enforcement Bureau had never addressed them.

In conclusion it can be said, that the execution problem may be caused, on the one hand by neglecting the child's best interests and disregarding his opinion in the process of court hearings, especially when the child is under 10 year of age, and, on the other hand by lack of custody and care institutions' participation in enforcement proceedings.

The fact should be commended that in accordance with amendments to the Law of Georgia "On Enforcement Proceedings"[492], cases related to transfer of the child or/and the rights of relationship of the other parent or a family member with the child had been passed over to care and custody institutions from 1 February 2011.

By 15 January 2011, Minister of Labor, Health and Social Security shall pass appropriate statutory act setting regulations of execution for custody and care institutions.

RECOMMENDATION:

Public Defender addresses Social Service Agency with recommendation, that, starting from 2011:

- **To ensure that during the enforcement of Judgment, the priority should be given to guaranteed protection of the rights of the child;**
- **To ensure that appropriate authorized agencies ascertain the child's best interest through appropriate procedures and with participation of professionals.**

JUVENILE JUSTICE IN GEORGIA

Pursuant to the world's best legislative theory and practices, children in conflict with law need rather rehabilitation and reintegration than punishment. Comment No.10 of the UN Committee on the rights of the child[493] provides that in all decisions taken within the context of the administration of juvenile justice, the best interests of the child should be

490 Letter #1668-10; 7 December 2010
491 Letter # 1668-10; 27 December 2010
492 15 December 2010.
493 UN Committee on the Rights of the Child, 10th general comment, Children's rights in juvenile justice, 2007

a primary consideration, which in its turn means that the traditional objectives of criminal justice, such as repression/ retribution, must give way to rehabilitation and restorative justice in concert with attention to effective public safety.

In today's world children accused of having infringed the penal law, have the right to enjoy the treatment, when their age, circumstances and requirements are fully considered.

Below is the list of international documents regulating juvenile's status within justice system:

- The United Nations Convention on the Rights of the Child (1989)
- The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules"1985)
- The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)
- The United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh, 1990).

Out of the above documents the Convention on the Rights of the Child, where all the guiding principles are concentrated, is the binding one. The States Parties to the Convention shall protect the rights of juvenile on three different levels:

- Prevention of children's delinquency;
- Protection by law;
- Promotion of reintegration.

Proceeding from the above, a State shall plan and develop delinquency prevention strategy. Commitment to the pledges shall not be limited to passing laws. At the same time, it is important that juvenile justice system is introduced in Georgia, as it is the case in most of the countries.

RESTORATIVE JUSTICE

Current Georgian legislation is not acquainted with peculiarities of juvenile justice (Independent justice system represented by juvenile courts and other).[494]

Priority of non-custodial penalty principle is one of the guiding principles of juvenile justice: According to Rule 13.1 of Beijing Rules "detention pending trial shall be used only as a measure of last resort", and second rule further expends this provision, stating: "…the placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period and only when there is no other appropriate response";

According to "b" sub-point of Article 37 of the Convention of the Rights of the Child "the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time".

To date there are two kinds of penalties applied to juvenile offenders in Georgia – deprivation of liberty and suspended sentence.

Regardless the fact that juvenile justice characteristics are not taken into account in Georgian legislation, the State has already started to implement the principles of restorative justice, which should be commended; respectively, it is important to review the innovation in legislative space, as it shall be conducive to juvenile justice.

[494] In many countries there are specialized courts for juvenile justice, as well as alternative support systems. Juvenile courts operate in GB, France, Italy, Spain, Austria, some USA states etc. Alternative systems, like committees for protection of juveniles' rights are set up, e.g. in Norway, Finland and Sweden.

DIVERSION PROGRAM

In July 2010, an amendment was introduced into Criminal Procedure Code of Georgia[495] enacting diversion program for juveniles in conflict with the law. The program was approved by orders of two ministers – Minister of Justice and Minister of Sport and Youth Affairs[496].

Main precondition for implementation of diversion and mediation program is the combination of the following circumstances:

- It is the first offence committed by the juvenile;
- The juvenile has not had participated in diversion and mediation program;
- The juvenile avows the guilt and is ready to apologize to the victims (provided there are victims);
- The juvenile (his/her family are ready to pay damages or the victim refuses to claim reparation;
- Based on inner conviction of the prosecutor and the best interests of the juvenile there is no public interest in starting, or continuing already started criminal prosecution

Provided all the above preconditions are present, the prosecutor has the right, at his discretion to divert the juvenile from criminal liability,.

When a prosecutor makes such a decision he/she contacts social worker and passes over the juvenile's case. Social worker makes the juvenile's bio-psycho-social portrait. Considering the juvenile's problem social worker shall draft civil agreement to be signed by: the juvenile, his/her parents, prosecutor, social worker and the victim of the offence. According to the terms of the agreement, the juvenile shall be provided with required services; besides he/she will be charged with obligations to the victim and to the public. These obligations imply specific activities on the part of the juvenile.

The State and non-governmental organizations shall help the juvenile. Social worker shall monitor execution by the juvenile of his/her obligations. There is a possibility, that the juvenile fails to avail himself of the given chance and breaches the agreement. In this case, social worker returns the juvenile's case to prosecutor and the prosecutor is empowered to initiate or to continue criminal prosecution against the juvenile. Such a perspective should make the juvenile think twice before breaching the agreement.

The program aims at removing juvenile from formal trial by the competent authority without damage to public interest and his rehabilitation and social integration beyond the system, which directly proceeds from universal provision of the Convention on the Rights of the Child.

The above innovation deserves to be commended, though some of the provisions need to be reviewed in terms of their conformity with international norms and basic legal principles.

PRECONDITIONS FOR DIVERSION AND MEDIATION PROGRAM

The juvenile's first, minor offence

As it has already been mentioned, diversion and mediation program shall be applied to a juvenile offender when, alongside other preconditions, it is his first offence and it can be classified as minor offence.

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495 Criminal Procedure Code of Georgia, Article 105, part 4.

496 Order #216 of 12 November 2010 by Minister of Justice "On approval of the prosecutors' guidelines on diversion and mediation and basic provisions of the agreement to be signed"; Order # 94 of 7 December 2010 by Minister of Sport and Youth Affairs "On approval of the guidelines for the mediators in diversion and mediation program"

The United Nations Committee on the Rights of the Child, within the comment No.10 calls upon States Parties to promote diversion program with regard to children in conflict with the law, but not to limit to children who commit minor offences and first-time child offenders but to apply it to other juvenile offenders.[497] It is important that diversion program be accessible not only for minor offenders, but also for those who have committed different gravity offences, regardless of whether this is the first-time offence or a repeated commission.

The juvenile (his/her family) are ready to indemnify the victim or the victim refuses to claim reparation

A juvenile shall be included in diversion and mediation program in case if, alongside with other preconditions, he/she or **his/her family** is ready to repair the damage. The above precondition regarding the family's obligation on reparation of damage may contradict to some of the criminal law principles, in particular to the principle of individuality of punishment (nulla poena sine culpa – there is no punishment without crime).

The above consideration is supported by constitutional claim, filed by Public Defender with the Constitutional Court[498] where the point at issue is part 5^1 of Article 42 of Criminal Code of Georgia, according to which: "where the convict is the minor and insolvent the fine shall be imposed upon a parent, legal guardian or tutor" (passed by the Parliament of Georgia 29 December 2006, #4213).

This case can be regarded as an analogous of disputable precondition for including a juvenile in diversion and mediation program. Insofar a juvenile may be included in diversion and mediation program only if his/her parents are ready to repair the damage resulted from the offence, the above provision, implying family's responsibility should not be a precondition.

● Rehabilitation Arrangements and Social Integration Opportunity

One of the most important results of juvenile's inclusion in diversion and mediation program shall be his reintegration in society, acquisition of social adaptation skills and in case of unmanageable behavior, learning its management. As it stands today there are not, if any, agencies to provide a juvenile with the above services. Hence, it will be a serious problem for diversion program to yield practical results. This factor poses a threat to the effectiveness of the program. Development of such services should be promoted by both governmental and non-governmental organizations. These serviced should be developed on the basis of adequate strategy aimed at quality and uninterrupted service. Priority consideration, while assessing the effectiveness of services, should be given to the juvenile's best interests and facilitation of his development. It also shall be assessed from the viewpoint of reduction of juvenile crime.

RECOMMENDATION:

Public Defender addressed Minister of Justice of Georgia with the recommendation:

- **To ensure the reinforcement of introduction of juvenile justice principles into the Georgian legislation;**
- **To ensure the improvement of diversion program mechanism in terms of both, legislative and practical viewpoints;**
- **To ensure the development of integration and rehabilitation oriented services network within the framework of juvenile diversion program.**

[497] The UN Committee on the Rights of the Child, General comment No.10, 2007 Chapter IV, article 25
[498] Constitutional Action (registration No.416

Woman's Rights

In September 2009, Child's and Woman's Rights Center was founded at the Public Defender's Office. The center regularly reviews complaints regarding the violations of women's rights and monitors implementation of legal acts passed in Georgia on gender equality issues.

From June 2010, within the framework of the project implemented with support of the UN Women's Organization ("Prevention of domestic violence and strengthening responses to it – ShiEId") five lawyers began work on the issue of women's rights at Public Defender's Central and four regional offices (Kutaisi, Gori, Marneuli, Zugdidi). Respectively, activities related to reviewing complaints on woman's rights violation, raising public awareness and legislation analysis were enhanced.

Due to lack of information on woman's rights among population and stigmatized approach to this issue, the amount of appeals to different organizations, including Public Defender's Office is still very low. Only 30 people submitted complaints to Public Defender's Office in 2010 regarding the protection of woman's rights. Most of the complaints related to domestic violence.

DOMESTIC VIOLENCE AND WOMAN'S RIGHTS

● Legal Regulation

In 1994, Georgia joined 18 December 1979 International Agreement (Convention) "On Elimination of all Forms Discrimination against Women" (CEDAW). The above mentioned Convention is ratified by Georgian Parliament Resolution No.561 with which Georgia committed to international community - to protect the rights of the woman as provided in the convention. The Convention on Elimination of Discrimination against Women" does not include the notion of "violence against woman", but the UN Committee on elimination of all forms of discrimination against women with its 1989 and then 1992 12th and 19th recommendations calls upon States Parties to the Convention to protect women against violence of any kind occurring within the family, at the work place or in any other area of social life. The above recommendations were the first to stress the fact that domestic violence does not lie in the sphere of private relations and it is the States' responsibility to protect victims of violence.

In 2009, European Court of Human Rights in the case "Opuz v Turkey"[499] decided that there was insufficient commitment on the part of the State to take appropriate action to address domestic violence and, for the first time,

[499] Opuz v Turkey, European Court of Human Rights 09.09.2009 (33401/02)

indicated that gender-based violence is a form of discrimination within the framework of European Convention on protection of human rights and basic freedoms.

In 2006, upon presenting the report to the UN Committee on Elimination of all Forms of Discrimination against Women, the Georgian State received the recommendation[500] where the committee calls upon the State to place high priority on the implementation of the "Law on the Elimination of Domestic Violence" and the Action plan on combating violence; to make the problem of domestic violence widely known to public officials and society at large; to ensure that all women, who are victims of domestic violence, including rural population, have access to immediate means of redress and protection, including protection orders, and access to a sufficient number of safe shelters and legal aid etc.

On 25 May 2006, Law of Georgia "On the Prevention of Domestic Violence, Protection of and Assistance to Victims of Domestic Violence" was passed. The Law contains definition of terms, such as victim of domestic violence, abuser, forms of domestic violence (physical, sexual, economic, psychological) etc. It introduces restraining and protecting order mechanisms.

On 28 July 2008, Order N 183/N by Minister of Labor, Health and Social Security was issued. The Orders set necessary minimum standards for construction of shelters for victims of violence and rehabilitation centers for abusers.

In compliance with Presidential Decree #665 of 5 October 2009, the rule of identification of victim of domestic violence was approved. The rule sets general regulations for identification of victims of domestic violence, defines actors participating in identification and their competences.

In 2010, the Law "On Gender Equality" entered in force. The Law aims at preventing discrimination in all spheres of life; creating appropriate conditions for exercising equal rights, freedoms and opportunities for women and men.

Especially important is that this law gives explanation to such notions as gender, gender equality, gender-based discrimination, direct and indirect discrimination etc.

Following agencies are active in the field of assuring gender equality and the arrangements against domestic violence in Georgia: Gender Equality Council[501], Interagency Council on the Arrangements of Combating Domestic Violence[502] and National Foundation for Protection and Support of Victims of Trafficking,[503] whose mandate was extended in 2009 to cover the issues related to victims of domestic violence[504].

For the execution of the above legislation "2009-2010 Action Plan on the arrangements of combating domestic violence and protection of victims of domestic violence"[505] was developed. In the framework of the mentioned plan, different arrangements were taken, resulted in the improvement of activities against domestic violence. In particular:

1. Under p. 1.1.1 of the Plan National referral mechanism was developed. It was considered and approved by Interagency Council on the Arrangements of Combating domestic violence at its 13 July 2009 sitting.

2. Under paragraph. 1.2.1. of the Plan, following changes and amendments to the Law "On Prevention of Domestic Violence, Protection of and Assistance to Victims of Domestic Violence" and related to it by-laws have been prepared:

[500] Concluding comments of the Committee on the Elimination of Discrimination against Women: Georgia, Thirty-sixth session, 7-25 August 2006

[501] The Council was awarded Standing status under the Law "On Gender Equality" on 26 March 2010

[502] The Council was created in compliance with Presidential Decree #626 on 26 December 2008

[503] The Statute of "National Foundation for Protection and Support of Victims and survivors of Trafficking" was approved by Presidential Decree #437 of 18 July 2006

[504] Presidential Decree # 4 of 6 January 2009 on changes and amendments to Presidential Decree # 437 of 18 July 2006 "On approval of the statute of legal person of public law – National Foundation for protection and support of victims and survivors of trafficking

[505] Presidential Decree # 304 of 23 April 2009

- on changes and amendments to the Law of Georgia "On the Prevention of Domestic Violence, Protection of and Assistance to Victims of Domestic Violence";
- on changes and amendments to the Code of Administrative Violation of Georgia;
- on amendment to Criminal Code of Georgia;
- on changes and amendments to "Arms Act" of Georgia;
- on amendments to Labor Code of Georgia
- on changes and amendments to the Law of Georgia "On Public Service"

Above-mentioned package of changes was adopted by the Parliament of Georgia on 28 December 2009 at the third hearing and entered in force on 1 April 2010.

Activities have started on criminalization of domestic violence offence, which involves appropriate changes/ amendments to Criminal Code of Georgia.

In 2010, a Concept of rehabilitation of domestic abusers was drafted.

In 2010, the representatives of Ministry of Interior in the regions, as well as prosecutor's office staff and lawyers of Legal Assistance Service have undergone trainings on violence issues. 24-Hours hotline was introduced for victims of violence.

Despite the above mentioned there are sectors with significant practical problems. Their elimination requires additional arrangements to be discussed below:

THE PRACTICE

The study, carried out by the UN Population Fund in Georgia on a national scale[506] in 2009 confirmed existence of different forms of domestic violence in Georgia (Altogether 2391 women were polled: 1188 women in rural areas and 1203 – in towns of which 500 in Tbilisi): 35,9% of women stated that they had experienced different forms of violence on the side of the spouse/partner, 14,3% of women spoke about emotional violence; 6,9% - about physical violence; 6% - about economic violence and 3,9% - about sexual violence.

Most of the complaints submitted to the Public Defender's Office in 2010 refer to domestic violence. It should be mentioned though, that there were many oral statements (197 consultations) alongside with written recourses (30 statements). Victims of domestic violence did not want to make written statement on the fact of violence and requested oral consultation from Public Defender. In oral conversation they mentioned that they refrain from making written statement mostly due to lack of social and economic guarantees: leaving the abuser (home) for them would mean no source of income, no housing and livelihood for them and their children. Vast majority of those, seeking consultations were unemployed women with no source of income. One of the factors, hindering open discussion is fear of being cut off from society due to prevailing in the society stereotypes - not to consider domestic violence in the context of human rights protection.

The above-mentioned tendency can be confirmed by statements filed with Public Defender's Office. Majority of victims of domestic violence (mostly women and children) protests against misconduct by family members. At the same time, they forget about their rights after learning what legal action may be taken against the abuser. This may be related to one of the study conclusions, that family is perceived as untouchable environment where anything can happen but should never become known to the society or subject of debates.

[506] "Nationwide study of domestic violence against women in Georgia, 2010". The study within. jointly financed by the UN Population Fund and Norwegian Government Project "Combat gender-based violence in the Caucasus" was carried out by the organizations – "ACT research" and Tbilisi Javakhishvili University Social Sciences Center.

Female victims often indicate in their statements to their economic insecurity, which forces them refrain from legal response and endure violence. When the victim of violence is economically unprotected, have no independent income and place to live, she cannot make decision against the abuser out of fear of grave social and economic consequences. Female victims express special concern over the fact that the State (and most of non-governmental organizations) provides them with shelter only for three months. But it should be mentioned that the State, as well as NGO representatives do their best to be able to offer the victims some other shelter after three months. (To date there are 6 such shelters in Georgia: 2 State shelters and 4 NGO shelters). Regardless all the efforts, such vague perspective often becomes an obstacle for the victims. Often after the consultations they choose to return to the abuser and to put up with the situation.

● Restraining and Protecting Orders

As a result of reviewing the complaints submitted to the Public Defender's Office and telephone consultations, important tendency became apparent: they seldom call patrol in case of domestic violence in rural areas. On the other hand in those rare cases, when patrol police is called police officers do not issue restraining order. The applicants state that the reason is authorized police officers' attitude to domestic violence. The police officer prefers to qualify the fact as family conflict and to avoid austerities (when the case is domestic violence).

The Child's and Woman's Rights Center of Public Defender's Office requested the information on the number of restraining and protecting orders issued by the courts of I instance by regions of Georgia. The following statistics can be observed:

The court	9 months of 2009		2009		2008		2007	
	Issued		Issued		Issued		Issued	
The court	Protective order	Restraining order	Protective order	Restraining order	Protective order	Restraining order	Protective order	Restraining order
Total	34	132	30	110	11	44	2	94
Gori	6		2		5	1	8	8
Rustavi	3	15	1	9	3	18		21
Kutaisi	2	2			1	1		11
Akhaltsikhe	1	2	1	1		1		1
Zugdidi						1		4
Telavi								1
Senaki							1	1
Khashuri							1	
Tbilisi	15	86	23	84	X	X	X	X
Batumi	3	20		16		18		53
Mtskheta	1	2						
Terjola						2		2
Marneuli			1		1			

Tetritskaro	1							
Ambrolauri	1							
Gardabani		1	1					
Samtredia		4						
Ozurgeti	1							
Zestafoni					1	2		

On the basis of the above statistics, one may say that restraining and protecting orders are issued rarely, especially in the regions. In some cases (Zugdidi, Telavi, Senaki, Khashuri, Terjola, Marneuli, Gardabani, Tetritkaro, Ambrolauri, Samtredia, Ozurgeti, Zestafoni) protecting and restraining orders have not been approved by the court or were approved in single cases.

Such statistics could be explained by the observations regarding restraining and protective orders, made on the basis of monitoring results of 2009-2010 Action plan against domestic violence[507]: when domestic violence is accompanied by physical assault (e.g. beating) the police initiates criminal proceedings. This was reinforced by the amendment introduced in the Code of criminal proceedings, which repealed private prosecutions (Article 27 of the Code of Criminal Procedure of Georgia, old edition). Article 16 of active Code of Criminal Procedure provides that prosecutor, when taking decision on initiating or discontinuing criminal prosecutions, uses his discretion being guided by public interest.

In this case, a trace of violence on the body shall be unconditional cause to initiate criminal prosecutions; it depends mainly on expert opinion about the extent of damage and the prosecutor's discretion. It is clear, that where there is domestic violence the police can issue (issues) restraining order if it is psychological, economic violence and, to some extent, constraint and not when it is physical or sexual violence, despite of ample evidence of domestic violence.

When criminal prosecution on the case is initiated, the police does not use a mechanism such as restraining order to combat violence, protect the victim and avoid repeated incidents of violence.

If immediately on initiation of prosecution, the imprisonment is not applied as a preventive punishment, then restricting order mechanism cannot be used during entire investigation and the victim is not protected from repeated abuse.

If a criminal prosecution against the person (abuser) is terminated, the abuser shall not be charged with any liability.

Where restraining order is not issued by police officer he/she (the abuser) shall not be imposed any restrictions, provided by administrative arrangements – restraining order.

Under such dynamics of legal proceedings the victim of domestic violence is unprotected and no steps are made to prevent violence. Hence, it is important that police officers, when responding to domestic violence, bear in mind the following aspect: undertaking prosecution does not disallow the use, for the sake of the victim's security the mechanism of administrative protection – restraining order.

Besides the above mentioned, raising awareness of police officers is very important. They should know that all cases of domestic violence deserve appropriate attention so that no fact is ignored under the influence of stereotypes, existing in the public.

Proceeding from the above it is important to continue advising police officers about specifics of preventing domestic violence in order to ensure maximum protection guarantees to the victim.

[507] "Specific arrangements in combating domestic violence and protecting of and support to victims of violence Monitoring of implementation of 2009-2010 special action plan" – implemented at the initiative of interagency Council on combating domestic violence and the support of the UN Population Fund and Norwegian Government jointly financed project "combating gender-based violence in the Caucasus" and Swedish Government financed UN Women's Fund financed project "SHiEld – prevention and combat of domestic violence in Georgia"

Public Defender addresses Minister of Interior of Georgia with recommendation:

- **To continue trainings for Ministry of Interior staff on the specifics of domestic violence, especially in the regions, where the number of calls to the police on domestic violence is low or does not exist at all.**

The role of Social Service

As a result of reviewing the information at hand it became clear that the role of social service and its inclusiveness in combating domestic violence should not be underestimated. The role of social worker is important in preventing and responding to violence and in victims' rehabilitation arrangements.

Para 2 of Article 8 of the Law of Georgia "On the Prevention of Domestic Violence, Protection of and Assistance to Victims of Domestic Violence" provides for specific measures of combating domestic violence:

1. Case study and relevant analysis of the causes of disputes and support to family members to overcome conflicts;
2. Implementation of activities, supporting victims of domestic violence;
3. In collaboration with relevant state institutions, identification of potential abusers and assistance to overcome the problems;
4. Participation in issuing protective orders;
5. Monitoring activities defined in protective and restraining orders;
6. Development and support for implementation of programs aimed to assist victims and abusers and facilitate their social rehabilitation.

Though, according to transitory Article 22 of the Law of Georgia "On the Prevention of Domestic Violence, Protection of and Assistance to Victims of Domestic Violence" the execution of Social Service functions (operation of article 8) shall be suspended until July 1, 2015.

The complaints submitted to the Public Defender's office reveal that often Social Service response to the facts of domestic violence is not efficient. Social Service Agency actively gets into gear when there is alleged violence against the child and applies the child protection referral procedures[508]. As the notion of a victim of domestic violence is all-inclusive, it implies both, a woman and a child simultaneously. Respectively, only child protection arrangements shall not be effective. Social workers should address the problem of the child and victim parent simultaneously, which is not the case at present. Objective reason for this problem is that due to postponement of operation of Article 8 of the Law of Georgia "On the Prevention of Domestic Violence, Protection of and Assistance to Victims of Domestic Violence" Statute of Social Service Agency does not provide for the function of this division in case of domestic violence.

Public Defender addresses Parliament of Georgia with recommendation:

- **To ensure the entry in force of Article 8 of the Law "On the Prevention of Domestic Violence, Protection of and Assistance to Victims of Domestic Violence" before 1 April 2015.**

[508] Joint Order No.152/ნ – N496 – N45/ნ by Minister of Labor, Health and Social Security and Minister of Interior of Georgia on 31 May 2010 on approving child protection referral procedures.

Public Defender addresses "Social Service Agency" with the recommendation:

- **To enhance activities to combat domestic violence, which implies comprehensive approach involving the child and other family members.**

Rehabilitation Measures for Abusers

Like the Social service, another similar problem is the postponement of enactment of Article 10 of the Law "On the Prevention of Domestic Violence, Protection of and Assistance to Victims of Domestic Violence" until 1 April 2015. The above mentioned article provides:

- In order to ensure temporary placement or/and rehabilitation of abusers in compliance with legislation in force, rehabilitation centers for abusers shall be established under the Ministry of Labor, Health and Social Protection, and by non-productive legal entity. Rehabilitation Centers for abusers shall meet minimum standards determined by the Ministry and shall ensure temporary placement of abusers, their psychological and medical assistance.

- The abusers' rehabilitation arrangements aim at psychological and social assistance and recovery of abusers from addictions (alcoholism, drug-addiction and mental diseases, not excluding sanity) and their rehabilitation to avoid further manifestation of abuse and ensure the victim's security.

At this stage, the Law of Georgia "On the Prevention of Domestic Violence, Protection of and Assistance to Victims of Domestic Violence" cannot fulfill its preventive functions due to non-existence of rehabilitation arrangements. According to all non-governmental organizations, engaged in this field, dysfunctional family rehabilitation would be impossible without working with abuser; so, in this situation, the only way to solve the problem of domestic violence is a full isolation of a spouse. This is why women often refrain from informing appropriate authorities on the facts of violence and domestic violence continues.

Public Defender addresses Parliament of Georgia with the recommendation:

- **To ensure the entry in force of Article 20 of the Law "On the Prevention of Domestic Violence, Protection of and Assistance to Victims of Domestic Violence" before 1 April 2015.**

Public Defender addresses Ministry of Labor, Health and Social Security of Georgia with the recommendation:

- **To ensure the establishment of rehabilitation centers for abusers and implement rehabilitation measures alongside with other arrangements.**

WOMEN PRISONERS

According to Ministry of Corrections and Legal Assistance official data for the year 2010, **2310 women** are serving a prison sentence[509]. Women in prison in Georgia face different problems, covered in Public Defender's reports of previous years.

Complaints, studied at Child's and Woman's Rights Center of Public Defender's office show, that the problem of prisoner women's relationship with their families is still relevant.

[509] 2010 report of Ministry of Corrections and Legal Assistance of Georgia

Legal regulation

The United Nations Standard Minimum Rules for the Treatment of Prisoners[510] provide for the necessity of regular contacts of prisoners with outside world as one of the most important preconditions for their reintegration and re-socialization.

In Compliance with Resolution[511] 2010/16 adopted at the UN Social and Economic Council plenary session on 22 July 2010, rules were developed for treatment of women prisoners. In particular, "Women prisoners' contact with their families, including their children, their children's guardians and legal representatives shall be encouraged and facilitated by all reasonable means"[512].

The United Nations Convention on the Rights of the Child[513] provides that States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child.

THE PRACTICE

In 2010, Child's and Woman's rights center of Public Defender's Office studied X.J (#0550-10) and Zh.M. (#0513-10/1) cases, when mother's serving prison sentence became a hindering factor to her relationship with the child.

Prisoner Zh. M, serving her sentence at Rustavi No.1 prison requested information about her child and help to organize a meeting. Regardless the involvement of social worker, the father categorically refused the child's meeting with mother. Neither did he provide information about the child. At the request of Public Defender, a "Social Service Agency" social worker gathered the information and sent it to prisoner mother.

As a result of the reform of penal system, a new - #5 women's semi-conventional and closed prison came into operation on 6 November 2010. The prison has rooms to accommodate mother and the child. As the practice shows, rooms are not enough to accommodate all women with children.

Prisoner Kh. J. appealed to Public Defender's Office stating that she was refused to bring her child to prison #5. As the warden of #5 institution explained[514] "The institution at this stage cannot meet the prisoner's request due to lack of space for joint accommodation of mother and child; the existing 6 rooms are already occupied by other mothers with small children".

From 2006 to date, 4 prisoner mothers appealed to Ministry for Corrections and Legal Assistance Penitentiary Department to allow them stay in prison with their children. Their claims could not have been met due to absence of appropriate space.[515]

The problem of relations between prisoner mother and her child needs comprehensive approach. Priority method for solving the problem would be improvement of living conditions in prisons. However, it is evident that this is not only Ministry of Corrections and Legal Assistance's responsibility. It requires mobilization and cooperation of different agencies. In particular, institutions of custody and care are also among decision-makers on joint accommodation of

[510] Adopted by the UN General Assembly in 1955
[511] United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders "http://www.un.org/en/ecosoc/docs/2010/res%202010-16.pdf
[512] Rule 26, contact with outer world Supplements rules 37 to 39 of the Standard Minimum Rules for the Treatment of Prisoners
[513] Convention on the rights of the child, article 9
[514] Letter #10/24/2-279, 26 January 2011
[515] Letter of Penitentiary Department #10/8/4-1457, 28 January 2011

prisoner mothers with their up to 3 years old children. It is them, who determine the child's best interests in such cases. Accordingly, it is important to enhance inclusion of social workers in the management process. Specific regulations of cooperation between penitentiary department and social service agencies should be developed to enable social workers to better assist prisoner women in their contacts with outside world, their children and families.

Public Defender addresses Penitentiary department of Ministry of Corrections and Legal Assistance and Social Service Agency with recommendation:

- **To ensure facilitation of prisoner women's contacts with their small children by means of enhancement of cooperation between prison administration and social workers of custody and care institution**.

Rights of Persons with Disabilities

Public Defender continues monitoring of protection of the rights of people with disabilities. The results of monitoring are usually reflected in annual report to the Parliament and in special reports. In October 2010, the first wide-scale monitoring of legal status of people with disabilities at public care institutions was carried out at Public Defender's initiative.[516] Also in 2010, at the initiative of the Center for people with disabilities and NGO coalition, the document on legal status of people with disabilities was drafted. The document was submitted to the UN Universal Periodic Review (UPR) (Report by stakeholders)[517]

The present chapter describes legal status of people with disabilities in 2010.

The report covers the following issues:

- Implementation of Public Defender's recommendations with regard to the rights of people with disabilities;
- Problem of ratification of the UN Convention on the rights of people with disabilities of 13 December 2006;
- Monitoring of the rights of people with disabilities by NGOs;
- Employment of people with disabilities;
- Problems associated with obtaining a driving license;
- Access to health care;
- Shortcomings in providing assistive devices;
- Access to the environment;

In 2010, the problem of non-conformity of Georgian legislation with international standards and related to it disability-based *de facto* and *de jure* discrimination remained relevant.

It should be mentioned that the State has not ratified the UN Convention on the Rights of Persons with Disabilities, which Georgia signed on July 10, 2009. Georgian delegation was given different recommendations in the process of reviewing the UN UPR report at the UN Human Rights Council 10th session.[518]

[516] Public Defender's special report on "Protection of Human Rights at public institutions for persons with disabilities – 2010".
[517] Submission to the Universal Periodic Review Committee concerning the rights of People with Disabilities in Georgia, July
[518] Preliminary report by UPR working group, UN Human Rights Council 10th session, Working group on the universal periodic review, 24 January 2011, Geneva http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/GE/Georgia-A_HRC_WG.6_10_L.9-eng.pdf

Besides, State Coordination Council on the issues of people with disabilities, which was set up by Governmental resolution of 15 December 2009 has not convened as yet. Main tasks of the Council are the following: coordination of State policy in the field of the rights of people with disabilities; coordination of development and updating of strategic action plan in the field of rights of people with disabilities; coordination of development of National programs in the field of rights of people with disabilities and monitoring their implementation (including hearings of monitoring and assessment reports); reviewing legislative proposals and initiatives in the field of disability and preparation of appropriate conclusions etc.

Lack of statistical information impedes protection of the rights of people with disabilities. The State does not have statistics regarding people with disabilities. The only data is based on the number of people, receiving pension and is incomplete, because only those, who enjoy the status the person with markedly expressed disabilities and limited number of those, who enjoy the status of the person with moderately expressed disabilities receive pensions. According to 2010 statistics it is 138 614 persons countrywide[519]. These data can not reflect the reality as in most of the countries people with disabilities constitute 10% of the population.[520]

IMPLEMENTATION OF PUBLIC DEFENDER'S RECOMMENDATIONS IN THE FIELD OF PROTECTION OF THE RIGHTS OF PEOPLE WITH DISABILITIES

II half of 2009 report contained different recommendations on improving legal status of people with disabilities in Georgia, but only part of them have been implemented by appropriate authorities.

It should be mentioned that Georgian parliament took note of Public Defender's recommendation on improving legal status of people with disabilities and introduced appropriate amendments to the Law of Georgia "On General Education" in 2010. The amendments are aimed at increasing access to education for children with disabilities. The mentioned amendments were developed jointly by Ministry of Education and Science, Center for people with disabilities of Public Defender's Office and other international and non-governmental organizations.

In his report for second half of 2009, the Public Defender addressed Parliament of Georgia with recommendation to introduce income tax allowances for people with disabilities on the basis of objective and reasonable criteria and not depending on the cause of disability and the time when it occurred. Also to increase the amount of tax allowances for people with disabilities from the existing to adequate.

As provided in article 168 of the Law of Georgia "Georgian Tax Code" of 2004, a taxable income up to GEL 3 000 in the course of a calendar year of persons with disabilities from childhood, as well as persons with disabilities caused by blindness of groups I and II would not be subject to taxation; besides, a taxable income of groups I and II of persons with disabilities would not be taxable up to GEL 1 500 in the course of a calendar year (other than those mentioned in part 2 of this Article).

In 2010, "Tax Code" Public Defender's recommendations were taken into account, though not fully. In particular, a taxable income up to GEL 3 000 in the course of a calendar year of persons with disabilities from childhood as well as persons with markedly and moderately expressed disabilities would not be subject to taxation.

With the above amendments overall amount of allowances were defined for all categories of persons with disabilities, but the amount did not increase.

[519] Social Service Agency Data: http://ssa.gov.ge/uploads/Pension%20122010%20ge/Book1.xls

[520] World Health Organization Action Plan 2006-2011. "Disability and Rehabilitation" http://www.who.int/disabilities/publications/dar_action_plan_2006to2011.pdf

PROBLEM OF RATIFICATION OF THE UN CONVENTION ON THE RIGHTS OF PEOPLE WITH DISABILITIES OF 13 DECEMBER 2006

In order to improve the status of persons with disabilities, it is essential that the State recognizes their rights and mechanisms of protection as guaranteed by the UN Convention on the Rights of People with Disabilities of 13 December 2006. The Convention for the largest minority provides for equal with others rights and opportunities and covers many spheres of life, such as access to physical environment, participation in political and public activities, the right to education, prohibition of discrimination, inhumane treatment, disability-based exploitation and violence etc.

European Court of Human Rights in *"Glor v. Switzerland"* case made explicit reference to the UN Convention on the Rights of Persons with Disabilities of 13 December 2006 as the basis for European and universal consensus on the necessity to protect persons suffering from a disability from discriminatory treatment. The Court indicated that universal standards of the Convention provide that discrimination on the basis of disability is inadmissible even if a State is not a contracting to the Convention party[521] as the Convention specifies all basic rights guaranteed by international human rights acts to all human beings without discrimination.

It should be stressed that Georgia signed the Convention and its supplementary protocol on 10 July 2009 but the Parliament has not ratified it as yet. According to the information provided by the President's Administration and the Government, consultations are ongoing for detailed consideration of all the provisions, as they may entail the arrangements in terms of legislative and budgetary changes[522]. It is still not clear when will this process end and the Convention be passed to the parliament for ratification;

Different governmental agencies state that it is important that the commitments provided in the Convention are scrutinized before ratification. At the same time, it is noteworthy that "Governmental Action Plan for 2010-2012 on social integration of persons with disabilities" approved by governmental resolution #978 of 15 December 2009 in fact contains all the commitments provided by UN Convention on the Rights of Persons with Disabilities.

Public Defender addresses Parliament of Georgia with recommendation:

- **In order to ensure protection of the rights of persons with disabilities in the State, to ratify the UN Convention on the Rights of Persons with Disabilities of 13 December 2006 in the nearest future.**

MONITORING OF THE RIGHTS OF PERSONS WITH DISABILITIES BY NON-GOVERNMENTAL ORGANIZATIONS

The monitoring of legal status of persons with disabilities, as permanent process of information gathering and analysis, is an effective tool for the assessment of quality, progress, results achieved by the government and for determining necessary changes.

On 20 December 2010, the Center for the rights of persons with disabilities of Public Defender's Office asked different NGOs, active in the field of the rights of persons with disabilities about their monitoring results. Among the NGOs there were:

- "Georgian Young Lawyers' Association";
- "Article 42 of the Constitution"
- "the Union for People, who need help"

[521] *Glor v. Switzerland*, European Court of Human Rights, 30 April 2009

[522] Letter #*52-of* of 18 January 2010 by Head of Administration of the President; letter #261-of of 11 March 2010 by Ministry of Labor, Health and Social Security

- "Coalition for independent living"
- "Georgian Psychiatrists' Society"
- "Dea" – "Association of women with disabilities and disabled children's mothers"

According to information provided by these organizations, only small number of NGOs carry out monitoring of the rights of people with disabilities. These are: "Dea" – "Association of women with disabilities and disabled children's mothers" and "Youth center of Coalition for independent living".

Center for the rights of persons with disabilities of Public Defender's Office asked Ministry of Labor, Health and Social Security whether the NGOs provided them with monitoring results and how do governmental agencies incorporate them in their specific programs and action plans.

According to Ministry of Labor, Health and Social Security reply[523], for recent 5 years NGOs have not provided them with monitoring results, because such data "cannot be found in the Ministry's archive data base". Ministry of Education and Science did not reply to the similar question.

At the same time, it should be mentioned that article 28 of 2010 "National plan of social rehabilitation of people with disabilities, the elderly and children deprived of family care"[524] provides for monitoring sub-program. The sub-program is aimed at monitoring of program implementation and assessment of the results. The above mentioned sub-program will be implemented by Social Security Department and Administrative Department of Ministry of Labor, Health and Social Security. As provided in Article 28 of above-mentioned program, independent organizations, which are not providers of services under this program shall also be involved in monitoring process. However, in 2008-2010 independent organizations did not participate in monitoring process.

As becomes evident from situation study, no monitoring of the rights of people with disabilities is carried out actively by civil society in Georgia. This is major impeding factor in terms of community supervision over development of adequate programs and implementation of 2010-2012 action plan by the government.

The Public Defender addresses the Ministers of Labor, Health and Social Security and the Minister of Education and Science with recommendation:

- **To facilitate inclusion and activation of independent NGOs in monitoring of social integration, employment, implementation of health and educational programs for people with disabilities in order to ensure transparency of the monitoring process.**

EMPLOYMENT OF PEOPLE WITH DISABILITIES

Employment of people with disabilities remains one of the main problems in the country. More than one person with disabilities contacted Public Defender's Office to state, that they were refused employment, informally, on the basis of their disability, due to their limited access to work place and possibility of adaptation to working conditions.

The UN Resolution ("Standard Rules on the Equalization of Opportunities for Persons with Disabilities") provides: States should ensure that Laws and regulations in the employment field do not discriminate against persons with disabilities and must not raise obstacles to their employment[525]. States should actively support the integration of persons with disabilities into open employment. This active support could occur through a variety of measures, such as vocational training, incentive-oriented quota schemes, reserved or designated employment, loans or grants for small business,

523 Letter #01–10/04/107. 6 of Ministry of Labor, Health and Social Security of 6 January 2010

524 Order #442/ნ of 30 December 2009 by Minister of Labor, Health and Social Security "On approval of 2010 National plan of social rehabilitation of people with disabilities, the elderly and children deprived of family care"

525 The UN General Assembly Resolution 48/96 on "Standard Rules on the Equalization of Opportunities for Persons with Disabilities, 20 December 1993, Rule 7.

exclusive contracts or priority production rights, tax concessions, contract compliance or other technical or financial assistance to enterprises employing workers with disabilities. States should also encourage employers to make reasonable adjustments to accommodate persons with disabilities. It is important that appropriate infrastructure is developed in Georgia to enable persons with disabilities to gain and maintain employment.

By Georgian legislation[526], employment of a person with disabilities in public sector shall entail his/her deprivation of pension. However, this restriction does not refer to persons with markedly expressed disabilities and disabled caused by blindness. But significant number of persons with disabilities have to refuse state pension in favor of public employment. This regulation puts persons with disabilities of different categories in unequal conditions. According to 1 November 2010 data, 430 persons have been refused disability pension on the grounds of their employment in public service.[527]

As a result, persons with disabilities, employed in public sector are discriminated against those working in private sector. Instead of facilitating the employment, the State infringes a person with disabilities' right to the pension, granted to compensate the needs arising from his/her disability.

Article 21 of 2010 "Program of facilitating social rehabilitation of persons with disabilities, the elderly and children deprived of family care" provides for "persons with disabilities' employment sub-program". The subprogram envisages facilitation of local production of wheel-chairs. This initiative is a **positive practice** in terms of persons with disabilities' employment facilitation. However, it is clear that facilitation of one enterprise shall not solve problems related with target group employment.

Proceeding from the above, it is important that the State develops overall policy with regard to persons with disabilities' employment and carries out appropriate arrangements in compliance with international standards.

The Public Defender addresses the Parliament of Georgia with the recommendation:

- **To introduce amendments to the Law of Georgia "About Pension" in order to ensure equalization of employment opportunities for persons with disabilities.**

The Public Defender addresses the Georgian Government with the recommendation:

- **To ensure extention and diversification of the employment sub-program for the persons with disabilities.**

PROBLEMS, ASSOCIATED WITH OBTAINING DRIVER'S LICENSE

The Center for the rights of persons with disabilities of Public Defenders Office was approached by a number of persons with disabilities, protesting against the restrictions provided by active law for certain categories of persons with disabilities to obtain driving license. According to them, due to restricted access to the environment (absence of infrastructure) a vehicle often is the only means of their movement and integration with the society. The problem lays in medical diagnosis-based approach, established in the country, which takes no account of needs and functional abilities of these persons. Whereas, international community gives priority to social approach to this issue.

In accordance with para 1 of article 21 of Order #1098 of 10 August 2007 by Minister of Interior of Georgia: "Candidates to obtain drivers' license shall submit to examination service, alongside with other documents, **health certificate**, certifying his/her suitability for driving a vehicle".

[526] Law of Georgia "About State Pensions", Article 6.
[527] Letter #04/07–22922 of 14 December 2010 by Social Service Agency of Ministry of Labor, Health and Social Security

Health certificate is issued in accordance with Order #215/n of 11 July 2007 by Minister of Labor, Health and Social Security "On approval of rules of periodic compulsory medical examination of employee at the employer's expenses". This Order lists a range of diseases and physical anomaly to which driving is contraindicated.

Citizen S.Kh. appealed to Public Defender's Office[528] complaining on difficulties with obtaining driving license because of his diagnosis – cerebral palsy and spastic diplegia. In compliance with para 10 of article 2 of the above mentioned Order, disease of any etiology, causing disturbance of function and dizziness is contraindication for driving. The Public Defender's Office, in order to obtain expert conclusion with regard to the above statement, applied to "Children's Neurology and Neurorehabilitation Center". The Center's conclusion, received on 25 December 2009 reads that cerebral palsy (which may be regarded as disease of any etiology, causing vestibular function disorder, dizziness) itself, does not exclude possibility for a person to drive the car. Cerebral palsy may be, or be not accompanied by vestibular function disorder. In case it is not accompanied by vestibular function disorder, a person can drive a car[529]. As a result of involvement of Center for the rights of persons with disabilities of Public Defender's office, Kutaisi #2 policlinic made individual assessment of the applicant's health and issued certificate, saying that "the claim is met, fit for B category only - as an individual case"[530].

On 4 October 2010, Ministry of Labor, Health and Social Security of Georgia submitted draft joint Order by Minister of Labor, Health and Social Security and Minister of Interior of Georgia "On approval of health condition requirements for driving mechanical transport and rules of examination" for Public Defender's consideration.

Above mentioned draft Order provides for possibility of individual decisions, in particular, with regard to diseases and anomalies listed in paras. 9, 11, 13 and 16 of Attachment #1. Such an approach is commendable and it corresponds to World Health Organization "International Classification of Functioning, Disability and Health". However, with regard to most of the diseases provided for in the Attachment #1 (paras 1, 2, 3, 4, 5, 6, 7, 8, 10, 12, 14, 15, 17, 18, 19, 20, 21) the assessment is based only on medical diagnosis without considering the person's individual functional abilities.

Public Defender's Office presented its proposals[531] with regard to above mentioned draft Order to Health Department of Ministry of Labor, Health and Social Security. The proposals draw the Ministry's attention to the fact that functional disorder, which may accompany one or another disease or anomaly should be determining factor when identifying contraindications for driving mechanical transport means, and not the list of particular diseases or anomalies. Medical diagnosis may not reflect the person's ability to drive mechanical transport means. A person with the diagnosis listed in draft Order may be functional or less functional and issuance of driving license on the basis of only diagnosis may infringe upon the rights of persons with disabilities, especially of those who, regardless medical diagnosis are functional to drive mechanical transport means. Consideration of Public Defender's proposals will create better grounds for implementation of above mentioned rights.

RECOMMENDATIONS:

The Public Defender Addresses the Minster of Labor, Health and Social Security and the Minister of Interior of Georgia with the recommendation:

- **When evaluating health condition for obtaining driving license, to take into account not only medical diagnosis but also individual assessment of functional restrictions.**
- **Instead of medical diagnosis-based approach, to ensure the introduction of social approach to persons with disabilities, which will take into account requirements and functional abilities of these persons.**

528 Statement of 18 February 2009
529 Letter #55of 25 December by the Center of Children's neurology and neurorehabilitation
530 Letter # 785 of 14 July 2010 by Kutaisi #2 policlinic
531 Letter #1282/04 of 20 October 2010

ACCESS TO HEALTH CARE

Persons with disabilities often face problems related to their right to health care.

Article 12 of the UN International Covenant on Economic, Social and Cultural Rights recognizes the States Parties' obligation to ensure the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

According to Article 11 of the Law of Georgia "On Patient's Rights" "Equal accessibility to medical service is ensured through state health programs"

Citizen V.Ch. submitted a complaint[532] to the Public Defender's Office stating that he could not pass medical examination due to limited mobility. He also could not call a doctor at home due to lack of financial resources. According to Ministry of Labor, Health and Social Security[533] "Outpatient treatment of population above 60" subcomponent of "Overall outpatient treatment" component of "Primary Health Care National Program" does not provide for medical examination at home[534].

Insofar "Primary Health Care National Program" aims at increasing geographic and physical accessibility, it should be designed so that physical or other constraints do not prevent a person from enjoying the benefits of the program. When the State provides a service to its citizens it should ensure that the service is accessible.

When there is no access to physical environment and a person cannot visit medical institution and enjoy his/her right, a concrete person cannot benefit from the program. This creates the situation where persons with disabilities have limited access to health care though this right is guaranteed to them by law. Note should be taken of the fact that when the State guarantees one or another right to a person, its appropriate arrangements should be effective and if, as a result of these arrangements, nothing changes for the person, the right remains unimplemented.

In order to settle the problem, the Public Defender addressed the Minister of Labor, Health and Social Security of Georgia with recommendation[535]. According to the reply[536] from the Ministry of Labor, Health and Social Security of Georgia, the above problem shall be considered in the process of development of 2011 health care programs.

Citizen M.B.[537] submitted a complaint to the Public Defender's Office. The woman was diagnosed with multiple sclerosis with severe form of restriction of functions (significantly worsened sight, severely limited movement, chronic pain, bedsores) but, being not able to visit medical institution for medical and social examination, she was not granted the status of a person with disabilities.

According to para1 of article 51 of the Law of Georgia "On Medical and Social Examination": "When a patient, because of health status cannot visit health center, he/she shall be examined in the hospital or at home". Regardless this provision, M.B. likewise other citizens, could not take advantage of such opportunity as to date this service is practically unavailable.

As a result of Public Defender's office interference, M.B. received the above service at home and she could exercise her legal rights.

532 Application of 27 April 2010
533 Letter #03/10-4050 of 24 May 2010 by Social Programs Agency of Ministry of Labor, Health and Social Security of Georgia
534 Order #424/6 of 22 December 2009 by Minister of Labor, Health and Social Security of Georgia "On approval of 2010 Health Care Programs."
535 Letter 2642/09–3/0796–1 of 26 July 2010
536 Letter #01–10/03/9453 of 17 August 2010 of Ministry of Labor, Health and Social Security
537 3 November 2010 Statement.

The Public Defender addresses the Minister of Labor, Health and Social Security with the recommendation:

- **To ensure the improvement of access to medical service through improvement of the program for persons with disabilities component in the National Program of Primary Health Care; also, to ensure full provision of medical service by health institutions as provided by the law.**

SHORTCOMINGS IN ACCESS TO ASSISTIVE DEVICES

Several people with sight problems appealed to Public Defender seeking protection of their rights. They appealed against shortcomings in 2010 National program of promoting rehabilitation of people with disabilities, the elderly and children deprived family care, which does not ensure providing them with necessary assistive devices.

2010 National program of promoting rehabilitation of people with disabilities, the elderly and children deprived family care envisages provision of assistive devices to persons with different disabilities (impaired hearing, limited movement) but not to those with sight problems ignoring their individual needs.

It is important that all persons with disabilities have equal opportunities to benefit from state funded programs, regardless of what kind of disability entailed the necessity to use assistive device.

In order to solve this problem, the Public Defender proposed to the Ministry of Labor, Health and Social Security to spread 2011 National program on persons with sight problems bearing in mind their individual requirements[538]. According to the reply received from the Ministry[539], solution of this problem will be envisaged, to the extent possible, in developing future programs.

The Public Defender addresses the Minister of Labor, Health and Social Security with the recommendation:

- **To consider individual needs of all persons with disabilities regardless the type of disability when providing supportive devices in the framework of 2011 National program,.**

ACCESS TO ENVIRONMENT

Public Defender's Office regularly monitors the problem of access to environment for persons with disabilities and makes appropriate recommendations to public agencies.

Principle of accessibility aims to dismantle the barriers that hinder the enjoyment of rights by persons with disabilities. The above mentioned concerns not just physical access to places, but also access to information, technologies, economic and social life[540]. Implementation of single programs, such as provision of ramps will not ensure application of these principles. Systemic vision and approach should be developed to dismantle all sorts of barriers in the environment.

In compliance with UN Resolution 48/96 on Standard Rules for Equalization Opportunities for Persons with Disabilities, States should recognize the overall importance of accessibility in the process of the equalization of opportunities in all spheres of society. For persons with disabilities of any kind, States should 1) introduce programs of action to

538 Letter #3447/09–3/0788–10 of 5 October 2010

539 Letter #01–10/04/11271 of 8 November 2010 of Ministry of Labor, Health and Social Security

540 UN handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities, Geneva, 2007, p.17 http://www.un.org/disabilities/documents/toolaction/ipuhb.pdf

make the physical environment accessible; and 2) undertake measures to provide access to information and communication. States should encourage the media, especially television, radio and newspapers, to make their services accessible[541].

Recommendation REC (2006)5[542] of Council of Europe Cabinet of Ministers charges States Parties with promoting the use of assistive devices and technological innovations in order to improve the accessibility of the built environment and give persons with disabilities equal opportunities to participate in community life. Such practices should be applied to new constructions and progressively extended to existing buildings.

Internal legislation also charges the State to consider the requirements of accessibility for persons with disabilities from the very beginning of designing and creating physical environment. In compliance with the Law of Georgia "On Social Protection of Persons with Disabilities"[543], "Design and arrangement of settlements, building of residential areas, development of design solutions, construction and reconstruction of houses and buildings [...] without due regard to the needs and requirements of people with disabilities is impermissible".

2010-2012 Governmental Action Plan of social integration of persons with disabilities provides for specific arrangements to be carried out by the government in order to create accessible and well equipped environment for persons with disabilities.

Enjoyment of other fundamental human rights depends on accessibility to the environment. When a person cannot move independently, enter public buildings and acquire necessary information it is impossible that his/her rights to health, education, employment, movement, independent life and inclusion in political and public life are protected.

THE PRACTICE

Accessibility problem is particularly relevant in rural areas. For the purpose of situation analysis, the Center of the Rights of persons with disabilities requested the information from several regional centers (Kutaisi, Zugdidi, Batumi, Poti, Gori, Telavi, Akhalkalaki, Rustavi). Received replies testify to that in no one city physical environment meets minimum requirements of persons with disabilities. Buildings, public transport, pedestrian's paths and crosswalks are not adapted.

Batumi: loudspeaker devices for the blind and people with poor eyesight are not installed on traffic lights. Public transport is not adapted to the needs of people with disabilities. At this stage no arrangements are being taken to adapt these people to the environment[544].

Rustavi: No traffic light is equipped with loudspeaker device for the blind and people with poor eyesight. Pedestrians' paths are partly adapted to the needs of people with disabilities in wheel-chair. Public transport is not designed to meet the requirements of persons with disabilities[545].

Kutaisi: Loudspeakers on traffic lights, as well as ramps for people in wheelchairs to get from the street carriageway to the sidewalk are not installed. The problem is under discussion at Kutaisi local government[546]

Gori: No traffic light is equipped with loudspeaker device for the blind and people with poor eyesight. Sidewalks are not adapted. But, rehabilitation works are underway and installment of ramps is planned[547].

[541] Resolution of the UN General Assembly 48/96 on Standard Rules on the Equalization of Opportunities for Persons with Disabilities, 20 December 1993, rule 5

[542] Recommendation Rec(2006)5 of the Committee of Ministers of Council of Europe "Improving the quality of life of people with disabilities in Europe 2006-2015", 5 April 2006, Art.3.6.3

[543] Law of Georgia "On Social Protection of Persons with Disabilities"1995, Article 8

[544] Letter #04–04/116981 of 5 December 2010 of Batumi mayor's office

[545] Letter #1088 of 7 December 2010 of Rustavi mayor's office

[546] Letter #01–1199 of 19 March 2010 of Kutaisi mayor's office

[547] Letter #4527 of 27 December 2010 of Gori Municipality

Telavi: Audible traffic lights are not installed for persons with disabilities and sidewalks, in many places, are not adapted for people in wheelchairs[548].

Akhalkalaki: Audible traffic lights are not installed and appropriate paths for people in wheelchairs are not laid.[549]

Zugdidi: During 2007-2009 some ten streets were reconstructed in Zugdidi, where special crosswalks for people in wheelchairs are arranged. As for the traffic lights the issue of application of traffic lights with tone-alerting digital control panel is being discussed[550].

The information analysis shows, that in most of Georgian cities no specific and effective arrangements are planned in order to adapt the environment.

As for public transport accessibility, according to Tbilisi Mayor's office information, only 40 out of all the buses belonging to "Tbilisi Transport Company" Ltd, are adapted to the needs of persons in wheel-chairs[551]. However, according to representatives of persons with disabilities' organizations, none of them is operational in reality, because most of them have removed/broken special ramp. Letters received from the regions indicate to that most of them have no public transport, so they can only recommend private companies to adapt their transport, which is not taken into consideration by the latter. Accordingly public transport is absolutely inaccessible to persons with disabilities.

Up to now, "penalty imposing body", as provided in para 45 of article 239 of Georgia Code of Administrative Offences, has not been defined. In particular, pursuant to article 178^1 of the Code "Avoidance from creation of necessary conditions for a person with disabilities to use living, public and working space, transport and transport communications, means of communication and information, as well as for his free movement, shall be fined by GEL 300 to 500. And pursuant to article 178^2, disregarding persons with disabilities' requirements in designing, building and reconstructing buildings shall entail the fine GEL 500 to 800.

Though para 45 of Article 239 provides that the protocol on the above mentioned administrative offence shall be drawn up by Ministry of Labor, Health and Social Security respective body, this "respective body" has not been defined as yet. Hence, the above mentioned legal guarantee is not valid.

Proceeding from all the above mentioned it can be concluded that the State fails to meet or not fully meets the commitments under international law and domestic legislation – ensure access to built environment, public transport, information and communication.

RECOMMENDATION:

The Public Defender addressed local governments:

- **To adapt physical environment on municipality territory in a way to ensure access for persons with disabilities.**

The Public Defender addresses the Minister of Labor, Health and Social Security of Georgia:

- **Pursuant to para 45 of article 239 of the Law of Georgia "Code of Administrative Offences", to define respective body, or to charge the existing body with the authority to draw up protocols on administrative offences pursuant articles 178^1 and 178^2 of the same Code.**

548 Letter #275 of 6 April 2010 of Telavi Municipality
549 Letter # 120 of 10 March 2010 of Akhalkalaki Municipality
550 Letter #05-2/182 of 15 March 2010 of Zugdidi Municipality
551 Letter #06/55924-12 of 13 May 2010 of Tbilisi Mayor's Transport Service Department

Cooperation of State Institutions with the Public Defender of Georgia, existing problems

The issues of cooperation of state institutions with the Public Defender of Georgia and existing problems were described in a separate chapter in the Report of the Public Defender on the Situation on Human Rights and Freedoms in Georgia in the second half of 2009. In spite of the positive tendencies, still some problems occurred in 2010 respectively.

According to the Constitution of Georgia and the Organic Law on the Public Defender of Georgia, the core function of the Public Defender of Georgia is to oversee the protection of human rights and freedoms in Georgia. The Law grants the Public Defender of Georgia with a number of rights in order to exercise his function.

The Article 43 of the Constitution of Georgia, stating that the creation of the impediments to the activity of the Public Defender of Georgia shall be punishable by law, guarantees the effectiveness of the work of the Public Defender of Georgia. Furthermore, the Organic Law on the Public Defender of Georgia contains number of articles[552] defining the powers of the Public Defender of Georgia.

According to the Article 22 of Organic Law on the Public Defender of Georgia, The report of the Public Defender shall include information about those State and local self-government bodies and officials that were found to have violated human rights and freedoms and failed to act upon the Public Defender's recommendations concerning the measures of redress.

It has been mentioned repeatedly that neglecting Public Defender's letters and recommendations, failure to provide information or necessary documents for the case study or any delays in the provision of the documents, hinder the work of the Public Defender and impedes redress of the violated rights.

Therefore, in the given chapter describes the problems encountered by the Office of the Public Defender in communication with certain state bodies.

THE MONITORING PROCESS, THE WORK OF THE NATIONAL PREVENTIVE MECHANISM

The problems and the attempts to stop/hinder the monitoring process that the members of the special preventive group of the Public Defender of Georgia had to overcome during the monitoring process require special attention. Having the directives from the management of LEPL "State Care Agency", several directors of the children's homes refused the members of the special preventive group to meet with the children confidentially. The members of the

[552] Articles 18, 19, 19 [1], 20, 21 of the Organic Law on the Public Defender of Georgia, http://www.ombudsman.ge/index.php?page=777&lang=1&n=7

preventive group explained their mandate and rights to the directors, including the right to meet confidentially with the residents of closed institutions, i.e. children in childcare institutions among them. **Finally, it was only after the conversation between the Public Defender of Georgia and the Minister on Labour, Healthcare, and Social Affairs that became possible to continue the monitoring process.**

It should be noted that contrary to the cases of impeding the confidential meetings with children, the directors and the staff of all the childcare institutions showed readiness to provide the needed documentation and information for the monitoring group. This very fact indicates to some positive tendencies.

The Public Defender of Georgia believes that the members of the special preventive group and the persons granted with special authority by the Public Defender will not face the above-mentioned impediments in future. The head of the LEPL "State Care Agency" and other management representatives shall abstain from giving orders (that would hinder) hindering proper monitoring process and (would violate) violating the Organic Law of Georgia "on the Public Defender of Georgia".

In 2010, the special preventive group studied the inmates' mortality rate and related peculiarities in the penitentiary system. The periodic and ad hoc visits as well as the official correspondence received from the Ministry on Corrections and Legal Assistance served as a source for the information. The conclusion was made after studying the results of the forensic medical examinations provided by "Levan Samkharauli National Forensic Bureau".

As in the previous years, the special preventive group faced some impediments while studying the issue. Besides the belated answers to the letters, in some cases the Ministry on Corrections and Legal Assistance did not provide comprehensive answer to the inquiries of the special preventive group. The Public Defender several times addressed the "L. Samkharauli National Forensic Bureau" and requested the copies of the conclusions on forensic medical examination of deceased prisoners. The list of deceased prisoners, compiled by the special preventive group was attached to a letter-request. The National Forensic Bureau was requested to double-check and fill in the list with the information at their disposal. Despite this, the Bureau was permanently providing us only with the conclusions on the cases of prisoners whose names have been provided by us in the working version of the list. Deriving from the dynamics of the working process, upon identifying each new deceased prisoner, we had to apply repeatedly to the Forensics Bureau with a request to submit the information. This was altogether hampering the process of studying the information.

THE PROCESS OF STUDYING THE APPLICATIONS AND COMPLAINTS

As we have already noted, the neglect of the letters and recommendations of the Office of Public Defender, inadequate answer or provision of incomplete information as well as delayed reply or refusal of reply, has negative effect on the work of the Office of Public Defender and on the redress of the infringed rights.

In some cases, the Office of Public Defender has to address repeatedly to the relevant bodies to receive the needed information that prolongs the working process and makes it less effective.

During the reporting period, the analysis of the correspondence of the Office of Public Defender identifies certain bodies, which pose the mention problems to the Office. Unfortunately, some structures abstain from fulfilling the obligations envisaged in the Constitution and the Organic Law of Georgia.

Like the second half of 2009, in 2010 the cooperation with the Main Prosecutor's Office of the Ministry of Justice was less effective. Though the deficiencies in cooperation were not systematic, the unanswered letters and belated answers created some problems to the efficient work of the Office of Public Defender.

The similar problem occurs in relation with the Ministry of Defense. The official letter stating the mentioned problem has been sent to the Ministry.

Like the previous reporting period, the cooperation with the Ministry of Internally Displaced persons from the Occupied Territories, Accommodation and Refugees of Georgia remains problematic. In order to study the rights of the Internally Displaced Persons, the Office of Public Defender often addresses the given Ministry to obtain the general information as well as on the basis of the complaints. Quite often, the letters sent to the given Ministry remain unanswered. Sometimes there is a problem of compliance between the requested and received information.

In 2010, 60 letters of the Office of Public Defender, requesting the necessary information for complaints study, remained unanswered. It should be noted that in each case the repeated letters have been sent, though, without any result. The mentioned indicates to the systemic nature of the problem.