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POLITICAL PERSECUTION

The number and intensity of applications received by the Public Defender's office indicate that after the unification of opposition forces in October 2007 events of political persecution reached their peak. The main aim of this persecution was to frustrate the opposition actions and to influence the pre-election process.

After analysing the applications, the impression gained was that a certain circle of individuals was mobilized to identify and exert pressure upon oppositionists and their families. Often it is difficult to assert whether governmental officials directly participated in such actions, but it is clear that the authorities appear to be the interested party in this matter. The statements and demands of the assailants towards the oppositionists give grounds to this claim. As a rule, the demands were identical in each case – oppositionists or their family members were to discontinue their political activities – and law enforcement officers were also asked to take part in the pressure, often through direct participation, as evidenced by statements made by victims and witnesses.

Practically all means of intimidation were applied against politically active persons, including physical threats, shadowing, office raids, insults, kidnapping, pressure upon families, and detentions, both administrative and criminal. Political persecution became the normal tendency for the time period directly before and after the November riots. Individual members of opposition parties speak about their problems related to their travel, as well as receiving anonymous telephone calls and insults. In other cases, the persecution consisted of propaganda campaigns against leaders in the opposition.

All means and methods of threat and political neutralization were applied towards individuals belonging to opposition forces. Several applications received by the Public Defender's office serve as proof to such behaviour. Members of opposition parties Kakha Kukava, Koba Davitashvili and Bezhan Gunava repeatedly talked about being persecuted and shadowed, yet none of their statements ever became the object of interest to law enforcement officials and no legal action followed. Accounts of such persecution are included in this chapter, as well as the chapters entitled, "Freedom of Rallies and Mass Demonstrations" and "Freedom of Expression."

Pursuit of individuals for their political opinion is unacceptable and impermissible in a democratic society. According to Article 14 of the Georgian Constitution, "everyone is free by birth and is equal before the law regardless of race, colour, language, sex, religion, political and other opinions, national, ethnic and social belong-

ing, origin, property and title, and place of residence;" and Article 156 of the Georgian Criminal Code provides for protection from and punishment for "persecution for speech, opinion, conscience, religious denomination, faith or creed, and political, public, professional, religious or scientific pursuits".

SHADOWING AND TELEPHONE THREATS TOWARDS MEMBERS OF OPPOSITION PARTIES

Representatives of opposition parties state that they and their offices were frequently shadowed. In most cases, the shadowing including videotaping, which was probably used to identify persons involved in the opposition, or who had close ties to the opposition. Police representatives, admittedly, participated in the shadowing.

The above action, if not authorised, is an illegal interference into people's private lives. According to Article 20 of the Georgian Constitution, "everyone's private life, place of personal activity, personal records, correspondence, communication by telephone or other technical means, as well as messages received through electronic means shall be inviolable. Restriction of the aforementioned rights shall be permissible by a court decision or also without such decision in the case of the urgent necessity provided for by law."

Information gathering about the activities and movement of representatives of political parties by means of unauthorised shadowing is not provided for by any rule, or exception to it. Hence, it cannot be justified as an urgent necessity provided for by law. Several facts point to the police representatives' participation in shadowing opposition party members.

The case of Tsisia Dolidze: Tsisia Dolidze, chief of the Patarkatsishvili Ajara Regional organization's press office notified the Public Defender's Office that local police authorities were shadowing the Batumi office of presidential contender Patarkatsishvili, No. 16, Gamsakhurdia St. On October 4, 2007, the Public Defender's representative visited Batumi to verify the claim. Near Patarkatsishvili's electoral headquarters, the representative noticed an official from the 3rd division of the Batumi Interior Administration in a red Mercedes. The Public Defender's representative asked the official the reason for his presence, to which he responded that the area was his responsibility and he was controlling it. After being informed about Badri Patarkatsisvhili electoral staff's suspicion of being shadowed, the official left the territory.

The case of Nino Gelashvili: Ms. Nino Gelashvili, chairperson of the Conservative Party's Khashuri regional organization, also talks about her office being shadowed. During the pre-election period, a white car, license plate number SSS 329, was constantly shadowing near her office. Unknown persons in the car were videotaping party members and their associates. On 14 December 2007, Conservative Party members were spreading information about the visit of Levan Gachechiladze, leader of the joint opposition to Khashuri. Not far from the village of Natsargori, people who were traveling in the above-mentioned car stopped them. As it later became clear, the people in the car were representatives of criminal police, though they did not identify themselves at the time and neither presented any identification. They took down the names of the party members and their associates, checked the boot of their car and warned them not to use megaphones.

During the office's reporting period, threatening telephone calls were frequently made; unidentified persons often called opposition party members using psychological threats, damaging words and death threats. The above-mentioned calls were politically motivated, and the caller demanded the person who answered the call to discontinue their political activity, abstain from any political activities, etc. Though these facts were brought to the attention of the appropriate bodies, no investigations or proceedings have as yet been taken.

On 25 December 2007, members of the joint opposition held a press-conference where they presented a recorded telephone conversation between Bezhan Gunava and an unknown person. The conversation was

also broadcast on Imedi TV. The unknown person confirms he repeatedly called Bezhan Gunava and insulted him. The opposition members claim that different opposition leaders received such calls from the same phone, which included threats. Though they filed formal complaints to law enforcement officials, no action followed. Ms. Teo Tlashadze, an MP, also talks about receiving insulting calls. She states that during the protest, unknown persons often called her and insulted her, demanding her to stop political activity.

The case of Juliette Lomaia: Juliette Lomaia, chairperson of the Poti city organization of the Liberty Party, also talks about being shadowed and receiving telephone threats. According to her, unknown persons kept shadowing her and her office, which was eventually raided. On one particular occasion, on 29 September 2007, chairpersons of the opposition parties contacted each other via phone and agreed to meet in the Liberty Party office on 30 September at about 15:00 hours. They were planning on presenting and discussing an action plan. The above-mentioned telephone conversations took place between 18.00 and 19.00 hours. As Lomaia states, about one hour after those conversations an unknown man called her on her mobile and threatened her. He demanded Lomaia cancel the meeting and to cease mobilizing people to join the Tbilisi actions; if she ailed to do so, he threatened to "put a hole in her head". Another call from the same phone came in about one hour, and the man made the same demands and threats. That same day the Liberty party office was raided. Lomaia was informed about the raid by Tengiz Baramidze, member of the Ajar Autonomous Republic Supreme Council, who owned the office building. Shortly after she received this information, the anonymous person called again to say, "The worst is still to come", and continued to threaten her with physical punishment should she continue cooperating with opposition parties and mobilizing people to Tbilisi. The Poti city Department of Interior started a criminal investigation on these events (case #4507379); under protection provided by part one, Article 187-e of the Georgian Criminal Code – damaging or destruction of object. The investigation is still going on.

The case of Merab Asanidze: Merab Asanidze, a member of Irakli Okruashvili's political movement in Poti since 17 May 2007, also received telephone threats. According to him, since 27 September 2007, he and his family kept receiving threatening calls on their mobile phones, and even received death threats. In fact, Asanidze's security is not guaranteed and thus is under house arrest. Asanidze explains that he has not filed complaints to law enforcement officials, as he is afraid of further aggravating the situation. Due to the Public Defender's recommendation, Poti's Interior Department has started an investigation on the threats made against Merab Asanidze.

ADMINISTRATIVE DETENTION ON MEMBERS OF OPPOSITION PARTIES

It should be noted that the number of administrative detentions of opposition party members has increased during this reporting period. Strikingly, these detentions coincided with when protest actions were planned or when the political situation was aggravated. In addition, these cases were pursued without proper investigation, without proper evidence, without any validation, without investigation of the circumstances of disorderly conduct, and yet opposition party members and activists received administrative detention or penalties.

A judge presiding over such cases is obliged to scrutinize all the pertinent evidence and circumstances integral to the case. In particular, Article 230 of the Georgian Code of Administrative Offence provides for the "timely, comprehensive, full and objective clarification of each case". The obligation of comprehensive clarification especially refers to cases when law enforcement officials allege the detainees used violence. A judge should also bear in mind that a police inspector's interpretation, and the police report, cannot be considered unbiased sources of information.

In accordance to Article 264 of the Georgian Code of Administrative Offence, "an official is obliged to ascertain the circumstances of a case during examination, which is necessary for the correct solution of the case". Keeping this in mind, most of the court hearings did not use witnesses. Murman Koncelidze's

case would be a good example of this behaviour, in which judges solely relied on explanations from police representatives and their reports. Explanations by patrols and police inspectors cannot serve as a single source of comprehensive and objective evidence; it is the judges' duty to ascertain the truth of action via comprehensive study and comparison of evidence and testimony.

The case of Merab Gogoberidze: On 8 November 2007, representatives of the Batumi Interior Department arrested Merab Gogoberidze. According to the police report, he was accused of committing acts of hooliganism (provided for by Article 166 of the Georgian Code of Administrative Offences), which included being loud, calling names and using unacceptable and foul language. According to the report, district police officer Jemal Beridze detained Gogoberidze. Gogoberidze's detention is due to his relations with representatives of the Interior Department and his political activities. In particular, in his interview to the newspaper, Batumelebi, on October 17, 2007, he blamed Jumber Diasamidze, chief of the 3rd division of the city Interior Department, for threats towards the opposition. Also, several days prior to his detention, Gogoberidze hung a dress on the Batumi Interior Department fence.

On 8 November 2007, at 11.00 a.m., after Gogoberidze learned that a crack troop of commandos broke into the Batumi Rustaveli University, he went there accompanied by Mzia Amaglobeli, director of the Batumelebi newspaper, Ether Turadze, chief editor, and Maka Malakmadze, a journalist of the same newspaper. David Bedia, chief of the Batumi Interior Department and Jumber Diasamidze, chief of the 3rd division of the same department were standing not far from the university. They pointed at Gogoberidze and soon people in masks approached him, forcefully dragged him to a white Zhiguli 07 car, blindfolded him and drove him to an unknown place.

The political motive behind Gogoberidze's detention can be proven by certain circumstances. In particular, when Amaglobeli asked the Interior Department officials standing by why they detained Gogoberidze, they responded that he had been identified as working with the Republicans and with students. All three witnesses confirm that no offence or swearing by Gogoberidze took place. Ether Turadze in her explanation points out that one of the masked men, while apprehending Gogoberidze, told him, "we have been looking for you for quite a long time, guy". Ether Turadze also states that Gogoberidze was mistreated as evidenced by markings on his neck, when he returned to the Batumelebi newspaper office after his release from jail.

According to Gogoberidze, he had been beaten about the head while in the car, and his captors kept saying, "Did you imagine you would get away with having a dress hung on the Minister's fence?"

In the 2nd division of the Batumi Interior Department, where Gogoberidze was later taken, another round of mistreatment took place. He was promised that they would "make a hole in his head" should he dare to appear at any protest action or party office. After this, Jemal Beridze, the district police officer who drafted the report of his administrative detention, approached him. Gogoberidze denied the fact of his administrative offence and states that he had to plead guilty as a result of pressure. He explained that he would be able to identify masked people should he see them again as they are from the staff of 3rd division of Batumi Interior Department.

That same day Gogoberidze visited the Batumi No.1 hospital. There is a statement in the case by doctor Irine Zamtharadze, in which Gogoberidze had a soft tissue bruise, a long "black and blue" line on his neck, he was loosing his balance, and the examination also revealed a closed head injury. Thus, Gogoberidze remained in the hospital from 8 to 12 November, which is confirmed by his inpatient's card.

The details of Gogoberidze's case were sent from the Public Defender's Office to the Office of the Prosecutor General, but there has yet to be any response.

Undoubtedly, Gogoberidze's political views were the reason for the violence and administrative detention. Moreover, a picture of criminal action by law enforcement officials is beginning to emerge.

The case of Malkhaz Khizanishvili: On 4 January 2008, Malkhaz Khizanishvili, a member of the joint opposition was detained administratively in Kvareli. The Kvareli court sentenced him to five days of administrative detention as provided for in Article 173 of the Georgian Code of Administrative Offences – disobedience of the legal orders or instructions of law enforcement or military officers. The court took for granted that on that day, at about 12:30 pm, Khizanishvili was on Chavchavadze Street and swore at on-duty policemen. They called Khizanishvili to order but he put up resistance and so was arrested. As the policemen George Ergeshidze and Levan Tsukoshvili testify, Khizanishvili called them "Saakashvili puppies". Nugzar Kakhashvili who witnessed the incident does not confirm this fact.

As Khizanishvili explains, he was standing in front of the joint opposition office with two of his team members. A Mercedes car passed by and stopped about 300 meters from his place. A stranger from the car called for him, saying, "Makho, could you please come for a second". The familiar address – Makho – made him think he was being called by an acquaintance. The man invited him into the car, which had tinted windows and so he could not tell that Kvareli police staff member, Levan Tsukoshvili, was inside. He also states that this person is well known for terrorizing locals. There was another policeman inside the car besides Tsukoshvili. Inside the car, the policemen said, "People say you have sworn at policemen; so, let us talk at the police station".

According to Khizanishvili, after arriving at the police station, a man dressed as a civilian alleged that Khizanishvili swore at him. He denied this fact and demanded a lawyer and a telephone call. Neither of these requests was satisfied. An hour after Khizanishvili's detention, the same person, who, as it later became evident, was policeman George Ergeshidze, entered the police duty unit and asked for the detainee's name. He then left the duty unit, returned and said, "Wrong name, it was not you who swore". Then another policeman, Tsukoshvili came and told him, "it was me who you swore at and put up resistance".

Olia Sepiashvili, the judge, did not take into consideration the statements of Khizanishvili or the witness, Nugzar Kakhashvili. According to the testimony of the witness, Khizanishvili entered the car of his own accord, and no swearing or resistance on his part took place. The court decision to impose an administrative penalty was founded only on the policemen's statements, and the court decision does not describe how Khizanishvili infringed Article 173.

The judge also did not take note of Khizanishvili's opinion that the police approached him so that he could be separated from the election process, since he was a member in the joint opposition.

According to Khizanishvili, the court made an unfair judgment when it sentenced him to five days of administrative detention, and the judge spent quite some time in his chambers with Tsukoshvili and other armed policemen.

As the detention of Khizanishvili is related to the elections, the Public Defender immediately informed Ms Eka Zguladze, Deputy Minister of Internal Affairs, and a member of the governmental group for free and fair elections, though this did not affect the final judgment.

PHYSICAL OFFENCE OF OPPOSITION PARTY MEMBERS AND PRESSURE UPON THEIR RELATIVES

During the reporting period, the number of incidents of physical offence to opposition party members and pressure upon their relatives increased. It is difficult to claim that government officials were the ones who exerted the pressure, although their statements and the substance of their talks indicate there was political ground for the above criminal conduct. The assailants demanded that opposition members discontinue their political activities. The cases of Andro Kitiashvili and Koba Phangani are striking examples of the attempt to influence opposition members through pressure upon their relatives.

The case of Andro Kitiashvili: On 15 December 2007, at about 8.00 pm, Andro Kitiashvili, son of Ghia Kitiashvili, an active opposition member, was kidnapped near his house. An unknown person approached him saying, "Can I have a word". At the same time, two other strangers took him by the arms, shut his mouth and took him to a churchyard near the house. The kidnappers pushed Kitiashvili into their black Mercedes car and drove him towards the Samaradiso forest. According to Kitiashvili, there were four other people in the car. They demanded that his father, Ghia Kitiashvili, discontinue his political activities. They also proposed to put a sound-recording device on him with whom he would enter the joint opposition office and bring back information. After his refusal, they beat and threatened him, saying, "tell your father to discontinue his political activities or he will find you dead somewhere". Later they returned him to the churchyard. The Khashuri Interior Department is investigating the case.

The case of Koba Phangani: In the case of Kakha Phangani, it is clear that his brother, Koba Phangani, was arrested in order to get back at him for his political activity. In particular, on 6 November 2007, Ministry of Interior staff arrested Koba Phangani charging him with the offence provided for by parts I and II, Article 360 – arbitrary behaviour – of the Georgian Criminal Code. Kakha Phangani states that his brother was arrested for political reasons.

Kakha Phangani is the founder of the Svaneti movement. He and his movement actively participated in the 2-7 November 2007 protest actions. On 2 and 3 November, unknown persons approached Koba Phangani demanding that Kakha Phangani and his movement members stopped their actions of protest. Otherwise, they threatened him with detention and an "appropriate response". Regardless of these repeated threats, Kakha Phangani and his movement continued their actions with increased force. His refusal entailed the arrest of Koba Phangani on 6 November. At the same time, prior to the arrest of his brother, Kakha Phangani noticed that he was being shadowed from cars without number plates parked near his house. On several occasions, law enforcement representatives stopped Kakha Phangani's car, driven by his relative, asking for his whereabouts. On 1 December, unknown persons came to the Phangani family allegedly to take the reading from gas-meter. When the door opened, six people barged into the house introducing themselves as representatives of the Constitutional Security Department. None of them presented any ID card and after having looked round, they left the house.

The beatings of Dachi Tsaguria and David Batsikadze, a member of the Ajar Supreme Council and head of presidential contender Levan Gachechiladze's Batumi election office, are examples of physical mistreatment of persons on political grounds. In both cases, their active and public opposition participation led to these violent events.

The case of Dachi Tsaguria: On 12 November 2007, Dachi Tsaguria and his friends, Ketevan Cheishvili and Natia Khaindrava, visited the Coffee House on Kazbegi Ave in Tbilisi. Khaindrava works in the Public Defender's Office. At about 11.00 p.m., Tsaguria's mobile phone became disconnected, while both Cheishvili and Khaindrava's phones were operable. Fifteen minutes later, Tsaguria noticed two persons entering the Coffee House and three others standing in the door. The strangers approached him, addressed him by name and asked him to follow them outside. Tsaguria refused. Khaindrava asked him not to follow the strangers and called the Public Defender for help. The strangers then beat Tsaguria for three minutes, after which time they left the establishment. Khaindrava states that she noticed a gun in the belt of one of the assailants.

The attack must be related to Tsaguria's participation in the Tbilisi protest actions on 2-7 November, as well as the Zugdidi protest action on 28 October. In addition, Tsaguria recalls that in 2004 he expressed his position with regard to the elections of the rector position for the State University, and in doing so, was threatened by David Akhalaia, then chairman of the Constitutional Security Department. And on 3 November 2007, during the rally, he met with Shota Khizanishvili, head of administration of the Ministry of Interior, who stated that he would frighten him if he continued in his actions. Tsaguria took his words as a threat. He believes that the

Coffee House assault is the sequel to that threat. He explains that when Khizanishvili used the word "frighten", it should be related to the opposition's slogan, "I do not fear".

Due to these facts, the Public Defender presented the case to the Deputy Prosecutor General. The case is under investigation at the moment.

The case of opposition activists: on 4 January 2008, at about 5.00 a.m., in Batumi, approximately 12 members of the joint opposition headquarters went to Rustaveli St., near the theatre, to hang up Levan Gachechiladze pre-election posters. Immediately after leaving the office, they noticed a white Ford minibus about 20 meters from the building. They noticed the same minibus at the theatre when hanging the posters.

Elguja Goguadze, one of the opposition activists had parked his Ford Scorpio car not far from the theatre. According to Goguadze, about 20 minutes after they came to the theatre, a Mercedes stopped in front of his car and about 10 masked people came out of it. They forced Goguadze to open the boot and checked the car. When they could not find anything, they tore off the tire and yelled at Goguadze.

Shortly after the above-described incident three cars – BMW, VAZ99 and a white Mercedes – stopped near the activists and about 10-15 masked persons came out of the vehicles. According to Raul Bolkvadze, these people were in military uniforms. They yelled at the activists, pushed Bolkvadze to the ground and kicked him. According to David Batsikidze, he explained to the assailants that he was a member of the Ajar Supreme Council, but they did not care, and followed and yelled at him for about 15-20 meters, then rushed off the scene. About three minutes after the incident a patrol car came to the scene. According to Nodar Tsintsadze, at the very same moment one of the assailants' car – the white BMW passed by. Tsintsadze showed the car to the patrol police but no effective measures were taken. Tengiz Artilakva, one of the beaten activists, was taken to Batumi No.1 hospital. The Public Defender's representative visited the admission room of the hospital and checked the log file. The log entry confirms that Artilakva entered the hospital on 4 January 2008, at 5:40 a.m., with soft tissue and sciatic nerve bruises.

The Public Defender presented the case on the above incidents to Nika Gvaramia, Deputy Prosecutor General, and Eka Tkeshelashvili, Head of Free and Fair Elections governmental group. Preliminary investigation on this case is ongoing now.

FACTS OF DETENTION OF OPPOSITION PARTY REPRESENTATIVES ON CRIMINAL CHARGES

After the break up of opposition rallies, arrests of the demonstrators and their relatives on criminal charges became frequent. Regardless of the fact that the investigations on these cases are carried out as provided for by different articles of the Georgian Criminal Code, the detainees claim that each case should be considered as political persecution. No case as yet has been brought to a court hearing. Fully realizing the court prerogative to get to the truth in each case, we would like to draw attention to the circumstances indicating political motives. All the detainees claim their innocence in regards to the charges against them. There had been no criminal action on their side. They also indicate policemen and other law enforcement representatives yelled and insulted the,. Each of them actively participated in the opposition actions of protest, collaborated with opposition representatives or was a member of one of the opposition parties. The above people talk about verbal and physical offences when being detained, as well as the falsification of evidence. They state that after detention the pressure continued with demands of collaboration.

Joseph Jandieri Case: Joseph Jandieri is accused of the crime provided for by part II of Article 260 of the Georgian Criminal Code – illicit preparation, production, purchase, keeping, shipment, transfer or sale of

drugs; and the analogy or precursor thereof. Now he is sentenced to 2 months before trial. Jandieri told Public Defender's representatives that on 13 November 2007, at about 12.30 p.m., approximately 15 representatives of the Special Operating Department (SOD) of the Ministry of Interior broke into his home. They explained that because of online information they would carry out a search. According to Jandieri neither he nor his family put up any resistance. They did not insist on the presence of witnesses either. The search was carried out hastily and lasted only 20 minutes. As a result, the SOD representatives took from under the pillow in the bedroom some white powder, which, according to the applicant did not belong to him or any of his family members. Only later, when reading the transcript of the search, he learned that the white powder was heroin. When the search was finished, Jandieri was transported to the "module" building, on the 2nd floor of which he met with two people dressed as civilians. One of them beat him, called him a traitor and said that his detention was concerned with his participation in the rallies. Jandieri does not remember the man's name.

Jandieri believes that his arrest results from his activities during the November protest actions. In particular, he had been head of the Rapid Reaction Service of the National Movement since its foundation. On 3 November 2007, he was at the protest action with Koka Guntsadze and Goga Khaindrava. There he handed over his National Movement membership card to Ghia Tortladze telling him that he was leaving the organization, which Tortladze announced to participants at the rally.

The case of Rostom Oniani: On 9 November 2007, at 7:00 p.m., Rostom Oniani was arrested by law enforcement representatives. He was accused of physical violence against policemen and resistance under Articles 353 – resistance, threat or violence against protectors of public order or other government representatives – and 239 – hooliganism. In particular, Oniani allegedly saw police representatives near the porch of his house and so physically attacked them.

Before his arrest, Oniani actively participated in the protest actions in Tbilisi on 2-7 November 2007. Together with other representatives of the joint opposition, he also visited Zugdidi and Batumi. His family members think Oniani's arrest is related to these facts. As witnesses – Nikoloz Klimiashvili, Nino Kikadze, Nino Dzidziguri, Ketevan Khelidze, Khatuna Svanidze and Ketevan Pantskhava – of the arrest testify, no criminal action on Oniani's part took place.

Klimiashvili, a colleague of Oniani's, states that on 9 November 2007, he gave a lift to Oniani who was tipsy. At about 7:00 p.m., he stopped the car in front of Oniani's house. The neighbors, who at that moment were in front of the house, confirm this. The eyewitnesses state that as soon as Oniani left the car, another car stopped at the front of the house and two people in civilian dress came out and tried to forcefully push Oniani into their car. Pantskhava explained this incident. Oniani showed no resistance at this moment, yet they twisted his arms and brutally dragged him to their car. Oniani's wife and the neighbors tried to find out who these men were, and where were they going. Soon a Zhiguli car approached the house and three men in police uniforms came out. By then many people had already gathered in front of the building. One of the policemen, immediately after leaving the car, started shooting his gun in the air without warning. This confused and frightened the gathered people. He fired off 7 shots and then collected the shells. All witnesses point out that Oniani did not show any resistance or engage in a criminal action. Oniani's friend Klimiashvili, states that prior to his arrest, Oniani, in a private conversation, mentioned noticing suspicious cars near his house.

POLITICAL PERSECUTION AT TBILISI STATE UNIVERSITY

There is a student government organisation at Tbilisi State University, headed by the elected student president, George Avaliani. The organization has access to the university's financial resources and carries out different student projects.

There are student groups at the university who do not share the views of the student government, more importantly; however, is whether these groups enjoy freedom of action and expression especially about current processes and events.

The student movement, Akhalgazrduli, was founded at the university as an alternative to the student government. As student government representatives say, the opposition political parties are behind this movement. The Imedi TV Company has recorded how Gaga Khabulilani, vice-president of the student government, is trying to disrupt presentations messy by the rival organization, Akhalgazrduli.

On 24 October 2007, members of Akhalgazrduli planned to hold a briefing in front of the university's first building about the expenditure of budgetary funds by student government. According to the witnesses' statements, about twenty people gathered in front of the university's second building, among them George Avaliani, Gaga Khabuliani and Thornike Khutsishvili. The president of the student government was curious whether the Akhalgazrduli movement intended to hold the briefing. When they responded affirmatively, members of student government beat George Topuria and George Chitarishvili - members of Akhalgazrduli movement.

With regard to the physical injuries to George Topuria and George Chitarishvili, a preliminary investigation has started at the Old Tbilisi Department of Interior; the investigation is currently going on.

As a result of analysing the above facts, as well as the facts described in the chapter entitled, "Freedom of Rallies and Mass Demonstrations and Freedom of Expression", we come to the conclusion that in the reporting period, the government acted against anyone who held different political views from them. The coincidence of such facts is so high that one can say with certainty that persecution of political opponents is the result of a well-orchestrated policy rather than that of individual acts.

The suppression of opposition ideas by means of force impedes the stability and development of the country. It is inadmissible in a democratic country to persecute people for their political views. Even if the persecution is carried out by individuals, the responsibility lays upon the government to stop such behaviour. It is the government's responsibility to stymie such actions and create a healthy political environment.

The existence of opposition forces and ideas is an intrinsic and important aspect for all democratic countries. Even talks about the existence of political persecution in a country seriously harm the image of that country both domestically and internationally. The most important task of the government at this stage is to carry out an unbiased investigation of all the above facts, and to punish harshly all those who participated in these events.

Today's most important social mandate is to create a healthy political environment so that each citizen can openly, and without fear, express his opinion with regard to the political situation. Effective measures should be taken in order to reach this goal.

RECOMMENDATION

I wish to address myself to the Office of the Prosecutor General with the following recommendation: Each criminal case needs to be investigated objectively, in the shortest possible time, and the persons who participated in the mentioned events should be punished.

2 FREEDOM OF ASSEMBLY AND MANIFESTATION

The events of the second half of 2007 that took place on 7 November seriously challenged the freedom of assembly and manifestation in Georgia. For the first time in the history of Georgia, special means (i.e.: water cannon, rubber bullets and psychological weapons) were used disproportionately, and in some cases unlawfully, to disperse protest ralliers. The Public Defender and his authorized representatives closely watched these events. The rally was dispersed violently by applying excessive force such as acts of cruelty, chasing people in the streets and into buildings, and firing rubber bullets at peaceful demonstrators were complete abuses of the use of force. Democratic values and the supremacy of law were rejected. In addition, according to the conclusion of forensic expertise, firearms were also used, resulting in the injury of three participants at the Rikhe rally. The events of 7 November massively violated not only human rights but also made the effectiveness of democratic institutions in Georgia seriously doubtful, thus disgracing the international image of the country.

According to the assessment of the international human rights organization, Human Rights Watch (HRW), the georgian government used excessive force in order to disperse the demonstration on November 7. Holy Cartner, HRW's Director for Europe and Central Asia Division, states that "the means used by police to disperse the rally on 7 November were illegitimate. The dispersal of the protest rally seriously damaged Georgia's reputation as a country being the champion of Human Rights Protection".

The European Union, European Council, OBSCE, and NATO all gave a severe assessment of the dispersal of the 7 November protest rally. The resolution of 29 November 2007, the European Parliament, states that "a six-day rally of the opposition grew violent **after riot police used excess force to disperse the rally. The use of water cannons, rubber bullets and tear gas caused injuries to five people, among them was Public Defender Sozar Subari".**

On 7 November 2007, Articles 3 of European Convention of Human Rights (no one shall be subjected to torture, inhumane or degrading treatment or punishment), 10 (freedom of expression) and 11 (freedom of peaceful assembly) were harshly violated.

Preceding the November events, sporadic questionable incidents took place when people were prevented from assembly by forceful methods, and participants were often attacked.[1]

[1] See cases of Rati Maisuradze,Nnika Machutadze and Bichiko Chitanava, Koba Chitanava

We can prove with a high degree of likelihood that representatives of state authority bodies participated in the above-mentioned assaults, as both victims and witnesses claim that the attackers were wearing black uniforms, which belong to security agencies.

The most massive dispersal of a protest rally took place in Zugdidi, on 29 December 2007, when the activists of the National Movement Party physically abused the organizers of the protest rally. The police exhibited complete negligence towards the fact. The representatives of the law enforcement bodies in Zugdidi were as indifferent during those assaults, as they were against protesters in Tbilisi during the November 2007 rally. As has already been mentioned, in some cases the representatives of law enforcement bodies themselves took part in the assaults.

Law enforcement representatives were trying to prevent the participants of the rally from moving around. For this purpose, they blocked roads, took driving licenses away from drivers, and threw strangely shaped nails on roads in front of vehicles moving along the road. They also detained passengers and took them to drug centers.

During this reporting period, the courts' attitude towards the participants of these peaceful demonstrations remained unpardonable. In most cases, the courts prescribed penalties or administrative arrests to protest march organizers and participants without having any proof, or substantial evidence, of the circumstances of their violation of public order; and were charged with crimes provided for by Articles 166 (petty hooliganism) and 173 of the Administrative Code of Violations. Under the previous reporting period, such an attitude was a rare exception and mainly was limited to one incident involving the NGO, Equality Institute; after the 2 November massive manifestation, administrative arrests and penalties were widely applied towards participants of the protest rally and political opposition members.

Based on the data from the Tbilisi City Administrative Court Board, 103 people were detained for the participation in manifestations and assemblies between 2 and 7 November, and were charged with administrative arrest. Among them, 23 individuals were given the punishment of administrative arrest, 65 were fined, and only 12 cases were dismissed from administrative proceedings. Naturally, those people who were charged with criminal offenses, as well as those whose cases were dismissed from administrative proceeding, are not included in the above number and their delinquency records were forwarded to the administrative board.

After 7 November, Georgia's investigative and judicial bodies applied the most severe forms of legal responsibility against the protesters. Different measures of restraint were imposed on eight participants of the protest march. Legal proceedings were dismissed on several occasions, delinquency records were filed and those persons were charged with administrative sentences under Articles 166 and 173 of the Code of Administrative Violations.

Protest participants were mainly suspected of participating in mass disorders, an action covered under part 2, Article 225 of the Criminal Code of Georgia. We also came across charges against the damage of property as per Article 187 of the Criminal Code of Georgia, which also included the use of rubber bludgeons and other special destructive[2] means, as well as damaging police patrol cars.[3]

The actions of 20 people suspected of the crime under part 2, Article 225 of the Criminal Code on 13 November 2007, were given a new charge under Article 173 of the Administrative Code of Violations. Only two persons, Nikoloz and Grigol Devdariani were not subjected to the above charge.

On 15 November 2007, the criminal Chamber of Tbiisi City Court imposed a four-month preliminary arrest of Lasha Sirbiladze, Ilya Koiava, Zviad Kharkelia and Vladimir Khutsishvili for their participation in the mass disorder. By the proof of the investigation, the persons under arrest abused a member of the special

[2] The case of Vladimir Khutsishvili

[3] The case of Otar Mujirishvili and Giga Mamardashvili

task force physically. According to the ruling, the above circumstance was proven by a TV recording, as well as by confession of the defendants. The defendants stated they confessed under psychological and physical pressure. Since 18 February 2008, the preliminary conviction was substituted with bail for the six persons mentioned above.

INVESTIGATION OF PROOFS UNDER THE CIRCUMSTANCES OF RESTRICTION OF FREEDOM OF ASSEMBLY

Under the reporting period, Article 166 (petty hooliganism) and 173 (disobedience to the legal orders by law-enforcement representatives) of the Administrative Code of Violations have often been the grounds for the state's interference of the freedom of assembly. Although when applying administrative responsibility, the court did not fully take into account the correlation between the importance of freedom of assembly and the measure of responsibility of an individual who committed a certain action. In such cases, it must be established whether the protest march was peaceful or not.

According to a statement by the Venice Commission, there is no sphere protecting the freedom of assembly under Article 11 of the European Convention unless the manifestation is peaceful. The article takes effect when the organizers of the protest march, or its participants, cause violence or disorder.[4] The European Court of Human Rights declared that the "organizers of a demonstration, as participants of a democratic process, should respect the rules regulating the process".[5]

The court dealing with law violation proceedings is obliged to investigate the circumstances in full details. This is especially true of those cases when law enforcement authorities prove the use of violence used by detained persons. The judge must take into account that the inspector's verbal explanation and delinquency report do not represent an objective source of information. Testimony given by law enforcement officials should get an especially critical assessment if a defendant was brought in for the expression of his/her political views.

The discussion of the case of four activists of the Youth against Violence movement, Irakli Japaridze, Irakli Gaprindashvili, Irakli Chukhua and Giorgi Mestumrishvili, who were detained on 16 October 2007, showed that the investigation of circumstances by the court, and the control of legitimacy of actions of law enforcement representatives, bears a formal character. The detained were found guilty only on the basis of verbal reports of the patrol police representatives given to the court[6]. One of the patrol inspectors, Roland Soselia, said the protest march participants did not let drivers drive by. One of the drivers got out of the car and asked one of the defendants to let him pass as his son had some health problems. The same patrol inspector said that protesters called the drivers slaves and betrayers.

Patrolinspector Mamuka Bliadze, who filed a report on Irakli Gaprindashvili, said the drivers were asking to be let through, but protesters called them rats, banged on their cars and demanded that they joined the protest march.

From video materials from the TV Company Rustavi 2, it can be clearly seen that Roland Soselia produced the wrong evidence about the drivers requesting to be let through, and the protesters calling the drivers rats, banging on their cars and demanding they join the protest march.

Nino Sakvarelidze, an Imedi TV reporter, attended the entire protest march and covered the event. According to her, she never noticed any offensive conduct by protesters against drivers or patrol police. Neither the

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[4] *CDL Opinion 290/2004 on the Law on conducting gatherings, meetings, rallies and demonstrations in the Republic of Armenia (CDL-AD) 2005 (040)).*

[5] *Oya Ataman v. Turkey*, no. 74552/01, §38

[6] See The case of Irakli Japaridze and others

use of offensive words nor misconduct at the moment of detention of Irakli Japaridze and others was documented by Rustavi 2 cameras. In other Rustavi 2 footage we can see a young participant of the march who, after his friends had been detained, was shouting at the police, calling them "killers".

Thus, using insulting words by lawbreakers, or any other misconduct, never took place. Accordingly, the reports of patrol police inspectors Mamuka Bliadze and Shmagi Jachvadze are false evidence and not proven by other facts. The fact of using insulting words was invented by patrol police inspectors in order to misguide the court and increase the punishment of the four members of the Youth against Violence movement.

The use of insulting language as one of the components of Article 166 of the Code of Administrative Violations was to be proven by an investigation under the weight of evidence. The verbal reports of patrol police inspectors should not have been considered as a valid and objective source of evidence. Their reports were to be verified by using Rustavi 2 footage and the testimony of journalists who witnessed the incident. However, the court neither requested any of the footage nor interrogated the journalists.

The judge dealing with the case on law transgression is obliged to investigate all the circumstances around the case. According to Article 230 of the Code of Administrative Violations, "the objectives of the proceedings for lawbreaking cases are a timely, comprehensive and objective investigation of the circumstances of each case". In accordance with part 4, Article 260 of the Code of Administrative Violations, when preparing a case on the administrative violations, theauthority settles the question of whether additional materials were requested. According to Article 264 of the Code of Administrative Violations, the authority is obliged to establish circumstances that are important for making the right decision.

Thus, before investigating evidences, Judge Kopalesihvili, who was dealing with The case of the four activists from the Youth against Violence movement, first had to solve the question on whether the evidence of the circumstances were comprehensive, full and objective. The judge should have taken into account the fact that the evidence given by patrol police inspectors as well as others might not have been objective.

It can be said that the court resolution on the case of Irakli Japaridze and others was based on artificial, fabricated evidence, and that the truth around it had not been investigated based on the weight of evidence.

In terms of fabrication of evidence, we can also draw interesting parallels with the arrest of Kmara activists, Giorgi Kandelaki and Luka Tsuladze, in Minsk, Belarus, who were detained for disorderly conduct.

On 24 August 2005, the Georgian citizens and activists of the Kmara movement, Giorgi Kandelaki and Luka Tsuladze, were detained in Minsk along with Vladimir Kobet, an activist of the opposition youth movement, Zubr. The latter was released within two hours. However, the Georgians were suspected of passport counterfeiting. On 29 August, the district court of Minsk found Kandelaki and Tsuladze guilty of breaking administrative law by offending their cellmate, and assigned them to a 15 day administrative arrest.

The international non-governmental organization, Amnesty International, declared Kandelaki and Tsuladze to be prisoners of conscience, since they linked the punishment to a statement made by the Head of the State Security Committee (KGB) on the air of Belarus TV on 25 August, in which he pointed out to the connection of the Georgians with such radical non-registered political organizations as Zubr, theYouth Front and Lemon. Amnesty International demanded the release of the Georgian prisoners since their punishment was due to political motivations and they were enjoying their right to the freedom of expression. Amnesty International also noted that the evidence against Kandelaki and Tsuladze was false.

On 29 October 2007, in Zugdidi, during court proceedings on the case of unified National Movement Party activists, Manuchar Putkaradze and others, the fabrication of evidence, making resolutions without sufficient

investigation of circumstances, and granting criminal immunity to a group of people for their party affiliation was observed.

On 29 October 2007, District Inspector of the Regional Department, Zviad Elarjia, filed an administrative delinquency report against Manuchar Putkaradze, which indicates that on 28 October, 2007, Putkaradze was using offensive language, insulting citizens verbally and physically, and so was violating public order. He defied the legal request of police to stop misbehaving. According to the delinquency report, Putkaradze's behavior was qualified as an action provided for by Articles 166 and 173 of the Code of Administrative Violations. The custody record attached to the report says that detention of the alleged offender took place on 29 October 2007, at 11:20 hours, in Zugdidi on Zviad Gamsakhurdia Avenue. Attached to the report were Putkaradze's notes and explanations regarding the report, in which he stated that on 28 October 2007, opposition parties held a meeting in Zugdidi where he was with his friends and they were peacefully expressing their protest against the meeting? After the meeting was over, Bidzina Gujabidze, Bezhan Gunava, Lasha Chkhartishvili (a member of the Equality Institute), and Soso Robakidze were using offensive words. Putkaradze pointed out that he and his friends insulted the protestors verbally and physically.

The case record also contains reports of Zugdidi Internal Affairs Department District Inspectors M. Changelia, Z. Elarjia, Kh. Sikharulia and V. Chikovani. All the police inspectors, except Merab Changelia, claim that Giorgi Samushia, Irakli Mikaia, Biktor Mikaia, Giorgi Mania, Manuchar Putkaradze, Akaki Rogava and Goga Ghurtskaia offended citizens verbally and physically. Police Inspector Merab Changelia attests only to the verbal offense.

Paata Gvalia, the criminal investigator of the Zugdidi regional department interrogated sole proprietors, Ilona Epsia and Rusudan Kurashvili, who claimed that at 20:30 hours, on 28 October 2007, Bezhan Gunava, an MP, was chased by five young men who hit him in the face five times and rushed into their shop. Epsia and Kurashvili made the five men leave their shop, and Kurashvili stated that one of the TV companies recorded the fact.

Manuchar Putkaradze's case was tried by Zugdidi Regional Court Judge Irakli Abshilava. In the motivation part of the resolution, which is only six lines long, it indicates that on 28 October 2007, at 21:00 hours, in Zugdidi, Putkaradze was misbehaving by using offensive language and insulting citizens physically on Gamsakhurdia Avenue, thus causing public disorder. He did not obey the police request to stop misbehaving. Putkaradze admitted to the misbehavior and as Irakli Abshilava notes, he apologized for his conduct. Putkaradze was accused of administrative violation according to Article 166 of the Code of Administrative Violations (disorderly conduct) and Article 173 (disobedience against lawful requests of law enforcement representatives). He was assigned a sentence in accordance with Article 36 and was prescribed a fine of 400 GEL, according to sanctions under the same article.

The resolution does not indicate on which evidence the judge based his conclusion to charge Putkaradze. The judge never looked into the report presented by Merab Changelia that proved that Putkaradze committed the offense of only using insulting words, which contradicted other evidence in the case record that indicated he used physical violence towards citizens, which is not a matter of administrative violation, but rather a crime under the Criminal Code. It is interesting to note that the word "physical", which was used in the delinquency report, has been taken out of the resolution. By such a performance, Judge Irakli Abshilava evaded stating the form of the offense in order to avoid charging the person with a crime, which would have been inevitable if the occurrence of a physical offense had been established.

According to Article 237 of the Code of Administrative Violations, a judge has to give his assessment of the facts in accordance with his inner conviction, and should base his judgment on the thorough investigation of circumstances under the weight of evidence. However, the question remains: On which grounds did Judge Abshilava assign only an administrative punishment given the evidence of Putkaradze committing a physical offense?

The fact that Biktor Mikaia insulted citizens verbally and physically is being proven by the delinquency report, administrative detention record, police report, and interrogation transcripts of Ilona Epsia and Rusudan Kurashvili. Mikaia provided his comments to the delinquency report, which state that he physically and verbally insulted the MPs, Bezhan Gunava and Bidzina Gujabidze, as well as a member of the Equality Institute, Lasha Chkhartishvili, and citizen Soso Robakidze, after they made obscene remarks referring to his mother and family, President Mikheil Saakashvili and Zugdidi inhabitants.

The administrative delinquency report against Mikaia was tried on 29 October 2007, by Zugdidi Regional Court Judge D. Kekenadze. The resolution states that Zura Elarjia, who drew up the report, gave the same information as stated in the report of the trial. The alleged offender agreed with Elarjia's comments. In the motivation part of the resolution there are no circumstances that the judge considered as established facts. The resolution simply mentions that the evidence produced in the case record proves the fact of the administrative violation committed by Mikaia. Thus, Kekenadze's resolution does not deny the fact of physical offense by Mikaia inflicted upon citizens. Despite the above, Mikaia was charged with a penalty of 400 GEL and no criminal prosecution has been initiated against him so far.

Similar administrative delinquency and custody reports were filed in the case of Goga Ghurtskaia. The reports describe the same actions for which Putkaradze and Mikaia had been brought to trial. The same interrogation transcripts and police reports that were used in the above cases were attached to the delinquency report. Ghurtskaia also noted that after having physically insulted the MPs, he dropped out of sight as the police that earlier had called him to order had returned.

It is also interesting to note that neither in the trial record nor in the court resolution are there any indications that Ghurtskaia offended citizens physically. In his ruling, the judge took into consideration the degree of threat of the delinquent action and the personality of the offender, and so for displaying disorderly misconduct he assigned him to 20 days of administrative arrest. In addition, for failing to comply with the legal request of the law enforcement authority, Ghurtskaia was given a penalty of 400 GEL, in accordance with Article 173 of the Code of Administrative Violations. After examining The case record, the following circumstances came to light: Ghurtskaia's action had not been individualized for the purpose of giving him a graver sentence, rather he was accused of causing public disorder and using obscene language in a public place, (i.e. the same behavior as had been conducted by Manuchar Putkaradze, Biktor Mikaia, Irakli Mikaia, Giorgi Mania and Akaki Rogava). However, unlike Ghurtskaia, they were given a lighter sentence and penalty. Let us also note that the court had not established the circumstances by then, which were different from his accomplices, making Ghurtskaia's accusation graver and proved the necessity for applying administrative arrest against him.

Herein, we need to mention the harsh violation that took place in assigning him the sentence. Article 36 of the Code of Administrative Violations envisions two rules in the assignment of sentences for several violations. The first is "when one person breaks two or more of the administrative laws he/she is charged with each of them separately". In the second part, we come across the special rule specifying the case when the same body (authority) tries more than one administrative violation at the same time. The judge did not apply the second part of Article 36, but the first part of the same article, which can be used under the following circumstances:

1. Different bodies try different violations committed by one person;
2. The same body tries different violations committed by one person separately; and
3. The same body tries several administrative violations committed by one person at the same time, but applies the sanction proportional to those given in the corresponding article of the Code of Administrative Violations.

In this case, the second part of Article 36 was to be applied, as the same body (Zugdidi regional court) and the same authority, D. Kekenadze, were trying two different violations committed by one person, Ghurtskaia –

disorderly conduct and disobedience to the requests of law enforcement representatives. The second part of Article 36 considers the following rule in this case: "The offender will be assigned a sentence within the limits of the sanction that is imposed for more serious violations. In this case, one of the additional charges can be added to the main one as per the articles specifying the measure of responsibility for the given violation". In this specific case, a more serious violation is covered under Article 173, as it calls for a penalty of 400 GEL, while Article 166 calls for a penalty 100 GEL. Both articles call for a 30-day restriction of liberty as an alternative to the penalty.

The judge was liable to apply the sanction called for in Article 173. Proceeding from part 2, Article 36, the judge was obliged to restrain from applying the sanction under Article 166. Part 2, Article 36 implies the application of both articles anyway, if one of them envisions additional sentencing. According to Article 25, the penalty and administrative arrest that Ghurtskaia was charged with simultaneously can be applied as a mandatory sentence. According to Article 25, additional administrative sentences imply the deprivation or confiscation of property. Neither Article 166 nor 173 envision the above circumstance.

In fact, Ghurtskaia and Samushia revealed their utmost cruelty. Ghurtskaia spurned Bezhan Gunava who was lying on the ground several times. Gunava got to his feet and ran to Ilona Epsia's supermarket opposite the street. At which time, Gunava was chased by the second activist of the National Movement Party. The latter hit Gunava in the head. When Gunava rushed into the supermarket, Ghurtskaia followed him in and kept beating him. Ghurtskaia's behavior is qualified as a crime by sub-clause "b", clause 2, Article 239 of the Criminal Code – misconduct committed against a government authority. Consequently, administrative detention, which the latter was charged with, was too lenient a sentence and not proportionate to the action committed. The judge did not adequately reflect in his resolution the circumstances under which Ghurtskaia conducted these actions, and all the cruelty that made him distinct form the other offenders. Taking all the above into consideration, we believe that the Ghurtskaia's sentence is unlawful.

The administrative delinquency report on Irakli Mikaia, as well as other evidence included in the case record, indicated the use of physical violence towards the MPs. Mikia admitted to the fact himself. From the explanatory report filed by Merab Hangnail, it is only Mikia who used obscene words and shouted at people. As Changelaia specifically pointed out at the trial, when he said that Mikaia was offending citizens, he meant that Mikaia used bad language. Mikaia's case is different from the other cases as the person who filed the report made a specific reference as to what was meant by "physical offence", which was that "everybody was fighting and shaking their fists". Thus, the filer of the report proved the existence of such punishable actions as beating a person with feet or hands, which is the basis for a criminal case. Whereas from the footage of several TV companies, it can clearly be seen that not only were they shaking their fists, but they also brutally beat people. Thus, the police inspector falsified the facts. When the judge asked Mikaia what he meant by "verbal and physical offence", he responded that they used obscene words referring to his mother and he, in response, just nudged them and never beat anyone.

Judge Amirido Gelantia got familiar with the explanations of the parties at the court, but he did not find it necessary to carry out an additional investigation into the evidence provided by the TV companies' footage or eyewitness accounts to obtain a more truthful picture. The court resolution says that on 28 October 2007, at 21:00 hours, in Zugdidi on Gamsakhurdia Avenue, Rustaveli Street and the adjoining area, Mikaia was swearing, and using bad language to address citizens. When he was called to order, he did not obey the request of the policemen.

According to Article 260 of the Code of Administrative Violations, the case procedural authority is liable to state whether necessary additional materials were queried. In accordance to Article 230 of the same code, the objectives of proceedings on administrative violations are the timely, **comprehensive and objective** investigation of the circumstances of each case, which, as has already been noted, implies the investigation of all circumstances based on the evidence (Article 237 of the Code of Administrative Violations). Taking into ac-

count the above-mentioned norms, Judge Gelantia was liable to investigate additional evidence through video footage and eyewitness accounts, which would fulfill the requirements of a full, comprehensive and objective investigation; as a result of which, the judge, in accordance with Article 264, would have established whether Mikai had to be subjected to the administrative sentence, and whether there were any grounds to forward The case to the preliminary investigative body or the prosecutor's office, if the signs of a crime as specified in Article 238 existed.

The assignment of the administrative sentence to Giorgi Samushia is based on the same grounds as that of Ghurtskaia's case. The evidence produced for his case was the same as in all the other cases. His administrative sentence assigned him to 20 days of deprivation of liberty for disorderly conduct, and a 400 GEL fine for disobeying the legal requests of law enforcement officials. Samushia was taking an active part not only in the beating of Bezhan Gunava's, but he also inflicted physical abuse to other people, Bidzina Gujabidze among them, who as a result developed bodily injuries.

Giorgi Mania's and Akaki Rogava's case proceedings were conducted in the same way as above. Zugdidi regional court judges, J. Morgoshia and I. Abshilava, assigned 400 GEL penalties to them for disorderly conduct and disobeying the legal requests of law-enforcement officials. None of the judges of the Zugdidi regional court ever investigated the video footage of the Imedi and Rustavi 2 TV companies, or questioned eyewitnesses.

From the comments given by a journalist of Radio Imedi, Nana Pazhava, to a representative of the Public Defender's Office, we learned that the activists of the ruling National Movement Party, including Goga Ghurtskaia, Giorgi Samushia, Gela Toloraia, Irakli Tordia, Koba Rigvava, Kado Kvartskhava and Manuchar Putkaradze, were trying to approach opposition leaders with the aim of offending them. However, protesters did not let them do so. Pazhava recalls that after the rally was over, it was presumably a policeman out of uniform who offended Goga Khaindrava and ran away. Samushia snatched a flag from their car and destroyed it. Maka Sakhuria, Bidzina Gujabidze's wife, was detained directly by the Deputy Head of the Samegrelo-Zemo Svaneti Department, Megis Kardava. The National Movement Party activists threw Bezhan Gunava to the ground and kicked him. The MP managed to run away and rushed into Ilona Epsia's supermarket. Ghurtskaia chased him in and kept on beating him. Epsia and the other woman, Rusudan Kurashvili, who was in the shop at the time, drove Ghurtskaia out and the activists of National Movement Party were not able to get a hold of Gunava. The latter stayed in the supermarket until 22:30 hours, when he was taken out by the Head of Samegrelo-Zemo Svaneti Department, Tengiz Gunava. According to Pazhava's report, one group of patrol police arrived at the scene but did not stop the unlawful action. The circumstances stated in Pazhava's explanatory notes are entirely proven by the video footage taken by the different TV companies.

The events in Zugdidi were closely watched by the Samegrelo-Zemo Svaneti Deputy Head of the main department of Internal Affairs, Megis Kardava, and the Head of Regional Department, Koba Narsia. They did not take any measures to provide security for the representatives of the opposition party and stop the criminal actions on the part of the activists of the National Movement Party. As Sakhuria said, Kardava himself was supervising the persons who abused Gujabidze. Kardava offended Sakhuria verbally by swearing in the Megrelian language, in response to which, she slapped him on the face. Narsia considered this particular behavior as a breach of order and detained her.

Thus, Kardava and Narsia revealed their negligence in their official duties, an action that falls under Article 342 of the Criminal Code.

The form of administrative responsibility is obviously disproportionate to the actions of public threat performed by the above persons. Moreover, it goes beyond the limits of administrative responsibility of law officials. Article 166 of the Code of Administrative Violations sets responsibilities for the following actions, "disorderly conduct, (i.e. using offensive language in public places), offending citizens, and other such behavior

that causes public disorder and breaks citizens' peaceful existence". From the video footage it is clear how the MPs were being abused physically and verbally, which caused various health problems for them.

The physical offences clearly exceed the limits of Article 166 of the Code of Administrative Violations. The above article provides for public order and breaking the peace. In the given case, not only was the public order and peace violated, but serious damage was done to such virtues as human health and physical integrity.

We can recall a similar event that happened on 21 September 2006, when a member of the National Movement Party offended two activist women for their political motives. A preliminary investigation started on the case of Giorgi Otarashvili and Sarkis Sharoian based on Article 142 of the Criminal Code (violation of equal rights for political beliefs) and Article 151 (threat). According to case records, the defendant Sharoian threatened Marina Gadelia, the activist of National Movement Party with a spade. Using a spade to aim a blow against someone was assessed by the law enforcement representatives as a crime, despite the fact that Gadelia was not injured.

During the incident in Zugdidi, the MPs were beaten by fists and batons, and were spurned. **It is strange that threatening an activist of the National Movement Party is considered a crime, but in an incident when Government party activists not only threaten, but beat opposition rally participants is not considered a crime.** The participants of the rally held in Zugdidi received various health injuries; however, the law enforcement bodies did not consider the incident with Gadelia as an action constituting a public threat, applying instead administrative law rather than criminal to the offenders. What these two incidents have in common, is that both actions were performed for political motives. The difference is that on one occasion, the victim was a National Movement Party activist, and on the other occasion, the activists of the ruling party were taking part themselves in the alleged criminal action motivated by political beliefs.

The accusation against Otarashvili and Sharoian was entirely based on the evidence of the two victims. The case record did not contain any other evidence from objective sources. The incident in Zugdidi can be proven by video footage shot by different TV companies, which is more reliable than evidence produced by the persons involved.

It seems that criminal sanctions are applied selectively and only towards those persons who belong to opposition forces and law enforcement officials are too lenient towards the activists of the National Movement Party when considering criminal actions.

The same articles of the Code of Administrative Violations were applied to the persons detained during the rally on 16 October 2007, in Tbilisi, and to those who dispersed the rally on 28 October in Zugdidi. Regarding the Tbilisi rally, on 17 October 2007, the administrative board of the Tbilisi City Court adjudged a sentence of 20 days for the administrative arrest of four activists of the Youth against Violence movement, G. Mestumrishvili, I. Chukhua, I. Gaprindashvili and I. Japaridze. Despite the fact that the participants of the 16 October rally in Tbilisi did not offend anyone physically, they were awarded the same 20 day sentence of administrative arrest as the two participants in Zugdidi. The difference was only in the penalty; the rest of the participants were awarded a relatively light punishment and penalty.

In the Zugdidi case, it is proven by video footage from TV companies that the actions taken place there served as the basis for awarding an administrative sentence to Irakli Japaridze and others, despite the fact that there was no evidence of committing the offense in their case records. The actions committed by the National Movement Party activists were far heavier, and besides their disorderly conduct, they contained the signs of a crime covered by Article 156 of the Criminal Code (persecution) and Article 142 (violation of equal rights). It was also necessary to conduct forensic studies to examine the degree of health injuries to Zugdidi protestors to determine which of the following articles applied to the offenders – Articles 117 (intentional major health injury), 118 (intentional less major health injury), 120 (minor health injury) or article 125 (beating).

The above is the subject of public prosecution and it is not important whether the given victims will take the matter to the court. The Ministry of Internal Affairs and the prosecutor's office are responsible to initiate investigations immediately, without any claims. Especially when it is clearly video footage that the police displayed negligence during the dispersal and, in some cases, took part in the dispersal themselves, which aggravated the crime even more.

SECURE MOVEMENT OF TRANSPORT AND FREEDOM OF ASSEMBLY

According to part 2, Article 25 of the Constitution of Georgia, it is necessary to give authorities prior notification if a public assembly is to be held in a public thoroughfare.

The Constitutional Court of Georgia construed the above article as follows:

"The obligation of prior notification of assembly is necessary so special measures can be taken; particularly, state bodies have to be informed about the forthcoming event so they know what orders to issue in terms of transport movement and other organizational items, so they can ensure the security of the assembly, and so they can assess what needs there are for the protection of third parties and public interests, as well as how to bring these two circumstances in line".[7]

Four activists of the Youth against Violence movement were awarded administrative arrest for holding their meeting in a public place on 16 October 2007 without giving prior warning. On Rustaveli Avenue, the blocking of a transport passageway on 7 November 2007 was followed by forcible actions by riot police, as a result of which 600 people were injured.

According to the European Court of Human Rights, the obligation of prior notification cannot represent the hidden obstruction for holding peaceful assembly, which is protected by Article 11 of the European Convention.[8]

The Court pointed out that holding a meeting without prior warning is unlawful. However, this does not justify the infringement of the right to assemble. Prior notification enables state bodies to minimize the impediment of traffic movement when such rallies are held during rush hour. At the same time, state bodies are able to take preventive measures of security when there is prior notification, which implies the mobilization of ambulances at the site of the rally.[9] Prior notification on holding the rally serves the above aims.

Thus, the government is notified, but this does not mean that it is necessary to obtain permission from the government to hold a manifestation or protest March. Consequently, when the police call on peaceful protestors to break up and disperse, the legitimacy of such demands becomes doubtful. Accordingly, if the protestors do not obey the appeal, their action cannot be automatically assessed as disobedience to requests made by law enforcement representatives.

In the case of Oya Ataman, which is similar to what happened during the protest marches on 16 October and 7 November in Tbilisi, security services warned the participants of the protest march that it was illegal and requested them to break it up. The participants of the protest march did not obey the request and as a result, tear gas was used against them and several participants were imprisoned.

[7] Resolution#2/2/180-183 of the Constitutional Court of Georgia Young Lawyers Association and others against the Parliament of Georgia

[8] *Oya Ataman v. Turkey*, no. 74552/01, §38

[9] *Oya Ataman v. Turkey*, no. 74552/01, §39

In connection with the above event, the European Court of Human Rights expressed their surprise regarding the impatient action of the government, which was trying to put an end to the protest march that only lasted for half an hour. Besides, there was no evidence to prove that the participants were posing a threat to the public order, except for impeding transport movement.[10] Considering this particular situation, there are no grounds for breaking up the protest march and bringing legal charges against the protesters. The legitimacy of using force to break up the protest march due to the march impeding the movement of transportation has to prove violent for such an action by the police; however, this could not have been established in Oya Ataman's case.

The protest rally on 7 November on Rustaveli Avenue was not of a violent character, even though it was held in a public thoroughfare – not a single shop window was smashed and protesters were standing with their hands raised as they stood in front of the water cannons.[11]

As for the rallies held at Rikhe and the Imedi TV Company office, they were non-violent and the roads were not blocked. As for the manifestation on 16 October, when the four activists of the youth movement were detained, the movement of traffic was only partially impeded by demonstrators for one minute. Likewise, with Oya Ataman's case, the government should have shown more patience since the protest march lasted for such a short time. These rallies were different from the morning rally on 7 November when protestors completely blocked the thoroughfare on Rustaveli Avenue before tear gas was used. But on 16 October, traffic on Rustaveli Avenue was not stopped; it was blocked for just a couple of minutes. Thus, the 20-day imprisonment of participants for disobedience is not justifiable.

DISORDERLY CONDUCT AND FREEDOM OF ASSEMBLY

In the second half of 2007, the Tbilisi City Administrative Court qualified the actions of 33 protesters under Article 166 of the Code of Administrative Violations. Four of them were sentenced to administrative arrest, and in 26 cases, fines were prescribed. Three cases were dismissed.

The article concerning disorderly conduct, as well as disobeying law enforcement representatives has been in force since 1984. Georgia inherited these norms from the previous totalitarian regime. The validity of Article 166 contradicts the provision provided for by Article 11 of the European Convention. The European Court of Human Rights made its conclusions on the assessment of disorderly conduct of demonstrators in the case of Gatsiani vs Armenia.[12] It is noteworthy that the Code of Administrative Violations of Armenia was adopted in 1985, at which time it was still part of the same country as Georgia (the Soviet Union), and it is no wonder the law concerning disorderly conduct in both countries is identical – disorderly conduct is defined as the use of offensive language in public places, abuse of people and such behavior violating public order and citizens' peace".

Therefore, disorderly conduct can be considered any such action that violates public order and citizens' peace. Is noise and road blocking the kind of violation of public order that justifies the use of force in the dispersal of the manifestation?

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[10] *Oya Ataman v. Turkey*, no. 74552/01, §41

[11] Patrol cars were damaged after the police used tear gas and started to beat up protesters with rubber truncheons.

[12] The applicant was one of the representatives of the main opposition candidate for presidency at the electoral commission during the presidential elections of 05 March 2003 in Armenia. On 7 April 2007, in Mashtots Square, in Yerevan, next to the Institute of Old Manuscripts (*Մատենադարան*), a rally was held. Most of the participants of the action (30,000 people) were women. They criticized the president. The applicant was on the territory mentioned above. On his way back home, two civil persons caught up with him , presented their documents and detained him. A report was filed to the head of the police department, in which it was stated that "the detainee was at the demonstration, that he impeded transport movement, and appealed to violence by his anti-social behavior. After Galtsian had been interrogated, therecord on administrative violation was filed (*վարչական իրավախախտման արձանագրություն*), in which it was pointed out that the claimant violated public order by disorderly conduct, the action covered by Article 172 of the Code of Administrative Violations of Armenia. The case was sent for discussion to the chairman of Criminal and Military Appeals court, who sentenced Galtsian to a three-day imprisonment.

In the case of Galtsian, the Court absolutely ruled out bringing protestors to any kind of legal responsibility due to noise and road blocking during the demonstration that inevitably violates citizens' peace. "Taking part in a peaceful meeting is so important that it is inadmissible that a person is subjected to any kind of legal responsibility, among them such a light measure of responsibility as is disciplinary sentence, unless the participant commits a blameworthy act.[13] The measure of administrative responsibility is much heavier, rather then just being disciplinary, it would imply imprisonment.[14]

The Court found the applicant guilty of disorderly conduct. According to the resolution, disorderly conduct implied shouting and blocking the road. In the previous chapter, we talked about the validity of road blockage. As for the noise, it is not an appeal to violence. "It is hard to imagine a crowded demonstration where people express their views, without noise".[15]

Thus, the European Court considers that the right of assembly and manifestation is so important that even if its implementation may cause a certain discomfort for other citizens, it does not justify the violent dispersal of the assembly and bringing the participants of the manifestation to legal responsibility.

Proceeding from the practices of the European Court of Human Rights, Georgian courts have to cease using Article 166 on protest march participants, unless there is substantial evidence proving that they had committed blameworthy violent acts against others.

Even if we consider the manifestations to be unlawful, Georgian legislation, in particular sub-point "e", clause 1, Article 9 of the law concerning police procedure, only allows the dispersal of protesters under strictly determined cases. According to the above disposition, police have the right to "eliminate unlawful meetings, demonstrations, picketing, or any other action, as well as current actions that pose a threat to the security of the public, human life and health, property and other rights protected by law".

On 16 October and 7 November 2007, the protest marches did not include the threats mentioned above. Consequently, the administrative sanctions applied to protestors in the above cases were illegal.

USE OF EXCESSIVE FORCE ON 7 NOVEMBER 2007

a) Dispersal of a protest rally on Rustaveli Avenue

On 7 November, at 7 o'clock in the morning, the municipality cleaning machines appeared near the Parliament of Georgia. There were approximately 20 large and small cars, as well as about 200 street cleaners. There were also about 16 people on hunger strike.[16] Within ten minutes, the cleaning service trucks brought in iron railings.[17] Since it was raining all night there were blue tarpaulin tents to cover the hunger strikers. By this time, there were about 200 participants at the protest rally in front of the Parliament building.[18]

At about 7:45 a.m., the garbage collector machines trucks left the territory. Patrol police, which had been patrolling Rustaveli Avenue since 2 November 2007, unblocked the road to let the trucks pass by. At this moment, two or three yellow buses appeared nearby the Freedom Underground Station and 60 policemen, dressed in yellow raincoats, got off.[19] They headed towards the protest march. From the side of the Tbilisi

[13] Galtsyan v. Armenia application no.26986/03 15 November 2007 # 115
[14] ibid #116
[15] ibid #116
[16] Davit Usupashvili's explanation
[17] Eliso Berishvili's explanation
[18] On Human Rights Watch data the number of people reached 600
[19] Davit Usupashvili's and Eliso Berishvili's explanation

Marriot Hotel employees of law enforcement bodies appeared, wearing jeans, black jackets and masks. Garbage collector trucks and the machines of the municipal cleaning service formed a corridor on the thoroughfare.[20] Participants of the protest march began asking questions to find out the reason of the police presence. The protestors moved to the pavement in an organized fashion. Meanwhile, police troops, in the form of a wedge, approached the pedestrians' part of the street and broke into the group of protesters. The rally participants stood with their hands raised on the side of the street of the hunger strikers. Goga Khaindrava was standing on the corner in the path of the law enforcers, who threw him over. After that, the police broke down the iron bars and started to throw the hunger strikers down the steps, away from the Parliament building, and often kicked them. Protestors had never heard a single warning from the police. The demonstrators were asking the police which law they were violating, but they never got a response. Demonstrators were trying to move the hunger strikers away from the building, but the law enforcers began beating them as well.

The recordings made by hidden cameras of the Imedi TV Company clearly show one policeman kicking Levan Gachechiladze, and as he falls to the ground, six more people joined in kicking him.[21] The law enforcers also physically abused a former member of the Tbilisi Sakrebulo, Bidzina Gegidze, who had gone on hunger strike the day before.[22] While the demonstrators were trying to take hunger strikers away from the Parliament building, as police forces were beating them, the police also seized and smashed the cameras of different TV crews. The dispersal action was only being filmed by 5-6 cameras belonging to the Ministry of Internal Affairs.

During the dispersal, a member of the Equality Institute, Goga Khaindrava, was detained, as well as a member of the Republican Party, Zura Marakvelidze. An administrative delinquency report was filed against these persons for disobedience (provided for in Article 173 of the Code of Administrative Violations), disorderly conduct (Article 166) and drug abuse (Article 45). Tbilisi City Court Judge Natia Jorbenadze dismissed the case due to non-existence of evidence provided for under Articles 166 and 173. For drug abuse, however, Khaindrava was assigned a fine of 500 GEL. Marakvelidze denied having been under drugs, which was confirmed by the clinical diagnosis of a physician. But Marakvelidze was found guilty of administrative violation under Articles 166 and 173, and was given an even heavier sentence by the principle of absorption of a less severe punishment by a more severe one as provided for by Article 173, and so was fined 400 GEL.

b) The second dispersal of the protest rally on Rustaveli Avenue

The participants of the rally who had been unlawfully driven out from the adjoining territory of the Parliament building came returned to the building at 10:30 a.m. on the same day. At first, the rally took place on the pavement. Later, participants tried to occupy the passageway of the building; however, the police did not let them do so. The second attempt of the protestors was slightly more successful due to an increased number of participants. There was no space on the pavement to accommodate so many people, and so they moved to the road, thus blocking traffic. For this reason, the police used rubber bludgeons on them. From the footage aired on Imedi TV, we can clearly see people with bloody heads after having been hit with the bludgeons.

The use of bludgeons did not bring the desired results the police had in mind, since, despite the injuries of several people, the road could not be cleared for traffic. After that, the police resorted to more severe measures. On the opposite side of the rally, there were water cannons. Soon after, demonstrators heard the following warning: "We ask you to break up; otherwise legal measures will be used". The warning was repeated several times.

Along with the water cannons, there were armed groups dressed in different uniforms. The first group, which was on the front line, was wearing helmets and were equipped with shields and bludgeons. Nearby was another group

[20] Human Rights Watch, Crossing the Line
[21] Human Rights Watch, Crossing the Line
[22] Davit Usupashvili's explanation

dressed in black jackets and jeans. The uniforms on some of them had the words "Criminal Police" written on the back. Some of those dressed in black jackets were wearing masks. Behind the officials in helmets was a group of people wearing military camouflage uniforms, some of whom were wearing gas masks. On the pavement, there were patrol police in yellow raincoats. This group had been in the adjoining area of Rustaveli Avenue attempting to stop protestors from moving to the transport road by setting up iron railings. None of the persons taking part in the dispersal wore identification badges. Imedi reporter, Thea Bolkvadze, recognized the Chief of Staff of the Ministry of Defense, Zaza Gogava, on Rustaveli Avenue. On Freedom Square, there were cars with Defense Ministry license plates, which indicates the participation of Ministry of Defense personnel in this special operation.

About 20 meters away from the water cannons there were stored metal railings. On the other side of thoroughfare there were protestors standing with their hands raised, signaling the members of the special task force teams that they were unarmed. In the front rows were mainly young people. Nearby, there were some middle-aged women, but not many. **We can definitely ascertain that the participants did not invoke any violence towards the police or other people. However,** after several warnings, the police started to shoot water cannons at those in the front rows.

Because of low water pressure it could not reach the participants standing in the thoroughfare. After that, a large amount of tear gas was sprayed in the air. From the footage of different TV companies that aired the event, it can be clearly seen that all the entire territory around Parliament was filled with white smoke. Several thousand people were trying to escape and leave Rustaveli Avenue, seeking shelter in Lesia Ukrainka, Chichinadze and Chitadze streets, but due to the large mass of people, there was a big struggle.

The tear gas affected most of the protesters, who had problems breathing and moving, and they felt sick. Their eyes were streaming tears and burning as well. Even though Rustaveli Avenue was completely evacuated, and the protesters ran in different directions, the special task force members kept on chasing them. The representatives of the Public Defender's Office reported an instance when emergency doctors in Chitadze Street were giving first aid to injured people, while members of the special units were shooting rubber bullets in their direction.

A small part of the people who escaped, among them Parliament members, managed to get into the Parliament building. Approximately 50-100 people entered the Parliament premises. Instincts of self-preservation made people do so. As the gas was spreading rapidly in the lounge of the building, people went up to the third floor.[23] Nino Burjanadze, the Head of the Parliament made a decision to open the gate. Because of the fact that a part of the protesters were in the Parliament building, in the court resolution on the seizure of Teleimedi Ltd., Tbilisi City Court Judge Giorgi Shavliashvili assessed it as an illegal break in (see details in the chapter on freedom of speech and expression).

Punitive measures were still being applied to a small group of people who remained on Rustaveli Avenue. The most apparent case of disproportionate use of power by police was shown by the Euronews TV Company. In their footage it can be clearly seen how members of the special task force beat up Avtandil Jorbenadze, who remained in Rustaveli Avenue, with bludgeons. After having been hit by the bludgeons, Jorbenadze ran away. Other special task force members ran after him and when they caught up, began kicking him.[24] There is a photo showing Jorbenadze on the ground, covering his head with his hands. At that moment law enforcers, one of whom was wearing military camouflage, were beating him. The people around were trying to protect the former state minister from his attackers. Police were also brutally beating people in front of the First Gymnasium. Video footage from the Caucasia TV Company show police in yellow raincoats chasing people into the Kashueti church yard, which was also filling up with tear gad. In Imedi's video footage we can see a piece of gauze on the ground smeared in blood.

[23] Koba Davitashvili's explanation

[24] http://www.youtube.com/watch?v=Aj1hGarg8lk&NR=1

The Public Defender witnessed the beating of Levan Tabidze, an Imedi TV reporter. Policemen were abusing him verbally and calling him "Badri's puppy". Tabidze, who, after the tear gas was sprayed, took shelter in the First Gymnasium building and saw that police were beating up someone on Chichinadze Street. Tabidze decided to videotape the beating. After that, he went out to the street where special task force employees identified him as a journalist by his microphone, and one of them hit him with a bludgeon to his left leg.

Giorgi Kvrivishvili, a reporter for Gori's Trialeti TV Company, was also deprived of his video camera and abused physically at the rally in front of the Parliament building.

The fact that the actions of the special task force were political was obvious, as Imedi filmed the column of law enforcers on Rustaveli Avenue – some dressed in yellow raincoats, others dressed in black special uniforms and masks, and a smaller part dressed in civilian clothes wearing masks – all of whom were loudly chanting: "Long live Georgia! Long live Misha! Fuck Badri's mother!"

One can get the impression that the people in these shots are not the employees of the Ministry of Internal Affairs, but rather as if from some extremist political party.

According to clause 2, Article 4 of the law concerning police procedure, "the police are obliged to respect and protect individual rights and freedoms, regardless of their citizenship, social status, wealth, racial and national belonging, sex, age, education, language and religion, political and other views".

Consequently, law enforcers have the obligation to stay neutral and impartial when performing duties; so their statements of political character and appeals contradict the major principles of police activities.

Law enforcers kept on treating a small group of people who remained on Rustaveli Avenue brutally. In photos we can see people who are being kicked in the face by masked people in black uniforms. Later a sonic machine, which emits particular sound waves to disperse people appeared.

Special Forces teams were chasing demonstrators who fled from Rustaveli Avenue, breaking down doors of hotels and houses to beat those who were seeking shelter with bludgeons. Sopio Khorguani, the deputy public defender says that she found shelter in the Ipari Hotel after a tear gas capsule had exploded in front of the Theatrical Institute on Rustaveli Avenue. She was given first aid at the hotel. Khorguani was standing in the hotel lounge, near the front door, and could hear the politicians' comments on TV. At this moment, she noticed a group of about 25 young people being followed by masked Special Forces team members dressed in black. One part of the group took shelter in the hotel. After that, the door of the hotel closed automatically. The Special Forces team members tried to get into the hotel and started throwing stones and banging on the door with their bludgeons. Khorguani also noticed that they were smashing the gate of a an "Italian yard", as a group of demonstrators were sheltered inside.

Nino Soselia was a victim of excessive force used by police. When the tear gas was being unleashed, she was standing next to the Parliament building at the building number 1 of the secondary school. At that moment a masked man dressed in military uniform hit her on the head with his bludgeon, slapped her in the face and pushed her with all his force against the wall of the school building. Despite the severe pain, Soselia did not lose consciousness. After the incident, she returned home. Later her left eye started to stream tears and she was getting strong pains in her head and back. On 8 November 2007, she went to the hospital where a doctor's examination revealed that her temple bone was broken.

As a result of the use of tear gas, people who were in the First Gymnasium building and Theatrical University were poisoned. Four representatives of the Public Defender's Office were taken to the Ghudushauri clinic because of poisoning. A nine-year-old boy, Tornike Papiashvili, was poisoned by tear gas as well. A tear gas

capsule was dropped in the Pupil's Palace building next to Parliament, wherein Irma Kardava, a protestor, along with her two small children, was hiding. After that, the people who were inside the building went out into the yard to discover that the exit gate had been locked from the outside by government security employees. Kardava's seven-year–old son fainted as a result of breathing the gas. After that, the gate opened and Kardava went towards the State Chancellery building where tear gas was fired again. Kardava and her children were eventually taken to the Iashvili clinic.

Nato Maskharashvili's two small children also required emergency services as they were not let in the Pupil's Palace after the tear gas was unleashed. An unknown person took them into his car to Kolmeorneoba Square, where they called for an ambulance.

One part of the protestors ran towards Freedom Square and were chased by Special Forces team members who were throwing gas capsules and shooting rubber bullets at them. Special Forces units chased them up to Pushkin Square. A few young people approached the Special Forces team holding their hands up, but they shot rubber bullets and gas capsules at them neverthe less.

Another part of the protestors ran in the direction of the Tbilisi Marriot Hotel and the Special Forces team again used tear gas on them. Finally, the protestors moved to the back of the Opera House. In the on-air footage of different TV companies there appears a damaged police car, as well as protestors who were throwing gas capsules that had been thrown by Special Forces teams back at them. More tear gas was returned as a response. A capsule hit one of the leaders of the Republican Party, Tina Khidasheli.[25]

The authorities of the Public Defender's Office had been closely watching the development of protest rally since 2 November 2007. On 7 November, after the situation escalated, the public Defender went to the rally to monitor it. At about 3 o'clock in the evening, after another rally dispersal, the public Defender was on Laghidze Street. The upper part of the street was blocked by Special Forces teams, equipped with shields bludgeons, and wearing gas masks. In the lower part of the street, there were people who had been driven from Rustaveli Avenue by the Special Forces teams. On the request of the Public Defender, the police stopped chasing the protestors, as he tried to calm people down, asking them to break up.

The citizens were breaking up gradually when suddenly more Special Forces teams appeared. They rushed towards the people shouting and holding rubber and wooden bludgeons. The people were followed by Special Forces teams with gas-masks, shields and batons. Seeing this, the people got scared and ran down the street. The Public Defender and his representatives followed them. Special Forces teams came up to the Public Defender and threatened him with their bludgeons. The employee of the Public Defender's Office, Daniel Mgeliashvili, shielded himself with his back to protect Sozar Subari, and asked them not to hit him. After that, Mgeliashvili was in front of the Public Defender, at which time one of the protestors fell down and the Public Defender helped him to his feet.

Quite unexpectedly, a Special Forces team member came to the Public Defender and started beating him with a bludgeon. As they said, they were beating him because he was the Public Defender. After that, they also beat Mgeliashvili physically. The Special Forces teams were also verbally insulting the Public Defender, calling him "the country's enemy" and "agent".

On 7 November, according to the information disseminated by the Ministry of Labor, Healthcare and Social Welfare, more than 300 people were admitted to medical establishments. The next day, this number grew to 600, which included protestors, journalists, four authorities from the Public Defender's Office, and other people who were in the buildings on or near Rustaveli Avenue. On 7 November 2007, Malkhaz Jolokhava

[25] Human Rights Watch, Crossing the Line

was hospitalized to the neurosurgical department of the #1 clinic. On 7 November, at 05:30 a.m., employees of the criminal police sprayed him with an unknown substance. By 12 o'clock, he returned to the Parliament building where he was beaten with rubber batons. He was diagnosed with a concussion and hemorrhages under the third fingernail of his right hand. According to him, the police treated him in a degrading manner and stabbed nails in his fingers.

On 7 November, at 14:00 hours, Gia Sherazadashvili was hospitalized due to injuries suffered at the rally dispersal near Parliament. He had been diagnosed with a closed head injury, an epidural hematoma in both hemispheres, and a subdural hemorrhage in the left frontal lobe. He was also switched to an artificial respiratory system. Sherazadashvili did not take part in the protest rally. He was simply standing in front of his house on Griboedov Street, far from Rustaveli Avenue. Special Forces members beat him when they were chasing protestors.

c) Dispersal of the rally at Rikhe

People who were outraged after the dispersal of the rally on Rustaveli Avenue gathered at Rikhe, which is on the left embankment of the Mtkvari River. The left embankment starts with a sidewalk for pedestrians, along which is a road adjoined by several green spaces, one of which is a stage platform used for different kinds of social events. It was there that the opposition moved to continue the rally.

During the rally, 10-15 military cars appeared from the side of Metekhi Church. The rally participants called on military columns to stand by their side and join the rally. The column stopped for a while and in a couple of minutes started to move towards Baratashvili Bridge in the direction of the Patriarch's residence. Ten to fifteen minutes later, Special Forces teams appeared from Baratashvili Bridge. Under the bridge was a water cannon machine. Special Forces teams appeared from the Metekhi Bridge as well. Seeing this, protestors began to panic and most of them started to run away in different directions. The Special Forces teams were chanting, "Misha! Long Live Misha!" After they had approached the stage, only 20 people were left. They stood on their knees, with candles in their hands, saying prayers. The Special Forces team members did not touch the people on the stage; but they did beat other protestors with clubs. Then they unleashed the water cannon and colored paint, and fired rubber bullets.[26]

Imedi reporter, Natia Mikiashvili, was reporting from Rikhe. According to her, Special Forces team members identified her as a journalist by her microphone and fired rubber bullets at her and her cameraman, Mamuka Gogichaishvili.

The whole territory was surrounded, which made it impossible to leave the premises without being injured. A journalist with the newspaper Georgian Times, Nino Silagadze, was there as well, along with a filming crew from Rustavi 2. She was attacked by four members of the Special Forces team, who fired rubber bullets at her, two of which her – one in the neck, and the other in the leg.[27]

The masked law enforcers smashed a red car parked at Rikhe with clubs. People who had run from Rikke headed towards the Metekhi Rise, and were chased down by Special Forces teams. Most of the people were not able to use the narrow street to escape, and the Special Forces team members fired gas capsules and rubber bullets after those who could not reach the upper part of the street, who were beaten brutally. In one particular instance, 10-15 policemen were beating one man who was lying on the ground.[28]

[26] Kakha Janashvili's explanation
[27] Nino Silagadze's explanation
[28] Kakha Janashvili's explanation

A small group of protestors fled towards Baratashvili Bridge. In the video footage of the Public Broadcaster, three policemen encircle one of the protestors and start beating him brutally. Near the bridge, protestors knocked down and beat up a sentry of the special task force, Paata Gelashvili. While he was trying to flee, protestors threw stones at him. The special unit member was beaten up after the rally dispersal at Rikhe.[29] The rally was proceeding peacefully until the law enforcers showed up and began using force.

The Special Forces units headed towards the Wine Rise and were displaced in the adjoining territory of Avlabari. Many policemen in raincoats were patrolling from the Armenian churchyard at Avlabari, chanting and cheering "Misha! Misha! Fuck Badri!" Special units in helmets and holding shields moved in the direction of Sameba church. The people who live at Avlabari were throwing different objects, such as stones and brooms, at the policemen. Eyewitnesses say the protestors were defending themselves against the attack of these special units. Two special unit members approached the Imedi TV filming crew and hit journalist Aleko Gabunia and cameraman Kakhaber Janashvili with their bludgeons. Later they asked them which TV company they were working for. Imedi journalists felt unsafe after the rally dispersal of the rally and so were working without any identification of who they were working for. Janashvili replied that they worked for Rustavi 2, at which point the special unit members left them alone.

About eight people fled from Rikhe, among them women and children, and they took shelter in PSP drugstore opposite the Avlabari Underground Station. The police broke into the drugstore and verbally insulted the women and children inside, but the men were forcefully taken out and thrown to the ground. Ten to fifteen policemen beat one man with rubber bludgeons.[30] The situation was confirmed by Imedi video footage, which was aired on 16 December 2007, on the program, Droeba.

The battered people were trying to escape, while other law enforcers chased the running people and kicked them. People were defending themselves by throwing stones and planks at the Special Forces team members.[31] One of the policemen in a yellow raincoat hit Dachi Beridze in the head with a rubber bludgeon, and after that, other policemen attacked and kicked him. Inhabitants living in the block of flats opposite the Avlabari Underground Station watched the events. Most of them were outraged by the brutality of the law enforcers, and so began throwing different objects at them from their windows and balconies. In the end, law enforcers fired tear gas in their direction.

Special Forces teams' members insulted people coming out of Sameba church. There is a video recording showing people in the church who had stay there all night, as they could not leave the church due to Special Forces members waiting outside.[32]

What is most alarming is that according to the conclusion of an alternate study, firearms were used at the Rikhe rally dispersal.

At about 23:00 hours, on 7 November 2007, approximately 300 people sought shelter on the ground floor of Sameba church; people leaving the church were attacked by Special Forces members. The Public Defender's authoritative representative, Koba Chopliani, was there at the time and saw a group of young people leave the church, who returned within 20 minutes. One of the young men had injuries on both legs. One of the citizens in the church, who was about 35 years old, had a skin injury on his arm and was bleeding. According to him, he got the injury after special unit team members hit him with their bludgeons. A man, aged 27, had a broken head and was bleeding. According to him, he was attacked by special unit members who beat him with batons and rubber bludgeons.

[29] Zviad Khargelia's explanation
[30] Kakhaber Janashvili's explanation
[31] Kakhaber Janashvili's explanation
[32] http://www.youtube.com/watch?v=IS-uFsjU1L4&NR=1

Near the Sameba church there was a mini-bus that had eight protestors inside. Masked attackers from a dark-colored Jeep without a license plate attacked the people in the bus who were asleep with batons and rubber truncheons. These people attacked all the protestors who tried to leave Sameba church.[33]

Three people, Vakhtang Inasaridze, Nika Didishvili and Giorgi Tevdorashvili, who were injured during the Rikhe dispersal received treatment in the first clinical hospital. An investigation has been launched in connection with their physical injuries. Preliminary investigative bodies have only managed to interrogate these three people as witnesses. No forensic study has ever taken place. In response to their passiveness, the public Defender and the victims' lawyers, Lasha Avaliani and Beso Gviniashvili, addressed Vector, a centre for independent study, on 20 December 2007, with a request to conduct an alternative investigation. On 8 January 2008, Vector sent copies of their forensic conclusions to the Public Defender.

The Deputy Minister of Labor, Healthcare and Social Welfare, Irakli Giorgobiani, made a statement on Rustavi 2 that aired on 20 January 2008, in which he pointed out the following: "With all my responsibility, I would like to state that not a single person had been injured by firearms".[34] Whereas the conclusions of alternative forensic medical studies say: "Taking into consideration that some extraneous materials were found in wounded areas, we can suppose that the injuries must have developed as a result of the impact of an explosive having kinetic energy."[35]

The Immediate Reaction Force Unit of the Penitentiary Department was taking part in the dispersal of the rally at Rikhe. The Public Defender's Office discovered that Levan Pitskhelauri, an employee of this unit was getting treatment at the #1 Tbilisi clinical hospital, due to injuries sustained during the dispersal. At about 8:00 a.m., on 7 November, this unit was camped at Metekhi Bridge, the members were wearing badges of the agency on their uniforms.

d) Koba Davitashvili's kidnap and physical abuse

Koba Davitashvili is the leader of People's Party. The above political organization is part of the United National Council, which was the group that organized the protest rally that took place in early November 2007 on Rustaveli Avenue.

On 7 November, Davitashvili was watching the dispersal of the rally on Rustaveli Avenue from the roof of the Parliament building. He went up to the roof to fix some of the technical equipment for the rally. After the dispersal of the rally, The United National Council assembled in the Republican Party office where it was planned to continue the rally at Rikhe. As there was no necessary equipment for conducting the rally, Davitashvili, along with three members of the Conservative Party went to buy it.

The seller told Davitashvili that there were employees of the tax revenue service dressed in civilian clothes and members of the Rurua Brothers gang in the market place, who were forbidding people from joining the rally.[36] In one of the shops, Davitashvili and the persons accompanying him bought the necessary technical equipment and as they were leaving the shop, approximately 20 people showed up. Approximately seven of them went into the shop and without any explanation or warning started to beat Davitashvili. These people, according to Davitashvili,

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[33] Koba Chopliani's report

[34] Forensic medical expert conclusion #56/h concerning Nika Didishvili, p. 10

[35] Forensic medical expert conclusion #55/j concerning Giogi Tevdorashvili, p. 7.

[36] Nikoloz Rurua, MP and Chairman of the Parliamentary Committee of Defense and Security. Together with his brother Giorgi (Zhorik), Nikoloz Rurua was the head of an informal armed military group commanding one of the groups called Mkhedrioni, theso-called, Borotebi Brotherhood, during the coup from 1991 to 1992. Rurua took part in the Abkhaz War from 1992 to 1993, as well as the civil war conducted in Samegrelo-Zemo Svaneti in 1993. According to some opposition leaders, on 7 November 2007, Rurua was supposedly taking part in the dispersal of opposition rally on Rustaveli Avenue.

were dressed in black civilian clothes. He does not exactly remember how long the beating lasted, but he was beaten by chairs, iron bars and other objects, and then taken out of the shop and was beaten some more. Davitashvili asked a clergyman and some other bystanders at the Eliava market for help. According to him, because of the people's resistance, theattackers were not able to get to their car. Instead, they took a driver of one of the mini-buses standing nearby as a hostage, then placed Davitashvili in the boot and made the driver go to Gori, via Gldani road. The minibus was white, and presumably, he had a tyre business as the boot was full of tyres. In the minibus, theattackers went on beating Davitashvili. According to Davitashvili, he was alarmed by the fact that they did not hide their faces. This situation made him think that they were going to kill him. Later in the conversation it turned out that he was right. Davitashvili told them: "If you're going to kill me then why are you taking me to Gori, take me to Kaspi, it's my native place". The attackers responded: "Ok, we'll do so if you throw a good dinner party". Davitashvili lost a lot of blood during the ride. As he thought that his death was inevitable, he said a prayer and forgave the attackers of all their sins. This behavior probably impressed the kidnappers and they told the driver to stop the van, at which point they brought him some water and washed and bandaged his wounds with a handkerchief. On the attackers' command, the driver took Davitashvili to an unknown place, left him there and swerved the car aside into some bushes. The kidnappers got out of the car and for some time talked on the phone. After that, they put Davitashvili in a black Toyota Jeep. The front windscreen of the car on the driver's side was damaged and was half-open. Before getting into the Jeep, Davitashvili noticed a red BMW. He was sitting in the Jeep with two to three of the attackers and there were two more unknown people in the car. While traveling, theattackers called someone and let that person hear Davitashvili's moans. During one of the telephone conversations, Davitashvili heard one of the attackers say: "We are three of us here, Alik is here too".

Finally, the attackers told Davitashvili that he had nothing to worry about as they were taking him to a hospital. It should be noted that the car entered the hospital yard without any hindrance. Davitashvili was placed on a stretcher and taken to the intensive care unit. The victim notes that the medical personnel were surprised to see him there, although the physicians seemed to know the situation and were ready to admit him. The doctor insisted on an operation, but Davitashvili went against the doctor's recommendation. He was given a number of tests, and despite the fact that he did not have any internal injuries or serious head trauma, he was still placed in the intensive care ward. Here he was absolutely isolated. Despite several demands, he was not allowed to make any phone calls. The next day he learned that bishop Andria of the Gori church was trying to get in touch with him but doctors told him that his health state was so serious that he would not be able to talk. As Davitashvili said, one of his relatives who worked in the hospital managed to secretly bring him a phone. Davitashvili got in touch with his family and Parliamentarian Kakha Kukava. Only after that, it became known where he was. Davitashvili says that an investigation is under way on the above fact; however, he was only interrogated once on 14 November.[37] The Public Defender asked for his commentary on November 9, 2007.

On the night of 7 November, three authorities of the Public Defender's Office were trying to enter Gori hospital to visit Davitashvili. By violating sub-clause "a", Article 18 and clause 1, Article 27 of the organic law of Georgia Concerning the Public Defender, theauthorities were not admitted to the territory of the hospital. Under such circumstances, isn't it is strange how the unknown persons managed to place Davitashvili in the hospital?

e) Dispersal of the protest march on the Imedi TV Company's territory

At 20:20 hours, on 7 November 2007, Sopo Mosidze and Levan Javakhishvili, presenters of the news program Chronika, informed their viewers that the Imedi building was being broken into by Special Forces teams and that the broadcast was going to be switched off the air from the TV tower at any time. The presenters demanded that the government ensured the security of the. They were waiting for Special Forces teams to appear in the live studio. Soon Giorgi Targamadze, the chief editor of public-political programs,

[37] Koba Davitashvili's explanation

took over. He spoke about the achievements of Imedi, at which time screaming was heard. Targamadze declared that the Special Forces team was already on the TV Company's premises and expressed his hope that everything would go on smoothly.

After Targamadze's address, people started to gather around the Imedi building located on Akhmeteli Street. Imedi employees who had joined the protest march returned to work, but could not enter the premises as Special Forces teams had already broken into the building.[38] Journalists from other TV companies came to the building as well. Protesters were demanding to restore Imedi's broadcast,[39] and were cheering, "Imedi! Imedi!"[40] Teleimedi employees who were taken out into the yard were making comments about the situation inside the building in front of the cameras.

The Special Forces team was mobilized on site; they put on gauze masks,[41] approached the protestors and started firing rubber bullets and beating them with bludgeons.[42] Before the dispersal, protestors never used any violence.[43] The dispersal started without any prior warning.[44] Special Forces team members called the women who were at the protest march "Patarkatsishvili's whores" and "the Jew's harlots", referring to Patarkatsishvili's religious affiliation. They used the same language when they were asked about the state of people inside the building. Two young men who asked about the people in the building were physically abused by the masked people and they damaged their car.[45] When they used teargas, protestors ran to nearby blocks of flats to get shelter.[46] After using teargas, the Special Forces team members besieged the protestors and did not let them leave the territory peacefully.[47] The Special Forces teams continued to chase people who fled from the blocks of flats. They shot six rubber bullets at Maia Antelava, an Imedi employee, who was running away.[48] They chased people down to the entrances of houses and beat the people who could not manage to hide, with bludgeons.[49]

The Special Forces team member shot many rubber bullets and teargas capsules at Imedi journalists after they had taken them out onto Ljubljana Street. Special Forces teams chased them until the Dighomi market and its adjoining territory were they again used teargas.[50] During the dispersal, the Special Forces members also physically abused a 12-year-old child.[51] They even beat people with rubber bludgeons who stopped to get some rest.[52] The Special Forces teams would stop chasing people only within a few kilometers from the site, near Mayakovski monument.[53] Young people were chased down and teargas capsules were thrown in the direction of the Beer Square.[54]

There is a building opposite the Imedi building, on the first floor of which is a supermarket. During the protest march there were some people on the upper floors of the building who lived there and the Special Foces teams threw teargas capsules towards the supermarket as well.[55]

[38] Tinatin Bakradze's explanation
[39] Ketevan Vashakidze's explanation
[40] Khatuna Pkhakadze's explanation
[41] Salome Arshba's explanation
[42] Rusudan Tabatadze's explanation
[43] Giorgi Mdivani's explanation
[44] Tamar Kvantaliani's explanation
[45] Maya Antelava's explanation
[46] Rusudan Tabatadze's explanation
[47] Ketevan Vashakidze's explanation
[48] Maya Antelava's explanation
[49] Rusudan Tabatadze's explanation
[50] Tinatin Bakradze's explanation
[51] Maya Shatashvili's explanation
[52] Giorgi Mdivani's explanation
[53] Maya Antelava's explanation
[54] Tamar Kvantaliani's explanation
[55] Irakli Nizharadze's explanation

Rustavi 2 viewers saw, live and on-air, how father and son Teimuraz and Giorgi Topuria were beaten. Journalist Manana Manjgaladze's live stand-up shows policemen in yellow raincoats chasing protestor Teimuraz Topuria and hitting him with their bludgeons. When he fell to the ground, a group of policemen rushed up to him and continued to heat him. Giorgi Topuria tried to cover the person lying on the ground not yet knowing that it was his father. The policemen started to beat him with bludgeons as well.

As mentioned earlier, teargas, rubber bullets and rubber bludgeons were also used on Ljubljana Street, where Imedi employees were taken, once out of the building. They struck journalist Ana Mamulashvili with a bludgeon and broke her head. The journalists on Ljubljana Street were going to return to their homes. Therefore, in this case, the aim of the use of force by the police was to punish people, rather than disperse them from the demonstration, which is why this incident is discussed in more detail in the chapter on the freedom of expression.

LEGAL ASSESSMENT OF 7 NOVEMBER EVENTS

On 7 November, the police used special means, such as teargas, rubber bludgeons, rubber bullets and noise exposure equipment for psychological effect, to disperse a protest rally.

The Human Rights Court of Europe stated, in connection with the case McCain v. the UK, that use of force must not exceed the limit that is absolutely necessary for reaching a legitimate aim. The use of force implies not only the action of those persons representing the government, but all those related to the circumstances, among them those who planned the use of force and its control (paragraph 150).

Resolution #34/169, reached on 17 December 1979, of the General Assembly of UN established a code of conduct for law enforcement representatives. In accordance to clause "b", Article 3 of this code, "the use of force should be applied proportionately. It is inadmissible to interpret this principle as the use of disproportionate force for the achievement of a legitimate goal". As per sub-clause "b" of the same article: "The use of firearms is an extreme measure. Every measure should be taken to exclude the use of firearms, especially against children. According to general principle, a firearm should not be used unless a suspect shows resistance or poses threat to other people's lives and it is impossible to eliminate the threat by less severe means, or capture. For each case of use of firearms the competent bodies of the government must be notified".

The standards of the excessive use of force were set by the Supreme Court of the USA: "State interests that are under threat may outweigh an individual's rights if the necessity of the use of force is established through objective reasons. The type of arms, circumstances under which the force is to be used and individuals against whom the force was used must be taken into consideration".[56]

According to the instructions of the Boston Police Department, USA, law enforcement officials must not use lethal force[57] unless an individual shows resistance. According to the same document, it is admissible to use less lethal means at crowded gatherings unless there is a tendency of violence. In this case, The used means must be adequate to the threat. The use of force by unauthorized persons is inadmissible. While using force, such factors as the composition of the group, especially their psychological and mental makeup, should be taken into consideration. It is inadmissible to use force against pregnant women, children (up to 16), older people (above 50), and mentally diseased people.[58]

When a bludgeon is used against a running person, who poses no threat at all to the police, this must be seen as an excessive use of force.

[56] Supreme Court in *Graham v. Connor*, 490 U.S. 386 (1989) http://www.aclum.org/pdf/less_lethal_report.pdf

[57] Less lethal means imply rubber truncheon, rubber bullet and teargas, the means that may cause death only in exceptional cases.

[58] http://www.aclum.org/pdf/less_lethal_report.pdf

The same qualification can be given to the use of water cannons and teargas against the protestors on Rustaveli Avenue, who were standing with their hands up and posed no threat to the life, health security and property of the police or other people. There was no reason to use such force, especially when the protestors were trying to escape the clouds of teargas and sought shelter in drugstores or side streets. On the Imedi territory, there were many and frequent cases of the beating of minors. Thus the stipulations of the composition of a group mentioned above, were not taken into consideration. In addition, the firearm injury of the three people during the dispersal of the Rikhe rally is the gravest case of the use of excessive force. Vakhtang Inasaridze, Nika Dedishvili and Giorgi Tevdorashvili were not showing any resistance, and neither were they posing any threat to the law enforcers' or other people's lives.

According to part 2, Article 10 of the Georgian law concerning assembly and manifestation, the government assigns an authorized representative who, in accordance with Article 13 of the law mentioned, should demand a stop to the assembly and manifestation of people. Such a demand from an authorized representative of the local authority body was never made prior to the dispersal of any of the rallies on 7 November.

According to clause 2, Article 10 of the law concerning police procedure, **a policeman is obliged to give prior warning to an individual about the use of physical force, use of special means and firearms and should give him/her enough time to obey his lawful demands, unless the delay may cause the abuse of health or life of a citizen and/or policeman, or any other grave consequence, or unless it is impossible to give such a warning under the given circumstances.**

The police never gave such a warning to the protestors when they dispersed the hunger-strikers on Rustaveli, the protest marches at Rikhe and at the Imedi property. The protestors were warned only when the rally was dispersed the second time.

Also, according to clause 1, Article 28 of the law concerning police procedure, **it is mandatory for a policeman to wear the uniform as determined by law; and** clause 2 states that **a policeman has to wear his identity card and special medal to testify his/her authorization.**

None of the law enforcement officials had any identification badges during the dispersal of the rally. Many of them were wearing jeans, which is not an article of the approved uniform stated by the Georgian legislation. **The above circumstances indicate that the rally was dispersed by unauthorized persons.**

At the same time, we should take into account that the agencies taking part in the dispersal (Ministry of Defense and Penitentiary Department) have no competence of dealing with such a dispersal.

As the meetings at Rikhe and at Imedi were not on a thoroughfare, according to Article 25 of the Georgian Constitution and the law concerning assembly and manifestation, there was no necessity to notify the authorities prior to the event. Consequently, it was lawful to hold the rally._Besides, we can recall the decision of the European Court of Human Rights in the case of Bukta and others vs Hungary. **According to the European Court, under non-existence of other law violations, the dispersal of a meeting for the reason that the organizers have not warned the state or municipal bodies is a disproportionate interference into the freedom of assembly.**

The law concerning police procedure comprehensively lists the types of special means that can be used during certain operations, among them are rubber bludgeons, tear gas, and water cannons. Rubber bullets are not an item on that list. **The first clause of Article 12 provides the list of all possible items of special means, which means that the norm is imperative and it is inadmissible to use any special means other than what is specified in the article.**

Clause 1, Article 10 of the law concerning police procedure supports the above statement, which specifies that "when discharging his duties, a policeman has the right to use physical force, special means and firearms only in the caseand manner as specified by the law".

As Article 12 does not consider the authorization of the use of rubber bullets, it is apparent that the bodies of Internal Affairs exceeded their official powers by using forbidden means not approved by law. Consequently, not only must ordinary special task force members be brought to criminal trial, but also all those officials of the Ministry of Internal Affairs who against the legislation purchased rubber bullets and gave the order for their use. It can be supposed without exaggeration that neither the purchase of rubber bullets nor their use would have been possible if it had not been ordered by the Minister of Internal Affairs, Vano Merabishvili. Thus, the Minister should be brought to criminal trial as well.

Reference to the practices of leading European countries cannot serve as justification for the appropriateness of the use of rubber bullets, where its use is directly stated in the law. Sharing the experience of European countries in the process of establishing laws is the sole competence of the Parliament of Georgia, which can determine the right to use rubber bullets by the law. The Ministry of Internal Affairs and military units within its structure, representing executive bodies, is responsible for the precise execution of the law, which means that it is forbidden to use any means against a person that is not specified by the law.

The state has the monopoly over the application of force. Along with this, force can only be resorted to in extreme necessity. Particular measures of force must be explicitly, directly and unambiguously specified in the law.

The law concerning police procedure does not specify the use of rubber bullets at all. The fact of existence of rubber bullets in the arsenal of the police is a violation of the law itself. Thus, it makes no sense to discuss the question of how much the use of rubber bullets served a legitimate purpose, or to what extent it was a necessary and proportionate measure to apply to the given situation. **The use of rubber bullets, without having the evidence of other circumstances already means the use of excessive force. Consequently, theactions committed against Levan Javakhishvili, Zaal Tsulukidze, Maya Antelava, Lasha Mikadze and others were an excessive use of official duties, an action provided for under Article 222 of the Criminal Code.**

In North Ireland, where the law allows the use of rubber bullets, they are used only when protest participants reveal a particular form of violence, for example the shooting of "Molotov cocktails".[59]

On November 7, in Tbilisi, no facts of the use of "Molotov cocktails" or any other means were reported. Protestors were spontaneously defending themselves against the aggression of the police by whatever objects they had at hand. It is true that protestors used unjustifiable cruelty towards Special Forces team members in some cases, which in its turn needs to be addressed with a lawful response; however, the facts that took place in response to the attacks of special task force members does in no way justify the actions that the police and government resorted to, to disperse the rally. The most egregious fact is that in all three described cases it was not the dispersal of manifestations, but the police attacking people, blocking the roads, and chasing the protestors, as their aim was physical abuse rather than clearing the street, or any of the other purposes stated to justify the events described above.

As for rubber truncheons, water cannon, and tear gas used as special means, although their use is allowed by law, the authorization of the above means is subject to strict restrictions. The use of such means should, in the first place, serve a definite legitimate purpose – it has to be a necessary, proportionate measure unless it is impossible to achieve the purpose with less severe means.

[59] http://www.nio.gov.uk international_law_enforcement_forum__visits_and_meetings_in_washington_august_2004.pdf

According to sub-clause "c", clause 1, Article 12 of the law concerning police procedure, tear gas is used to retaliate an attack from a citizen, policeman, or some protected articles; to eliminate mass disorder; or to apprehend a person who has committed a dangerous action and is taking shelter or operating a vehicle.

In the United States, tear gas is used only on the President's approval and under strictly determined circumstances.

Permission for the use of such special means was given to armed forces displaced in Iraq in order to protect the population. It is forbidden to use tear gas against soldiers who hide behind a civilian. Such means are used in the U.S. to retaliate a mob or to avert an attack during the transport of prisoners.[60] Dispersal of peaceful manifestation by the use of tear gas is considered an excessive use of force in the United States. For example, when the Deputy Sheriff of Humboldt County used tear gas to disperse a peaceful manifestation of Hidwater forest activists, the jury of the California North District Court considered that excessive force was used.[61]

The European Court of Human Rights referred to the issue of the use of tear gas in the case of Oya Ataman vs Turkey. Tear gas is not a chemical weapon. Despite that, its use can cause breathing problems, sickness, vomiting, irritation of the respiratory tract, irritation of the tear sac and eyes, cramps, chest pain, and allergic reactions. A large dose of tear gas can cause necrosis of the respiratory and digestion tracts, lung disease or internal hemorrhages (international standard on the use of tear gas, see the decision of the Strasbourg Court in the case of Oya Ataman vs Turkey, paragraph 18).

In the case of Oya Ataman, tear gas was used against demonstrators who blocked a thoroughfare. The European Court of Human Rights considered the use of tear gas for this dispersal as a violation of Article 11. The court stated that "if demonstrators do not use violent actions, other than that of blocking traffic, the state has to show patience to a certain extent towards the peaceful manifestation, which is a right guaranteed under Article 11 of the European Convention" (paragraph 42).

The dispersal of a meeting by tear gas and rubber truncheons is a legal issue covered under Article 3 (torture, inhumane and degradable treatment). In The case of Oya Ataman, the violation of Article 3 could not be established, as the applicant could not produce medical evidence to prove the side effects caused by tear gas. The use of tear gas causes side effects that have to be proven by medical experts. Besides, The use of tear gas has to serve the purpose of causing suffering and humiliation (paragraphs 23-25).

The European Court of Human Rights touched upon the proportionate use of rubber truncheons and tear gas in the context of inhumane and degradable treatment when it referred to the case of Bacik and others vs Turkey.[62] The court declared that the burden of proof of not using excessive force lies with the state (paragraph 31). Although the case record did not report a prior notification of holding the manifestation, the police still had the opportunity to know about it and take preventive measures. By being peaceful, protestors did not create a threat that required the use of tear gas and truncheons. To exercise the freedom of assembly is a right guaranteed by the Constitution and so cannot be considered unlawful (paragraph 32). The force that is directed to the hindrance of exercising the above right is certainly excessive, and in this case the government fails to justify itself in its actions. Regarding the same case mentioned above, the court underscored the fact that the measures used by the government are dealt with in Articles 10 and 11 of the European Convention of Human Rights.

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[60] http://www.commondreams.org/headlines03/0402-01.htm

[61] John Driscoll, *Excessive force: Jury issues verdict in favor of pepper spray plaintiffs*, EUREKA TIMES STANDARD, April 29, 2005. http://www.aclum.org/pdf/less_lethal_report.pdf

[62] CASE OF BALÇIK AND OTHERS v. TURKEY application no. 25/02. The applicant and his 39 associates held a protest march where they publicized a declaration with the demand to close F-type prisons. The police asked the protestors to disperse themselves and explained that without giving prior notification it was illegal to hold the manifestation. The protestors did not obey the demand and decided to hold a protest march on Itsical Street in Istanbul. The demonstrators were loudly and repeatedly reading the declaration. Police dispersed the participants using truncheons and tear gas. Two of the applicants suffered injuries.

The court judgment states that any kind of assembly or expression can cause the disruption of the everyday pace of public life. For this reason, it was important to take preventive measures (paragraph 49). The use of tear gas and rubber bullets against the persons who express their position by assembling in public places was considered a violation of Article 11 of the European Convention (paragraph 53). **At the same time, the use of rubber bludgeons and tear gas against the two applicants, who on the basis of medical evidence, proved the cause of their health injuries was assessed as a violation of Article 3 of the Convention.**

Thus, the use of tear gas is inadmissible unless the rally loses a peaceful character and becomes violent. On 7 November, The use of violence by demonstrators was reported near Tbilisi Marriot Hotel when they threw a stone at a policeman and damaged a patrol car, as well as the beating of a Special Forces team member on Baratashvili Bridge. But these incidents were preceded by the use of tear gas and rubber truncheons against escaping demonstrators.

If an assembly or manifestation remains peaceful, its protection is guaranteed by Article 11. As for the attack on the police, it happened only after the use of tear gas and rubber truncheons by police. The above conclusion was made by the European Court of Human Rights in The case of Nurettin Aldemir and others vs Turkey.[63] The court stated that the blocking of the central avenue without prior notification does not contain a serious threat to public order, despite the fact that such an action might have caused serious obstacles in the busiest part of the city. Demonstrators were trying to continue their way by force after police had commanded them to disperse and blocked the road. After that, the police used tear gas and rubber truncheons. The demonstrators responded with violence. The European Court considered the results as pubic disorder, because of the demonstrators' actions and the injury of demonstrators and policemen.[64]

In order to evaluate how peaceful the protest march was, the court took into consideration the actions that took place prior to demanding dispersal and the use of tear gas. "The action was initially peaceful, although the government immediately interfered in dispersal by use of force, which resulted in confrontations between demonstrators and police".[65] The court, taking into consideration the peaceful nature of the protest march and the means of dispersal used by the police, considered that the force used by the government was disproportionate and there was no need to break public order as provided by clause 2, Article 11 of the Convention.

When evaluating the 7 November events, we should base our judgment on the standards set by the European Court of Human Rights in the case of Nurettan Aldemir. The protest march was initially peaceful. During these days, protestors never used violence against law enforcement officials. It was the police who first resorted to violence when they broke up the hunger-strikers at the steps of the Parliament building on the morning of 7 November. The second time, police used water cannons and tear gas. Only after that, some protestors damaged a patrol police car on Rustaveli Avenue and threw stones at policemen. However such actions, taking into consideration Nurettin Aldemir's case, cannot affect the peaceful nature of the 7 November protest rally and justify the dispersal. That demonstrators threw stones, damaged a police car, and committed other disorderly conducts was provoked by the use of force of the police.

The same can be said about the dispersal of the protest rally at Rikhe. Protestors brutally beat up a special task force unit member only after water cannons, paint, rubber bullets, truncheons and on some occasions, firearms, had been used.

[63] Case of NURETTIN ALDEMIR AND OTHERS v. TURKEY (application nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02) 18 December 2007: In 2001, the parliament of Turkey was discussing a draft bill about the amendments to the law on trade unions. When the draft bill was being discussed, trade unions of public servants held a protest march against the bill. When the president of the trade unions was reading the address to the participants, police warned the demonstrators that their actions were unlawful and asked them to break up. The protestors blocked the main street of Ankara, Ata Turk Avenue, and were trying to hold the protest march at the Prime Minister's office. Police used rubber truncheons and batons against protestors, as well as tear gas. Some demonstrators attacked the police and threw stones and sticks at them.

[64] NURETTIN ALDEMIR AND OTHERS v. TURKEY paragraphs 43 and 44

[65] Same case, paragraph 45

As for the second reason for the dispersal of the protest rally produced by the government, the appeal to overthrow constitutional order, we have already discussed that in the chapter on freedom of expression. Here we will simply note that the words said by Tina Khidasheli and other opposition leaders ("Let's do away with this government") did not lay any ground for violence or provide any real threat to overthrow power. In order to qualify these statements as appeals, there must exist a real risk of the implementation of unlawful actions. It is doubtful that the people who came out into the street unarmed had a realistic possibility to conduct unlawful actions against Special Forces teams equipped with special means and firearms.

As per sub-clause "b", clause 1, Article 12 of the law concerning police procedure, rubber truncheons can be used to retaliate an attack on a citizen, policeman and/or any protected object; also when detaining an offender or a person violating public order if s/he does not obey the lawful request of the policeman; or to eliminate public disorder caused by masses and groups of people.

Rubber truncheons were used against people by groups of policemen, sometimes against only one person. Rubber truncheons were used to restore public order in the least. Often, force was used against women and minors without any warning and any evidence of violation of public order. Truncheons were used when the rally already dissolved and there was no risk of mass disorder. The attempt to break up the protest rally definitely acquired a criminal character as a result of the kidnapping of the leader of the People's Party, Koba Davitashvili. We consider that the action against Davitashvili was an unlawful restriction of his liberty (an act covered under Article 143 of the Criminal Code), which was presumably directed at the unlawful breakup of the assembly and manifestation through the use of violence (under Article 161 of the Criminal Code).

DISPERSAL OF THE RALLY ON 8 NOVEMBER IN BATUMI

7 November 2007, was not an unfortunate exception in terms of the use of excessive force by law enforcement agencies. Peaceful demonstrators once again became victims of their brutal treatment. The actions of these law enforcers have been recorded using mobile phones.

At 9 o'clock in the morning, on 8 November 2007, in Batumi, a protest action was held in front of Shota Rustaveli State University by the students of the university and Batumi Naval Academy. The rally was dispersed by persons dressed in special uniforms and wearing masks. These special task force unit members cornered the protestors and beat them with rubber truncheons, which lasted several minutes. After that, tear gas was used. The protestors ran in the direction of the # 2 Batumi secondary school, all the while being chased by special task force unit members. Part of those who escaped took shelter in the building of a kindergarten, and some 20-30 people rushed into school #2. The special unit members chased those who could not manage to escape.

On 8 November 2007, four protest participants, Nika Kakhidze, Giorgi Beridze, Lasha Bazhunashvili and Mamuka Mamulashvili, were hospitalized in Batumi #1 clinical hospital. They suffered various bodily injuries. Giorgi Beridze had a hemorrhage in the left temple; Nika Kakhidze had a hemorrhage between the right temple and crown of the head; Nika Mamulashvili had pains in the chest; and Lasha Bezhunashvili was beaten on the back and in the face, causing his glasses to be broken, a scratch on his brow, and a contusion of the right eyeball.

A participant of the rally, who was on her 7th month of pregnancy, was taken to the Charkviani maternity home. As a result of the use of force at the dispersal, the fetus was traumatized but was fortunately saved. Another pregnant woman was also injured as she was made to run up the stairs of the university building to escape. Unfortunately, it was impossible to save the fetus.

On 7 November 2007, the prime Minister informed the public about the decree of a state of emergency, which was meant to be valid only in Tbilisi and not in the whole territory of Georgia. The above information was aired on 8 November by the Public Broadcaster. If the Batumi protest march participants had known about the state of emergency as they stated, they would not have held the protest march on other territory of Georgia as it would have been unlawful, and consequently the force used against the protestors would be legitimate, although the force used was clearly disproportionate. The use of violence against the cornered and helpless protestors cannot be justified by the unlawfulness of an action or the state of emergency. This is not only the interference of the freedom of assembly, but also the use of torture and inhumane and degrading treatment. Under clause 1, Article 46 of the Constitution of Georgia, and clause 2, Article 15 of the European Convention, even at the time of a state of emergency, deviation from the restriction of torture, inhumane and degrading treatment is inadmissible.

According to clause 3, Article 12 of the law concerning police procedure, physical force and use of other special means is prohibited against women bearing apparent signs of pregnancy, unless they are carrying out a group or armed attack, show armed resistance, or are posing a threat to a policeman's health and life, and it is impossible to avert the attack by other means. It is doubtful that the two pregnant women in Batumi were armed at the rally, as they were never brought to court for the illegal storing of arms or showing resistance against the police. The same is true of the pregnant Imedi journalist, Diana Trapaidze, who was subjected to inappropriate treatment the day before.

The European Court of Human Rights stated in the case of Ergie vs Turkey that the use of such means against a citizen during the dispersal of a rally under a state of emergency that might threaten a life is protected by Article 2 of European Convention. In the given case, The use of force seriously abused her health and the right to life of the fetus. That is why the action of special task force is not proportionate with the purpose and cannot be justified by a state of emergency.

Article 15 of the European Convention does not envision the deviation from the right to life under the state of emergency. A fetus originated as a result of ovum fertilization by sperm in a woman's body already has the right to live.[66] This does not mean the right as established by the Civil Code, which states that a human originates not upon conception, but upon birth. The right of a fetus to life means that it can be aborted by precise observance of norms regulating abortion as prescribed in the Georgian law concerning healthcare. Any deviation from the above norm is considered to be a disproportionate interference into the right to life of a fetus, and consequently in violation of Article 2 of the European Convention of Human Rights.

RECOMMENDATION

1. Taking into consideration the case law of the European Court, Georgian courts must restrain themselves from the application of Articles 166 and 173 of the Code of Administrative Violations, unless there is credible evidence of violence used by a protest action participant.
2. Due to the usage of rubber bullets, the issue of political responsibility of the Minister of Internal Affairs, Mr. Vano Merabishvili should be raised. Also, the caseshould be investigated and all persons who made the decision to use rubber bullets should be brought to criminal trial, as well as those who executed the above unlawful order.
3. The Office of the Prosecutor General should ensure the effective implementation of the investigation into the cases of those injured during the 2-7 November events: Rati Maisuradze, Koba Chitanava, Nika Machutadze, Bichiko Mshvidobadze and others.
4. To establish the identity of those law enforcement officials who violated the principle of neutrality of police structures and expressed their support of one political leader by cheering, being abusive and using anti-Semitic expressions towards others, in order to raise the issue of their disciplinary responsibility.

[66] Konstantine Kublashvili. Fundamental Rights. Publisher GCI Tbilisi, 2003, p. 124

5. The Office of the Prosecutor General of Georgia should study the issue of proportionality of application of tear gas, rubber bludgeons and special paint in each particular case.
6. The inappropriate treatment of journalists during the dispersal of the protest rally should be studied thoroughly. Video materials and equipment that were taken away from journalists should be returned to them.
7. A preliminary investigation should be initiated into the facts of exceeding official power, and the inhumane and degrading treatment towards Avtandil Jorbenadze, Nino Soselia, Dachi Beridze, Teimuraz Topuria, Otar Mujirishvili, Vakhtang Inasaridze, Nika Didishvili, Giorgi Topuria and other victims of the 7 November events. The law enforcement officials concerned should be brought to criminal trial.
8. The grounds by which the militarized units of the Defense Ministry of Georgia and special task forces of the penitentiary department of the Ministry of Justice of Georgia took part in the dispersal of 7 November rally should be cleared up, and the officials concerned should be held responsible.
9. The Deputy Head of Samegrelo-Zemo Svaneti regional department of the Ministry of Internal Affairs, Megis Kardava, and Zugdidi Head of the Internal Affairs department, Koba Narsia, should be brought to criminal trial for having displayed their negligence of duties by inflicting physical abuse on opposition representatives on 28 October 2007, in Zugdidi.

3 FREEDOM OF SPEECH AND EXPRESSION

Violations of freedom of speech and expression, and restrictions on independent media became especially widespread and severe in the second half of 2007. During the reporting period, the government used force to disperse the media, destroy its property and ban broadcasting, all without any legal ground.

The Public Defender's Office studied numerous incidents involving the police, who obstructed journalists from performing their duties, confiscated their video cameras, and destroyed them, including the videotaped materials.

There have been cases of inhumane and derogatory treatment towards journalists, including threats of violence, intentional physical abuse by using rubber batons, specifically being targeted and shot with rubber bullets and tear gas capsules, and cases of censorship and interference in their editorial independence.

Furthermore, problems related to the freedom of speech emerged in other spheres, such as the right to privacy and airing biased coverage of pre-election processes.

All the abovementioned instances have partially been reflected in assessments made by international organizations. For example, according to a reputed international NGO, Freedom House, Georgia remains "partly free" in the former-Soviet region. Freedom House highlights the areas in which Georgia regressed, and freedom of expression is one of them; and it concludes that, the "media environment in Georgia falls short of international standards". Freedom House was especially interested in the problems related to the only nationwide pro-opposition broadcast TV Company, Imedi, which occurred at the end of the year. Freedom House's indicators also included the use of police force in November, and the imposition of emergency rule in the country, which entailed the suspension of media activities.[67]

Freedom House also focuses on the recommendations made by the Election Observer Mission of the democratic institutions, and the OSCE Office for Democratic Institutions and Human Rights, with regards to the imbalance and absence of a pluralistic environment in media. It specifically states that "the campaign coverage in news programs lacked balance on most monitored TV stations, with Mr. Saakashvili generally receiving the most coverage."

[67] http://www.freedomhouse.hu/index.php?option=com_content&task=view&id=122

ON THE RAIDING AND SUSPENSION OF IMEDI TV BROADCASTING

On 7 November 2007, around 20:20, Giorgi Targamadze, head of Imedi TV's Political Programs, entered the studio, took the Kronika news program anchors' seat and addressed the viewers. He said special task forces entered the premises of the TV company and expressed hope that everything would end well. Following this announcement, Imedi was taken off the air. According to the accounts of journalists there, members of the special task force twisted their hands and made them lie face down on the floor at gunpoint. All mobile phones were confiscated from the journalists. Members of the special task forces did not present any documentation proving the legitimacy of their presence on the premises. Imedi TV employees were not allowed to move freely for about half an hour. Then they were ordered to leave the premises, one at a time, and proceed to the yard where other law enforcement representatives made the staff lie face down on the ground. They were then told to leave the premises.

Later in the night, during the same day at 22:32 hours, a state of emergency was declared in Georgia. It was not until 13 November that it came to light that there was no court order that legally allowed the government to seize Imedi LTD property and suspend their broadcasting license.

Considering the bizarre nature of the events related to this broadcasting suspension, it took some time to decide whether it was possible to prepare a serious legal judgment regarding the suspension. By using common sense, the Imedi TV broadcasting license suspension was outright illegal, and the reason behind it was purely political.

Court Decision Date

The order of Judge Giorgi Shavliashvili of the Board of Criminal Cases of Tbilisi City Court on seizing the Imedi property and suspending its license is dated 7 November 2007. The order quotes an investigator who refers to Badri Patarkatsishvili's public address and describes the events that took place at Rikhe.

According to the chronological account of the development of events in Tbilisi on 7 November 2007, published on the official website of the Parliament of Georgia, Special Forces of the Ministry of Internal Affairs dispersed the participants of the protest rally at Rikhe at 17.30 using water cannons and tear-gas. Patarkatsishvili's announcement was initially aired on Imedi TV at 18.28. Since the investigator's testimony above refers to the developments at Rikhe, and Patarkatsishvili's announcement that created "an immediate and genuine threat that could lead to a further escalation of the situation, which could topple the government", it is logical to assume that the testimony was prepared after the events unfolded. Special operations on the suspension of Imedi TV's broadcasting was carried out on the same day at approximately 20.00 hours; while, according to the chronology of the events published on the website of the Parliament of Georgia, Imedi TV was off the air at 20.30 hours.

Hence, within this short period of time (around 2 hours) this is what happened: the investigator identified the criminal characteristics of the reports aired on Imedi TV; concluded that the announcement made by Patarkatsishvili, aired on Imedi TV at 18:00 hours, had implications that the riot was inevitable; thus Imedi TV would play an instrumental role in the protests and so the investigator became convinced that it was necessary to seize Imedi TV's property to avoid a possible crime. The investigator drafted a document, which gave a detailed account of the events that occurred between 2-7 November (we assume it would take a minimum of 40 minutes to draft and type such a document), proceeded to the City Court (30 minutes distance) and submitted it. The judge then immediately discussed and agreed with the analysis in the document, following which, the investigator mobilized law enforcement personnel (due to the haste, some of them were dressed in civilian attire) to carry out the special operation, with the purpose of neutralising the "possible instrument of riot" – in this case, the Imedi TV Company.

The court's order on the license suspension was handed to TV company management on 13 November, six days after it was issued. When asked why the document was not presented on the day of the storming of Imedi TV by the special task force (which would have avoided moral and material damage suffered by the TV company and its personnel, which we will discuss later in more detail), the investigator G. Kajaia stated that they could not locate Bidzina Baratashvili, the general Director of Imedi TV, to deliver a copy of the judge's order. Consequently, when the interested party was made aware of the court order, the72-hour deadline for submitting an appeal had long expired.

Without further elaboration, the above description would indicate that the court order did not exist on 7 November, and was belatedly issued only after the storming. We assume that the order was made post-facto in order to bring the barbarous actions carried out against Imedi TV Company within a legal framework.

We started studying the court order as soon as we obtained a copy on 15 November. We soon had our first doubts that the license suspension was illegal and against the norms defined by the Criminal Procedures Code.

Legal Grounds for the Suspension of Broadcasting License

The second sentence of Paragraph 1, Article 6 of the Law of Georgia on National Regulatory Authorities states that "only the regulatory authority is fully authorised to provide the issues delegated on such an authority by the appropriate law". According to Paragraph 3 of the same article, "any person's attempt to exercise jurisdiction upon the sphere of authority of the independent regulatory body is illegal, and the results will have no legal force".

According to Article 3 (sub-point "K") of the above mentioned law, "an entity" refers to "physical persons and legal entities having institutional/legal form, as well as authority bodies, institutions of executive authorities, institutions of local government and management, and other government institutions".

As we can see, the intrusion of any state mechanism, which includes judicial courts, within the jurisdiction of an independent regulatory body is illegal and the outcomes are devoid of any legal effect.

Suspension of a broadcasting license falls within the authority of an independent national regulatory body, particularly, the National Commission of Communications. The Law on National Regulatory Authorities also states that the licensing authority is held by the regulatory body without any external interference:

According to Article 10 on Licensing and Permissive Authorities

1. An independent regulatory authority has full authority to issue, suspend, extend, modify and revoke licenses within the scope of its authority; and
2. It is inadmissible to intervene and control the licensing and permission authority of an independent regulatory authority.

Also, according to Article 36 of the Georgian Law on Broadcasting, the commission is the only entity authorized to issue broadcasting licenses and the Commission modifies, renews, suspends, or revokes licenses according to this law.

The "established rule" mentioned in Article 36, and according to paragraph 4 of Article 38 of the same law, is the rule of public administrative procedure, which states that "licenses for frequency, spectrum-based broadcasting shall be issued, modified, suspended and revoked following public administrative proceedings; licenses for activities by the frequency spectrum, as well as by terrestrial stations of broadcasting satellite systems or cable networks, shall be suspended and revoked under the same procedures."

Considering the above-mentioned articles, it is apparent that the suspension of the broadcasting license by the court (i.e. application of criminal procedural norms for its suspension) is illegal on two counts. First, the court does not represent an authorized body, and by issuing the order to suspend the license, it interfered with the competency of an independent regulatory authority, which, as we have seen, is classified illegal by paragraph 3, Article 6 of the Law on Independent Regulatory Authorities. Second, the rule of public administrative procedure in the special law was not applied, which is also a violation.

> To address all doubts regarding the legitimacy of the suspension, we tried to locate the decision of the National Commission of Communications; however, we could not find anything on the website of the Commission on the evening of 15 November. The Imedi TV administration remained unapprised of the existence of such a document until 15 November. We had decided to request the relevant information directly from the Commission to help clarify its position on the suspension of the license, but two statements about Imedi TV simultaneously appeared on the website of the Commission on the evening of 16 November.
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> The first one was Decision #673/18, entitled, "On Cautioning and Penalizing Teleimedi Ltd.", and dated 7 November 2007. According to the verdict, on 7 November, the department of the Office of the Commission (G. Ratishvili), in accordance with the Law of Georgia on Broadcasting, Article 5, Para 3 – E, carried out an inspection of the activities of the broadcasting companies and produced an inspection report, which explains that on 7 November 2007, Teleimedi Ltd. aired Patarkatsishvili's public address. The decision went on to note that when considered against the backdrop of the sentiment prevailing in the country, the address should be viewed as a clear support and instigation for the further escalation of illegal developments, which are deliberate actions, contributing to obvious, direct and significant threats of illegal outcomes (the disruption of constitutional order).
>
> The Commission considers the mentioned action to be a clear and direct threat, as a well as a call for violence, as defined by paragraph 2, Article 56 of the Law of Georgia on Broadcasting, and a violation of license terms, as per paragraph 1, Article 70.
>
> As per Article 71 of the Law of Georgia on Broadcasting, in case of violation of Georgian legislation or license terms by the license holder, the commission is authorized to caution the license holder in writing and impose a fine.
>
> In accordance with Article 95 of the General Administrative Code of Georgia, "in urgent cases, when delaying the issuance of an administrative act may substantially undermine public or private interests, an administrative agency may render the decision regarding the issuance of the act without complying with paragraphs 1 and 2 of this Article".

It is not quite clear as to why the TV company did not receive any preliminary cautioning, especially if the commission was receiving public complaints, as per Commission's Decision #673/18, which noted, "since November 2, the commission has been receiving numerous calls of concern from Georgian citizens (customers) that the Imedi broadcasting company is intentionally escalating the political situation in the country and a genuine threat of turmoil is being created".

Representatives from the Public Defender's office requested clarification of this issue from member of the Commission, Mr. Zurab Nonikashvili, who, along with another member of the Commission, D. Pataraia, were the signatories of the mentioned decision. According to Mr. Nonikashvili, the rationale was that until 7 November the Commission had not observed any violations in Imedi programs: "Although the public calls of concern were received since 2 November, the commission found the implications for violations only in the broadcasting of 7 November, which formed the basis for taking such decisions". Hence, the key – if not the only reason that caused the sanctions to be taken against Imedi – was the airing of a statement made by Patarkatsishvili.

Meanwhile, based on Decision #673/18, "Regarding the temporary suspension of 16 broadcasting licenses of Teleimedi Ltd.", dated 8 November 2007, the commission suspended the Teleimedi's license for three months. The decision stated that "the license holder was obliged to comply with the requirements as soon as possible, as stipulated by Decision #672/18 of 7 November 2007 (Teleimedi Ltd. was promptly informed of the decision of 7 November 2007 via telex); however, this did not take place. Furthermore, Patarkatsishvili's public address, defined as restrictive by paragraph 2, Article 67 of the Law of Georgia on Broadcasting, was aired again".

We got in touch with Mr. Bidzina Baratashvili, General Director of Teleimedi, who informed us that nobody had communicated any kind of warning to him, and that he received the copies of the verdict only on 16 November.

Even if we assume that the Imedi TV company was informed about the warning as early as 7 November, the immediate imposition of sanctions and penalties by the Commission through a single decision was still against the law, as per Article 71 of the Law on Broadcasting, which states that the imposition of a fine is possible, only in cases when the warnings are not being heeded.

Zurab Ninokashvili provided his explanation to representatives of the Public Defender on this subject and stated that "the Commission, acting within the authority defined by the Common Administrative Code of Georgia and having assessed public and private interests, concluded that the broadcasting of Teleimedi Ltd. contained obvious signs of appeal to violence, and the continuation of its activities could have resulted in uncontrollable consequences and turmoil. Resorting to alternative means of warning, such as a sanction, would not eliminate the potential threat, which is why the Commission, acting in the public interest, took all measures necessary to temporarily suspend broadcasting. Consequently, the commission carried out complex measures of cautioning, penalizing and temporarily suspending Imedi's license, which were subsequently reflected in the two legal acts issued by the Commission".

If we assume that on 7 November, immediately upon the publication of Patarkatsishvili's statement (i.e. at 18:00 hours), the Imedi TV company received a warning for the illegitimacy of the given statement, then that means that the Commission could have only imposed a penalty in the case of repeated airings of the same statement by Imedi TV. In that case, it should have become a subject of another decision even if the violation took place on the same day. Neither public interest, nor the implementation of "complex measures" justifies the failure to comply with the procedures defined by the law.

Moreover, Decision #672/18 was erroneously based on paragraph 2, Article 56. In accordance with Article 56 of the Law of Georgia on Broadcasting, response to violations should have been made within the framework of internal structures as defined by paragraph 1 of Article 14 of the same law. In addition, paragraph 2, Article 591 directly prohibits the Commission to consider claims arising on the basis of Article 56.

We are particularly disturbed by the fact that the Commission's decision of 8 November states that in spite of the warning, Imedi re-aired Patarkatsishvili's statement, which resulted in the imposition of the further radical sanction – suspension of its license for a three month period.

The Commission deliberately overlooked the fact that due to the storming operation, theImedi TV Company could not have physically resumed operations as of 20:30 hours on the previous day. Considering these circumstance, the commission could have restrained itself from suspending Imedi's license since on the previous day, 7 November, at 20:30 hours, Imedi went completely off the air as a result of the raid by special task forces. Therefore, there was no threat of having "appeals instigating violence" repeatedly aired by the company. Not to mention that the declaration of the state of emergency at 22:30 hours again on 7 November prohibited the TV Company from airing news and political statements. Hence, by 8 November there were no necessary pre-conditions for the suspension of the license, which, according to paragraph 2, Article 73 of the Law on Broadcasting implies repeated non-compliance by a TV broadcaster with the requirements of the law. At the same time, the commission should have taken into account paragraph 3 of the same Article, according to which, "a license is suspended before eradication of violations specified in paragraph 2 of this Article, but within three months of a decision on the suspension of the license". Thus, as early as 7 November, actions to stop violations from occurring stripped the Commission of its authority to make decisions with regards to license suspension.

According to Inspection Report #20 of the Georgian National Communications Commission (GNCC), the commission carried out monitoring of Teleimedi Ltd. at 17:40 hours on 7 November 2007, and a respective

report was compiled. As stated in the report, "it is confirmed that Teleimedi, on several occasions, aired Arkadi (Badri) Patarkatsishvili's public address".

The same day, the GNCC convened in a special session (session #66) that was chaired by Zurab Nonikashvili, the GNCC Chairman, and was attended by secretary N. Janelidze, D. Pataraia, G. Ratishvili, G. Sulukhia, K. Kurashvili, and V. Shugliashvili.

According to the minutes of the meeting, there was a hearing of the report by Z. Nonikashvili on cautioning and penalizing Teleimedi Ltd. Mr. Nonikashvili noted that the GNCC Broadcasting Department, in compliance with the Georgian Law on Broadcasting, Article 5, paragraph 5, sub-paragraph E, carried out the inspection of the broadcasting company's activities on 7 November 2007, and compiled a respective report, which explained that on 7 November 2007, Teleimedi Ltd. aired Patarkatsishvili's public address. When considered against the backdrop of the sentiment prevailing in the country, it should be qualified as a clear support and instigation for the further escalation of illegal developments, which is a deliberate action, contributing to obvious, direct and significant threats of illegal outcomes".

Mr. Bidzina Baratashvili, General Director of Teleimedi Ltd., submitted a video recording of the public address made by Patarkatsishvili on 7 November 2007, which proves that the given public address was first aired on Imedi at 18:28 hours on 7 November, 2007. The GNCC Inspection Report #20 was compiled at 17:40 hours and the GNCC special session was convened at 18:00 hours. Thus, G. Ratishvili pre-defined Patarkatsishvili's public address that aired on Teleimedi 40 minutes earlier; while Zurab Nonikashvili convened a special session of the GNCC and imposed a warning and penalising sanctions on Teleimedi for actions that took place only 28 minutes later.

The Public Defender believes that such an action has the aspects of criminal activities defined by the Georgian Criminal Code, Article 341, including, "falsification in service, i.e. entering false data or records into an official document or register, or the drawing up or issuance of a false document, as well as forging of an official or private document existing in the file of an enterprise, establishment, organization, by an official or a person equal thereto, perpetrated for mercenary purposes or by any other personal motive".

On the part of the GNCC staff, falsification in service was expressed by incorporating false records in an official document, and there is reasonable suspicion that personal motives might have perpetrated such actions.

The Public Defender applied to the Prosecutor General with the request of launching a preliminary investigation on this case.

As we can see, GNCC Investigator M. Kajaia, and Judge G. Shavliashvili, concurrently came to the conclusion that Patarkatsishvili's public appeal, aired by Imedi, contained "obvious, direct and significant threats of disrupting the constitutional order, instigation of unrest or appeal to violence" to such a serious extent that it was necessary to suspend the broadcast of the TV company airing the public appeal referred to.

Thus, all means were employed to eliminate every opportunity for Imedi TV to resume its operations, including the seizure of property, suspension of license, destruction of equipment, switching off the signal from the television tower and severing satellite dish cables. Though, as we have already mentioned, it is obvious that these actions did not take place in the given chronological order.

There is a reasonable doubt that the dates on the named documents are indicative of falsification. The primary information provided to the public was that Teleimedi being taken off the air was carried out based on the presidential decree and the measures implemented during the state of emergency. However, on 13 November, it became evident that Teleimedi's broadcasting suspension was based not on the state of emergency, but rather the court order of 7 November 2007, to seize the property.

Let us forget about the chronological divergences discussed above, and the unjustified instructions restricting the broadcasting, as well as the delinquent forms of their implementation, and let us assume that the broadcasting licenses can be suspended, and consider the contents of the order discussed (though it is obvious that considering the array of speculations our judgment can only be of formal character).

Legitimacy of Suspending the License

On 13 November, at 16:10 hours, M. Kajaia, Senior Investigator of the Investigation Department of the Office of the Prosecutor General of Georgia, handed a copy of the order dated 7 November 2007, to the General Director of Teleimedi Ltd., according to which the property of Teleimedi Ltd. was seized, and the owner and tenants were restricted to enjoy property rights. The order was issued by the Judge of Tbilisi City Court, G. Shavliashvili.

As clarified by the order itself, the court ruling was based on the Criminal Procedure Code of Georgia, Articles 140, 190-194 and 200.

Article 190 of the Criminal Procedural Code of Georgia defines the purpose and grounds for seizure. The court based its ruling on the second clause of the Article 190, stipulating the following, "the procedure of seizing property stipulated by the Code shall also apply to the perpetration of one of the crimes, or other especially grave crimes, as stipulated by Articles 323-330 and 331 of the Criminal Code of Georgia, and for the purposes of their suppression, provided the data is sufficient to prove that the property is being used for criminal activities".

For the analysis of the court ruling, it is important to evaluate the legitimacy of the ruling of seizure by the court, and to what extent it was in compliance based on the objectives and justifications stipulated by Article 190, Clause 2 of the Criminal Procedure Code.

From the content of the Article 190, Clause 2 of the Criminal Procedure Code, it is apparent that the purpose of seizing a property should be defined by one of the crimes defined by Articles 323-330 and 331 of the Criminal Code of Georgia, other serious crimes, or in the case of having preliminary information regarding their preparation and for their prevention; while the basis for application is "sufficient information for this property to be used for committing crime".

In this specific case, the investigator's solicitation for issuing a court order on property seizure, to put it across mildly, did not have any factual grounds. As it is clarified by the description of the court order, the investigator based his solicitation on the following arguments:

"On 2 November 2007, a number of political movements and parties registered in Georgia set up protest rallies in Tbilisi, on Rustaveli Avenue, in front of the Parliament of Georgia, with the initial goal of persuading the Government to comply with their political demands regarding forthcoming elections. The protest actions were organised, supported and financed by businessman Arkadi Patarkatsishvili, who, in his TV and other public appearances, clearly confirmed the fact of financing the opposition parties and expressed extreme opposition towards the legitimate Government of Georgia".

"On 7 November 2007, on the grounds of violation of the requirements stipulated by the Georgian Law on Public Gatherings and Manifestations, namely that formal requirements stipulated by the Law were not met and local governance bodies were not duly informed; consequently, the protest action was illegal. Furthermore, the movement of public transport was intentionally restricted, mass consumption of alcoholic drinks was also observed during the rally, which is prohibited by the law, temporary constructions were illegally set up on Rustaveli Avenue, and there were instances of forceful resistance (even by the organisers of the rallies) at the attempt of dismantling the constructions by the law enforcement agency representatives. Despite the

legitimate warning by the municipality, the organizers of the meeting did not comply with the requirements of the law, which was to stop the rallies in case of mass violations and take actions to disperse the participants; thus, the law enforcement authorities took absolutely legitimate, adequate and comparative measures for the prevention of illegal actions and restoration of civil order".

"Active encouragement by the organisers of the rally resulted in incidents of violence against law enforcement representatives and mass disobedience to their legitimate requests, which also resulted in mass riots, including illegally breaking into the Parliament premises. After law enforcement forces restored order on Rustaveli Avenue, following the calls by the organizers of the rally, the protesters moved to the left side of the River Mtkvari, called Rikhe, and continued rallying there. Here again there were incidents involving violence against law enforcement personnel and mass disobedience on their legitimate demands. As a result of the described developments, over ten law enforcement representatives suffered various physical injuries."

"On 7 November 2007, Arkadi Patarkatsishvili, being involved in conspiracy , spoke on Imedi Television, a TV company practically controlled by him, and made a public address. Considering against the backdrop of the sentiment prevailing in the country, it created an obvious threat for the further escalation of the developments and toppling the government, which was a further instigation to the mass riots taking place in the capital".

"For the actions described above, Patarkatsishvili was declared a suspect in committing the crime stipulated by the Criminal Code of Georgia, Article 315, paragraph 1, on 7 November 2007."

The order states that the investigator based his demands of solicitation on the following circumstances, "mass riots are taking place in the capital of Georgia, there are incidents of widespread violence and resistance against police, the investigation supposes that there is a genuine danger of further escalation of these developments and becoming uncontrollable; therefore, for the purposes of the containment of an extremely serious crime – the toppling of the Government through riot – we requested to seize the property of Teleimedi Ltd. located at 5 Ljubljana Street, Tbilisi, as there is sufficient data and reasonable speculation that the property would be used for the above-mentioned purposes. The speculation is further supported by the fact that Imedi TV was used as a main instrument for organizing rallies, which later turned uncontrollable, resulting in mass riots in the capital and creating a genuine threat of toppling the Government."

In order to clarify whether there were real grounds stipulated by paragraph 2, Article 190 of the Criminal Procedures Code of Georgia, we must understand whether the following took place in this specific case:

- one of the crimes stipulated by the Articles 323-330 and 331[1] of the Criminal Code or their perpetration; or
- other extremely serious crimes or their perpetration.

Furthermore, sufficient data must exist that proves the property was or would be used for criminal purposes.

In this specific case it is apparent that there was neither any data pertaining to any of the crimes stipulated by the Criminal Code Articles 323-330, 331, nor an investigation launched. Consequently, in order to use the measure of seizure, it was necessary to have other grave criminal offences committed or perpetrated.

In order to apply Article 190, clause 2, the following preconditions were necessary:

1. The court should have had sufficient data based on the critical evidence to prove that there was a considerable likelihood of using the specific property (Teleimedi property comprising of premises, equipment, and nonmaterial goods in the form of a license) for perpetrating criminal actions;

2. There should have been a case of an especially grave crime (to be prevented), or the perpetration of such crime (so that seizure of property would prevent it); and
3. The mentioned property should have been an effective instrument for committing a crime.

In order to define whether these pre-conditions existed at the time of the court hearing, it is necessary to discuss each of them separately.

1. Did the court have enough data proving that Imedi property would be used for committing a crime?

According to Article 193, clause 2 of the Criminal Procedure Code, "the prosecutor, or a designated investigator, prepares and submits an evidence-based solicitation on seizing property as stipulated by Article 140 of the same law, and the solicitation should contain the necessary information for obtaining a court order".

According to the mentioned rule, the prosecutor or investigator designated by the prosecutor is obliged to submit to the court an evidence-based solicitation, confirming the high likelihood of the authenticity of the reported facts.

It is based on this solicitation that the court makes its decision in accordance with Article 140 of the Criminal Procedure Code of Georgia. According to the first clause of the article, based on the solicitation submitted by the prosecutor, or investigator designated by the prosecutor, magistrate judge, or in case of his/her absence, the respective District (Civil) Court, issues an order on seizing the property.

In accordance with clause 11 of the same article, upon verification of the fact-based solicitation, the judge issues an order on the application of compulsive measures of the criminal procedure. However, if the case does not contain either a formal or factual basis for applying such measures, the judge issues a justified order on the rejection of the application for employing compulsive measures of criminal procedure.

Consequently, it is the judge who is obliged to prove the existence of both formal (procedural) and factual (evidence-based) circumstances, thus requiring the use of compulsive measures of criminal procedure.

According to clause 8 of the same article, a judge has the authority to summon and question the person whose evidence serves as grounds for solicitation, and a judge can request the person soliciting to present necessary documentation and factual evidence for verifying the solicitation.

If resorting to compulsive measures of criminal procedure, the court is obliged to provide justification regarding the factual circumstances that served as the basis for the court decision. In this specific case, the court order describes the circumstances reflected in the solicitation submitted by the investigator and the judge has familiarized himself with the materials of the criminal case, considered the solicitation justification, concluded that the solicitation was submitted in compliance with the procedural rules and there were valid grounds for its approval. The judge cannot specify as to which concrete factual circumstances served as the basis for his conclusion; that it was precisely the Imedi TV company property that would be used for criminal actions. The investigator's speculation that Patarkatsishvili's public address aired by Imedi TV would turn the TV company into the instrument of crime could not be perceived as a valid argument. The court could have been driven to such a conclusion only by the investigator's "outstanding abilities of convincing the judge", in which case the judge would have specified the "sufficient data" that would prove that the Imedi TV property would be used for committing crime. The court order clarifies that the Judge could not specify the concrete data, which is sufficient to raise reasonable doubts that it was specifically the Imedi TV company property that was used to commit criminal actions defined by Article 325, clause 2 of the Criminal Code of Georgia.

Hence, the fact of issuing this court order, without providing any factual circumstances (which would prove the speculations), can be associated only with the "outstanding abilities "of the investigator M. Kajaia. Otherwise, there are no known grounds to believe that it was necessary to seize Imedi property to suppress the crime.

Consequently, the judge did not have sufficient grounds to order the seizure of Imedi Ltd. property.

2. Did any especially grave crime (that had to be suppressed) actually take place, or was being perpetrated (so that it was required to seize the property to prevent the crime)?

As it was already noted, in compliance with Article 140, clause 11 of the Criminal Procedure Code of Georgia, following the verification of the solicitation justification, the judge issued an order regarding the use of compulsive measures of criminal procedure. However, if the case does not contain any grounds – formal or factual – justifying resorting to such a measure, the court makes a decision to reject solicitation for the implementation of compulsive measures of criminal procedure.

Criminal Procedure Code links the use of compulsory measures to two circumstances:

1. When there are factual grounds for its application; and
2. When there are formal grounds for its application.

We have already discussed whether there were any factual grounds for using compulsive measures of criminal procedure. It is equally important to consider whether there were any formal grounds for using compulsory measures.

In this specific case, for formal grounds to exist, as stipulated by Article 190, clause 2 of the Criminal Procedure Code of Georgia, there should have been at least one of the following factors present:

1. Especially grave criminal offence (that should have been suppressed); and
2. Perpetration of especially grave criminal offences (so that property seizure would prevent it from happening).

These are precisely the circumstances that are linked with the possibility of resorting to property seizure, as stipulated by Article 190, clause 2 of the Criminal Procedure Code of Georgia.

At the same time, it is important to note that the crime, committed or perpetrated, should be of an especially grave stature.

According to Article 12, clause 4 of the Criminal Code of Georgia, "an especially grave crime shall be the crime of aforethought, or a crime of negligence for practice, whereof the sentence provided by this code exceeds ten years of imprisonment or covers a full life term".

In this specific case, as revealed by the narrative part of the court order, a preliminary investigation was underway resulting in rendering businessman Patarkatsishvili a suspect on 7 November 2007, in compliance with Article 315, clause 1 of the Georgian Criminal Code (collecting, keeping of the object, document, information, or any other data containing the state secrets of Georgia, or transferring thereof to a foreign country, foreign organization or their representative, or extortion or transference of other information by commission of the surveillance of a foreign state or a foreign organization to the detriment of the interests of Georgia). The action is punishable by prison sentences ranging from five to eight years, and falls within the category of grave crimes.

As it was already mentioned, the court had the procedural authority to resort to compulsive measures of criminal procedure if there was a high probability of committing an especially grave criminal offence.

Let us assume that Patarkatsishvili intended to "organize or lead mass disorder involving violence, pogrom, arson, use of arms or explosive device or armed resistance against government representative", as stipulated in Article 225 of the Criminal Code of Georgia, and falls under the category of especially grave crimes. The court did not have authority to implement measures stipulated by Article 190, even if the above speculation was true.

Such measures can be implemented only when there is evidence (which should provide grounds for limiting one's rights) that an especially grave criminal offence is being perpetrated or is conditional on the use of the specific property. Otherwise, the decision authorising property seizure is against the law.

According to Article 263 of the Criminal Procedure Code of Georgia, "grounds for a preliminary investigation is information regarding the crime provided to an investigator or a prosecutor by a physical or judicial person; state, self-governance or governance bodies; state officials; investigating authority; offender voluntarily handing himself/herself to the police; or the information was obtained from media sources, or facts revealed as a result of investigation conducted by a criminal procedure body, except the cases when the law enforcement representative serves as an eyewitness or an injured party; and the facts revealed as a result of investigating criminal offence".

In the case of Teleimedi it can be said that the judge based his decision solely on the speculation of the investigator, who stated that in the near future Patarkatsishvili could have committed a crime stipulated by Article 315, clause 2 of the Georgian Criminal Code. To prove this speculation, the investigator was unable to provide any arguments. Otherwise, it is not quite clear, as to why Patarkatsishvili was not rendered a suspect based on clause 2, Article 315 of the Criminal Code of Georgia.

Nevertheless, the judge based his decision only on this "farsighted" speculation, agreeing that Patarkatsishvili could indeed commit an especially grave criminal offence, such as conspiracy, by using Imedi TV company property, and found it sufficient to seize Imedi property and practically disrupt its broadcast. The investigator did not provide any argument proving that through the utilization of Imedi Ltd. property, Patarkatsishvili was perpetrating an uprising with the aim of toppling the government.

Decisions similar to this one would have been if the courts of the United States of America seized all aeroplanes following the September 11 terrorist attacks so that terrorists would not able to crash planes into any more buildings; or if all the transportation means would be seized because there exists M. Kajaia's speculation that they might be used for committing an especially grave criminal offence.

It should be noted with particular emphasis, that when investigator M. Kajaia in his solicitation was describing the "further instigation of mass riots taking place in the capital", and considered it necessary to "suppress attempts of toppling the government through uprising" – and when the same was repeated by Judge G. Shavliashvili in his order – by that time there were no pockets of riotous people in the town and special task forces cleared both Rustaveli Avenue and the riverside Rikhe territory. Having done this, it was impossible to claim, or even assume, that any kind of public address aired by Imedi could result in the sudden appearance of armed people organized to topple the government. Of course, there is no need to prove that unarmed and disorganized people could not have ousted the Government.

Hence, considering that there was no sufficient evidence of any especially grave criminal offence being committed or perpetrated, the judge had no authority to resort to the measures stipulated by Article 190.

Thus, considering all the above said, the order issued by Judge G. Shavliashvili, lacks sufficient factual and formal grounds, and is therefore, illegitimate.

Imedi Broadcasting as an "Open, Direct and Major" Threat for State Security

Let us consider how adequate and proportionate was the suspension of Imedi broadcasting to avoid the alleged turmoil, and how effective the property of the given TV Company and its broadcasting license would be as a tool of criminal offence.

First of all, it should be noted that in terms of arguments, the order of Judge G. Shavliashvili is especially limited. A single page of the document describes the events that took place between 2-7 November and the violations identified.

These claims are less convincing, though we are not going to discuss how argumentative they were as it has very little to do with the sanctions taken against Imedi TV company. When the November events were in the centre of Georgian and international attention, it was natural that TV companies (Imedi among them) were keen to provide coverage of the developments. In a democratic state, where "independent print media is practically a link between people and the Parliament, in other words its (people's) representatives in the government, people exercise their control over state government through print media". Public pressure and control exercised through print media on the Parliamentary and government members, forces them to make concrete political decisions according to the view of the majority of the population".[68]

It should also be noted that "illegally breaking into the premises of the Georgian Parliament" as cited in the court order, did not actually take place. Chairperson of the Georgian Parliament, Ms. Nino Burjanadze, while speaking to Imedi journalists, personally confirmed that the gates of the Parliament were opened following her instructions, so that the citizens could find shelter in the Parliament premises, which must have saved many people from heavy injuries or poisoning.

The only argument mentioned by investigator G. Kajaia in favour of seizing Imedi property, which was shared by the judge, was the airing of Patarkatsishvili's announcement by Imedi.

We would like to note here that according to the Law on Freedom of Speech and Expression, Article 4, paragraph 2, "advocacy shall be protected by a qualified privilege. An incitement shall cause liability envisaged by law only when a person commits an intentional action that creates direct and substantial danger of an illegal consequence."

Hence, according to Georgian law, it is not the act of incitement, but actions leading to breaking the law that are punishable. We would like to reiterate that by 18:00 hours in Tbilisi there was no imminent danger of rioting since all forms of manifestations were suppressed and no rallying was in progress. Consequently, when Imedi aired Patarkatsishvili's announcement (at 18:28 hours) there were no direct or major threats that would entail any negative effects in the form of mass riots and violence.

We believe it was proved by the announcement made at 22:32 hours by Prime Minister Noghaideli that as a result of enforcing a state of emergency, "temporary restrictions are imposed […] on mass media with regards to appeals to overthrow the government through riots, violence and use of force; these are the only restrictions introduced, otherwise freedom of speech is not limited. As soon as order is restored, the state of emergency will be naturally lifted, and mass media will resume its usual operations".

As we can see, Mr. Prime Minister quite correctly believes that disseminating any kind of address is an integral part of freedom of speech, and it can be restricted only by introducing the state of emergency for a certain period of time, which excludes imposition of long term sanctions against media for disseminating public appeals.

> The decisions of the National Communication Commission refer to "obvious, direct and significant threats of illegal outcomes (disruption of constitutional order). According to the Commission's assessment, the given action (airing of Patarkatsishvili's announcement) represents a "clear and direct threat of instigating violence".

[68] Konstantin Kublashvili, Fundamental Rights, Tbilisi (GCI) 2003, pp.250-251

Badri Patarkatsishvili's announcement was the following:

"Saakashvili's fascist regime is doomed. Like millions in Georgia until recently, I was naive to think that the government would not dare to wage war with its own people. I did my best to find a compromise. The opposition leaders did not succumb under the influence of any provocation of the authorities, and neither did they commit any violation of the law. This in turn, caused the rage of insane Saakashvili, Bokeria and Merabishvili – those who have already managed to tell us tales about them being democrats. Saakashvili's power turned out to be simply criminal. Today, before the very eyes of the whole Georgia and the entire world, the government lost its legitimacy. The authorities confirmed that there are no differences between them and the Communist Regime. Soldiers under the Communists chopped the heads of citizens with digging tools on April 9, 1989. And the current scene of action is the same. Now we know for sure that Saakashvili's government spends money belonging to the people to equip the punitive police force and special task force to cripple hungry people. That is why they are so worried about those who spend their money to develop our country, our towns. The scorn of the criminal authorities has been fuelled by the independent opinions expressed by people and the Imedi TV Channel insubordinate to the government. I am extremely thankful towards journalists, and especially those who work for Imedi, for their attempts to make the people of Georgia and the world to look at the criminal regime of Saakashvili with their eyes open. It is symbolic that Georgia has to suffer from the new tragedy precisely on 7 November, the90th anniversary of the Bolshevik putsch.

Let nobody have doubts, that I shall do everything in my power, and spend all my resources to deliver Georgia from this fascist regime! Long live to Georgia!"

By our assessment, the announcement above does not contain any appeal to violence, due to which the TV Company would refuse to air it. The public was aware that Patarkatsishvili had decided to provide financial support to oppositional parties and their pre-election campaigns. In his previous announcements he always highlighted that he considered only a peaceful change of Government and that he would do everything to achieve this. Consequently, to claim that someone would interpret Patarkatsishvili's announcement as an appeal to violence is unacceptable. It was a political statement made in a heated and aggressive tone, which is protected by the principle of freedom of expression. It is even more unacceptable to impose sanctions on the media, spreading this announcement through its broadcasting.

To back up our position we would like to bring the example from the case-law of the European Court of Human Rights. We would also like to note that Article 2 of the Georgian Law on Freedom of Speech and Expression, as well as Article 3, paragraph 2 of the Georgian Law on Broadcast, stipulate that "the interpretation of this law shall be made in accordance with the Constitution of Georgia and the international commitments undertaken by Georgia, including the European Convention on Human Rights and Freedoms and case law of the European Court of Human Rights".

The main element, assessed by the European Court, is the aspect of violence. In order to justify the restrictions imposed on the freedom of expression, an appeal or a publication should itself be able to cause violence. As to the degree of probability of such an incident, it should be assessed by taking into consideration specific circumstances.[69]

In any other case, the priority is given to providing information to the public, and consequently, providing the public with any type of information, even if it is a very aggressive announcement, that aims at the realistic coverage of the events.

The Strasburg Court, in the case OKÇUOGLU v. TURKEY, indicated that the limiting effect of Article 10, paragraph 2 of the Convention is too narrow to be applied only to political speech or debating on the issue of

[69] Judgement made on 8 July, 1999 on the case Sürek and Özdemir v. Turkey (nos. 23927/94 and 24277/94)

public interest. The scope of criticism allowed is much wider in respect to government, than in case of private persons or even politicians. Dominant positions held by the government obliges it to restrain from resorting to criminal procedures when it is possible to use measures other than criminal procedures; to counter ungrounded attacks and criticisms of their opponents. Despite this, the government retains the power to react, including through criminal procedural rules to extreme expressions that threaten public order, as was the substance in the case of INKALI v. Turkey. In respect to the announcements made containing appeals of violence addressed to individuals, public officials or part of the society, the government enjoys a wide range of assessment, whether to limit the expressions of such a nature (paragraph 47).

According to the European Court, the main principle of democracy is the ability to form different political attitudes and protect them, even those opposing the current organisational system in the country.[70] In such cases, the government is obliged to restrain from applying criminal procedural rules, especially when there are other ways of responding to unjustified critical comments made by the public or media.[71]

The European Court of Human Rights in the case of OKÇUOGLU v. TURKEY, considered the involvement by the Government of Turkey as disproportional, and hence, as a violation of Article 10. Although the tone of the announcement in the print media was hostile, it did not contain appeals for participating in violence, armed resistance or coup. This was the essential factor taken into consideration by the Court.[72]

Patarkatsishvili said on Imedi that he would not spare his last Tetri to change the Government of Saakashvili. He made this announcement while giving his assessment of the raid on the peaceful rally on Rustaveli Avenue. The assessment is of a hostile nature, though it is not an appeal for armed disobedience. The implementation of criminal procedural rules regarding a similar assessment was rendered as disproportional by the European Court of Human Rights in the case described above. Hence, assessing Imedi's airing of the given statement as an appeal to violence, and based on this assessment, suspending the broadcast of the TV Company is a violation of Article 10 of the Convention, and of Article 39 of the Georgian Constitution respectively.

In the case of INKALI v. Turkey, a public announcement was made by the applicant in the form of leaflets, aimed at fuelling discord against Kurds residing in Izmir. According to the leaflets, the Izmir municipality was planning to evict Kurds from the town. The Turkish Government explained the use of criminal sanctions against the plaintiff by the fact that Inkali was calling on the public for disobedience and revolt. Therefore, the measures taken against him were justified to avoid disorder and riots. The European Court did not share this position and stated that, despite the real threat of terrorism, nothing proves Inkali's role in the problems related to terrorism, namely the confiscation of the mentioned leaflets; and the criminal sanctions were disproportionate and not a necessity in a democratic society, and therefore, it violates the requirements of Article 10.

Even if Patarkatsishvili had called for toppling Saakashvili's government, the audience would not be fully armed terrorist groups, such as in Inkali's case, but people who were standing with bare hands against fully armed military and special task forces of the Ministry of Internal Affairs. By using rubber batons, water cannons and other special devices, the military dealt very successfully with fulfilling the task of suppressing what Judge Giorgi Shavliashvili calls a "clear attempt of mass riots and coup".

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[70] Judgement made on 10 October 2000 on The case **AKSOY v**. **TURKEY** NN28635/95, 30171/96 et 34535/9, §77; Judgement made in 1999 on Freedom and Democracy Party v. Turkey 28635/95, 30171/96 et 34535/97 §44

[71] Castells v. Spain

[72] A Turkish citizen of Kurdish origin, Akhmed Okcuoglu, published an article in "Democrat "journal, which was rendered to be against the territorial integrity of Turkey by the Istanbul Office of the Prosecutor General. It seized the copies of the edition, while the author of the article was charged with the criminal offence. By the decision of the Turkish National Security Court, the commentary of the applicant regarding the division of Kurdistan territories by the several states, and the refusal of citizenship to the people of Kurdish origin was a separatist propaganda and against the backdrop of the terrorist war in south-eastern Turkey, claiming lives of tens of people every day, it threatened the territorial integrity of the Turkish state.

The case of Sürek and Özdemir v. Turkey referred to the publication, which reflected the position of not a single citizen, similar to the one discussed earlier, but rather an illegal terrorist organisation operating in south-east Turkey. Even in this case, according to the European Court, such publications allow the reader to familiarise himself/herself with the opinions of the other side, and to respectively weigh each side. Strict criticism of the state was more "descriptive of the aggressive position of one of the sides, rather than a call for violence. In its entirety, the article cannot be considered as an appeal to violence".[73]

The decision of the National Communications Commission (#673/18) on the "temporary suspension of Teleimedi N B16 broadcasting license" it is mentioned that "on 7 November, after 20:00 hours, the mentioned TV aired clearly misleading messages that law enforcements were planning to break into Sameba Cathedral".

If we scan the video recording that the National Communication Commission is referring to we find that a journalist, Natia Mikiashvili, is only speculating regarding the possibility of law enforcement forces breaking into Sameba Cathe dral. The mentioned speculation is based on interviews with citizens outside Sameba Cathedral, as well as on the fact that tear gas was fired into Kashueti Church the same day. Following the live report by Natia Mikiashvili, "Kronika" anchor Sopo Mosidze stresses the fact that the information regarding the possible breaking in of special task forces into the Cathedral is not verified, and as stated by the anchor, "Kronika" would try to verify this information at the Ministry of Internal Affairs and subsequently provide the information to the viewers.

The European Court considers that publishing rumours and speculations is a part of freedom of speech. In the case of Thorgeirsson v. Iceland, a journalist published unverified information received from various sources regarding illegitimate activities of the police. The European Court noted that in such cases, the media does not bear responsibility to verify the information, and that, if the press was obligated to publish only verified facts, it would not have been able to publish any kind of information at all.

In the case of The Observer and Guardian v. UK, the European Court states that "the news is a perishable product and the delay in publishing, even for a short period of time, can damage its value or interest in it" (paragraph 60).

European Court case law gives a separate assessment to the issue of disseminating announcements made by other people through the media. In the cases of Jersild v. Denmark, and Thoma v. Luxemburg, the court states that "punishing a journalist for the assistance provided to disseminate an announcement made by another person [..] would seriously obstruct the press to contribute towards the discussion of issues of public interest, and should not be considered unless there are obvious reasons for it".

Clearly, such "obvious reasons" would not include speculations by an investigator or any other person that the dissemination of the announcement might entail illegitimate action.

Taking all the above-stated into consideration, the public defender believes that the suspension of Teleimedi broadcasting was a severe violation of Georgian legislation and international human rights standards.

In any case, nothing can justify the actions taken by the law enforcement agencies to suspend Imedi broadcasting.

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[73] In his interview, a representative of a terrorist organisation calls Kurds not to participate in elections, and speaks about the dangers due to which elections should be boycotted: "They want to use Kurds to achieve their own goals. The aim of elections, on one hand, is the obstruction of the positive processes ongoing in the south, while on the other hand, is aimed to prevent Kurdistan independence and its fight for freedom."
"We are the people who lost everything and are fighting to return what is lost. This is the aim of our actions. We have nothing to lose. We are not hiding from anyone and are not scared. The only thing we can lose is our slavery… that is why we act without fear".

Storming Imedi TV company and Excessive Ill-treatment of Journalists

Apart from the fact that storming the Imedi office was illegal, there were cases of excessive use of power by the police. Tear gas was fired in the premises of the TV Company.[74] The same tear gas was used after the journalists were moved outside to Ljubljana street. This time the TV company employees who were returning home were shot with tear gas and rubber bullets.[75] Journalist Anna Mamulashvili was injured in her head with a rubber baton.[76] It should be noted that on Ljubljana Street there were no actions of resistance made by the journalists against the special task force.

Ill treatment was especially evident in relation to a woman, journalist Diana Trapaidze, in whose case, according to Georgian law, police action must be reduced to a minimum. In this given case, there were two instances of excessive use of power and ill treatment against Trapaidze. In the first instance she was forced to kneel with her hands up[77], and in the second instance, she was fired at with tear gas and rubber bullets, and was pursued by the police; as a result, she was forced to sprint some distance to escape.[78]

At the time of raiding the Imedi TV company office by the special task force, there were no actions endangering the life or health of special task force members. The journalists were without words of reproach, obeying clearly the illegal and derogatory instructions, such as requests to lie down on the floor, handing over their mobile phones, and being moved from one room to another or from one floor to another. The journalists left the premises following the instructions of the special task force as well. Hence, it is not clear as to what was the threat requiring the use of tear gas on Imedi TV company premises.

The actions of the special task force were disproportionate even to the alleged threat under which the mentioned operation was launched. If there was a verified speculation that from the part of Imedi TV Company there was a fact of appeal for a coup, less painful measures should have chosen to suppress such actions. This could have been, for example, suspending the broadcasting transmission from the TV tower, or the presentation of the 7 November order by the Tbilisi City Court on seizing the property and offering to voluntarily suspend broadcasting. There are no facts proving that special force members presented the TV Company general director an order on seizing the property, and provided clarification on the legal basis for entering the TV company premises. According to Article 196 of the Criminal Procedure Code of Georgia, an investigator or a prosecutor shall present a court order on seizing the property to the person who is making use of it. There is direct evidence proving that the TV Company general director received the order on seizing the property not on 7 November 2007, at the time of the special task force of the Ministry of Internal Affairs entering TV company premises, but on 13 November, 2007. Thus, it is only natural that Imedi TV company management could not understand the legal basis for law enforcement forces to enter the privately owned premises. It turned out that instead of giving an appropriate clarification, the director of the TV Company, Bidzina Baratashvili, was threatened to be shot in his head.[79]

According to the Law on Police, Article 10, paragraph 2, the police is obligated to warn a person in advance that physical force will be used so that the person is given enough time to comply with his/her legitimate demands. It is difficult to understand what legitimate demands were made by the patrol police and special task force towards Imedi TV company staff that in case of not complying within a reasonable period of time would result in nearly all TV company staff lying down either on the floor or on wet asphalt (Teleimedi security guards), having their mobile phones confiscated, some physically being abused and being threatened verbally by using offensive remarks.

[74] Tamta Peikrishvili's explanation
[75] Explanations of Levan Javakhishvili, Zaal Tsulukidze and others
[76] Giorgi Murjikneli's explanation
[77] Thea Sichinava's explanation
[78] Lasha Mikadze's explanation
[79] Explanations of Levan Alpaidze and Levan Manvelidze

Inhumane and derogatory treatment violates Article 3 of the European Convention on Human Rights. To determine whether such treatment took place it is important to define if the victim of such treatment suffered fear, pain or a feeling of inferiority. Derogatory treatment also implies actions directly affecting a person emotionally, physically and mentally (Ireland v. UK, Paragraph 167). In addition, part of inhumane treatment is forcing a victim to act against his/her will and consciousness (judgment of the European Commission on Human Rights in The case of Grik, Chapter IV).

Inhumane and derogatory treatment also implies the destruction of property. The European Court on Human Rights regarding the case of Selçuk and Asker v. Turkey stated that destruction of property by a police operation that is planned in advance and is accomplished in a derogatory, offensive manner, accompanied by the destruction of the victim's property in his presence, falls under inhumane and derogatory treatment (paragraph 77-78). If such actions are identified, it is not sufficient to claim whether these actions were aimed at punishing or offending the victim (paragraph 79). The European Court of Human Rights additionally assessed this case as a violation of Article 1 of the first additional Protocol of the European Convention on Human Rights since there was an unjustified intrusion into the peaceful ownership of the person's property (paragraph 86).

For the action to be qualified as inhumane and derogatory, it should reach a certain level of brutality. While evaluating inadequate treatment, the following aspects are considered, duration of the action, physical and emotional consequences resulting from it, victim's age, sex and health condition (Tekin v. Turkey, paragraph 52). In this specific case, when assessing the kneeling on one's knees as inhumane and derogatory treatment, the circumstance to be considered was the fact that the subject of such treatment was a pregnant woman.

Forcing the employees to lie face-down on the floor or wet asphalt (Teleimedi security guards)[80], confiscating their mobile phones, physically offending some of them[81], threatening and using offensive language[82], firing tear gas in the premises, threatening at gunpoint[83], the destruction of the studio, equipment, and wiring in the presence of journalists[84], all represent inhumane and derogatory treatment. The aim of the law enforcement agencies was to threaten the TV company staff; their punishment and humiliation, accompanied with physiological pressure and the threat of being at gunpoint left them in helpless state.

Thus, from the actions of the law enforcement agencies, there was an additional violation of paragraph 3 of the First and Third Additional Protocols of the European Court of Human Rights.

As stipulated by the General Administrative Code of Georgia, Article 208, clause I, "the State shall bear liability for the damage inflicted by a state administrative agency, it's official, or other public servant in the course of the execution of official duties". By the estimate of the Imedi TV company management, the damage as a result of destroyed equipment amounted to approximately 1.2 million GEL, while the income not received as a result of unperformed TV commercial orders amounted to 1 million GEL. A detailed inventory of the damage is currently underway. We consider that the damage incurred by the Imedi TV Company should be reimbursed from state budget resources without further delay.

Force of law during the state of emergency

On the basis of Presidential Resolution No621 a nationwide state of emergency was announced in Georgia on November 7, 2007. On that night, the prime Minister of Georgia, Zurab Noghaideli, made an announcement

[80] Explanations of Levan Manvelidze, Levan Giorgadze, David Kikvadze, and Ivne Kituashvili
[81] Explanations of Maia Kipiani, Thea Sichinava, Levan Javakhishvili, Amiran Murvanide and others.
[82] Explanations of Levan Javakhishvili, Tamar Chikhladze, Ana Tsilosani, Giorgi Khugashvili, Merab Metreveli, Matte Kirvalidze, and Rusudan Tabatadze
[83] Explanations of Levan Javakhishvili, Tamta Peikrishvili, Thea Kereselidze, and Nino Kiknadze
[84] Explanations of Tamta Peikrishvili, Elene Lomashvili, Tea Sichinava, Kakhaber Imnaishvili, and Levan Alpaidze.

according to which the state of emergency applied only to Tbilisi. The decree of the President of Georgia on the measures to be taken in case of emergency is dated November 7, 2007. According to paragraph 1, sub-paragraph "a" of the above decree, all rights guaranteed by articles 24 (freedom of media, right to receive and distribute information), 25 (freedom of assembly) and 33 (right to strike) of the Constitution were limited. According to paragraph 2 of the decree, all TV and radio broadcasters ceased the reception and dissemination of information in written, verbal or any other form. According to sub-paragraph "c", only the Public Broadcaster was authorized to receive and disseminate information. This decree, as well as the complete and finalized text of resolution No. 621, became publicly known on November 8, 2007, through the Public Broadcaster.

Several minutes after the Special Forces team's raid on the building of Imedi TV, the independent TV station of Tbilisi, Caucasia, was shut down. On November 8, at 01:00 a.m., the Adjara headquarters of the Ministry of Internal Affairs of Georgia shut down independent TV Company, Batumi TV 25. In addition, the Imedi radio station and TV company were shut down. The above actions against electronic media were taken before the dissemination of the Prime Minister's statement on the air. With regards to the shut down of Batumi TV 25, according to the statement made by the Prime Minister on the night of November 7, the state of emergency was announced only within Tbilisi.

It is unclear why the independent TV station in Batumi ceased its operation before the announcement of the state of emergency. It is also unclear why certain independent electronic media signals were terminated before the announcement of the state of emergency.

Despite the shut down of three TV channels and one radio station, the public Broadcaster, Rustavi 2 and Mze were still on the air. The broadcasting network of the Public Broadcaster remained unchanged as it assumed the reception and dissemination of information. The news program Moambe and socio-political programs were still aired. The news offices of Rustavi 2 and Mze suspended their operation. The above stations withdrew their talk shows from the air as well. Rustavi 2 and Mze continued their operation and aired entertainment, music and other types of programs.

The official reason for the termination of Imedi TV broadcasting was the calls for riots made via the above TV station – this fact is unconfirmed. Moreover, similar appeals have not been aired by Caucasia and Batumi TV 25. The reason why these two stations were stopped remains unknown as no legal actions aimed at regulation or cessation have been applied. Obviously, the discriminatory attitude towards the above media sources had a political leaning. The government allowed Rustavi 2 and Mze to continue broadcasting as these TV channels demonstrated their loyalty towards the government. TV stations with critical attitudes towards the government, Caucasia and Batumi TV 25, with fully shut down broadcasting signals were not permitted to broadcast in a limited format like Rustavi 2 and Mze. As a result of this selective treatment, Caucasia and Batumi TV 25 turned out to be in a very unfavorable situation compared to other TV stations.

It is still unclear on what grounds Caucasia and Batumi TV 25 ceased their broadcasting, as is the legality of the restrictions applied on the operation of news groups of Rustavi 2 and Mze is questionable. From November 8 to November 16, the list of programs aired by Rustavi 2 and Mze did not include news blocks. It was explained by the decree of the President of Georgia what measures would be taken in case of an emergency, paragraph 2 of which stated that all TV and radio broadcasters ceased their receipt and dissemination of information.

According to letter No. 131, dated 14 November 2007, the print media distribution company, Matsne, published the 37th issue of the Legal Newsletter, which was submitted to their dispatch office on November 8, 2007, and delivered to subscribers the next day.

According to letter No. 81, dated 20 November 2007, from Elvaservice Ltd., the organization received part 1 of the Legal Newsletter (37th issue) on November 8, but the subscribers of Elvaservice Ltd. received it only on November 9, 2007.

According to letter No. 71/3, dated 12 November 2007, from Saxalxo Posta, part 1 of the Legal Newsletter (37th issue) was delivered on November 8, 2007.

In accordance with article 38, paragraph 5 of the law of Georgia regarding "legal acts", the official dissemination of a legal act of Georgia means that the first dissemination of a complete text should appear in the Legal Newsletter of Georgia. The Presidential decree was disseminated on November 9, 2007. In accordance with article 42, paragraph 2 of the law of Georgia regarding "legal acts", the decree of the President of Georgia becomes valid after it is disseminated through the official print media. As per article 45, paragraph 1 of the same law, the legal act becomes valid at 24:00 hours of the day of distribution.

Thus, the decree of the president of Georgia "on the measures to be taken throughout the territory of Georgia in case of emergency" became valid on November 9, 2007, at 24:00 hours.

Therefore, the suspension of operation of the Rustavi 2 and Mze news offices before November 10, 2007, on the basis of the decree, was illegal, to say nothing about the stations Caucasia and Batumi T 25, whose broadcasting signal was jammed without any grounds, explanation or official documentation.

The Case of Radio IMEDI

On November 16, 2007, at 19:00 p.m. the state of emergency was canceled in Georgia. TV station Caucasia resumed broadcasting, and Rustavi2 and Mze restored their news blocks. Batumi TV 25 managed to resume broadcasting 24 hours after the cancellation of the state of emergency. Resumption of Batumi TV 25 became possible only after the public defender notified the Delegation of European Commission on the fact. To clear the matter, the representatives of the European Commission applied to the Office of the Prosecutor General. Imedi TV and Radio IMEDI did not resume operation.

Radio Imedi does not represent an independent organizational or legal entity; it was registered in April 1, 2002, at Vake-Saburtalo Regional Court. Imedi TV and Radio Imedi have the same founder, businessman Arkadi (Badri) Patarkatsishvili, who was announced as a suspect by the resolution dated 7 November 2007, created by M. Kadjaia, special cases investigator of the investigative unit of the Office of the Prosecutor General.

On the basis of the order dated 7 November 2007, the Tbilisi City Court suspended broadcasting license No. B16. The conclusive part of the order issued by Judge Giorgi Shavliashvili refers to Teleimedi Ltd. and says nothing about Radio Imedi, which is a legal entity, independent from the TV station, and does not broadcast on the basis of license No. B16, mentioned in the court order.

On the basis of the resolution of the National Communications Commission dated 3 March 2006, regarding the modification of TV broadcasting licenses, Radio Imedi received the license of a private broadcaster (license number B49) to broadcast within the first zone (Tbilisi) and license number B50, to broadcast in the other regions of Georgia. The court order restricts use of license B16 only. But there is no court order or resolution from the National Communications Commission regarding the suspension of licenses B49 and B50. Despite the above said, the office of Radio Imedi was sealed, and its staff were restricted from entering the building.

On July 1, 2007, the I-Media group handed over a filming pavilion with a total area of 2,215 square meters, located at No. 10 Akhmeteli St., to Teleimedi Ltd., on the basis of a lease agreement for the non-residential space. On October 1, 2007, Teleimedi Ltd. concluded its sub-lease agreement with Radio Imedi. On the basis of this agreement, the sub-leaser handed over part of the pavilion (part 4), located at No. 5, Ljubljana St., Tbilisi, to the sub-lessee for temporary use and possession.

In accordance with article 193, part one of the Criminal Procedures Code, a prosecutor or an investigator, if permitted by the prosecutor, has to identify the location and the owner of the property for a proper motion

calling for the arrest of the owner and the seizure of property to be filed to the court. Article 194, part two of the Criminal Procedures Code obliges the judge to indicate in the arrest order, the guardian of the seized property. In his order, Judge Giorgi Shavliashvili mentioned the building owned by Teleimedi and the assets used to commit the offence described in article 315 of the Criminal Code. To prove the validity of the seizure of the Imedi building, it must be considered whether the court order contains a direct indication, as per article 194, part two of the Criminal Procedures Code, that Radio Imedi is the entity that owns the property leased by Teleimedi. As it was already mentioned, the court order did not include such an indication. It means that only the property possessed by Teleimedi was seized, and not the assets the company owns. Thus, the building sub-leased to Radio Imedi was not seized on the basis of the order of Judge Giorgi Shavliashvili. Restrictions, applied by the officers of the Ministry of Internal Affairs, on the staff's entry into the building and performance of their duty were illegal.

Thus, the suspension of Radio Imedi's operation had no legal basis. Unlike TV Company Imedi, the law enforcement officers never attempted to justify the fact of suspension of radio broadcasting by means of any legal act.

The Public Defender applied to the Minister of Internal Affairs with the recommendation to cancel restrictions on Radio Imedi's operation. The Public Defender also applied to the National Communications Commission with the recommendation to study the reasons for the suspension and to resume the radio station's broadcast. The reply received from the Commission was absolutely inadequate; it stated that the license of radio Imedi had never been suspended.

According to the Public Defender, such a formal attitude toward media sources, demonstrated by the entity that is supposed to regulate communications, is totally unacceptable, and represents a good example of the inadequate administration.

Broadcasting Company Hereti case

The Public Defender has reviewed the statement of the broadcasting company Radio Hereti, operating in the Kakheti region, regarding the threat of being raided. Director of Hereti, Ramaz Samkharadze, recorded a statement made by Isako Tskipurishvili, a representative of the election office of Mikheil Saakashvili, in November 30, 2007.

According to Isako Tskipurishvili, the president of the Chamber of Control introduced him to representatives of the central government. The latter sent him to the director of Hereti and required him to change the organization's editorial/operational policy. Ramaz Samkharadze was required to withdraw any criticism regarding the National Movement Party and Mikheil Saakashvili from the content of all programs aired by Hereti, and to air pro-Saakashvili ads. Tskipurishvili complained to Samkharadze about negative remarks made about Gocha Mamatsashvili, the head of the Telavi election office of Mikheil Saakashvili, and Davit Adeishvili, brother of the Prosecutor General, and warned him to refrain from similar actions in future. If he failed to meet this requirement, Radio Hereti would become the target of a governmental executioner group, who he indicated was the same group that attacked the Imedi building a couple days prior. Besides the raid, Samkharadze was threatened with the suspension of the radio's license.

Several days after the conversation, on December 3, 2007, the National Communications Commission sent Hereti a warning regarding its payment of 20% of the licensee fee (1032.75 GEL). The above responsibility was imposed on Hereti on the basis of a decision by the National Communications Commission dated April 20, 2007, by which Hereti was announced to be the winner of a private general broadcasting competition. According to the decision, Hereti would be granted a license within 7 days after its submission of a receipt confirming

payment of 20% of a license fee. Hereti submitted the above documents on July 7, 2007. Thus, Samkharadze could not understand the basis for the demands made by the Commission or the threats made by Tskipurishvili.

The Public Defender considers that audio records contain elements and signs of offence; in particular, the deprivation of the freedom of speech. The above-mentioned actions imply illegal interruption of the receipt and dissemination of information, punishable under article 153, part one of the Criminal Code.

The actions of Tskipurishvili also imply signs of offence mentioned in article 151 (threat) of the Criminal Code. Tskipurishvili stated that the Hereti building would become a target for attacks of a special group. In accordance with article 151 of the Criminal Code, threats of the deprivation of life, damage to health or destruction of property, if a subject of threat has a reasonable fear that the threat will be fulfilled, are punishable by a penalty or social labor from 120 to 180 hours, or corrective labor up to one year, or deprivation of liberty up to one year.

Despite the Public Defender's recommendations, Tskipurishvili was actively involved in the pre-election campaign and on election day as well. On January 5, 2008, at Lagodekhi precinct station No. 15, polling station No. 19, he physically threatened, abused and interrupted the operation of a radio Hereti reporter.

The Case of Cable TV Company Maestro

On February 23, 2007, based on Decision No. 104/1, the National Communications Commission of Georgia granted Studio Maestro Ltd. a broadcasting license (No. B87) for cable broadcasting. The type of license granted to Studio Maestro Ltd. was a special one, which included entertainment, musical and educative broadcasting. The broadcasting zone allocated for TV Company was Tbilisi.

On November 28, 2007, the Maestro's broadcasting signal was disconnected. According to the statement made by the Director of TV Company Maestro, Mamuka Ghlonti, during an interview aired on TV Caucasia, some unknown person called him and required the withdrawal of a talk-show entitled, "Profession: Reporter", from its programming. The above-stated program was to be anchored by the famous reporters, Alexander Elisashvili, Tamar Chikovani, Ia Antadze and Zviad Koridze. The topic of the first program was to be the elections.

In his interview with TV station Rustavi 2, the president of the National Communications Commission explained that the shut-down of the TV station was due to some technical problems. Giorgi Arveladze explained that Maestro was only entitled to air musical, entertainment and educative programs, and the company was not allowed to change the type of programming.

According to the General Director of the TV Company, Mamuka Ghlonti, the company resumed broadcasting on November 29, 2007, only after the interference of the acting President of Georgia, Nino Burjanadze.

In accordance with the law of Georgia regarding broadcasting, changing the type of broadcasting is possible via modification of a license. The latter means the "insertion of amendments and/or additions into the license, in accordance with amendments and/or additions entered into Georgian legislation, or priorities of broadcasting environment, and/or on the basis of the justified requirement of the Commission or license holder" (Article 2, sub-paragraph "S").

The law of Georgia regarding broadcasting identifies two types of broadcasting licenses, general and specialized. General broadcasting means broadcasting of no less than two topics, including news and socio-political programs (Article 2, sub-paragraph "J"). Specialized broadcasting means broadcasting of one topic, except for news and socio-political topics (Article 2, sub-paragraph "H8"). Thus, in order for the broadcaster to have the right to air

news and socio-political programs, it must obtain a general license. What happens when the programming of a holder of a specialized license includes news and socio-political programs? Does it serve as the basis for sanctions, including the deprivation of a license, to be applied against the license holder?

In accordance with article 45 of the law of Georgia regarding broadcasting, the license may be modified in case of any modifications to Georgian legislation or priorities of the broadcasting environment. The license modification process starts on the basis of a justified requirement of the Commission or license holder. The application requesting the modification of a license is reviewed via simple administrative rule. The National Communications Commission must consider the essential modification of the type of license to be restricted (Article 45, paragraph 3). This article refers to the category of license and not the type; type is changed via modification or issue of a new license.

If we take a quick look at the practice of the National Communications Commission, we shall see that modification does not require the license holder to apply to the Commission with a statement. If through monitoring a broadcaster's programs the National Communications Commission assumes that the programs do not comply with the type provided by the license, the commission will, at its sole discretion, make a decision regarding modification. A good example of such a practice is decision No. 43/2, dated 3 February 2006, which states that "as a result of the examination of submitted letters and monitoring of the broadcaster's operation the following is determined: Broadcasting of Stereo One Ltd., despite its general broadcasting format indicated in license No. 325, consists of only musical and entertainment programs, as per the programming and existing records. In accordance with the law regarding broadcasting, broadcasting one topic, besides news and socio-political topics is considered to be specialized broadcasting. The Commission considers it appropriate to modify license No. 325 granted to Stereo One Ltd. and determines the type to be specialized (entertainment) broadcasting".

From the very first day, the programming of TV Company Stereo One was predominantly comprised of musical programs. Despite the fact that the above TV Company had a general license, it never aired news or socio-political programs. The above circumstance had never served as the basis for the deprivation of its license, or the imposition of any other sanction. On the basis of article 45 of the law regarding broadcasting, which determines the basis for modification of broadcasting license, the National Communications Commission considered that changes entered into the priorities of Stereo One, despite the absence of the statement of the above broadcaster, represented the basis for modification of its broadcasting license.

In accordance with article 4, part 3 of the General Administrative Code of Georgia, making different decisions regarding different entities in cases of identity of case-related circumstances is restricted.

If, as a result of monitoring TV Company Maestro, the National Communications Commission considered that the program "Profession: Reporter" was of a socio-political nature, based on the principle of equality by law, it must have considered the identical case relating to Stereo One. Therefore, the National Communications Commission should have refrained from applying sanctions against Maestro, and the Commission, instead, should have made a decision to modify Maestro's license.

FREEDOM OF EXPRESSION AND RESPECT TO PRIVACY

a) Breach of the right of inviolability of home in Gurjaani

The Public defender reviewed the case and prepared his recommendation on the situation where two legal truths conflicted – the right of a community to receive complete information on certain issues via media sources, on the one hand, and the right of inviolability of the home on the other.

On august 15, 2007, in order to determine how easily one could enter the house of Nana Japharashvili without overcoming any obstacles, regional reporter of Imedi TV in the Kakheti region, Jana Didebashvili, her cameraman, Kakha Gogilashvili, and the regional coordinator of the Human Rights Center in Kakheti, Gela Mtivlishvili, visited the above-mentioned house, went into the yard, and videotaped the half-ruined house, in order to prove that any person could get in without any problem. Therefore, the act of theft committed by a minor in the above place under article 177, part 3, sub-paragraph "c" of the Georgian Criminal Code – the ft with unauthorized entry – which caused the sentence for the above act to become aggravated, was not correct. Imedi aired the story about the above act committed by the minor, and the story contained details of Japharashvili's house. Japharashvili assumed that the reporters breached her privacy and inviolability of her home, and applied to the Gurjaani Department of the Ministry of Internal Affairs. The investigation commenced.

It must be noted that news block of Imedi TV entitled, Kronika, generalized the facts relating to the theft of Japharashvili 's house. Imedi related the incident that took place in Gurjaani with a similar type of criminal case that occurred in Tbilisi. In both cases, for the the ft of inexpensive items, the court charged minors with an unreasonably large bail amount. The story highlighted the economic situation of the families of both minors. The reporter also stressed the incorrect qualification of the act committed by the minor in Gurjaani, and for illustrative purposes, the video of the story included the road leading to the house, the entrance, the walls and the ruins of the building.

Article 8 of the European Convention of Human Rights guarantees the right of the inviolability of a home. The same right is protected by article 20 of the Georgian Constitution. Protection of this right is ensured by different legal acts, including article 160 of the Criminal Code and article 18 of the Civil Code, as part of privacy. In the countries of continental law, legal acts and standards of the general law regarding respect of privacy are being interpreted by the court.

The European Convention of Human Rights has a direct action force in Georgia. Any Georgian citizen, in terms of his/her relation with any national agency, has the right to refer to the case-law of the Strasburg Court, which explains the text of the Convention. Thus, the application of article 160 of the Criminal Code must be based on the case-law of the Strasburg Court.

The European Court of Human Rights imposed a positive liability over the country involved in the case against the Kingdom of Netherlands; the country was liable to ensure the rights under article 8 from private persons' violations. In the case of Gaskin v. United Kingdom, the European Court declared that while determining the presence or absence of a positive liability, the country must establish a fair balance between the general interests of a community and the individual interests of a person. Presently, the only case examined by the European Court in which there was a conflict between the above interests, is the case, the princess of Monaco, Carolina Von Hanover v. Germany. In the above case, the Strasburg Court identified two types of tests in order to resolve of the conflict between the right of privacy and freedom of expression:

1. Does the publication of materials contribute to public debates?
2. Does a person, who is being filmed, have a reasonable expectation of protection of privacy?

The stories aired by Imedi TV referred to the imposition of unreasonably huge bail amounts over minors raised in poor families and the theft of inexpensive items. This problem goes way beyond the scope of interests of certain individuals and so acquires a social character. Therefore, Imedi TV had the right to deliver to its audience its view of the above-stated issue. Thus, the depiction of a problem contributes to public debates.

Did Japharashvili have a reasonable expectation of protection for the inviolability of home?

First, it must be noted that there can be no reasonable expectation when filming is done from public areas, such as streets, gardens, squares, state forests with free entry, etc., and due to the absence of intrusion protection

items, like windows and doors, the video captures moments of personal life. If one wishes not to let other people know about the internal conditions of one's home, then they must take certain measures to prevent that. Otherwise, it is impossible for a person to have the reasonable expectation of protection for the inviolability of their residence. Under the circumstances, the person is obliged to endure a violation into their privacy for the benefit of freedom of expression.

The obligation of patience terminates at the point where the object of private ownership of a person begins. Such an object may be a house and the area around it, detached from a public space by capital constructions, fences, etc. The presence of protective fencing serves as the basis for the reasonable expectation that one's privacy will be protected from any impact resulting from overcoming such a fence. In accordance with case-related circumstances, Japharashvili's fence, detaching the house from public space, was damaged only at one point. According to the Public Defender, the fact that the house was left unattended, and the fencing was not properly reinforced, does not justify the actions of the reporters, who filmed the story on the property registered to the late mother of Japharashvili without the consent of the legal successor of the property.

The argument of the regional coordinator of the Human Rights Center in Kakheti, Gela Mtivlishvili, alleging that the data of the Public Register of the house did not represent the property of Japharashvili, and therefore, was not subject to protection under article 8, is absolutely groundless. The right of the inviolability of one's home is a civil right, and the protection of property is a socio-economic right. The Public Register data are important whenever the ownership of immovable property is being determined, and the owner's rights need to be protected. In this particular case, Japharashvili does not claim the violation of her owner's rights, rather the subject of dispute is the right of inviolability of her residence.

Article 8 of the European Convention of Human Rights does not establish the right of residence/home. In the case of X v. Germany, the European Commission established that the refusal to provide a refugee with residence does not represent violation of article 8. In the case of Buckle v. United Kingdom, the European Court rejected the argument that article 8 of the convention protected only legally established residences. In this specific case the European Court stated that due to the absence of any ownership rights over the land, the inviolability of residence (a gypsy's van – the place he intended to spend the rest of his life) was protected. The European court went further in the case Naimietz v. Germany, establishing that an industrial building, where a search was conducted, was a residence. Article 1 of the first amendment of the European Convention of Human Rights recognizes the inviolability of property, which once again highlights the difference between the rights covered by this article and the rights covered by article 8. The same applies to the Constitution of Georgia: Article 20 recognizes the right of inviolability of a residence and the privacy therein, and article 21 protects ownership and legacy. It must also be said that Japharashvili was not deprived of her socio-economic right towards the house taped by the cameras of the Imedi group. Nana Japharashvili represents a first line successor of deceased owner.

On the basis of this analysis, the aforementioned action must be deemed as a breach of the inviolability of a residence.

Despite this, the following question arises: How commensurate is the imposition of criminal liability for breach of the inviolability of a residence, when the act under examination is aimed at the satisfaction of an increased public interest?

Article 160, part 1 of the Georgian Criminal Code stipulates a penalty of corrective labor for two years or the deprivation of liberty for the same amount of time. According to part 3, paragraph "a", of the same article, the inviolability of a home or other property, breached by a group, is punishable by a penalty or deprivation of liberty from two to five years.

The sanction stipulated by article 160 is very severe for those who intrude onto other people's property in order to accomplish one's professional obligation, protect the public interest (in this particular case, the interests of a minor), and provide the audience with urgent information, thus contributing to public debates. Imprisonment, or other severe sanctions, may have a "freezing effect" on the freedom of speech. For fear of severe sanctions, the reporters will refrain from the dissemination of urgent information, and thus will not be able to assume the function of watchdog (Tolstoy-Miloslavsky v. United Kingdom).

Based on the above, in order to protect the good, for the sake of which the reporters breached the inviolability of Japharashvili's residence, it would be reasonable to cease the investigation of the case and examine it in a Civil Court. The owner of the house is entitled to compensation of any incurred damage on the basis of article 18 of the Civil Code. I think that in this particular case, civil actions will be adequate measures for the protection of the right stipulated by article 8 of the European Convention of Human Rights (right of inviolability of home).

FREEDOM OF EXPRESSION BY A MEMBER OF PARLIAMENT

(Case of Giorgi Tsagareishvili)

Giorgi Tsagareishvili, a Member of Parliament, became the target of attacks and physical abuse by his colleagues (other members of Parliament), after he made the following statement on Rustavi 2 TV: "The behavior of Keti Makharashvili and Teo Tlashadze is true heroism. I would like to remind you that just one floor above sit 140 dishonest and shameless men, coping with and never objecting to all types of insults for all these years".

In accordance with the law regarding the freedom of speech and expression, obscenity is "a statement that does not have any political, cultural, educative or scientific value, which rudely violates commonly accepted norms of ethics".

In accordance with article 9, paragraph 1, subparagraph "b", law may regulate the content of speech and expression if it refers to obscenity.

With regards to the case Handyside v. United Kingdom, the European Court of Human Rights stated that "freedom of speech includes not only the type of information and ideas that are welcomed or are neutral, but also the type of information that is insulting, shocking or exciting. These are the requirements of pluralism, tolerance and reasonability". According to the European Court, "the acceptable scope of criticism in reference to politicians is wider than to private persons; politicians deliberately attract the attention of society and media towards themselves. Therefore, they must demonstrate a high level of tolerance and patience" (Obershlik v. Austria).

Freedom of expression is good for everyone, but it acquires special importance with respect to political representatives chosen by the people. A member of the legislative body represents his electorate, and in terms of performance, he must pay extra attention to, and protect, their interests. Therefore, the interference of the freedom of expression of parliament oppositionists becomes the subject of critical examination by the European Court of Human Rights (Castells v. Spain, paragraph 42). In the same case, the court noted that in comparison with statements published by print media, statements made by a parliament member during a parliament session carries a higher level of protection; though special positions held by print media in the country, established on the principles of rule of law, must not be ignored. Despite the fact that print media should not cross the borders established for protection of internal disorders and the reputation of others, there still exists an obligation to spread ideas and information referring to political and social issues (Castells v.

Spain, paragraph 43). Freedom of the press enables a community to clarify and formulate their opinions and attitudes towards political leaders. To be more precise, the press enables politicians to comment on urgent and important issues. Thus, free participation in political debates becomes available for everyone, which is one of the basic concepts of a democratic society.

The opinions and ideas of Giorgi Tsagareishvili were uttered in the context of political debates. At the moment of making his statements, Tsagareishvili was accomplishing the tasks assigned to him as a representative of the people, as public statements represent the widespread form of functioning as a member of parliament. His colleagues (other members of parliament) were obliged to demonstrate tolerance towards his statements, which means that representatives of the majority had the capability to respond adequately to the insulting opinions. Meanwhile, all parties were obliged to refrain from violent actions. Damage to his health, confirmed by medical records, which served as the basis for the political statements made by Tsagareishvili, must be evaluated by a preliminary investigation as interference into the activities of the Member of Parliament. Damage of health to a Member of Parliament is an act covered by article 325 of the Criminal Code.

In regard to the above facts, the members of the majority stated that the physical insults inflicted upon Tsagareishvili represent a case of private prosecution. It must be taken into account that despite the level of damage inflicted on the health of Tsagareishvili, we deal with a special case – the victim is a Member of Parliament, a politician and a high ranking official. Despite the level of damage inflicted on his health, an attack on a political figure is punishable under article 325 of the Criminal Code – the case of public prosecution. Although we are not aware of the position of the Prosecutor General regarding this case, the latter was obliged to initiate a preliminary investigation, regardless of the presence or absence of the claim by Tsagareishvili.

EDITORIAL INDEPENDENCE

The absence of editorial independence in Georgian media remains one of the most painful issues facing the country today. Media owners and managers still actively interfere with the operation of news agencies and socio-political programs.

On one hand, a media owner may be the director of a TV channel with unlimited authority to determine the editorial policy of the channel, and to reinforce his/her authority by means of the provision of the charter of the station. On the other hand, the political trend of a TV channel is determined by the relations of its general director with certain businesses or political groups. Changes within the ruling political elite or the debilitation of influence automatically lead to changes within the leadership/management of certain TV media. Those reporters and journalists working in television, who provided the Public Defender with relevant information, do not confirm the receipt of direct instructions from specific groups. If the leading political party conveys its interests through media directors, direct pressure exercised by a politician over journalists is absolutely unreasonable. In this particular situation there is no borderline between the violation of external (a journalist's freedom to be protected from the influence of a government authority/official or any third person) and internal (protection of journalists from interference of a media owner or manager) freedom of media.

During this reporting period, the general Director of Broadcasting Company Rustavi 2, Koba Davarashvili, suggested a new concept for the channel to the journalists. According to the journalists, Davarashvili offered the employees a model on how to create "new human beings" out of the audience. In order to achieve this goal, he demanded carrying out a revolution in their consciousness. Journalists were ordered to prepare optimistic stories. They were also told to describe events not as is, but as desirable for the government. Such an attitude was related to the concept of patriotism, which acquired a new meaning according to the concept presented by Davarashvili. The TV station was not allowed to air any news or events that Russia might use against Georgia. One of the topics, which might have endangered Georgia, was the cutting down of vineyards in the Kakheti

region of Georgia. Rustavi 2 not only ignored this event, but when it had to report on it, it tried to present the event in an optimistic manner and from a favorable standpoint, calling it the "Successful Vintage of 2007".

There is nothing illegal in the fact that certain TV stations, except for the Public Broadcaster, may have a political platform. For Western countries, especially the U.S., communities are quite familiar with having TV stations that identify with certain attitudes and stand on a strong political platform. The interference of management into editorial activities, which does not mean determining the basic trends of news blocks or socio-political programs, implies the blocking of specific topics. This obvious censorship is considered to be a violation of the freedom of expression. Besides the vineyard event, journalists of one of the above-mentioned TV companies recollect stories that were censored on the decision of their general director, despite the will of the journalists and editors. Such stories included rehabilitation works on Javakhishvili (former Elbakidze) slope, the disappearance of Davit Sigua from Gali, and social polls ordered by Irakli Okruashvili. As we can see, parts of these topics contradict the interests of the government, and some stories feature the political opposition in a positive light. It must be mentioned that even before the presentation of the new concept of the "creation of new human beings", Davarashvili used to block edited or raw stories, ideas and topics anyway. Editors and producers rarely made decisions on the removal of materials from a program. Editors and producers paid more attention to the professionalism and expertise used in putting a program together.

As explained by the journalists, the"creation of new human beings" implied censorship and the negligence of different mindsets. As a result, it was impossible to prepare balanced and objective stories.

The principle of editorial independence is reinforced by the law regarding freedom of speech and expression. According to article 3, paragraph 2 of this law, everyone, except for administrative bodies, retains the right to freedom of expression. Sub-paragraph "d" of the same article lists the values protected by the freedom of expression, including the unacceptability of censorship and the primacy of editorial independence. The law, however, does not stipulate for any legal recourse in case of violating the principle of editorial independence, which gives this legal act only a declarative power. In order to make it mandatory, certain protective mechanisms must be created.

Besides the above-mentioned legal act, the principle of editorial independence is defined by the law regarding broadcasting. In the context of the protection of editorial independence, the law of Georgia regarding broadcasting sets a clear scope of its jurisdiction. In reference to the Public Broadcaster, this law defines that the Public Broadcaster is obliged to ensure editorial independence of the programs (article 16, paragraph 1, subparagraph "a"), a breach of editorial independence of the Public Broadcaster by administrative bodies is prohibited (article 18, paragraph 2). Of course, the above norms apply to the Public Broadcaster only and are not applicable to private broadcasters.

The only legal act regulating editorial independence of journalists of private broadcasters, stipulated by the law regarding broadcasting, refers to the sponsorship of a program and suppliers of advertisements. These subjects are not allowed to influence the content of a program sponsored by them or interfere with editorial independence. This article is not applicable to the owner of a private broadcaster, however. Therefore, there is no basis that will protect private broadcasters from unlimited interference into editorial activities.

The fact that journalists and editors are exposed to pressure of media owners and management is explained by the current Labor Code. The latter implemented the concept of verbal agreement. Before adoption of the new Labor Code, media suffered from various bad practices, including journalists either working without any labor contract or having one-month written contracts. This tendency still exists. In the environment when a founder or manager can easily dismiss a journalist without any financial loss, it is impossible to discuss editorial independence.

The European Court of Human Rights dealt with the issue of editorial independence in "Fuentes Bobo v. Spain". The labor contract with the journalist was terminated in accordance with the Labor Code of Spain simply be-

cause he was subordinate. The European Court of Human Rights considered that the case was a breach of freedom of expression. The comments made by the journalist that served as the basis for his dismissal referred to the issue of public interest and were in response to statements made by a radio manager. In the same case, the court highlighted that in similar situations there must be solid financial guarantees that will ensure the welfare of a journalist in case of the termination of a labor contract. This subordination principle is typical for media, and in other fields, and journalists need to adhere to this principle. But the dismissal of a journalist due to his critical statements about the manager counts as a disproportionate interference into his freedom of expression (paragraph 49).

The Public Defender considers that amendments and additions must be entered into the law regarding freedom of speech and expression and the law regarding broadcasting. Owners, management or authorized representatives, shall be restricted to make decisions on the airing or publication of materials against the will of an editor or a journalist to select a topic or decide editorial issues. In order to avoid any manipulations, it is recommended to include into the Labor Code, in the form of an exception, an obligation[85] for a broadcaster to conclude at least a one-year contract with a journalist, over and above the probationary term. The issue of compensation, in case of dismissal for some inexcusable reason, must be adequate for a journalist and conformable to incomes of a media source, and must be regulated by law. Provision of reasonable compensation is a guarantee of protection of editorial independence recognized by Strasburg Court.

GOVERNMENTAL PRESSURE OVER MEDIA

In his biannual report for 2006, the public Defender referred to the resignation of leading journalists Natia Lazashvili, Nana Lejava, Tamar Ghvinianidze and Tamar Rukhadze, from Broadcasting Company Rustavi 2. Allegedly their reason for resigning was the replacement of former director Nika Tabatadze by Koba Davarashvili. At that time, the journalists did not report about any pressure on behalf of the government. Their first statements about such pressure were made during the program, Reaction, on Imedi. The Public Defender became interested in the above-mentioned statements and asked for some explanations by the ex-chief producer of the news program, Courier, Tamar Rukhadze, and ex-anchor of the day news, Nana Lejava.

From their explanations the following was determined, members of the government had permanently attempted to influence the operation of the news unit of the TV station. Social and political figures expressed their discontent with the stories aired by the company and gave their necessary instructions in order to avoid similar stories in the future. Government officials were dissatisfied with the political and non-political. Tamar Rukhadze remembered a phone call made by the Mayor of Tbilisi, Gigi Ugulava, in which he objected to a story in the news program, Courier. The story referred to a lizard that crawled out of the tap in one of the apartments of Tbilisi. The story about a car accident in Turkey was followed with the same reaction. Members of government not only gave instructions on what materials to air, they even attempted to determine the sequence of stories. According to Rukhadze, the Member of Parliament, Giga Bokeria, made a remark to her only because the news program did not start with a story of the assassination of Lebanese Prime Minister Raphik Harir.

During this reporting period, the public Defender studied the case that referred to the interference of local government officials into the professional activities of a journalist. A correspondent of the Public Broadcaster in Gurjaani, Tea Alaverdashvili, accused the city's Governor Ramaz Kerechashvili of exerting pressure on her. According to her, the governor threw a mobile phone at her for airing a press conference about the unauthorized use of budgetary funds. The event of throwing the mobile phone towards her has not yet been proven, but the explanations and statements collected by the public Defender make it clear that the governor was dissatis-

[85] According to current practice, one-month contracts are concluded with journalists. This puts the journalists into a vulnerable position and forces them to obey every word of an owner or director, and refrain from expressing different opinions, which finally causes serious damage to the realization of the principle of editorial independence.

fied with the journalist of the Public Broadcaster. According to Alaverdashvili and her colleague Gela Mtivlishvili, Governor Kerechashvili called them several times and demanded them to withhold certain events from airing. The journalist never complied with this demand. According to Alaverdashvili, the governor of Gurjaani has a wrong understanding of the duties of the Public Broadcaster, as he considers that a journalist of this TV channel cannot possibly air stories containing any criticism of the government.

The European Court of Human Rights declared that the press plays an essential role in a democratic society. The function of the press is to distribute information and ideas about the issues of interest to a society by any means that do not contradict its obligations and responsibility[86]. Providing a society with information is not only the obligation of print media; but a society has the right to receive such information. Without that, the press would be deprived of its vital function – the ability[87] to serve as a public watchdog. Censorship is great hazard, and thus needs to be paid much attention. This particularly refers to news programs and printed materials. The shortest delay in publication or airing may cause the products to lose their value and the public's interest in them[88].

Obviously, in terms of close control on behalf of the members of government, the existence of an independent media is impossible. The government creates a certain environment of censorship, and the society is deprived of the information that is not produced by the participants of political processes. Members of a government might publicly declare their opinions regarding the operation of certain TV companies, without giving instructions to heads of news units on the phone. In general, issues of editorial policy of TV channels, and the protection of professional standards of journalism stand far beyond the direct obligations of government officials and therefore, interference into such issues is totally unpardonable.

SEIZURE OF VIDEO CAMERAS

Seizure of video cameras by law enforcement authorities, thus interfering with their professional performance, is quite a common practice. Law enforcement officers apply this method in most occasions to cover their abuses of authority. Many such events have been inspected by the Public Defender in past[89].

During this reporting period, four such events have been reported. Each of the events occurred whenever the agencies of the Ministry of Internal Affairs conducted special operations using force and attempting to have their actions filmed only by the camera of the special service of the Ministry of Internal Affairs. Each occurrence of seizure of a camera was accompanied by the use of excessive force, with one exception. All cameras were returned to their owners, but was done so without the recordings.

The first occasion of seizure of a camera took place on September 27, at Atoneli St. No. 24, during the arrest of former Minister of Defense, Irakli Okruashvili, when officers of the Ministry of Internal Affairs stopped Imedi TV reporter, Rusudan Chabukiani, and cameraman Kakha Janezashvili, twisted their hands, put them with their faces towards their car, and took away their cameras and some other equipment. Later, the officials returned the camera, without the tape. The Ministry of Internal Affairs denied the event.

On November 7, at 7:30 a.m., law enforcement officers wearing yellow raincoats approached the parliament building where a protesting demonstration was going on. They attacked the hunger strikers gathered in front of the building. The attack was recorded by a member of Imedi TV. They threw cameraman Temur Tandarashvili to the ground and took away his camera. In one hour's time, the head of Administration of the Ministry of

[86] *De Haes and Gijsels v. Belgium*, judgment of 24 February 1997, *Reports of Judgments and Decisions* 1997-I, pp. 233-34, § 37

[87] *Thorgeir Thorgeirson v. Iceland*, judgment of 25 June 1992, Series A no. 239, p. 28, § 63

[88] The Observer and the Gardian v. the UK judgment 26 November 1991 §60

[89] see Public Defender's biannual report for the first half of 2006, regarding seizure of cameras from reporters of "LIDER TV and "ANS TV", TV stations of Azerbaijan in village Damia-Georarkh.

Internal Affairs, Shota Khizanishvili, returned the camera to the cameraman, but the camera was damaged and absolutely useless.

During the events of November 7, law enforcement officers physically abused Trialeti cameraman, Giorgi Kvrivishvili and took his camera away. The camera has never been returned to Trialeti, a TV company in Gori.

On November 25, a protesting demonstration was held at the Square of Europe. Reporter Mariam Kadagishvili, who was preparing materials for cable TV company CNN, attempted to record several high ranking officials present at Rikhe area, including the Head of Administration of the Ministry of Internal Affairs, Shota Khizanishvili; Head of Penitential Department of the Ministry of Justice, Bacho Akhalaia; and Head of Special Operations Department of the Ministry of Internal Affairs, Erekle Kodua. Seven police officers used force against her and took away her camera. Later she received the camera back, but the recorded materials were not there.

In accordance with article 134, paragraph "b" of the Criminal Procedures Code, detention is a form of procedural constraint. The Criminal Procedures Code does not contain any legal acts or requirements that restrict the collection, distribution and audio/video recording of information relating to detention. In accordance with article 274, part 1 of the Criminal Procedures Code, "the investigator and prosecutor ensure the confidentiality of data referring to investigative actions and their results, content of testimonies and statements, content of The caseor its parts, and information about experts' reports". Thus, video recording may be restricted during investigative actions and not during actions of the detention of a person or dispersion of a demonstration. Restrictions also do not apply to the video recording of a government official in a public area or on duty, as such a recording does not support the distribution of classified or secret information, and there is no reasonable expectation of protection of privacy.

In any case, with exclusion of the exceptional circumstances identified by the law, imposition of restrictions on video recording or distribution of recorded materials is the competence of the court. Therefore, seizure of video cameras and destruction of materials by the police breaches the principle of media independence and represents interference into the competence of the judicial system. Moreover, the above-mentioned actions were conducted in a violent and insulting manner.

How available is the information regarding the operation of law enforcement bodies, including the instances of detention or other uses of force to the general public? What is the role of journalists in such circumstances?

These issues were broadly discussed at the European Court of Human Rights during the case Thorgeir Thorgeirson v. Iceland. The Court stated that the remarks the journalist made, or information he spread regarding the actions of police forces, represent the public interest and have the same level of protection as any expression in a political context (paragraph 64).

Forced seizure of journalists' equipment, accomplished via use of force, contains the elements/signs of the offence stipulated in Article 154, parts 1 and 2 of the Criminal Code. This statutory act sets the liability for illegal interference into a journalist's professional performance (i.e. for forcing him/her not to distribute certain information). Such an action is subject to graver punishment if it is accompanied with the abuse of power. The above-stated action implies the signs of offence stipulated under Article 333 of the Criminal Code – abuse of authority. In addition, it must be taken into account that in some cases the equipment got damaged, which requires additional qualification of the action under Article 187 of the Criminal Code.

In relation to each particular case, the public Defender applied to the Office of the Prosecutor General and required the initiation of preliminary investigations. The Public Defender considers that each and every officer of law enforcement agencies that used physical force and kept the journalists from accomplishing their professional duty must be identified and charged.

RECOMMENDATIONS AND PROPOSALS

To the Parliament of Georgia:

- In order to ensure editorial independence in the media environment it is necessary to elaborate on and adopt effective statutory guarantees;
- The Parliament of Georgia needs to enter an amendment into Article 160 of the Criminal Code. Any person that breaches the inviolability of a residence must be released of responsibility if such a breach was committed for the sake of the protection of public interests.

To the Supreme Council of Justice of Georgia:

- Disciplinary punishment must be imposed on Judge Giorgi Shavliashvili for the adoption of the order dated 7 November 2007 regarding the seizure of the property of Teleimedi Ltd. and restriction of the use of its license.

To the Office of the Prosecutor General of Georgia:

- To commence preliminary investigation of the fact of abuse of authority and falsification of authority by Judge Giorgi Shavliashvili;
- To commence preliminary investigation of the fact of abuse of authority and falsification of authority by special cases investigator of the investigative unit of the Office of the Prosecutor General, G. Kadjaia;
- The Office of the Prosecutor General must examine the legality of the intrusion into the Imedi building, and prosecute all government officials who made the decision on the arrangement of the special operation;
- The Office of the Prosecutor General must examine the legality of the termination of broadcasting of TV companies Caucasia and Batumi TV 25, and radio Imedi, and prosecute all government officials who made the decision for the termination of the above-listed media sources;
- The Gurjaani department of the Ministry of Internal Affairs must cease criminal cases regarding the intrusion into the residence of Nana Japharashvili;
- To commence preliminary investigation and to prosecute all members of the task force who used excessive force during the operation at the Teleimedi building;
- For the threat made against Radio Hereti, to prosecute Isako Tskipurishvili. He must be found criminally liable for threats, physical abuse and interference into the professional operation of journalist Khatuna Gogashvili on January 5, 2008;
- The Office of the Prosecutor General must commence preliminary investigation against the National Communications Commission on the fabrication of Inspection Protocol No. 20, dated 7 November 2007, and the protocol of unscheduled urgent meeting No. 66.

To the National Communications Commission:

- The National Communications Commission must ensure the elaboration of unified administrative practice in accordance with Article 4, part 3 of the General Administrative Code; in particular, withholding from treating license-holders in a discriminatory manner;
- Instead of imposing sanctions on Cable TV Maestro, ensure the modification of its license, if so required.

4 PRESUMPTION OF INNOCENCE

Constitution of Georgia, Article 40:

1. Each individual is considered innocent until proven guilty through the due process of law
2. No individual is obliged to prove his innocence.
3. A person can only be proven guilty if the evidence is incontrovertible. Every suspicion or allegation not proven by the right established by law must be decided in favour of the defendant.

European Convention of Human Rights and Fundamental Freedoms, Article 6, part 2

2. Eeryone charged with a criminal offence shall be presumed innocent until proven guilty according to the law.

THE CASE OF PATARKATSISHVILI

On 16 December 2007, the public Broadcasting TV Company aired a documentary made by the Office of the Prosecutor General, entitled "The case of Patarkatsishvili". The film was in the format of an interview with Deputy Prosecutor General Nikoloz Gvaramia. The interview included comments on crimes committed by Arkady "Badri" Patarkatsishvili. The documentary states that 100% of the shares of the Imedi TV Company are owned by Patarkatsishvili, who is the chairman of the supervisory board, a position that entitles him to determine the editorial policy of the channel. The interview further claims that due to his position he can use Teleimedi for his own interests.

Later, Gvaramia focused on a statement made by Patarkatsishvili on 7 November and aired on Teleimedi, in which he labeled the existing government as fascist and declared that he will spend his financial resources to the last penny to change it. In the film, Gvaramia said, "When processes become illegitimate and statements are made in such a seditious tone, naturally his position can be considered as illegitimate". Gvaramia points out that Patarkatsishvili's statements were subversive; and during the "mass turbulences" that happened in Tbilisi on 7 November, such statements could have caused an overthrow of power.

However, circumstances in which a person is considered a suspect does not give the prosecuting counsel the right to consider him/her a criminal. Violation of the presumption of innocence comes to the forefront even more with the prosecutor's statement about a person committing such a crime for which he/she is not considered a suspect.

On 7 November 2007, Patarkatsishvili became a suspect under part 1 of Article 315 of the Georgian Cri-

minal Code, which concerns itself with the responsibility for the conspiracy of forcible change of power, its overthrow or seizure. Nika Gvaramia states that Badri Patarkatsishvili incited protesters to overthrow power. Such a crime falls under Article 317 of the Criminal Code – country-wide appeal to violent change of the Constitutional order or overthrow of power. However, Patarkatsishvili had never been identified as a suspect in committing the crime as per the above article, and so Gvaramia violated the presumption of innocence.

Further, Deputy Prosecutor General Gvaramia speaks about Patarkatsishvili paying Irakli Okruashvili a large sum to make a statement on TV, and that he told the organizers to draw parallels between the rallies on 7 November 2007 and the events of 9 April 1989. Even if these facts were proven, no crime according to the criminal code took place, unless one takes into account that Gvaramia considers drawing the above-mentioned parallels as sedition to overthrow the power. In the documentary, different political leaders draw such parallels; but even if one considers such statements as sedition, Gvaramia never produced any evidence to prove the relation of these statements with Patarkatsishvili and his alleged criminal plans.

After that, a taped audio recording of Imedi TV journalists, Eka Kadagishvili and Sopho Chaava, was aired. In the recording, Chaava said the picketing planned on Tuesday would be violently and forcefully dispersed by the government and there will be three victims, after which the participants of the rally will "trample" the government representatives in the commotion. Chaava continued to say that she learned about it from a meeting she attended with Giorgi Targamadze and Levan Vepkhvadze. Despite the public defender's request, sent to the Office of the Prosecutor General on 28 November 2007, we could not obtain any information on the legal basis for tapping these telephone conversations and recording them.

One striking fact about Gvaramia's claim that the journalists knew about the anticipated escalation on Tuesday, that three people were to be murdered, and that a mass revolt was anticipated, is that Gvaramia and his office never reported this information to law enforcement bodies, thus committing a crime under Article 376 of the Georgian Criminal Code – failure to report a grave crime. Despite the fact that the aired recording does not enable us to conclude that the journalists had prescient information, and that the conversation was clearly just an ordinary discussion about the further development of events, Gvaramia insists that the journalists were trying to conceal their crime. This statement was made at a time when the crime had yet to be proven by legal indictment and the journalists had yet to be interrogated.

Gvaramia linked the jounalists' conversation about the anticipated events on Tuesday with a telephone conversation between Konstantine and Tsotne Gamsakhurdia. In this conversation, Tsotne Gamsakhurdia urges his elder brother, Konstantine, to take more active actions, to which Konstantine responds that the actions will enter the active phase in two days time. On Gvaramia's interpretation, the conversation took place on Saturday. "These people are saying the same thing, i.e. nothing is going to happen in one or two days, but on Tuesday there will be a picket and the situation will escalate" – Gvaramia says; thus blaming them for not reporting the crime. It is also remarkable that from the above-aired conversation, it is not clear that the instability will take place through the picketing. Konstantine Gamsakhurdia is speaking about turning the events into an active phase, but he never mentions the word "picket". Therefore, Gvaramia's statement is groundless.

Konstantine Gamsakhurdia, similar to the above-mentioned journalists, was also not found to be a suspect under Article 379 of the criminal code. He was interrogated as a witness on a criminal case concerned with the conspiracy to overthrow the government with the use of power and espionage. The case was later dismissed since there were no signs of his actions pertaining to such a crime.

In the film, Gvaramia also refers to the illegal creation of armed groups and their leaders. The narrator of the film says that Patarkatsishvili's chief security man, Alexandre Maisuradze, was establishing different security services and was trying to recruit former employees of the Ministry of Security. Presumably, the task of these security groups, supervised by Alexandre Maisuradze and led directly by Gia Beridze, was to spy and eavesdrop. In the narrator's opinion, these groups were to be used to create mass turmoil. Beridze and Maisuradze

were detained for the illegal possession of arms and the illegal formation of armed groups. These accusations, however, do not correspond with the charges brought against them. They have not been found guilty of creating mass turbulence, or even attempting to do so. Therefore, the court's indictment and mentioning their names within the context of such crimes violates the presumption of innocence principle. The narrator never states that they "were possibly planning the civil unrest", that "they were spying", or "were most probably leading the armed groups". Nevertheless, such allegations were affirmatively made.

The narrator also links Zurab Metreveli with Beridze and Maisuradze in the illegal creation of armed groups and purchase of firearms. Here again the narrator uses an uncompromising and affirmative tone. Gvaramia speaks about the criminal actions of Beridze in the same tone, implying that he was recruiting people to the illegal groups. Gvaramia states that Beridze was speaking about a particular day, which he interpreted to be 7 November, which still violates the presumption of innocence. The investigation on Beridze has not accused him of organizing the mass turbulence, thus it is not clear why Gvaramia speaks about these accusations. Gvaramia continues in this manner when he speaks about Maisuradze being the founder of the "International Security Association", but the Supreme Court acquitted him in that case.

In the case of the European Court of Human Rights – A. L. v. Germany, it was determined that the presumption of innocence is violated when, despite existing legal grounds, a person is given a not guilty verdict and high ranking officials continue talking about the person as if they had committed crime. In this particular film, Gvaramia violated the presumption of innocence by making public statements linking a person with a crime of which they had been found not guilty.

The documentary mentioned above was aired in connection with the suspension of Imedi TV's license. Public interest in the events of 7 November and Imedi TV's license suspension was especially high, and so that somehow justified showing the TV documentary, even though it was biased. The public had the right to hear the government's position on the events and people involved, but in the interest of maintaining a civil society, it did not justify the violation of the presumption of innocence of certain persons. It is also remarkable that the defense counsels of the people mentioned in the documentary were not given equal airtime to respond to the assumptions and accusations made in the film. The documentary aired on Rustavi-2 TV, Mze TV and on the Public Broadcasting Company, and according to sub-clause "a", clause one, Article 16 of the Georgian law on broadcasting, only Public Broadcast TV is obliged to ensure impartiality and fairness of programs. Therefore, it is the responsibility of the public broadcaster to give the audience balanced and impartial information. This was not done and caused a serious threat to fairness and fundamental rights.

Airing the film, which violated the principles of presumption of innocence, can be construed as exertion of pressure over the court since it has to hear the case of Maisuradze, Beridze and Metreveli. This film could have influenced the judge with preconceived ideas and stereotypes about the defendants. The right to defense was also breached since they had no possibility of presenting counter-arguments during the same airtime.

DOCUMENTARY FILM "FROM NOVEMBER TO NOVEMBER"

The Public Broadcasting Company aired a documentary it produced, entitled, "From November to November", on 20 November 2007. On the second day after the release of the film, it informed the public that "the film 'From November to November' had been made by the Ministry of Internal Affairs and was based on materials supplied by TV Companies: Mze, Rustavi-2, Public Broadcasting Comapny, Imedi and Ajara. The film shows the latest development of events viewed from the standpoint of the Ministry of Internal Affairs and prosecutor's office". Thus, the opinions expressed in the film convey the views of a particular state body – the Ministry of Internal Affairs – and so the documentary can be discussed within the context of compliance with Georgian law.

The film starts with the assault against opposition leader Mikheil Saakashvili in 2003, which was linked to Russian intelligence agency activities. It then goes into the Rose Revolution and Saakashvili taking over as president, which created serious actions from the Russian government and its intelligence agencies. The existing territorial problems in the country at the time, controlled by warlords, Aslan Abashidze and Emzar Kvitsiani, were presented as activities of Russian intelligence agencies. This portion of the film assessed and evaluated the challenges the state had been facing since 2003. This portion gives a general analysis of Russian-Georgian relations and so no law transgressions were found.

The first incident in the film that mentions an individual having committed a crime is about an incident that takes place in Akhalsopeli. The film states that "in this period, Russian intelligence services obtained information about the Georgian economy and its political plans through various means, including the use of secret agents". After that statement, a taped audio recording is aired of a conversation between MP Levan Berdzenishvili, and Russian diplomat, Sokolov. Berdzenishvili informs Sokolov that the Georgian Parliament is not planning to quit the Commonwealth of Independent States (CIS).

The producers of the film recall the protest campaigns against the introduction of cash registers in stores, in which Labor Party leader, Shalva Natelashvili, took part. In the film, these protests are considered to lay down the groundwork for the forthcoming instability. Video of Natelashvili's speech at the rally is accompanied by the following words, "the existing spy network in Georgia started linking the group dissatisfied with Saakashvili's regime to social class". This juxtaposition leads the audience to surmise that Natelashvili is the representative of these agents.

The Ministry of Internal Affairs' statement about Brdzenishvili being the representative of Russia's spy network who supplied information about Georgia's economy and its political plans to Russia, falls under Article 314 of the Georgian Criminal Code, which deals with espionage.

The conversation mentioned in the film did not point to any kind of disclosure of secret information. From the taped telephone conversation, it appears that Berdzenishvili learned about Georgia quitting the CIS via the Ministry of Foreign Affairs, which was actively preparing for the Summit. This was not secret information and the Georgian media provided wide coverage of the issue at that time. Supplying the foreign diplomat with such openly available information is not espionage. Therefore, the Ministry of Internal Affairs' statement should be considered as a violation of the presumption of innocence, especially since a court indictment was also not present. In this particular case, the film presented Berdzenishvili a suspect, though the taped telephone conversation did not even provide grounds to suspect him in the alleged crime.

On the other hand, it is unclear why someone who organizes a protest march automatically is assumed to be a member of a spy network. Thus, the public statement Natelashvili is in violation of the presumption of innocence.

The film also mentions businessman Badri Patarkatsishvili and includes the following statement made by the Ministry of Internal Affairs: "For Moscow's account, the oligarch dissatisfied with Georgia's existing regime was the appropriate candidate to overthrow Saakashvili's government. An agreement was made for Patarkatsishvili to personally head the operation to change power in the country and in return, Russia would cease its persecution of Patarkatsishvili. The Russian Office of the Prosecutor General discharged Patarkatsishvili from many accusations made against him".

In the case of Butkevisius v. Lithuania, the European Court of Human Rights declared that the statement made by the prosecution in the presence of media about the existence of enough evidence for the court to decide about the commission of a crime by an individual does not violate the presumption of innocence.

In the film, it is unclear what substantial evidence the Ministry of Internal Affairs had when it claimed that Patarkatsishvili was involved in a plot with Russia. Apart from the fact that the statement does not sound as an

assumption, but rather a factual claim, there is no mention of any evidence to prove the circumstances within. Consequently, Patarkatsishvili's presumption of innocence was violated.

Further, the taped telephone conversations of Natelashvili and Khaindrava with Russian diplomats Sokolov and Solomatin cannot be considered as essential evidence. On one occasion, Natelashvili makes an appointment with Sokolov; and on the other, Khaindrava addresses Solomatin as "maestro". This taped conversation does not represent any substantial evidence to prove the crime committed by Natelashvili and Khaindrava as per Articles 314 – espionage – and 315 – conspiracy or uprising to overthrow the constitutional order of Georgia by force – of the Georgian Criminal Code. When making statements to the press about the commission of a crime by an individual, it is necessary to present sufficient evidence. Otherwise, the Ministry of Internal Affairs was under the obligation to be more restrained in making the statements about Khaindrava's and Natelashvili's involvement in espionage (see Dactars v. Lithuania).

The film also shows materials of counter-intelligence, which indicate that Okruashvili and Patarkatsishvili were planning to turn the protest march into a mass riot. Okruashvili's armed supporters would occupy strategic positions such as state organizations, the parliament, city council, etc. Okruashvili, who would lead the coup, would then declare the creation of a transitional government.

Once again, the film uses a declarative, rather than assumptive, tone to prove conspiracy to overthrow constitutional order. However, it still remains unclear upon which counter-intelligence reports these claims can be based. The Office of the Prosecutor General of Georgia has not initiated a case on Okruashvili under Article 315 of the criminal code regarding the planning of criminal actions. The same film also implies that Okruashvili is accused of mugging, money laundering and the excessive use of authority.

The film also indicates that Patarkatsishvili, with the help of Maisuradze and Beridze, was forming serious military units by using Imedi as a shield for the critical moment in which there would have been a forcible overthrow of power. In this section of the film, Maisuradze and Beridze are openly charged with the crime under part one of Article 315. Presently, they are under preliminary detention. They were brought to court under Article 223 – leadership in and formation of illegal armed groups – and Article 236 – purchasing and keeping firearms – of the criminal code. The action committed under Article 315 was never brought up in court and thus, this film section violates the defendants' presumption of innocence.

When commenting about the protest rally that took place on 2 November, the Ministry of Internal Affairs claims that with the encouragement of Russia, the opposition created a hostile environment among the public in order to justify the forcible overthrow of power. The Ministry of Internal Affairs considers that the preparations for the protest march were an attempt to overthrow power, which is not based on any evidence.

Also in the film the particular incident that took place in front of the State Ministry of Conflict Regulation office is considered to be an act of sedition on the part of opposition party leaders. Before the protest march began, with the aim of provoking demonstrators, Patarkatsishvili's caricature, along with caricatures of the demonstrators in action as marionettes, was displayed in front of the above-mentioned office. Some of the participants demanded the poster be taken down; however, in order to keep the poster, police officers were mobilized. Some citizens, exasperated by the cartoon, started throwing stones. The incident settled and mass disorder was averted, mostly due to the interference of one of the opposition leaders, Tina Khidasheli; whereas the producers of the film blame the rally organizers for the incident.

The producers used the taped telephone conversations of Tsotne Gamsakhurdia, Konstantine Gamsakhurdia and Natelashvili as evidence for mass disturbance. Tsotne Gamsakhurdia blames opposition leaders, calling them incapable, for not being able to achieve the goal of having 150 000 people out in the street. However, the Ministry of Internal Affairs cannot explain the connection between the telephone conversation and the incident in front of the state office, and the stone throwing was in response to the provocative actions taken by

government representatives, who displayed the insulting poster in front of thousands of people. Consequently, the incident could not have been caused by a preliminary agreement among Tsotne Gamsakhurdia, Konstantine Gamsakhurdia and Natelashvili, otherwise we should suppose that government representatives displayed the poster as a result of preliminary talks with opposition leaders.

Similar to the film, the case of Badri Patarkatsishvili, made by the Office of the Prosecutor General the Ministry of Internal Affairs restates the opinion that journalists Giorgi Targamadze, Levan Vepkhvadze and Sopho Chaava knew about the anticipated uprising on 7 November. The producer of the film claims that Teleimedi was instructed to be on the lookout if any events, including minor incidents, took place. The film does not mention anything about the fact that police dispersed the protest demonstration at 8 o'clock in the morning by force, and physically offended Levan Gachechiladze.

At the same time, and without any sound ground, Teleimedi was again blamed for calling upon the violent overthrow of the power, as if the TV station was drawing a parallel between that morning's protest dissolution and the events of 9 April 1989, which does not reflect the truth. The Ministry of Internal Affairs also blamed opposition leaders for calling upon the overthrow of power at 11 o'clock that same morning after the protest rally resumed on Rustaveli Avenue. The producer of the film said, "one part of the opposition leaders, who were being instructed by the Russian intelligence service, called upon participants to break through the defense line to block the avenue". In the opinion of the Ministry of Internal Affairs, after using tear gas, truncheons and launching water canons, the appeals to overthrow the government were heard. Koba Davitashvili's and Levan Berdzensishvili's statements were considered as such, and in their interviews on Teleimedi, they compared the dispersal of a peaceful demonstration with that of the 9 April events; and the Ministry of Internal Affairs considered Patarkatsishvili's statement about the dispersal of the demonstration at Rikhe as sedition. As stated in the documentary, "an appeal to overthrow the government was heard. Patarkatsishvili aired his address, in which he called Saakashvili's government fascist, and called upon citizens to overthrow his power".

It should be noted that Patarkatsishvili's statement did not contain any appeal to overthrow power. His statement, which was read live by Magda Anikashvili, said, "be sure that I will use all my finances, until the last penny, to free Georgia from this fascist regime". It is clear, from the above statement, that he does not call upon anyone to forcibly overthrow power; he simply speaks about using his financial resources to change the current power, not to overthrow it, as the producers of the film want to prove. Changing power through elections and pre-election campaigning is the constitutional right of every citizen and consequently, is not a sign of committing a crime.

The producers of the film blamed Imedi journalists for sedition as well, in particular, Natia Mikiashvili. Mikiashvili stated, live on air, that Special Forces were going to ascend on the Sameba church that was protecting protesters. But, she also indicated that the information was unverified. The same was reported by Chronica presenter, Sopo Mosidze; however, that was not included in the film. The producer also blames TV reporter, Giorgi Targamadze, for sedition, who was the news presenter at the time when special service troops broke into Imedi. It is unknown what his act of sedition was, and it is curious why showing the operation of the riot police on air should be considered a crime causing mass turmoil. Further, it is impossible for anyone to interpret the following words of Targamadze as sedition: "Now I would like to ask you… but I don't even know what to ask; keep calm, everything will be all right".

No preliminary investigations have begun concerning seditious appeals, under Article 317 of the Georgian Criminal Code made by Davitashvili, Berdzenishvili, Patarkatsishvili and Mikiashvili.

Mikiashvili's statement is followed by the following comments made by the producers of the film: "This was to turn the situation into an uncontrolled action, which then would be followed by a well-planned operation conducted by well-trained armed groups"; and at that time the film shows the detainment of Metreveli, one of Patarkatsishvili's security service employees. The film producers link this person as a participant in the planned conspiracy on 7 November, which has no basis and thus violates his presumption of innocence.

The film qualifies the actions of the participants and organizers of the peaceful protest as mass turmoil and a Russian plan for a coup d'etat; however, nothing is said in the film about the force used by law enforcement officials on civilians.

Patarkatsishvili and Natelashvili were suspected in espionage and in attempting to overthrow constitutional order, and Berdzenishvili, Konstantine Gamsakhurdia and Khaindrava were interrogated as witnesses. By the resolution of the Office of the Prosecutor General, the preliminary investigation was dismissed for lack of any criminal evidence in their actions. However, before the dismissal, the public Broadcasting Company openly accused the above persons of treason; and, despite the Public Broadcasting Company's promise, none of the persons named as culprits in the film were given an opportunity to rebut. Thus the right of the defense party to present its position in the court of public opinion, and to avert the establishment of incorrect stereotypes perpetrated in the film, was breached by not giving them the chance to enjoy the same conditions as the prosecution enjoyed.

The aim of the documentary was not to present legal arguments about certain events held in high public interest, rather it was to discredit political leaders of the opposition and to justify their persecution for their political convictions. The Ministry of Internal Affairs unambiguously assessed the 7 November events as mass uprising that might affect the case proceedings of six convicted persons accused of participating in the unrest, which were Levan Gelashvili, Ilya Koiava, Davit Maghlakelidze, Lasha Sirbiladze, Vladimer Khutsishvili and Zviad Khargelia.

5 JANUARY 2008 EXTRAORDINARY PRESIDENTIAL ELECTIONS: FACTS AND RECOMMENDATIONS

Elections are the basis for the authority of the government and the will of the people expressed through polls, and determines the political and legal future of a country. The full realization of the electoral right is one of the pre-conditions for having an accountable and effective government, which will serve as the guarantor for the protection of all other rights.

It should be noted that the 5 January 2008 extraordinary presidential elections were particularly competitive politically. However, the pre-election environment was not equal and fair. This time, as usual, the alarming tendency of blurring the distinction between the presidential candidate of the ruling party and the state authority occurred, which was expressed through the direct political involvement of the different agencies (especially law enforcement agencies) of the executive branch in the electoral processes. One of the proofs of the involvement of the mentioned agencies is that the electoral headquarters of the ruling party's candidate was in reality led by the Minister of Internal Affairs, who was conducting meetings and assigning local party leaders, heads of police departments, employees of the Constitutional Security and Special Operative Departments, prosecutors, and governors with particular election-related tasks.

Despite the fact that in November and December 2007, as well as in the post-election period, the public Defender systematically received information regarding violations of election legislation. On 5 January 2008, staff members of the Public Defender Office observed the voting, counting, and tabulation process in a number of polling stations (mostly in Tbilisi, Kutaisi, Batumi, and Zugdidi). The scale of the mentioned activities does not allow us to evaluate the 5 January 2008 presidential elections by relying merely on the information at our disposal. Taking this into consideration, the report is mostly based on the conclusions and evaluations of the presidential elections produced by the international and local observer missions that have relevant monitoring and election experience.

This document is focused on revealing the main problems hindering the full realization of electoral rights. Consequently, this report draws less attention to the positive factors. It was mentioned several times that a number of positive amendments were incorporated in the election legislation and that a competitive political environment in comparison to other elections characterized the 5 January presidential elections. However, it is obvious that these factors were not enough for protecting citizens' electoral rights.

At this stage, our aim is to draw attention to the quite serious and concerning circumstances and violations observed during the elections in order to prevent them in the future. In addition, this report includes recommendations the Public Defender deems indispensable for implementation.

ELECTION LEGISLATION

The main principles of Europe's electoral heritage are universal, free, equal, secret, and direct suffrage, which are also principles affirmed under the constitution of Georgia. The election code of Georgia is the main instrument for implementation of these principles, and it defines the legal basis for preparing and holding different types of elections, as well as covers the rights and obligations of the participants in the electoral process. Apart from the election code, a number of laws and by-laws regulate the election processes, including the normative and individual legal acts of the Central Election Commission (CEC).

While talking about the election code of Georgia, it should be mentioned that there has been a bad practice established in Georgia – making amendments and additions to the Election Code in favour of the existing political conjuncture. Despite the fact that such amendments can eradicate defects detected during the previous elections, according to international standards, the stability of the main electoral components should exercise maximum protection. "The fundamental elements of electoral law, in particular the electoral system proper, membership of electoral commissions, and the drawing of constituency boundaries should not be open to amendment less than one year before an election, or should be written in the constitution or at a level higher than ordinary law".[90]

Notwithstanding the fact that the mentioned fundamental elements are generally included in the Constitution of Georgia, as well as in the organic law, the election code of Georgia, the provisions related to the election system, and the composition of the election administration are amended upon changes in the political situation of the country. Amending the concrete, procedural provisions is far more frequent. Both mentioned factors impede the establishment of a sound election culture in society and the stability of the election legislation. Another serious problem is the training of the election administration members in parallel to the procedural changes.

For the 5 January 2008 presidential elections, the election code of Georgia was amended on 7 December and 22 December 2007. The amendments inter alia defined the new rules for the composition of the CEC and Precinct Election Commissions (PEC). Also, voting based on additional voter's lists was allowed for election registration, and some provisions regarding pre-election campaign were changed.

Despite the fact that the amendments to the Election Code reflected some of the recommendations of the OSCE/ODIHR, European Commission for Democracy through the Law (Venice Commission) of the Council of Europe, and the Parliamentary Assembly of the Council of Europe, problems were still created. This became obvious by frequent cases of divergent interpretations of the law, and the substance of the electoral disputes related to the violations of the election legislation. Different types of shortcomings can be detected in the current election code. In particular, some aspects of the electoral process are not comprehensively defined in the legislation, and some of the provisions contradict with the international standards and national legislation. The code contains contradictory and ambiguous provisions, thus giving credence to different interpretations of its articles, and granting wide discretion to the election administration. Given the low level of public confidence in the election administration, the afore-mentioned undermines the legitimacy of the whole electoral process.

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[90] "Code of Good Practice in Electoral Matters", the European Commission for Democracy through Law (Venice Commission), 5-6 July 2002.International Election Observation Mission, (Tbilisi, 6 January 2008 – The International Election Observation Mission (IEOM) for the 5 January 2008 extraordinary presidential election in Georgia is a joint undertaking of the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), theOSCE Parliamentary Assembly (OSCE PA), the parliamentary Assembly of the Council of Europe (PACE) and the European Parliament (EP).), Georgia – 5 January 2008 Extraordinary Presidential Elections, Statement of Preliminary Findings and Conclusions.

The Public Defender Office is analyzing the current election legislation and will submit its detailed proposals to Parliament in the nearest future. We consider that the support of the international organizations should be actively used in the process of election legislation study. The proposals of domestic observer organizations should also be taken into consideration, as their activities are directly linked to revealing the shortcomings in the election process and election legislation.

Finally, it is desirable to improve the election code not only for the 2008 Parliamentary elections, but also for establishing sound guarantees for the realization of electoral rights in the future, and for eradicating the practice of constant amendment to the election legislation in Georgia.

ELECTION ADMINISTRATION

The Rule of the Composition

Despite formal attempts to establish a professional election administration in Georgia, attempts remain mere statements, since authorities do not have enough political will to create a professional and independent election administration. Apparently, certain political maturity and a high level of public confidence is required to achieve this objective. The "professional administration", in reality, has been a single-party election administration. The vast majority of commission members, at all levels of the election administration, have been supporters or activists of the ruling party, the Unified National Movement.

The 22 November 2007 amendments defined a new rule for the composition of the CEC, the supreme body of the election administration, and the PECs. If previously the CEC chairperson and six members were nominated by the President and elected by the Parliament, currently the CEC is composed of 13 members, seven members of which are appointed by the political parties (currently six opposition and one ruling party), while five members and the CEC chairperson are nominated by the President and elected by the Parliament. The same principle of the party representation applies at the PEC level. This amendment reintroduces partisan composition of the election administration, thus raising many questions regarding the independence and impartiality of the commission members. It is also notable that the members of the CEC, nominated by the parties are not required to have the certificate of the election administration officials, which decreases the standards of professionalism. However, the previous rule for CEC composition could not ensure neutrality and political impartiality either. In reality, considering the balance of political forces in the Parliament, the president and the ruling party exercised their full authority in defining the composition of the CEC. Consequently, in practice, the election commission, which formally had to be a professional administration, was a single-party administration.

By introducing the partisan composition of the election administration, the election legislation allowed opposition political parties to have representation at the highest level of the election administration as well as at the PEC level. However, this new principle of election administration composition did not apply to the District Election Commissions (DEC), thus creating an imbalance in representation at different levels of the election administration. Despite the fact that the authority of the DECs was somewhat reduced by means of the new amendments, significant concerns were raised in connection with the DECs during the 2008 presidential elections, mainly regarding the tabulation of votes, consideration of complaints, and addressing the CEC with relevant decisions.

As for the PECs, the statement of the International Election Observation Mission indicates that opposition parties were underrepresented in managerial positions at the PEC level. The ruling United National Movement held de facto majority in the PECs.

Authority and Decision-Making

While adopting decisions, the election administration shall be permanently guided by the Constitution of Georgia and election legislation. During the 2008 extraordinary presidential elections there were cases when

the procedures defined by the CEC were not comprehensive, or were inconsistent with the election code,[91] thus creating a danger of their inconsistent application. The process of considering complaints and making relevant decisions by the election administration revealed serious problems as well.

According to the election code, the decrees of the CEC are subordinate normative acts passed by a two-thirds majority of the commission. As for the ordinances of the election commission, in order to pass the individual legal acts they need to receive the majority of the votes of the commission members attending the session, but not less than one-third of the commission, unless otherwise stipulated by law. It should be noted that according to the law, a range of important issues need to be stipulated through ordinances, such as decisions on repeated polls, second rounds, canceling or amending the decisions made by the lower level election commissions and their officials, opening packages received from relevant PECs, recounting ballot papers, special envelopes, voters lists, and approving the summary protocols of the election results. Consequently almost all important decisions could have been passed without considering the opposition's opinion.

As for the rule of passing decisions by the election administration, the code of good practice in electoral matters of the Venice Commission of the Council of Europe states that "it is desirable that electoral commissions take decisions by a qualified majority or by consensus."[92] The 21 January 2008 PACE report, reflecting the results of the observation of the extraordinary presidential elections by the Ad Hoc Committee of the Parliamentary Assembly, states that the decisions of the CEC often split along party lines with its members placing narrow party political interest before a sound interpretation of the law. This was compounded by the inconsistencies and ambiguities in the Unified Election Code, which allowed the CEC to stretch the law beyond reasonable interpretation. The same report states that decisions were often made in the form of orders, which only need a simple majority to be adopted. In that manner, the CEC avoided a possible blockage of its work as a result of the split between pro-government and opposition representatives, but the legal basis for this appeared questionable at times.[93] The fact that the CEC members voted along party lines and not based on the reasonable interpretation of the law is highlighted in the second interim report of the OSCE/ODIHR Election Observation Mission as well.[94]

On 12 December 2007, the CEC failed to adopt the decree on the early conduct of the 2008 presidential elections and plebiscite in the peacekeeping battalions of Georgian armed forces abroad. Consequently, the CEC could not fulfill its duty (defined under the legislation) to ensure the realization of the active electoral right of the Georgian citizens in Iraq and Kosovo who are eligible to vote, which is a right granted under the Constitution and the election code of Georgia. The Public Defender addressed the supreme body of the election administration with the relevant recommendation. The mentioned issue was considered by the court as well, which assigned the CEC to make an appropriate decision.

VOTER REGISTRATION AND VOTER'S LISTS

The accurate voter's lists is one of the guarantees for observing the principle of universal suffrage. Problems related to the inaccuracies in the voter's lists, often caused by the lack of an accurate database, are of a major concern. However, intentional manipulation with the voter's lists is also common to the electoral practice of Georgia.

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[91] OSCE/ODIHR Election Observation Mission, Georgia 2008 extraordinary Presidential Elections, Interim Report #2, 14–24 December 2007 page 2.

[92] "Code of Good Practice in Electoral Matters" adopted by the Venice Commission of the Council of Europe (Commission for Democracy Through Law) on 5-6 July 2002.

[93] Parliamentary Assembly of the Council of Europe, 21 January 2008 , Observation of Extraordinary Presidential Election in Georgia (5 January 2008)), report, Reporter: Mr Mátyás EÖRSI §20, 21.

[94] OSCE/ ODIHR, Election Observation Mission, Georgia, 2008 Extraordinary Presidential Elections, Interim Report #2, 14–24 December 2007, page2.

For the 5 January 2008 presidential elections, the CEC compiled the voter's lists using a door-to-door voter list verification method, along with data received from the relevant bodies in accordance with the law. The voter's lists were published for public scrutiny in order to enable the election contestants, observers, and voters to check their records and request the election administration to make relevant changes.

As mentioned in the statement of the International Election Observation Mission, "Political parties and NGOs provided OSCE/ODIHR observers with some examples of multiple and incomplete records, omissions of eligible voters, spelling and typographical errors, and cases of deceased persons remaining on the list. The CEC acknowledged that mistakes might have remained, citing lack of time due to the unexpected announcement of the election. At least six complaints submitted to the CEC by opposition parties, with over 40,000 voters' records claimed as being inaccurate. All these complaints were submitted after the legal deadline for voter list verification. The CEC stated that cases listed in the complaints were checked, and necessary changes were made when inaccuracies were confirmed."[95]

The 22 November amendments introduced the possibility of using additional lists for the 5 January 2008 elections. There were cases in the electoral practice of Georgia when eligible voters were not able to exercise their electoral right due to the non-existence of a permanently updated and accurate voter's database. Consequently, the additional lists allowed those voters to register on election day and vote. However, there might be a danger of misusing the additional lists, especially when the mechanism against multiple voting (inking procedure) is not properly applied. Besides, the additional lists are only a one-time mechanism and do not exempt the State from the obligation to compile accurate voter's lists. It is necessary to realize that the political will and appropriate efforts remain crucial for creating accurate voter's lists.

The elections revealed several significant problems with regard to these additional lists. In particular, on election day, the inking was not checked or applied at some of the polling stations, or it was applied with irregularities. The report of the International Election Observation Mission states that, "the most widespread procedural irregularities were related to inking safeguards, with not all voters being checked for ink in 15 percent of polling stations visited, and ink not always being applied in 12 percent".[96] The mentioned percentages are alarmingly high and obviously, such a scale of violations can affect the final election results.

Furthermore, the counting of votes from additional lists revealed serious problems in the existing legislation. Namely, Article 1297 of the Election Code gives full discretion to the PECs to pass a decision by a two-thirds vote of a commission to count or not to count the ballots cast by voters registered on additional voter's lists. In the latter case, the PEC sends special envelopes, along with the relevant documentation (additional lists, voter applications, copies of the ID or IDP cards), to the CEC. The CEC, based on a wide discretion, passes a decision to count the mentioned votes by a two-thirds vote of commission members. The improper legislative regulation of the issue raised suspicions on the sending of this relevant documentation from the PECs to the CEC, which was compounded by allegations related to election documentation being found in the rubbish. Finally, the CEC did not apply uniform standards while counting the votes from additional lists. As a result, the issue of votes cast by voters on the additional lists was considered as one of the main problems.

PRE-ELECTION PERIOD

The 5 January 2008 elections were preceded by important political events and processes in the country. Consequently, the presidential elections, as well as the plebiscite, were held during an emergency regime. It is notable that the election administration had to organize the elections and the plebiscite in limited timeframes, and the election legislation underwent important changes shortly before the elections.

[95] International Election observation Mission, Georgia – extraordinary presidential elections, 5 January 2008 Statement of Preliminary Findings and Conclusions.

[96] *ibid.*

The entire pre-election period was characterized by events of political opposition and various allegations. The fact that the Imedi TV Company was not broadcasting during this period had a negative impact on the election process as well. Attention also needs to be drawn to other threats to the freedom of media, which occurred to Radio Hereti in the pre-election period.[97]

Despite the fact that the elections were generally assessed as competitive, the election campaign was accompanied by a number of alarming circumstances running counter to the main principles of democratic and free elections, including paragraph 7.7 of the 1990 OSCE Copenhagen Document, according to which, election campaigns should be conducted in a fair and free atmosphere without any administrative action, violence, or intimidation.

The participants of the election process, including the election contestants, observer organizations and voters have pointed out to the following significant violations in the pre-election period:

Misuse of administrative resources, blurring of distinction between the state and the ruling party. The reports of the international[98] and domestic observer missions and organizations have pointed out this problem of not being able to distinguish between the State and the ruling party.

The statement of the International Election Observation Mission mentions that the blurring of the distinction between State and political party is not in compliance with paragraph 5.4 of the 1990 OSCE Copenhagen Document and contributes to creating an unequal campaign environment.[99]

According to the Election Code of Georgia, Article 76, part 1, "it is prohibited to use the material and technical resources of organizations that are being funded from the State budget for pre-election agitation and campaigning".

Two months before the end of the budget year, based on the President's initiative, the government launched numerous social welfare projects, which required significant funds for their implementation. Considering the social and economic conditions in our country, social welfare programs are always timely for different layers of the society; however, several months before, authorities considered it impossible to make some of the decisions that were initiated a few weeks prior to the elections. Some of these social projects included increasing social benefits for war veterans, blind persons, multiple children families, teachers, pensioners, as well as the issue of special benefits related to public transport.

Since 1 December 2007, the amount of minimum pensions increased from 38 to 55 GEL, the salaries of the academics at the National Academy of Science increased to 1,600 GEL, and the salaries of the member correspondents increased to 1,000 GEL. Currently, there are 65 academics and 64 member correspondents in the Georgian Academy of Science, which means the State will need approximately 2.2 million GEL annually for paying these increased salaries. While in the first version of the 2008 State budget, only 1.3 million GEL was envisaged for the Academy of Science. Moreover, all the initiated social programs were not envisaged in the 2007 and 2008 draft budget. This raises suspicion that the mentioned decisions were part of the pre-election campaign, and not of the consistent and long-term social politics of the government.

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[97] The Public Defender addressed the Prosecutor General and the Minister of Internal Affairs to investigate relevant facts, see chapter "Freedom of Expression", attachment - "The case of Hereti".

[98] Statement of the NDI election observer delegation to Georgia's 2008 presidential election Tbilisi, January 7, 2008, page 3; International Election Observation Mission, Georgia – Extraordinary Presidential Elections, 5 January 2008, Statement of Preliminary Findings and Conclusions. Parliamentary Assembly of the Council of Europe, 21 January 2008, Observation of Extraordinary Presidential Election in Georgia, (5 January 2008), Report, Rapporteur – Mátyás EÖRSI.

[99] International Election Observation Mission, Georgia – Extraordinary Presidential Elections, 5 January 2008, Statement of Preliminary Findings and Conclusions.

The report of the International Election Observation Mission points out that medical supplies and utilities "vouchers prominently displayed that they were a subsidy from the President. Healthcare vouchers, as well as employment scheme leaflets, featured visually outstanding number "5"s – the number on the ballot under which the UNM has run in elections since 2004. Distributors of vouchers sometimes asked recipients whether they would vote for Mr. Saakashvili, and asked them to sign documents confirming their support. Vouchers were in some cases distributed from UNM offices".[100] The Public Defender's Office also received information on these facts. Moreover, one of the chairs of the PECs was involved in the process of distributing the vouchers. There were a number of other facts related to the blurring of the distinction between State and ruling party. One of the obvious examples is the participation of the presidential candidate, Mr. Mikheil Saakashvili, in the official opening ceremony of the new pipeline in Akhalkalaki and the Tbilisi-Senaki-Leselidze highway lighting system.[101]

According to Article 73 of the Election Code of Georgia, the following persons have no right to participate in the pre-election campaign: "Public officials of State and local governance bodies when performing official duties". During the 2008 extraordinary presidential elections, numerous incidents of participation of public officials in the election campaign, while performing their official duties, as well as their active involvement in the pre-election agitation of the ruling party's presidential candidate, were observed.[102] The mentioned facts were appealed, however respective complaints were not satisfied.

The report of the Parliamentary Assembly of the Council of Europe indicates that both the courts and the CEC tended to stretch the law beyond reasonable interpretation while adjudicating disputes on the usage of administrative resources and participation of public officials in the election campaign in favor of the ruling party and officials.[103]

The final report of the OSCE/ODIHR Election Observation Mission, in the paragraph on pre-election complaints and appeals, states that in the adjudication of the complaints, the CEC failed to follow important procedures provided by domestic laws and international standards. The report mentions as well that, "in some cases the decisions on complaints were made unilaterally by the CEC chairperson, and not by the commission as a collegial body".[104]

Although the Election Code of Georgia and relevant legislation contains significant shortcomings in the mentioned field, these issues need to be analyzed in compliance with international standards and recommendations. Consequently, any form of usage of administrative resources (human or financial), as well as other actions blurring the distinction between State and party structures shall be eradicated.

INTIMIDATION OF VOTERS AND VOTE-BUYING

A number of cases of intimidation and pressure were referred to in the pre-election period. According to the statement of International Election Observation Mission, "these included a number of confirmed cases of pressure on opposition supporters by the police and local officials to desist from campaigning, threats of arbitrary arrest or job dismissal, and cases of landlords who were pressurized not to let premises for use as

[100] *ibid.*

[101] *ibid.*

[102] Georgian Young Lawyers Association, 5 January 2008 Extraordinary Presidential Elections and Plebescite Observation Mission, Monitoring Report, 17 January 2008. Transparency International Georgia, pre-election monitoring reports.

[103] Parliamentary Assembly of the Council of Europe, 21 January 2008, Observation of Extraordinary Presidential Election in Georgia, (5 January 2008), Report, Rapporteur - Mátyás EÖRSI, § 29.

[104] OSCE/ODIHR Election Observation Mission, Final Report, 5 January 2008 Extraordinary Presidential elections.

[105] International Election Observation Mission, Georgia - Extraordinary Presidential Elections, 5 January 2008, Statement of Preliminary Findings and Conclusions.

opposition campaign offices. Isolated instances of violence against opposition activists, including kidnapping, were reported and verified".[105] The Public Defender's Office also received similar information.

There were also cases of pressure on the representatives of domestic observer organizations, mostly in the regions.

The cases of transferring material values and giving promises to voters, categorically prohibited under Article 73 of the Election Code, were observed at the central, as well as local level bodies in the pre-election period.[106]

Problems related to the transparency of election campaign funds should also be noted. Article 48 of the Election Code defines the rules for disposal of election campaign funds. According to Article 48, part 6, "no later than one month after the publication of election results, the election contestant shall submit to the relevant election commission a report on the funds used for elections, together with the audit report (of the audit company), with a statement of the source of the funds deposited to the election campaign fund. The election subjects, which, according to preliminary data, receive the necessary number of votes established by the Election Code, must do the same, no later than eight days after the election day. An audit examination can be carried out by an auditor (audit company) functioning on the territory of Georgia". According to part 11 of the same article, "information about election contributions is open, public and accessible. The CEC of Georgia is obliged to provide all interested persons with the information on the amount, source, and date of deposited funds existing in election campaign funds, as well as to ensure publication of this information on the corresponding website".

In order to provide timely and relevant campaign finance information to the public, the election Code should require disclosure of not only sources and amounts of financial, but also the types and amounts of campaign expenditures. Additionally, the legislation should clearly determine the requirement to disclose the aforementioned information during the whole election process, and this provision should be implemented in practice as well.[107]

VOTING

On 5 January 2008, the election day was generally peaceful. The eligible voters were mostly able to express their will.

The voting process itself revealed a lack of organization and proper knowledge from the PEC members, as well as a number of technical problems. Furthermore, significant violations of the voting procedures were observed:

- A certain number of polling stations were opened with delays;
- In some PECs, casting of lots for assigning functions to PEC members was not conducted;
- In a certain number of the PECs, the control slips were not inserted in the ballot box;
- The presence of unauthorized persons at polling stations or more representatives of the election contestants than allowed by the law was revealed;
- Some PECs had ballot boxes were not sealed properly;
- Cases of multiple voting and identical signatures in the voter's lists;
- In some polling stations, ballot box stuffing occurred;

[106] Georgian Young Lawyers Association, 5 January 2008 Special Presidential Elections and Plebescite Observation Mission, Monitoring Report, 17 January 2008.

[107] Joint Opinion of the Election Code of Georgia by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights, adopted by the Council for Democratic Elections at its 19th meeting (Venice, 16 December 2006) and the Venice Commission at its 69th plenary session (Venice, 15-16 December 2006), §106.

- Some polling stations had incidents in which voters were intimidated during the voting process and the secrecy of the vote was systematically violated;
- According to the information of the OSCE/ODIHR Election Observation Mission in 11 percent of polling stations equipped with video cameras, the video cameras were placed in such a way that they did not ensure the secrecy of the vote;
- In a certain number of polling stations there were problems related to the additional lists, such as the voters added to the additional lists were not registered on the territory of the given precinct, the members of the PECs were not requesting the voters to leave copies of the IDs, or to fill in the relevant applications;
- In some precincts, people voted with birth certificates and military tickets; and
- The most significant and alarming violations were related to the inking procedures. Considering the existence of the additional lists, it was of a concern that the inking was not at all checked at a certain number of the polling stations. There were cases when the inking liquid was not applied or voters who had already been inked were allowed to vote. Besides, the technical problems related to the inking equipment and liquid increased the cases of improper application of the mechanism against multiple voting.

It should be noted that the voting process was critically assessed in some regions: "In Samtshke-Javakheti, 24 percent were assessed as bad or very bad, in Kvemo Kartli and Shida Kartli 10 percent, and in Kakheti 9 percent".[108]

Observers of the International Election Observation Mission found CEC-produced stickers with the text, "Where will you be on 5 January?" There was number "5" in a red circle visually resembling to that used on Mr. Saakashvili's campaign materials.[109]

Problems with the voting process were observed in places of preliminary detention as well. According to Transparency International Georgia, out of 2,152 preliminary detainees, only seven percent of them were able to vote, as only this seven percent had their ID cards with them. The remaining 93 percent were unable to vote for reasons beyond their control.[110]

VOTE COUNT AND TABULATION

Apart from the fact that the vote counting process was slow and unorganized, many observation missions gave a negative evaluation on its compliance with the law.

"The IEOM observed the vote count and completion of results protocols at 180 PECs. A significant 23 percent of the counts observed were assessed as bad or very bad".[111] This percentage is also alarming.

Many problems were revealed, including a number of serious violations, for example:

- In some cases the counting officers were not selected based on the lot;
- The procedures prescribed by the law were not observed while counting votes;
- The validity of ballot papers was determined without uniformity and not in line with the law;
- Unauthorized persons took part in the counting of votes;
- The rules defined in the legislation were often neglected while filling the results protocols;

[108] International Election Observation Mission, Georgia - Extraordinary Presidential Elections, 5 January 2008, Statement of Preliminary Findings and Conclusions.

[109] *ibid.*

[110] Transparency International Georgia, Monitoring of Voting By Preliminary Detainees.

[111] OSCE Office for Democratic Institutions and Human Rights, Election Observation Mission, Georgia Extraordinary Presidential Election, Post-Election Interim Report, 6–18 January 2008.

- The information required by the law, as well as the signatures of the commission members and stamps, was missing from many protocols;
- The protocols were not displayed publicly;
- In a significant number of protocols serious discrepancies were found, the total number of voters having participated in elections did not correspond to the total number of the valid and invalid ballots; and
- Incidents of changing data and altering protocols were observed. Furthermore, "occasionally, protocols had been pre-signed and completed in pencil rather than ink".[112]

Serious violations were found out during the tabulation process in the DECs, namely:

- The EOM indicates cases when the protocols given to the mission were different from the protocols provided by the DECs. These protocols showed a significant increase of votes cast for Mikheil Saakashvili;[113]
- There were cases when the EOM observed that protocols from several PECs within the same DEC appeared to be completed by the same person;[114]
- The legislation has reduced the authority of the DECs to a certain extent, and the DECs are not explicitly authorized to amend the decisions and documents of the lower level election commissions. According to Article 34 of the Election Code, upon the application/complaint, as well as upon its own initiative, the DEC shall examine the lawfulness of the decisions made, and actions taken by the PECs and their officials on election day, including the correctness of the registration of election participants, counting of ballot papers, etc. In case it detects any violation, it shall make the appropriate decision, which will immediately be sent to the CEC for approval or raise the issue of invalidating the results from the respective PEC in the CEC.[115] Regardless, incidents of correcting PEC protocols by the DECs were observed;[116] and
- According to the OSCE/ODIHR Report, 23 PECs reported 100 percent turnout, while another 205 commissions reported turnout between 90 and 100 percent. A significant number of PECs reported unusually high turnout during the last three hours of voting. According to the information produced by the CEC and received by the EOM, "at 79 polling stations, more than 500 voters cast their ballots during this period. For instance, in Marneuli, 866 people voted in PEC 50 during the last three hours, and 657 in PEC 1. In Sagarejo, 822 voters were processed by PEC 36 in the last three hours, and in Akhalkalaki, 879 by PEC 24. Based on more complete information drawn from protocols now posted on the CEC website, as of 17 January, the number of such polling stations stands at 45".[117]

It is impossible not to have doubts regarding the validity of such turnout figures since it is not feasible for a voter to go through the relevant procedure in such a limited time period. These facts need to be further studied by the Prosecutor's Office.

The formal attitude towards the issue, that there had been indeed such a high turnout in some polling stations, only increases the doubts. It is completely unrealistic that there had been a 90 percent turnout, not to mention a 100 percent turnout. If we analyze these percentages in the light of the context of the above stated violations, it is evident that there was total fraud in these polling stations.

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[112] International Election Observation Mission, Georgia - Extraordinary Presidential Election, 5 January 2008, Statement of Preliminary Findings and Conclusions.

[113] OSCE Office for Democratic Institutions and Human Rights, Election Observation Mission, Georgia Extraordinary Presidential Election, Post-Election Interim Report, 6–18 January 2008.

[114] *ibid.*

[115] Regardless of the above amendment to the legislation, Article 63 of the Election Code, related to the tabulation of voting and election results by the DEC, contains clauses still mentioning the right of the DECs to invalidate the results of the PECs and make corrections to PEC protocols. It is indispensable to eradicate this controversy. Furthermore, Article 77, paragraph 28 provides for a possibility to appeal to the Court the DEC ordinance on invalidation or refusal to invalidate the PEC results.

[116] OSCE Office for Democratic Institutions and Human Rights, Election Observation Mission, Georgia Extraordinary Presidential Election, Post-Election Interim Report, 6–18 January 2008.

[117] *ibid.*

On 23 January 2008, the public Defender addressed the Chairperson of the CEC, Mr. Levan Tarkhnishvili, with a letter enumerating a long list of polling stations and requesting the video recordings made on these precincts by means of the special cameras placed in the polling stations for ensuring the transparency of the polling process. In his response, the CEC chairperson indicated that there had been no cameras placed in the polling stations listed in the letter, except for polling station N4 of N40 Akhalkalaki District (results from this polling station have been invalidated). It was pointed out in the letter that the CEC had not requested respective DECs to submit the recordings from the afore-mentioned polling stations, and that this procedure would be carried out in the nearest future. Note should be taken of the fact that according to CEC Decree N25, dated 29 November 2007, on defining some of the electoral activities for the 5 January 2008 extraordinary presidential elections, "after the results are tabulated in a polling building where a video surveillance system is placed, the recordings made by this system shall be sent to the relevant DECs within reasonable timelines, and the relevant DEC shall send this material to the CEC upon tabulation of the results". Attention needs to be drawn to the fact that the CEC decree does not include a list of polling stations where cameras were to be installed. Although the above information can be found in the minutes of the CEC sessions, it is not included in any of the CEC legal acts, which should have preferably stipulated this issue. The Public Defender requested the recordings from all polling stations where filming had been carried out according to the CEC information. However, apparently, it is not technically feasible to make copies of the video recordings and it is possible to watch them only in the CEC building. Given this, it can be concluded that the activity initiated by the CEC to ensure transparency of the process itself lacks transparency as the results of this initiative are in fact inaccessible for the public.

It should also be noted that the CEC refused to submit to the request of the Public Defender for copies of the signed voter's lists from a number of the polling stations. The reason for the refusal was the fact that the documentation was sealed and the CEC had not passed a decision on opening it. This refusal contradicts Article 20 of the organic law on the Public Defender, according to which, the public Defender shall have access to all types of information. Article 23 of the same law requires that any State or local government body, official, or legal entity will provide assistance to the Public Defender, and provide him, without any delay, the material, documents, and other information he requires in order to carry out his mandate. According to Article 25, the neglect of the requirements of the afore-mentioned law, as well as the creation of obstacles to the Public Defender by any means is punishable under the law, and will be reflected in the report of the Public Defender, subject of special discussion by the Parliament of Georgia.

The failure to submit the requested material is considered as neglect of the lawful demand of the Public Defender, and is therefore an offence envisaged in Article 1734 of the Administrative Offences Code of Georgia. Consequently, the public Defender drew up an administrative offence protocol for the CEC. On 29 February 2008, the Administrative Collegium of Tbilisi City Court terminated the case on imposing a penalty on the CEC without indicating the basis for its decision.

The Public Defender's Office received information on several violations of the law during election day, including various acts of violence.

After having verified the information and receiving relevant explanations, based on Article 21, paragraph "d" of the organic law of Georgia on the Public Defender, the public Defender addressed the CEC with a request to consider the issue of the disciplinary responsibility of the persons who impeded the legal representatives of the election contestants, and the representatives of the observer organizations, from observing the polling process and results tabulation, revealing violations and filing complaints with the commissions in the N33 Kardenakhi PEC of N12 Gurjaani electoral district. However, the above proposal of the Public Defender was not taken into consideration.

Based on the information received by the Public Defender's Office, and results of studying relevant cases, the material was sent to the Prosecutor General of Georgia regarding the acts committed in the N12 Gurjaani electoral district, N111 polling station in N59 Kutaisi electoral district, N15 polling station in Kobuleti N15 District, N15 polling station in Kvareli N16 District, N16 polling station in N17 Telavi District, and N19 polling station in Lagodekhi N15 Electoral District. The Public Defender considers that these acts might contain signs of crimes covered in Article 162 (impeding the exercise of free will in the elections, referendum, or plebiscite), Article 163 (interference with the work of election or referendum commission) Article 164 (violation of secrecy of voting, miscounting of votes, or incorrect tabulation of election results) Article 164[2] (participating in elections, referendum or plebiscite based on false documents) Article 151 (threat), and Article 154 (unlawful impediment of the professional activities of a journalist) of the Criminal Code of Georgia. According to the Public Defender's information, an investigation was opened regarding the events in N12 Gurjaani Electoral District, in N111 polling station of N59 Kutaisi Electoral District, in N15 polling station of N81 Kobuleti Electoral District, and in N16 polling station of N17 Telavi Electoral District.

COUNTING OF THE VOTES CAST BASED ON THE ADDITIONAL VOTER'S LISTS

Particular attention needs to be drawn to the counting of the votes cast based on the additional lists, which was carried out in the CEC. As it was already mentioned, the election legislation created significant problems in this regard. According to the OSCE/ODIHR Report, around 85,000 voters were registered in the additional lists on election day. 35,772 votes out of these were counted by the CEC. The counting was accompanied by significant problems. Particularly, according to the Report of the Georgian Young Lawyers Association (GYLA), "although the Election Code does not envisage the counting rules specifically for the CEC, the non-existence of such a special clause does not exempt the CEC (which is in fact carrying out the function of the PEC) to guide itself by Article 59 of the Election Code, which defines comprehensively the counting procedures in the PEC. Through ignoring the requirements of Article 59, envelopes of different size and color were opened simultaneously by several persons, thus making it impossible to find out how many ballots were placed in one envelope. Regardless of requests from the observers, in the majority of cases, the persons counting the votes did not check the signature of the registrar and stamp, which is essential for defining the validity of the ballot according to Article 59 part 3. The Election Code imperatively requires to tabulate the votes cast based on the additional lists only in cases when the additional list and copies of the ID cards accompany the ballots. At the same time, if the number of signatures is less than the envelopes received from the polling station, the envelopes received from the relevant polling stations shall be considered invalid and will not be included in the overall summary document. Given that the above violations were observed, GYLA observers officially addressed the CEC with a complaint on 10 January 2008, at 16:50 hours, and requested summarizing the votes cast based on additional lists, without including the ballots received in breach of the law from 123 polling stations".[118] The complaint submitted by the GYLA was not satisfied.

The problems related to the election documentation were also stressed in the OSCE/ODIHR report, which indicates "that a significant number of ballots from some PECs in certain DECs appeared to have been filled out in identical fashion, raising suspicion of wrongdoing. In such cases, numbers of all but one candidate on ballots had been circled, or all but one name had been crossed out identically".[119] The report also states that some of the ballots filled in the above manner were invalidated; however, in the majority of cases, such ballots were considered valid based on the new CEC ordinance on identifying invalid ballot papers cast by voters added to the additional voter lists that are counted at CEC, dated 10 January. This ordinance offers a more liberal interpretation for ballot validity than the Election Code itself.[120]

[118] Georgian Young Lawyers Association, 5 January 2008 Extraordinary Presidential Elections and Plebescite Observation Mission, Monitoring Report, 17 January 2008.

[119] OSCE Office for Democratic Institutions and Human Rights, Election Observation Mission, Georgia Extraordinary Presidential Election, Post-Election Interim Report, 6–18 January 2008.

[120] *ibid*

The commission summarized the votes cast based on the additional lists by drawing the special protocol of the results of voting by means of the additional lists. The data in the protocol is not given according to the PECs, therefore it is not possible to have a comprehensive picture on the allocation of votes according to PECs.

Finally, according to the amendments made to the Election Code in November 2007, the CEC shall summarize the results of the Presidential elections in eight days (instead of the 16 days as provided in the previous version of the code). Given the timelines set for appeals by the same code, the eight-day period does not give the possibility for the CEC to summarize the results so that adjudication on the appeals submitted to the relevant Court is over. This fact was proved in practice during the 5 January elections. The CEC approved the summary protocol of the election results, while the Tbilisi City Court had not yet finished consideration of the appeal submitted by the GYLA.[121] Furthermore, the election Code stipulates that the election contestant, which, according to the preliminary data, receives the necessary number of votes as established by the law, shall no later than eight days after the polling day submit to the commission the full report of the election funds. If the violation of the relevant provisions is proved, the appropriate commission warns the contestant in writing and requests to remove the shortcoming. "If the appropriate DEC or CEC considers that the violation is substantial and could affect the results of the election, it shall be entitled to apply to the court with the request of consolidation of the results of the elections without taking into account the votes received by those election subjects." There is therefore, one more circumstance that raises a question regarding the full usage of the eight-day period – in case the contestant uses the eight-day period completely, the CEC will have to summarize the results so that it will not be in the position to take into consideration the information on the campaign funds.

ELECTORAL DISPUTES

After the polling day, the international community and local observer organizations, as well as the Georgian society in general, emphasised on numerous occasions the necessity of tabulating the results, considering complaints, and making respective decisions in compliance with the procedures established by law. This should have become the precondition for a fair and free transition of the will expressed by the Georgian electorate on 5 January 2008 in the final results.

However, the election administration, as well as the common courts, did not satisfy the public demand. The complaints and appeals were almost fully neglected, often through an abuse of the right to interpret the law. In the majority of cases, the evidence and the case circumstances were not examined appropriately and the decisions lacked legal basis and justification.

Regardless of the considerable number of the complaints lodged with the election administration regarding polling, vote counting, and results tabulation, these violations were not investigated, and the complaints were not appropriately examined at the DEC as well as the CEC level. Furthermore, a significant part of the complaints requesting invalidating the PEC protocols/voiding the results was not examined by the election administration due to a lack of requisites defined by law. According to the EOM, "PECs received approximately one thousand complaints, with additional instances when PECs refused to register complaints. DECs received several hundred complaints (also refusing to register some)".[122] For instance, the GYLA submitted about 230 complaints to the election administration, out of which 35 contained requests on invalidating the

[121] Georgian Young Lawyers Association, 5 January 2008 Extraordinary Presidential Elections and Plebescite Observation Mission, Monitoring Report, 17 January 2008.

[122] OSCE Office for Democratic Institutions and Human Rights, Election Observation Mission, Georgia Extraordinary Presidential Election, Post-Election Interim Report, 6–18 January 2008.

[123] Georgian Young Lawyers Association, 5 January 2008 Extraordinary Presidential Elections and Plebescite Observation Mission, Monitoring Report, 17 January 2008

precinct results. Out of the most important complaints concerning the PEC results, only one was completely examined and satisfied.[123]

Particular concern is related to the fact that by referring to the imperfectness of the electoral law, the CEC rejected a great number of complaints as inadmissible due to their failure to comply with the procedural requirements set by the law. While acting in such a manner, the CEC did not even once use its right enhanced in the Election Code to study, upon its own initiative, the lawfulness of the decisions and actions of the election commissions and their officials, and to invalidate or change them by ordinance, in case the violations are detected. The CEC could also make a decision to open the packages and recount the ballots, special envelopes, and voter's lists received form the relevant PEC. The EOM Report indicates that the CEC "incorrectly refused to consider several complaints requesting annulment of protocols, on grounds that only the courts had authority to do so6. In addition, the CEC Chair incorrectly declared that the CEC did not have investigative powers. In one instance the CEC refused to review the official video recording of an alleged incident in a PEC, stating that the CEC had no authority to do so".[124] In total, according to CEC information, it invalidated results from five PECs and amended results protocols of six PECs.

Regarding the court cases, according to the EOM, more than 50 appeals were filed to city courts, the vast majority of which were rejected, most for technical reasons; 30 cases of appeal against decisions of city and rayon courts, most of which had rejected requests for invalidation of PEC and DEC result protocols, were submitted to the courts of appeal in Tbilisi and Kutaisi. All these cases were either rejected or not satisfied.[125] According to the CEC, results from only seven precincts were invalidated by the courts.

On 15 January 2008, four appeals were lodged with the Tbilisi City Court with the request to invalidate the final protocol of results of the 5 January 2008 elections. On 16 January, the Tbilisi City Court received one more appeal. All the appeals were rejected as groundless. On 18 January, three candidates lodged appeals with the Tbilisi Court of Appeal. However, the court upheld the decision of the first instance.[126]

The EOM report points out that the mission was aware of the criminal investigations initiated regarding the events that occurred on the polling day. The Public Defender will follow the developments in this regard and inform the public on the results of the respective investigations.

Taking this into consideration the aforementioned, the activities of the CEC and its chairperson are to be evaluated particularly negatively. Regardless of a great number of violations highlighted by local and international observers, the commission not only did not take any measure to improve them, but through its subjective approach and intentional inaction, enhanced the "legitimization" of these violations.

RECOMMENDATIONS

To ensure the democratic election process it is indispensable to take into consideration the firm will of the Georgian voter to participate directly in forming the State authority through equal, free, and fair elections. In order for the voter to be able not only to express his/her will in accordance with the democratic standards, but also to ensure the full reflection of the expressed will in election results, it is indispensable for the authorities to immediately take relevant measures, in particular:

- The Prosecutor's Office shall consistently, and in compliance with the law, investigate all the facts that are linked to the violations in the pre-election, polling day, or post-election periods. In accordance with the results of the investigation, all perpetrators shall be punished to the strictest extent provided by the law to create serious precedents of eradication of the impunity in the above field. The information on the measures taken in this respect shall be made public to the maximum extent;

[124] OSCE Office for Democratic Institutions and Human Rights, Election Observation Mission, GeorgiaExtraordinary Presidential Election, Post-Election Interim Report, 6–18 January 2008.

[125] *ibid.*

[126] *ibid.*

- Election legislation shall be improved; provisions that are not in line with the international standards and constitution, as well as contradictory provisions and shortcomings, shall be removed from the Election Code, to exclude the possibility of different interpretations of the law;
- The recommendations of the international organizations regarding the electoral system and election threshold related to the parliamentary elections shall be taken into consideration. According to the joint opinion of the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights, the"winner takes all" electoral system is unusual for parliamentary elections; therefore, it is recommended for the Parliament of Georgia to consider carefully the appropriateness of the above system.[127] It is indispensable as well to lower the election threshold in accordance with European standards, which varies from three to five percent. In its Resolution 1477(2006) the CoE Parliamentary Assembly calls upon the government of Georgia to lower the election threshold to five percent;
- The authorities of all levels of election commissions shall be improved, and clear distinctions shall be made between them, in particular regarding their authority with respect to complaint handling; clear procedures shall be established for challenging election related violations; and accurate and comprehensive rules shall be set for the examination of the above complaints to ensure that the complaints mechanism is not a formal procedure but a real tool;
- The intimidation of participants in the electoral process, or any form of influencing them, shall be clearly prohibited, including the prohibition of voter "buying", and appropriate measures shall be taken against perpetrators;
- In order for all election contestants to have equal conditions, particular attention shall be paid to the separation of State bodies and the ruling political party, for which it is necessary to define precise and stricter legal regulations stipulating the issue of the use of administrative resources. The legislation shall clearly determine the issues of participation of the State and local authority representatives in the election campaign, as well as the incompatibility with the official position, the strict measures of responsibility shall be set for the perpetrators of the relevant requirements provided by law;
- The State bodies, as well as election administration, shall take all measures to eliminate the problems and discrepancies related to voter lists; the relevant possibility to verify the unified voter's lists by election contestants, observer organizations, and citizens shall be ensured sufficiently and well in advance of elections. No possibility of voting based on the additional lists shall be provided for the next elections;
- All relevant measures shall be taken to ensure the publicity of all the information related to the elections, the knowledge of which is indispensable for the voter to make free and informed choices. The above measures shall not be limited to a merely formal nature, even legislative provisions and their effectiveness shall be ensured to the maximum extent. It is indispensable to ensure maximum transparency in the highest body of the election administration, during the pre-election and post-election periods, particularly regarding the receipt of election documentation from the lower level commissions, results tabulation, and complaints handling;[128]
- Legal regulation of campaign funding shall be improved, in particular the publicity of the information shall be ensured not only on the amount and sources of funding, but on the expenses as well. At the same time, the above information shall be public during the whole electoral process, before as well as after polling; and
- Legislative changes shall be made in the timelines enabling the election administration to develop and implement appropriate training programmes for all members of the election administration.

It is indispensable that the judiciary approaches the issue of election appeals handling with maximum attention, and maintains impartiality while interpreting the law.

We underscore that all the afore-mentioned measures, and ensuring their effectiveness in the future, are crucial for restoring the citizens' confidence in the election process, since election results are legitimized by a voter first, and this process shall be based on the principle according to which the source of State power is the citizens of the same State.

[127] Joint Opinion of the Election Code of Georgia by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights, adopted by the Council for Democratic Elections at its 19th meeting (Venice, 16 December 2006) and the Venice Commission at its 69th plenary session (Venice, 15-16 December 2006), §44,45.

[128] "Code of Good Practice in Electoral Matters," the European Commission for Democracy through Law (Venice Commission), adopted on 5-6 July 2002, states that any computer rooms, telephone links, faxes, scanners, etc. should be open to inspection. "Any computer rooms, telephone links, faxes, scanners, etc. should be open to inspection."

6 THE STATE OF HUMAN RIGHTS CONDITIONS IN PSYCHIATRIC INSTITUTIONS AND THE RIGHTS OF PATIENTS PARTICIPATING IN ELECTIONS

PAST EXPERIENCE

On October 5, 2006, on Election Day for local administrations, the public Defender's Office conducted monitoring in psychiatric institutions with the aim of exerting control over the realization of voting rights for persons with psychiatric disorders. The monitoring uncovered a certain number of problems. In particular, the psychiatric institutions failed to meet the responsibilities envisaged by paragraph 3, Article 10 of the Election Code regarding the submission of a list of voters. One of the institutions submitted an incomplete list, which included no data on the patients' identity. Despite the abovementioned fact, the ballot commission members brought a transportable ballot box and the patients were allowed to vote; however, the patients possessed no ID (identification) cards during the process.

On April 17, 2007, a roundtable was held in the Office of the Public Defender, which was attended by representatives of governmental, non-governmental and international organizations, as well as representatives of the Central Election Commission (CEC) and administration of psychiatric institutions. The issues discussed at the roundtable addressed the problems that hindered the realization of voting rights for patients and solutions to these problems were determined as well. The Ministry of Labour, Health Care, and Social Welfare, as well as psychiatric institutions were duly instructed about the discussed solutions concerning the ID cards of the patients.

The Public Defender's Office exerted control over the process of following the issued recommendations. The administrations of the psychiatric institutions have taken due measures for the restoration of patients' ID cards and identification of the status of their disabilities. Monitoring of the patients' human rights was conducted once again in three psychiatric institutions due to the extraordinary Presidential elections of January 5, 2008. These three institutions were the M. Asathiani Psychiatric Scientific Institute, Tbilisi A. Zurabishvili Psychiatric Hospital, and Kutidze Psychiatric Health Centre.

A standard questionnaire for the administration and personnel was used during the monitoring, which included the following questions:

1. What is the general number of inpatients?
2. How many patients have disability status?
3. Has a list of patients been submitted to the relevant district election commission no later than six days before the elections? (see the copy)

4. How many inpatients, from a total number, possess ID cards.
5. Have the patients been informed in advance regarding the elections?
6. Has the CEC offered any kind of assistance in the realization of election rights for the in patients?
7. Has an election precinct been opened in this particular institution?
8. Name particular difficulties regarding the participation of patients in the elections.

In accordance with the election results:

There were 220 inpatients in M. Asathiani Psychiatric Scientific Institute by the time of the elections. The administration had no complete data regarding the total number of disabled patients. The patients' list was submitted to the relevant district election precinct no later than six days prior to the elections. All the patients capable of voting, who have expressed their wish to participate, have been included in the list – the number of such patients totalled 40.

These 40 patients all possessed ID cards. They were duly informed about the presidential candidates and their election programs, both by television and newspapers. The personnel also supplied the information regarding their participation in the elections. In support of the patients' participation in the elections, the head of the institution appointed a responsible person who was authorized to keep contact with the CEC. In accordance with the administration statement, the CEC consulted them in a number of cases regarding the questions and issues that arose in connection with the elections. The mobile election box and ballots were brought into the institution by noon

1. **Voting in the M. Asathiani Scientific Institute of Psychiatry was quite well organized. Only two ballots were invalidated – in one of the cases the patient only had an ID card, and in the other, the patient refused to participate in the elections. The administration was well prepared for the elections.**

By the date of elections, there were 100 inpatients in A. Zurabishvili Psychiatry Clinic. The total number of disabled patients was 40. The patients' list was submitted to the commission of the relevant local election precinct three weeks prior to the election. 29 patients capable of voting were included on the list that had to be sent to the CEC. Only 29, from 60 inpatients capable of voting were in possession of ID cards. The patients received no information regarding the presidential candidates and their election programs. Upon the statement made by the administration, they were offered no consultations from the CEC on organizational issues. The mobile election box and ballots were brought to the institution.

The patients from A Zurabishvili Psychiatric Clinic were given a chance to participate in the elections. In the future, however, additional measures will have to be taken for the provision of information for the inpatients regarding the election process, candidates, election programs, and ballots.

The Kutiri Psychiatric Health Centre housed 477 inpatients by the election date, among them, 14 were undergoing compulsory treatment provided by the court decision due to their criminal offence. Out of the 477 patients, 26 were given disability status. The list of 438 patients was submitted into the relevant election precinct commission no later than six days before the election date. A voting precinct was functioning in the Kutiri Psychiatric Health Centre. The 14 patients that were undergoing compulsory treatment were not included in the list submitted to the election precinct commission, as well as the 26 patients regarded disabled.

Upon the statement made by the administration, the above-mentioned 14 patients were not included in the voting list as they had no right to participate in the elections in accordance with the legislation.

Under paragraph 2, Article 28 of the Georgian Constitution, citizens who are recognized by the court as disabled or are in custody as a result of a court decision, have no right to participate in elections. In accordance

with part 3, Article 322 of the Procedural Code, "statements for the recognition of a person as partially disabled or disabled shall be submitted to the court." Also, in accordance with Article 7 of the Georgian Law on rendering psychiatric aid, only the court has a right to recognize a person as disabled. Under part 2, Article 5 of the Georgian Election Law, persons recognized as disabled or those in custody upon a court decision are deprived of the right to participate in elections".

Proceeding from the above, the rights of the 14 citizens undergoing compulsory treatment due to a court decision for criminal misdemeanour have been violated, since a person subjected to compulsory treatment for misdemeanour cannot be considered disabled.

A majority of the inpatients possessed ID cards and were informed about the election campaign, candidates and their programs in advance via television; they were also briefed by the health centre's personnel. The administration received consultations from the relevant election precinct commission regarding organizational issues.

Elections in the Kutiri Psychiatry Health Centre were held in an organized way. The patients were given the possibility to participate in voting. Restoration of the ID cards became possible for all the patients who had lost them previously. The centre was also offered a recommendation regarding the inpatients who were undergoing compulsory treatment for misdemeanour and were banned from the participation in voting.

Particular difficulties have arisen connected with the voting participation of patients who have psychiatric disorders. Observance of election procedures and understanding the essence of the ballots has posed certain difficulties for the patients since they were doing this for the first time under the status of being a patient, thus they had no experience of the task.

The patients were not duly informed about the plebiscite in all three institutions. For this reason, they experienced difficulties tackling the issues independently. They asked various questions regarding NATO (North Atlantic Treaty Organization) and the elections in general, for which reason the administration's representative was compelled to brief the patients on the given issues. However, under our observation, the curator had offered no prompts to any of them. He just explained what was written on the ballots, leaving the patients to fill in the ballot independently. These circumstances made one of the commission members sceptical regarding the correctness of the participation of the patients with psychiatric disorders in the elections. He believed their participation was just an empty formality. Besides, commission members avoided giving explanations to the patients regarding the procedure, and usually asked the administration to do so believing "that they (the administration) knew better how to approach them (the patients)".

The patients kept asking how they should define their ballot choice (i.e.: by putting a signature, underlining, etc). It should also be noticed that some of the patients had difficulty in reading the ballot without their glasses. In certain cases, the attitude of the commission members and their remarks were somewhat insulting.

Despite certain mistakes, the inpatients of the psychiatric institutions have been given the chance to vote for the first time in five years with all the rules observed and the right to make a free choice, which is highly important for the realization of their rights.

Generally speaking, the administration and personnel were prepared for the elections, which facilitated the participation of the patients in the extraordinary presidential election of January 5, 2008. The monitoring has shown positive tendencies – a major part of the patients participated in voting with enthusiasm and tried to follow the election procedure correctly. The patients' participation in voting in the psychiatric institutions was 60 percent.

Recommendations to the psychiatric institutions:

- Regulation of all the difficulties connected with ID cards shall continue in order to allow capable patients to participate in voting;
- Patients shall be better informed about the election process, candidates, their election programs, and ballots during pre-election periods; and
- Special measures shall be taken to ensure the participation of patients undergoing compulsory treatment for misdemeanour as determined by court decision.

Recommendation to the Central Election Commission:

- Better information for partially disabled patients shall be ensured regarding the voting procedure, which could be realized with the organization of role playing and presentations of special information clips in advance. The CEC shall conduct special activities regarding the rights of disabled persons in order to eradicate insulting incidents on the part of commission members.

7 RIGHT TO A FAIR TRIAL

The cause of many serious problems currently facing Georgia is the non-existence of an independent judiciary. The reform of the judiciary system has been going on for years; the legislation is being amended; court buildings are being equipped with modern technologies and judges are being trained. However, the situation in this area is not ameliorating. According to the opinion polls, the public trust in the ju-diciary is between 14 and 15 percent.

The key reason is that the judiciary in Georgia is not independent and is completely controlled by the Prosecutor's Office and the State Administration. Decisions passed beforehand in other cabinets are simply approved by notaries in the courtrooms. Comfortable and well-equipped court buildings with nice-looking facades are not able to serve their main objective – guaranteeing the protection of human rights.

In this situation, an ordinary citizen is completely unprotected and his/her fate depends on the subjective will of the officials in power, which as a rule is the same as the state's interest. Currently, it depends on the political situation, and not the judiciary, whether a citizen's rights and property will be protected. After the 5 January 2008 presidential elections, the political situation changed and the government affirmed that the destruction and demolition of private property is wrong. However, the judiciary had not objected to such unfairness and disorder before.

Internationally, the concept of an independent judiciary mainly comprises the following four components:

a) Independence of judges in their activities means independence from internal and external parties in the decision making process;
b) Personal independence means that a judge's carrier (appointment, promotion and dismissal) does not depend on the government in a way which would affect that judge's decision making;
c) Collective independence means institutional, administrative and financial independence from legislative and executive powers; and
d) Internal independence means independence of judges from their leadership and colleagues.

Judicial independence is based on the existing legislative guarantees, appointment procedures, safety guarantees while exercising his/her authority, adequate remuneration and privileges.

According to the Public Defender's findings, improvement of the situation in this field is impeded by the following factors:

1. Inexistence of a political will - attempts from the Prosecutor's Office to control the judiciary with an aim to monopolize power;
2. Low level of professionalism within the judiciary, making it easier to influence the decision making process; and
3. Lack of democratic culture.

In a modern society, judicial independence as a universal value of international human rights law should be reflected in the fundamental principles of the state's policies. In order to achieve the constitutional aim of ensuring equal execution of justice in economic, social and political life, legal consciousness should be enhanced and all possible political and economic consequences of the judiciary's dependence on other branches of power must be appropriately analyzed.

The judiciary, like all other branches of power, belongs to the people. The activities of the judiciary should be open and public and the rule of law should be observed within the courts.

There should be a real, operational judiciary system in the country, guaranteeing legal protection for individuals, and if necessary, ensuring through its independence the accountability of the government.

The right to a fair trial includes comprehensive examination of a case by an independent and impartial body, and making a lawful and fair decision. The Public Defender studied Irakli Batiashvili's case which revealed numerous violations and the biased attitudes of judges (see annex #4 – Irakli Batiashvili's case).

An obvious example of the judiciary's dependence on the Prosecutor's Office is the case of Levan Zhorzholiani, in which the court, in the absence of appropriate evidence, issued a judgment of conviction. The Prosecutor's Office based the indictment (Article 338, bribery) only on one witness's indirect testimony. The witness categorically stated that while discussing the implementation of their criminal plan on the mobile phone with one of the accused persons (G.S.), Zhorzholiani was with the accused G.S. The witness heard that G.S was discussing this plan with Zhorzholiani. The court considered the above-mentioned as being sufficient evidence Zhorzholiani was sentenced to ten years imprisonment (see case of L. Zhorzholiani).

By issuing such a conviction, the court violated the right to a fair trial and the right to liberty guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms. According to paragraph one of Article 18 of the Criminal Procedure Code of Georgia: "An investigator, prosecutor, judge and court shall determine undoubtedly whether a crime was committed, who committed it and find out all other circumstances of the object of proof with respect to the criminal case."

The case of Giorgi Getsadze, staff member of the Public Defender's Office, further shows the problem of a lack of judicial independence. The only argument put forth by the court about his motivation to commit a crime was a deep inner belief that Getsadze had committed an attempt of crime provocation. The judgment reads as follows: "The crime (provocation) is considered to be complete from the moment of persuading a person to commit a crime. The action of the defendant was directly linked to committing a crime; however the crime was not brought to an end." With this kind of explanation the judge appeared to be in contradiction with himself (see annex # 4, Case of Getsadze).

In the above-mentioned case, the court had to ensure comprehensive, impartial and full examination of the case. Besides, according to Article 19.2 of the Criminal Code of Georgia, while assessing the evidence, the court had to establish whether this evidence was incontrovertible and sufficient for rendering the judgment of conviction.

According to Article 6.1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, "… in the determination of any criminal charge against a person, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

In the case of Musuc v. Moldova, the European Court of Human Rights found that the judgment of conviction based solely on the witness's testimony, in absence of other evidence submitted by the the Prosecutor's Office constitutes a violation of Article 5.1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms – the right to liberty and security. In the same judgment, the Strasbourg Court observed that the evidence submitted to the court by the Prosecutor's Office should clearly reflect the circumstances leading the court to their conclusion, that the accused had committed the offence attributed to him (paragraph 32).

In the case of Perna v. Italy, the allegation against the defendant was based on the evidence of one covert witness, Pentito – a former mafia member who agreed to cooperate with the investigation. The Italian court considered this evidence to be generally convincing and credible.

The European Court of Human Rights underlined the importance of Pentito's testimony within the institution of the Italian legal system. At the same time, it was stressed that consideration of such statements by the court could give rise to numerous problems. While examining such evidence, the court should be very cautious as to its incontrovertibility. The court should be confident that evidence given by particular witnesses is not related to any ulterior motives, such as revenge against an accused person or receiving personal benefits (paragraph 157). Sometimes the double meaning of a witness's statements combined with the risk that the accused person might be deprived of his liberty based on unproved statements should become the subject of assessment by the court (Contrado v. Italy, paragraph 112). Therefore, the European Court of Human Rights in the case of Perna v. Italy found that a court's decision on the deprivation of liberty of a defendant, based on witness's evidence that was not corroborated with other objective evidence, violated Article 5.1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (Perna v. Italy, paragraph 158).

Therefore, the Georgian case law, which states that a judgment of conviction can be based solely on a particular witness's evidence, contradicts the principles established by the case law of the European Court of Human Rights.

LEGISLATIVE AMENDMENTS

High Council of Justice of Georgia

According to the amendments to the Organic Law of Georgia on Common Courts of Georgia adopted on 19 June 2007, the high Council of Justice is no longer the advisory body of the President, and is vested with the power to appoint and dismiss judges in the Common Courts of Georgia.

According to Article 86.13 of the Constitution of Georgia, "the authority and the rule for the creation of the High Council of Justice is defined by the organic law."

The Organic Law of Georgia on Common Courts of Georgia regulates the activities of the High Council of Justice and is part of the judiciary.

According to Article 60.1 of the Organic Law of Georgia on Common Courts, "the High Council of Justice is created for the purpose of appointing and dismissing judges, organizing qualification tests, developing proposals for judicial reform, as well as for performing other assignments as provided by law."

The weakening of the President's influence over the High Council of Justice should be assessed positively. As a result of amendments, the number of the council members is balanced as well. The council is composed of 15 members, more than half of which are elected by the self-governing body comprised of the judges of the

Common Courts in accordance with the law; the Parliament is represented by three members selected by the Parliament, and the President is represented by two members appointed by him/her.

The Common Courts of Georgia are represented by the Chairperson of the Supreme Court and eight other members, including the Secretary of the High Council of Justice, elected by the Judicial Conference upon nomination of the Supreme Court Chairperson.

Disciplinary Prosecution

The Law of Georgia on Disciplinary Responsibility and Disciplinary Prosecution of Judges of Common Courts of Georgia envisages imposing disciplinary responsibility and penalties for having committed a disciplinary violation.

Article 2 of the above law defines that a gross violation of law in the process of executing judicial authority by a judge is considered to be one of the types of disciplinary violation.

In March 2007, the Venice Commission criticized the possibility to commence a disciplinary prosecution against a judge on the above-mentioned grounds, and urged Georgia to make the phrase, "a gross violation of law", more specific. As a result, on 11 July 2007, the law was amended and the definition was reformulated as follows: "Violation of the Constitution of Georgia, an international treaty and agreement of Georgia, and the imperative norms of the Georgian legislation, which caused substantial damage (or could cause such damage) to the legal rights and interests of the party at a hearing, or a third person, or public interest shall be deemed as a gross violation of law."

The definition unites two terms, "caused substantial damage" and "could cause such." The Public Defender considers that types of disciplinary responsibility should be formulated separately since he considers it unfair that the same responsibility is imposed in case of an existing damage and a possible one. Besides, this would contribute to the creation of a uniform practice, prevention of possible problems and the unfair interpretation that might occur in this regard.

CONFISCATION OF PROPERTY

The Public Defender revealed two more systematic problems in respect to the judiciary.

The Criminal Code deals with the confiscation of an object and/or an instrument of crime or an object aimed at committing a crime. Article 52 of the code reads as follows: "Seizure of an object and/or an instrument of crime, or an object aimed at committing a crime, shall mean confiscation without reimbursement of the property that was used in the commission of a deliberate crime or was intended for this in any form, and is in the property or legal possession of the suspect, accused or convict. The seizure of an object and/or an instrument of crime, or an object aimed at committing a crime, is determined by the court for all deliberate crimes envisaged in the present code in cases where it is needed for the state and public necessity, or for the protection of rights and freedoms of particular persons or for the prevention of a new crime."

According to the content of this article, the code also provides for the confiscation of property of a third person whose property was used for committing a crime. In addition, the article defines the conditions under which the Court is authorized to confiscate property, which are:

1. "The State and public necessity", and

2. "Protection of rights and freedoms of particular persons" ; and
3. "Prevention of a new crime".

The term "for the prevention of a new crime" is so general that it can be widely interpreted. Any type of property (e.g. a vehicle, an apartment etc.) might fall under this category. The above-stated circumstance enables judges and prosecutors to use this article in a biased manner. Furthermore, the practice proves that judges in their decisions do not provide justification for the need of confiscation.

In the case, Davit Jimsheishvili, Tariel Gvetadze and Neli Dalalishvili v. the Parliament of Georgia, the constitutional Court of Georgia provided explanation in this respect. The Court noted that, "according to the disputed provision, one of the major conditions for resorting to additional punishment is the existence of "the State and public necessity" clause. This is a general, broad notion. There is no definition for this notion; not even for the aims of the disputed provision. Although this clause implies the goals of protecting others rights and preventing a new crime, its concept is not limited to these two circumstances only. At the same time, it can have different meanings in connection with different crimes. Obviously, it is not possible to stipulate the exact definition of this clause in the legislation, or to provide an inclusive list of the cases that would be considered under such circumstances. Regardless, the possibility of subjective or biased interpretation of this circumstance should be excluded. Although the decision in this case is made by the court and is an important guarantee, the function of the court is limited to appropriately determine whether such state or public necessity stipulated by the legislator exists in each particular case; the will of the legislator is decisive for the court, as the court cannot determine the particular content of this clause according to its own will or attitude."

The public defender requested the material related to the implementation of Article 52 from 2 July to October 2007. As of March 2008, he received 73 decisions and none of the judges provided justification for the confiscation of property.

Judges violate the law by failing to justify the confiscation of property, and they ignore the decision of the Constitutional Court.

Moreover, the public defender does not agree with the confiscation of property as a type of punishment (apart from objects taken out of civil circulation).

According to Article 39 of the Criminal Code of Georgia, "the purpose of punishment is to restore justice, prevent a new crime, and re-socialize the criminal". Confiscation of property does not serve any of the above stated objectives. The lawful justification of confiscation cannot be explained by preventing a new crime, since the person intending to commit a particular crime will be able to get other objects of the same type to commit the crime.

At the same time, it should be noted that Article 52 provides for confiscation without indemnity. This contradicts Article 21.1 of the Constitution of Georgia that reads as follows: "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."

Article 21.2 of the Constitution of Georgia does not specify the terms for the compensation of property, however it provides for the restriction of the right to property and not for its confiscation. Therefore Article 52 cannot be discussed in this context. Paragraph 3 of the same article envisages the confiscation of property only upon relevant compensation; in particular, "the deprivation of property for the purpose of a pressing social need shall be permissible in the circumstances as expressly determined by law, under a court decision, or in the case of urgent necessity, as determined by Organic Law and only with appropriate compensation."

The Constitution envisages the conditions for confiscating property as:

a) For the purpose of a pressing social need in the cases expressly determined by law, under a court decision and with appropriate compensation; and
b) For the purpose of a pressing social need in the case of an urgent necessity determined by Organic Law and with appropriate compensation.

In compliance with the requirements of the Constitution of Georgia, the parliament of Georgia adopted "The Rule of Sequestration of Property for the Pressing Public Need" in 1999 and the Organic Law, "The Rule of Sequestration of Property for the Pressing Public Need in the case of the Urgent Necessity", in 1997. Both laws imperatively and comprehensively stipulate the cases when property may be confiscated, making such confiscation, without relevant compensation, prohibited in all other cases.

The list envisaged in Article 52 of the Criminal Code of Georgia does not comply with the requirements set in Article 21 paragraph 3 of the Constitution of Georgia (as well as other relevant laws). Therefore, it is in breach of paragraph 1, Article 21 of the Constitution, according to which the property is recognized and guaranteed. At the same time, the list provided in Article 52 contradicts the stated aims of punishment.

The European Convention for the Protection of Human Rights and Fundamental Freedoms, and the International Covenant on Civil and Political Rights envisage that rights might be restricted only when the following three circumstances exist jointly:

1) in cases prescribed by law;
2) if there is a legitimate aim; and
3) if it is necessary in a democratic society.

The restriction of the right to property, which implies confiscation, does not comply with the above-stated requirements in the discussed case.

INCOMPETENCE OF JUDGES

Violations occurring in the process of executing justice often indicate the incompetence of judges.

The public defender studied cases when judges violated procedural rules (see the annex 4, cases of Lomsadze, Oboladze-Lobzhanidze, and Zhorzholiani).

Along with their independence, the public requires a high level of competence from its judges. Capacity building of judges, obviously, plays a significant role in enhancing their qualification; however, their proper selection is imperative.

According to Article 47, paragraph 4 of the Organic Law of Georgia on Common Courts, "the candidate is selected based upon competition, taking into consideration their results on qualification exams, the candidate's business and moral reputation, his/her ability to evaluate submitted issues in a free and unbiased manner, their professional working experience and physical conditions."

The candidate selected as a result of such competition is appointed by the High Council of Justice. Incompetence of judges may bring about harsh results. Therefore, the public Defender believes that the High Council of Justice should pay more attention to the selection of judges and their level of professionalism.

Apart from the above arguments, the high Council of Justice should pay more attention to the violations of law caused by the incompetence of judges, or by other reasons, and adequate measures need to be taken in this respect.

The majority of the recommendations from the Public Defender regarding imposing disciplinary responsibility on judges did not bring any results, and in some cases, the violations were so obvious that no investigation was needed.

On 4 July 2007, the law on "Amendments to the Criminal Code of Georgia" removed Article 336 – issuing illegal judgments or other judicial decisions – from the Criminal Code of Georgia. This activity was decriminalized; however, this does not waive a judge from the disciplinary responsibility in case he/she violates the law. The Public Defender studied a case in which a judge ordered a 30-day administrative detention for a juvenile. A preliminary investigation based on Article 336 of the Criminal Code was initiated after the Public Defender sent the case material to the Prosecutor's Office. The investigation was closed after the abolition of Article 336, and the issue of disciplinary responsibility was not even raised. The Public Defender addressed the Ministry of Justice with a letter requesting a deeper look into the issue of disciplinary responsibility of the judge. (See case of A.L.).

STATISTICS

From 1 July to 31 December 2007, common courts rendered judgment on 9,919 criminal cases in respect of 11,948 persons. 182 cases in respect of 203 persons were terminated. 29 persons were subjected to measures of restraint and 53 cases in respect of 64 persons required additional investigation.

In comparison to last year, there was a decrease in the number of motions concerning the assignment of detention as a restraint measure, which is evaluated by the Public Defender as a positive development. Before, the Prosecutor's Office entered motions for detention as a restraint measure in respect of any category of crime, and most of them were approved by the court. In the second half of 2006, the situation began changing for the positive.

In the second half of 2007, 10,059 motions on restraint measures (detention, recognizance, and bail) were made. Of these, 4,475 motions, or 44.5%, of the whole number concerned detention; and 4,240 motions were granted, which constitutes about 94% of all motions.

It should be noted that despite the fact that, in comparison with the previous year, the Prosecutor's Office requests more frequently included non-custodial restraint measures, which did not seriously influence the absolute number of detainees, since the overall number of the people deprived of liberty increased during the reporting period.

The Public Defender believes it is advisable for courts to limit the judgment of custodial sentences in respect to lesser crimes, which, at the same time, would help solve, to a certain extent, the problem of prison overcrowding.

It should be noted that the number of motions granted for bail and recognizance, applied as a measure of restraint, has increased since the first half of 2007. More specifically, in the second half of 2007, 5,455 out of 5,537 motions for bail, and 46 out of 47 motions for recognizance, were granted. And in the first half of 2007, 5,153 out of 5,321 motions for bail, and 38 out of 38 motions for recognizance, were granted.

These figures refer only to motions made by the Prosecutor's Office. Unfortunately, statistics on the motions made by the defence party were not available in the Supreme Court. According to the Supreme Court, this kind of information is not registered separately.

STATISTICS ON MEASURES OF RESTRAINT

	Prosecutor made a motion before the court on:	Granted (the total number):
1 January – 30 June 2006	Bail – 2212 Recognizance – 221 Custody – 5868 (in total 8301)	Bail – 2121 Recognizance – 216 Custody – 5156 (in total 7584)
1 July – 31 December 2006	Bail – 3445 Recognizance – 80 Custody – 5893 (in total 9418)	Bail – 3362 Recognizance – 80 Custody – 5202 (in total 8644)
1 January – 30 June 2007	Bail – 5321 Recognizance – 38 Custody – 5084 (in total 10443)	Bail – 5153 Recognizance – 38 Custody – 4689 (in total 9880)
1 July – 31 December 2007	Bail – 5537 Recognizance – 47 Custody – 4475 (in total 10059)	Bail – 5455 Recognizance – 46 Custody – 4240 (in total 9741)

Compared to previous years, the number of judgements of acquittal has decreased, particularly:

In the second half of 2007, the judgements of acquittal were rendered to eight persons, out of which six judgments were rendered by criminal courts, and two judgments by the courts of appeal.

During the period of 1 January to 1 July 2007, the criminal courts rendered judgments of acquittal to seven persons, while the court of appeal did so to four persons, and the court of cassation terminated a case for one person due to the inexistence of a crime.

STATISTICS ON ACQUITTALS

	First instance courts	Court of appeal	Court of cassation
2005	In respect of 64 cases and 79 persons	In respect of 7 cases and 8 persons	In respect of 11 cases and 11 persons
1 January – 30 June 2006	In respect of 12 cases and 17 persons	In respect of 5 cases and 5 persons	In respect of 4 cases and 5 persons
1 July – 31 December 2006	In respect of 20 cases	In respect of 8 cases	In respect of 2 cases
1 January – 30 June 2007	In respect of 7 persons	In respect of 4 persons	Case was terminated due to inexistence of a crime in respect of 1 person
1 July – 31 December 2007	In respect of 6 cases	In respect of 2 cases	

Concerning the statistics on individual rulings of common courts issued with respect to human rights violation, no individual rulings were issued at all.

The issue of a conditional release is of high importance. In the reporting period, 196 cases were examined by the common courts, out of which 112 petitions were granted. In the first half of 2007, 173 out of 196 petitions were granted. In the second half of 2006, only 86 cases were examined and 40 petitions were granted. There were no cases concerning a replacement of an unserved part of a sentence with a lighter penalty in the second half of 2007.

In the second half of 2006, five petitions were submitted concerning the remission of a penalty as a result of illness or elder age, and three were granted. In comparison, in the first half of the year, there were ten petitions to that effect, of which two were granted. And in 2005, there were 15 petitions concerning the same issue and five were granted.

Seven cases were examined concerning remission of a penalty because of old age, and three petitions were granted.

In the second half of 2007, common courts rendered 4,544 judgments in respect to 5,770 persons based on plea bargaining. Eight cases in respect to eight persons were returned to the Prosecutor's Office for an indictment decision.

In the first half of 2007, common courts delivered 3,888 judgments on a plea bargain in respect to 4,689 persons. Seven cases were remitted to the Prosecutor's Office for an indictment decision. Therefore, 99% of the motions submitted by the Office of the Prosecutor General were granted.

8 ENFORCEMENT OF COURT JUDGMENTS

Many applications received by the Public Defender's Office feature the enforcement of court decisions in which different budget-funded organizations are the debtor parties having arrears owed to citizens (creditors) due to non-payment of wages, pensions, job dismissal and so on.

The Georgian law concerning enforcement proceedings regulates the execution of court decisions towards budget-funded organizations differently. In this case, the bailiff is obliged to act in accordance with the following parts of Article 911 of the law concerning enforcement proceedings:

1. Compulsory enforcement of payments may start three months after the proposal of voluntary enforcement of court judgment is served, or after the refusal of the Parliament of Georgia to allocate additional funds to the state budget enforcement fund with the purpose of enforcing court judgments during the budget year.
2. The Ministry of Finance of Georgia recovers the sums to debtors according to the order of priority of proposals on voluntary enforcement".

Thus, in the process of enforcement of the above said category of cases, according to Article 911 of the law concerning enforcement of court judgments, the debtor and the Ministry of Finance are sent proposals on voluntary enforcement within three months. They are also sent bank accounts by the enforcement department and other bank data in order that the sums are transferred to the corresponding accounts as assigned by the court rulings.

According to applications examined at the Public Defender's Office, no voluntary enforcements of court judgments followed the proposals sent by the enforcement department. There were even cases when proposals were sent off repeatedly to debtor state organizations.

After the non-enforcement of proposals the process of compulsory enforcement starts, but is often procrastinated, which frustrates citizens. The enforcement department sends similar letters to creditors notifying them that "the enforcement case in concern has been passed on to the special group of execution of extraordinary cases that according to article 91 1 of the Georgian law concerning enforcement proceedings has submitted the proposal of court judgment on the enforcement of the case within three months which the debtor has not followed". Hence, the enforcer has been instructed to implement compulsory enforcement measures in compliance with the law in due time.

In the reply received from the department there is no mention of what specific measures are applied in the event of voluntary non-enforcement of the proposal, and in fact, the enforcement of court judgment takes a rather long time. Despite the fact that there are certain terms set by law for compulsory enforcement, in a number of cases the process is procrastinated and often court judgments remain unenforced for years. In such cases, citizens apply to the Public Defender's Office complaining that enforcement bodies do nothing to enforce judgments or, on a number of occasions, the implemented measures are ineffective.

The process of compulsory enforcement cannot last forever. Non-fulfillment or hindrance of the enforcement, which is the obligation of a debtor, and includes a representative of state power or state or local self-governing body officials, is punishable by law.

In the process of the enforcement of court judgments, the court execution official is obliged to take all legal measures to ensure prompt and realistic enforcement of the judgment, to explain their rights and duties to the parties, and help them protect their rights and lawful interests.

If the applications indicating non-payment of the sum prescribed by the court decision violate the applicant's rights, the public Defender's Office sends recommendations to the enforcement department so that enforcement bodies can take compulsory enforcement measures in case of voluntary non-enforcement, and oblige them to enforce their liabilities as prescribed by the law. Namely, the bailiff, while performing his official duty, is entitled to act according to Article 17 of the law concerning enforcement proceedings at the stage of the compulsory enforcement of a court judgment. According to sub-clauses "a" and "g", clause 4 of the article, the bailiff is authorized to effect payment "from sums or property of other persons that the debtor owes to, and, on the basis of the collection order, from the debtor's bank accounts".

Prompt enforcement of court judgments depends on the timeframe and initiation of compulsory enforcement indicated by the bailiff, which as indicated above, is not defined differently by the law for budget-funded organizations. The process of compulsory enforcement regarding payment of sums by the debtor budget-funded organizations can commence only three months after the proposal of voluntary enforcement. Different from a three-month term, the court has the right to start the process of compulsory enforcement against the subjects of private law, among them physical persons, in accordance to the requirements set forth in Article 28 of the Georgian law on enforcement proceedings in the event of voluntary non-enforcement of a court judgment within five days. As for the payment of money or property, the bailiff immediately starts property registration and seizure upon the submission of the proposal of voluntary enforcement as stipulated by the law.

Compulsory enforcement measures against debtor state organizations in the payment part are mainly carried out on the basis of sending collection orders to the bank accounts of the debtor organization. There were such cases when the collection orders had been sent, but no enforcement of the court judgment had followed. For example, in the event of Londa Tsitaishvili's application the special group of enforcement of extraordinary cases sent the collection order so that the sum had to be taken from the united fund of social insurance bank accounts of the debtor. Further examination of the case proved that by the time the collection order was sent, the treasury accounts of the debtor organization had changed, which in turn made it impossible to enforce the collection order and court judgment. The collection order was returned to the enforcement department unenforced.

Non-fulfillment of the collection order, without any basis, is an obvious law violation according to clause 1, Article 17 of the law concerning enforcement proceedings, which states that "requirements related to the performance of official duties are obligatory for all physical and legal subjects despite their subordination and organizational legal form".

The foresight of relevant assignations to the 2007 state budget considerably favored the enforcement of court judgments against budget-funded organizations in the second half of 2007. According to clause 15, Article 42 of the Georgian law on the State budget of 2007, budget assignations allocated to the Ministry of Finance

envisaged the liabilities of previous years of budget-funded organizations, among them the sums designed for the enforcement of court judgment totaling ten million GEL. The majority of cases on debt payments have been covered by the above assignations (see statistical data).

The allocation of sums in the 2007 state budget also facilitated the acceptance of the Public Defender's recommendations and restoration of citizen's rights. In the second half of 2007, 58% of recommendations were accepted related to the recovery of arrears in wages. Currently, one recommendation is under consideration, which refers to the enforcement of a court judgment on wage arrears of The Center for Social Rehabilitation of Disabled Persons LTD employees. Court decisions in favor of citizens Rezo Bochorishvili, Nugzar Galuashvili, Eliko Sulkhanishvili and Marine Datuashvili were enforced. They were fully reimbursed for their wage arrears (see appendix #5).

Among cases that have not been enforced, we can point out Bato Chumburidze's and Robert Diakonidze's cases. On the basis of Chumburidze's suit, the defendant, Tbilisi Municipality Office, was assigned to enter the record of decision of his dismissal from membership of the supervising board of the Tbilisi Residential Rehabilitation and Development Support Center on his employment records. In addition, the defendant was to reimburse Chumburidze's salary in the amount of 150 GEL monthly, starting from January 2005 until entering the above decision into the employment record.

On 28 December 2007, the enforcement department sent a reply to our recommendation, according to which the above enforcement case was under control and that enforcement measures were to be taken in the near future. Despite this fact, no enforcement of the court judgment has ever followed to this date.

As for the case of Robert Diakonidze, the sum which he claims is recognized as an internal debt by the state; however, it has never been paid. He lodged suits in the Tbilisi Vake-Saburtalo district court and later, the highest courts. Eventually, the Supreme Court of Georgia made a decision on 31 January 2007, which satisfied his suit and prescribed the defendant, the Ministry of Finance, to pay out $28,102.35 equivalent in GEL to Diakonidze. The case was forwarded to the special group for extraordinary cases at the enforcement department for its execution. In its reply to our recommendation of 2 November 2007, it is indicated that the enforcement department will take all measures of compulsory enforcement in compliance with the law (see appendix #5).

The Kutaisi government and the Ministry of Refugees and Resettlement of Georgia have not enforced the Kutaisi court judgment to provide refugees Vepkhvia Mikautadze, Tamar Jalaghonia, Marina Papava, Medea Ratiani and Zinaida Rigvava with housing space.

It can be said that enforcement of court judgments is implemented more effectively regarding private persons; however, there are some problems here too. The case of Malkhaz Melashvili proves the above (see Appendix #5).

Many state organizations were reorganized, and as a result, many public servants were dismissed from work. A majority of these people considered their dismissal unlawful and applied to courts to defend their rights. The courts considered the dismissal of certain employees unlawful, and state organizations were assigned to restore their rights by issuing the relevant administrative/legal enactments. The enforcement of these court judgments is going on rather ineffectively for various reasons.

Article 17 of the Georgian law concerning enforcement proceedings specifies the measures that need to be taken by the bailiff in the event of money or property payment. As for the enforcement of the court judgments which do not concern the payment of money or property by the debtor, the bailiff is authorized to determine the necessary measures for the enforcement himself, and acts in accordance with clause 5, Article 17 of the same law.

The bailiff is obliged to take all legal measures in order to ensure prompt and realistic enforcement, to explain the rights and obligations to the parties, and to help them protect their rights and legal interests.

In the event the persons who have been unlawfully dismissed become reinstated to work, Georgian law does not specify what type of compulsory enforcement measures need to be taken by the bailiff in order to implement the compulsory enforcement of court judgments. The enforcement of such court judgments consist the issuance of a legal act, on which the process of administrative proceedings must be independently carried out by the debtor organization (administrative body) or a relevant authorized person.

Therefore, we consider that the Georgian law concerning enforcement proceedings requires improvement. Namely, it is necessary to develop relevant mechanisms and determine specific measures of compulsory enforcement, which the bailiff will be able to apply in the cases where the debtor does not voluntarily enforce the judgment. Having defined specific compulsory measures in the law will enable the bailiff to act in accordance with a concrete norm and implement the compulsory enforcement of the court judgments in the process of enforcement of the category of cases in question.

The difficulties in the process of the enforcement of court decisions in favor of unlawfully dismissed persons are more clearly shown in enforcement cases provided in the appendix (see the cases of Gia Pataridze, Omar Chincharadze and Zurab Tordia).

The effectiveness of the judiciary power is expressed by the enforcement of decisions taken. That is why, the particular respect towards the judiciary power and court writs, as well as the demand for compliance, is supported by the Constitution of Georgia and legislative acts.

The Constitution of Georgia is the supreme law of the state. According to clause 2, Article 82 of the Constitution, "acts of courts are binding on the whole territory of the country for all state bodies and persons".

Article 6 (1) of the European Convention of Human Rights and Fundamental Freedoms protects the people's right to fair court. Applying to court is not only a theoretical right to make final judgments, but it also implies the expectation of enforcement of the judgments. The European Court explains that the process of enforcement is the constituent part of jurisprudence, and the right implies the accessibility to the enforcement process as well (see the judgment of European Court of 28 November 2008, on the case of Apostol v. Georgia).

On the official data, from 1 July 2007, until 1 January 2008, 133.393 cases were under proceedings at the territorial enforcement bureaus of the enforcement department. 35,207 cases were enforced by enforcement bureaus in the period mentioned above.

The percentage of the enforced cases accounts for 26 percent of the total amount of cases. This indicator includes not only cases dealing with payment but the cases of other categories as well, such as eviction and accommodation, reinstatement of employment, payment of alimonies, etc.

From 1 July 2007, until 1 January 2008, 1,452 cases regarding the state budget were under proceedings to be enforced by the territorial enforcement bureaus of the enforcement department. 552 of the cases were enforced in the above period.

The total amount of cases in the above category makes up about 38 percent.

As we can see, only a certain part of cases on budget and budget-funded organizations have been enforced, which accounts to only 3 percent. That is why many complaints and applications received by the Public Defender's Office refer to the above problem.

I would like to address the Parliament of Georgia with the legislative proposal to determine those measures and mechanisms, which the bailiff has to apply to in the event of voluntary non-enforcement of court judgment by the debtor.

9 PROSECUTOR'S OFFICE AND HUMAN RIGHTS

During the four years following the Rose Revolution, the prosecutor-General's Office has developed into an institution with practically unlimited powers, which unofficially governs the state and controls almost every field of state and social life. Indeed, in all regions of Georgia, local prosecutors, in coordination with the Prosecutor General, make decisions on how budgets of the local self-government bodies should be spent, while self-government bodies only have the power to legalize those decisions.

All the infringements of property rights after the Rose Revolution are connected with the Prosecutor's Office, which can be illustrated by numerous facts contained in the 2004 to 2007 Public Defender reports. However, those infringements were not given due consideration by the government. In some cases the Prosecutor's Office arrested property owners and made them sign their deeds to their property over to the state (e.g. The case of Jemal Tsiklauri in Gori, see the Public Defender's reports for 2004, the first half of 2006 and the second half of 2007).

In some cases, prosecutors summoned property owners and threatened them, forcing them to give over their deeds as gifts to the state (e.g. the "baths' case" in Tbilisi, see the Public Defender's report for the second half of 2007); and Gela Bejashvili's case in Sighnaghi, see the Public Defender's report for the first half of 2007).

In other cases, citizens' property was seized and destroyed by different state agencies (e.g. self-government bodies and police), but the Prosecutor's Office does not seem to be investigating such cases even when the elements of crime are evident.

The Prosecutor's Office has turned into a body that administers political punishments. The office is used for the criminal prosecution of the present government's political opponents, or for discrediting them by publishing taped telephone conversations or other conversations, which are products of montage or falsification (see Irakli Batiashvili's case; the TV film "From November to November"; the case of Patarkatsishvili"; etc).

Quite a few cases studied by the Public Defender make it obvious that judicial power is greatly influenced by the Prosecutor's Office, and the only function left for judges is to copy and notarize the bills of indictments issued by prosecutors. The existence of such practices was acknowledged and censured by the European Court of Human Rights regarding the case of Gia Patsuria vs. Georgia as an infringement of the right to fair trial.

There is a marked tendency not to investigate criminal cases thoroughly since many prosecutors see no need for that, and in any case, a court will pass the sentence demanded by the prosecutor. Such a tendency can be illustrated by the incredibly small number of acquittals – out of 17,526 sentences made during 2007; only 19 acquittals were brought in. However, there were many cases in which judges did not fully yield to the demands of the prosecution. Such objections are rather formal, and in most cases, led to insignificant reductions of the punitive sanctions demanded by the prosecution, thus creating the above-mentioned statistics, which do not really change the state of facts.

It has become a common practice to pass a bill of indictment based upon a testimony given by only one witness or a victim when there is no other evidence in the case.

Prosecutors often think that it is their duty to bring in a conviction and they take no notice of the circumstances excluding the crime (e.g. see the case of Davit Badzgaradze and the Public Defender's reports for the second halves of 2006 and 2007). In private conversations, prosecutors justify their decisions by claiming that there is nothing else they can do since the prosecutor who demands the dismissal of charges is immediately suspected of being corrupt and acting in his/her own interests by the Prosecutor General and thus becomes the object of special attention. Hence, the prosecutors who do not want such attention prefer to bring in bills of indictment at any cost.

On November 22, 2003, a road accident involving a private car and an armored troop carrier took the lives of Davit Sakvarelidze, 23, and Eter Tsuliashvili, causing bodily damages to the three children of the latter, Badri, Gocha and Sopiko. The investigation of the case of Davit Sakvarelidze and Eter Tsuliashvili has not been completed yet.

Eight expert examinations were to be made regarding the above case. The first three examinations proved the guilt of the armored troop carrier, while the following ones attempted to present the circumstances of the case in a different way. Moreover, the sixth, seven and eights examinations were not made at all. During a period of two years and eight months, the investigation of the above case was periodically suspended and recommenced. Finally, by April 30, 2005, the criminal case against Avtandil Mamaladze, the driver of the armored troop carrier, was terminated.

The above decision was cancelled by the June 5, 2005 resolution of Judge S. Tsitsvidze at the Criminal Board of Tbilisi City Court, which was left unchanged by the Tbilisi District Court.

On February 23, 2006, due to the absence of unlawful acts, criminal case #1003544 was terminated again by the resolution of M. Ghoghoberidze, Prosecutor at the Department of Supervision over Lawfulness of Criminal Proceedings in Internal Affairs Bodies of the Tbilisi Prosecutor's Office.

This resolution was appealed by M Sakvarelidze, the legal successor of the victim at the Criminal Board of Tbilisi City Court. Consequently, upon the resolution passed by Judge J. Kopaliani on May 22, 2006, the February 23, 2006 resolution of the Tbilisi Office of the Prosecutor General regarding the termination of the criminal case was cancelled and the case was returned to the Tbilisi Prosecutor's Office for preliminary investigation. However, no results have been achieved so far. From the materials to the case, it is obvious that the case was left unsolved thanks to the efforts of those who at that time held high posts at the Ministry of Security and the Prosecutor's Office.

Cases of torture are also not properly investigated by the Prosecutor's Office. Furthermore, quite frequently it seems that the task of the Prosecutor's Office is not to investigate such cases and punish the criminals; rather it is to defend the torturers and help them evade criminal responsibility. Good examples of this are the cases of Aleksi Bakhutov, described in the present report (see the chapter on the Ministry of Internal Affairs and Hu-

man Rights) as well as that of the children from the Akhaklgori children's home, when policemen convicted the workers of torturing minors, among other charges, but then were released on bail based on a plea bargain (see Appendix #6: the cases of L.K and I.G.). Apart from the abovementioned cases, there are quite a few similar cases described in the present report, and also in the reports for 2004 and 2007.

Despite the evidence of torture and inhumane and offensive treatment, the prosecutors, instead of starting investigations and taking the cases seriously, carried out strange procedural actions, such as "speaking" to police officers rather than interrogating them. For the most part, crimes are left uninvestigated, and if there are investigations, the Prosecutor's Office concludes them with plea bargains, inadequate demands for torturers of minors, and dispenses mild punishments like suspended sentences (see Appendix #6: the cases of L.K and I.G.).

The testimonies of the police officers questioned regarding torture cases are very similar, which confirms the suspicion that instead of investigating the cases properly, investigators just go through certain formalities to "write off' the cases. In order to change this practice, the cases of torture and inhumane and offensive treatment should be investigated by the Prosecutor's Office since there are rather strong links between regional prosecutors' offices and the regional police, meaning there is a high probability that cases will be falsified and terminated in favor of the police.

However, the case of Aleksi Bakhutov described in this report proves that the indulgent attitude towards torture is not only a local/regional problem, as that particular case was "legalized" and falsified by the Prosecutor's Office. An innocent person, from whom a false testimony was obtained by means of torture, was at first convicted of Lasha Chopikashvili's murder, and later, when it turned out that the latter was safe and sound, Bakhutov still was not released, but his charge was revamped to attempted murder.

There is a need to apply the "zero-tolerance" principle towards torture, as it has been recommended to Georgia by the UN special speaker on issues of torture.

■

In his report for 2007, the public Defender made special mention of the detainment of 24 persons in the Imereti regional administration building by representatives of the Georgian Home Ministry's Department of Constitutional Security on July 2, 2007. That action was a show, staged for journalists, as the detained persons had been specially brought together from different places. One of them had even been brought from Tbilisi. However, the the Prosecutor's Office did not consider the circumstances indicated in the case as violations (see Appendix #6 – The case of the persons detained in Kutaisi City Administration).

During the reporting period, the the Prosecutor's Office has assumed different attitudes about similar issues. In two cases it applied the analysis obtained from the Supreme Court in different ways, which leads us to think that in some cases the Office of the Prosecutor General is biased, and instead of being guided by law, acts against a defendant's interests.

Based on the information received from the Prosecutor's Office, the preliminary investigation of criminal case #74068449 was ceased. The case concerned the passing of an unlawful sentence by Judge L. Kuparadze at the Samtredia Regional Court, which is punishable by Section 1, Article 336 of the Georgian Criminal Code. The judge sentenced a minor to administrative detention.

In accordance with the July 19, 2007 resolution on the termination of preliminary investigation, the preliminary investigation carried out regarding the above case revealed that, "L. Kuparadze, Judge at the Samtredia

Regional Court passed an unlawful sentence, thus committing the crime covered in Section 1, Article 336 of the Georgian Criminal Code – passing an unlawful sentence by a judge. On July 4, 2007, based on the Law of Georgia on the "Introduction of Amendments to the Criminal Code of Georgia", Article 336 of the Criminal Code was removed and a new law was adopted, which no longer regarded the abovementioned action as criminal. Based on Sub-section (c), Section 1 of Article 28 of the Criminal Code of Georgia, when a new law no longer regards an action as a crime "criminal proceedings shall not commence, and the proceeding and preliminary investigation that have already been started shall be ceased". This means that the preliminary investigation of the case of L. Kuparadze, who passed an unlawful sentence, should be terminated.

The Public Defender of Georgia requested the Deputy Prosecutor General of Georgia to consider the issues of passing an unlawful sentence by Judge L. Kuparadze, as well as the lawfulness of the July 19, 2007 resolution on the termination of the preliminary investigation passed by R. Zarandia, Chief Prosecutor at the Investigation Department of the Office of the Prosecutor General of Georgia. The Public Defender has yet to receive an answer.

In another case, the Office of the Prosecutor General assumed a different approach towards a similar event. On October 10, 2007, the criminal Board of the Georgian Supreme Court comprised by Maia Oshkhareli (chair), Zaza Meishvili and Davit Sulakvelidze, examined the appeal submitted by the defendant Besik Gvajava. He requested them to revise the October 31, 2006 decision of the Criminal Board of the Supreme Court in accordance with newly surfaced evidence, but they refused to satisfy the request.

According to the motivational section of the resolution passed by the Georgian Supreme Court on October 10, 2007, "B. Gvajava was convicted of the crime covered by Section 1, Article 336 of the Georgian Criminal Code. On July 4, 2007, an amendment was introduced to the Criminal Code of Georgia regarding the removal of Article 336. Although the special circumstance provided in the above article no longer exists in the Criminal Code of Georgia, the action covered by that article still has criminal character and is socially dangerous, and the crime dealt with in Section 1, Article 336 of the Criminal Code is now punishable based on the articles covering the crimes committed by public servants. The criminal action committed by the convict Gvajava, namely passing an unlawful sentence/decision, which is a crime qualified by the Section 1, Article 336 of the Criminal Code of Georgia, also contains all the criminal elements described in Article 332 of the present Criminal Code. Hence, criminal proceedings against Gvajava cannot be stopped, as the crime committed by him has not been regarded as non-criminal, i.e. it has not been decriminalized due to the fact that the elements of the crime covered in Article 336 represent a specific case covered under Article 332 of the Criminal Code."

Apart from Article 336, the amendments introduced to the Criminal Code of Georgia resulted in the removal of Article 184 as well.

The Public Defender of Georgia recommended the Office of the Prosecutor General submit a claim to the Criminal Board of the Supreme Court of Georgia based on Section 3, Article 593 of the Criminal Procedural Code, requesting that based on newly revealed circumstances, they should revise the court sentences/decisions passed upon persons convicted for the crimes covered by Article 184 of the Criminal Code.

According to the information received from the Deputy Prosecutor General, "based on the June 28, 2007 decree passed by the Grand Chamber of the Supreme Court regarding case #1042ap, the removal of Article 184 from the Criminal Code of Georgia shall not rule out the criminal character and punishability of the action covered by the mentioned article. Therefore, there cannot be any newly revealed circumstances, which, according to Section 3, Article 593 of the Criminal Procedural Code, would provide ground for the revision of a court sentence/decision."

As stated in the motivational section of the decree passed on June 28, 2007 by the Grand Chamber of the Supreme Court, "the removal of Article 184 from the Criminal Code, based on the 23 May, 2007 amendment

to the Criminal Code (enforced from June 16, 2007), or the absence of the special circumstance provided in that article in the present Criminal Code, does not mean that the criminal character of the action covered by Article 184 should be ruled out, regarded as not dangerous for society or decriminalized. According to the current Criminal Code, such actions are punishable by Articles 177, 178 and 179 dealing with crimes of kidnapping with purpose of infringement of private property."

The above examples make it clear that in particular cases, the court and the Office of the Prosecutor General act arbitrarily against the will of the legislators when they state that particular actions have not been decriminalized, while it was directly indicated in the explanatory letters of the draft laws that it was the decriminalization of the actions covered by these dispositions that led to the removal of Articles 184 and 336.

Such an attitude from the court and the Prosecutor's Office is in conflict with the stipulation of Paragraph 1, Article 7 of the European Convention on Human Rights and Fundamental Freedoms, which, based on the case law of the European Court of Human Rights, establishes the principle of, "no crime, no punishment without law" (nullum crimen, nulla poena sine lege).[129]

The mentioned attitude also violates the stipulation of Section 1, Article 3 of the Criminal Code of Georgia, prescribing that "a criminal statute that rules out the criminal character of an action or extenuates the guilt shall have a retroactive force".

■

The cases studied by the Public Defender revealed a clear tendency of the prosecution not giving due consideration to the events happening in the penitentiary system, or to start investigations by applying inadequate laws or, because of the absence of actions covered by criminal statutes, to discontinue preliminary investigations when the crimes are obvious (see the chapter on penitentiary system, Appendix #8: Z Vibliani's case, and also the case of L. Managadze and G. Ghvinianidze). Additionally, during the reporting period, the public Defender's Office submitted 127 appeals to the Prosecutor-General's Office and the Ministry of Internal Affairs, based on reports of the violation of human rights in places of preliminary detention, which resulted in (according to the information provided by the Office of the Prosecutor General) the commencement of preliminary investigations on ten cases, although none of those investigations have finished yet.

Generally, the attitude of the Prosecutor's Office towards the facts of beating and torture has not changed compared to what it was several years ago (see the case of L. Maisuradze).

Unfortunately, the Ministry of Internal Affairs and the Prosecutor's Office very often fail to investigate the cases of torture with due consideration. Despite many statements made in this regard, the fight against torture has not only failed to become a state priority, but in many cases, investigative bodies do not investigate torture cases, thus covering up the suspects. Such actions have revealed that many cases are not properly investigated or are attributed far less serious charges. Moreover, there are instances of putting pressure or threatening victims, their families and witnesses in order to achieve the withdrawal of claims.

For preventing torture, the state should make sure that public servants are punished in proportion to their crimes.

[129] "According to The caselaw of the court, Article 7 of the convention is not confined to the prohibition of the retroactive application of law against a defendant's interests. It also comprises a more general principle providing that crime and punishment can be determined only by law (nullum crimen, nulla poena sine lege) and the principle based on which criminal legislation cannot be broadly interpreted against a defendant's interests." (e.g. Kokinakis vs. Greece, 25 May, 1993, § 52; Poohk vs. Estonia, 10 February, 2004, § 25).

As it was mentioned above, the public Defender studied the case when the Prosecutor's Office concluded a plea bargain with the police officers accused of torturing the children from Akhalgori children's home along with several other crimes (see Appendix #6: The case of L.K and I.G).

Particularly, by the November 20, 2007 sentence of the Mtskheta Regional Court, Besik Orkodashvili and Bondo Tatunashvili were found guilty based on Article 369 of the Criminal Code of Georgia – falsification of testimony, punishable by a fine or correctional service for a period of one to two years, or up to a one year prison term; on Sub-paragraphs (a), (b) and (c) of Article 333 – exceeding one's authority, repeatedly, through violence or use of arms, or personal injury, punishable by imprisonment for a period of five to eight years, with deprivation of the right to hold a high post or a particular job for a period of up to three years; and on Sub-paragraphs (a), (b), (c), (d), (e) and (f), Paragraph 2 of Article 144[1] – torture or a similar action committed by a public servant or a person having the same status, through abusing one's authority, repeatedly, by two or more persons, in a group, or towards a pregnant woman, a minor, a detained or otherwise confined or helpless person whose condition is known to the offender or a person financially or otherwise dependant on the offender, punishable by restriction of freedom from twelve to seventeen years, with deprivation of the right to hold a high post or a particular job for a period of up to five years.

The above persons were sentenced to a two-year term in prison, which was later changed to a probation sentence, a fine of GEL 5,000 and deprivation of the right to be appointed to a high position in local self-government for a period of up to three years.

The sentence passed for the abovementioned crime is definitely inadequate to the action and it cannot be justified by the insufficient qualification given by the staff at Prosecutor's Office and the court, since the Office of the Prosecutor General usually demands more severe punishments for these crimes. This case reveals the state's approach towards the issues concerned.

The national legislation, as well as international law, makes it incumbent upon the state to investigate cases of torture in an effective and unbiased manner, and to pass adequate sentences upon the offenders.

According to the case law of the European Court of Human Rights, not only are the facts of torture and inhumane treatment are regarded as violation of Article 3 of the European Convention, but so are the cases when a statement or claim regarding such actions are not properly considered and investigated.[130]

Torture is one of the most serious crimes and many countries implement different measures for fighting or preventing it, although it remains a global problem. Therefore, biased investigation of torture cases hinders the democratic development of any country. If society sees that crimes involving public servants are investigated in a biased way, they lose their confidence in the rule of law. Indeed, the main public order towards the post-revolutionary government was the eradication of the unpunishability syndrome, and the achievement of equality and rule of law. However, the present tendency leads us to think that the government has not yet carried out that order.

The unpunishability syndrome is connected with the tendency of the Prosecutor's Office to avoid doling punishment out to persons employed in its system through criminal or disciplinary proceedings even in cases when a crime is obvious (see Appendix #6: The case of D. Badzgaradze).

[130] E.g. Asenov and others vs. Bulgaria, October 28, 1998, §§ 102 etc.; Labitta vs. Italy, April 6, 2000, § 131; E.K. vs. Turkey, February 7, 2002, §§ 54-56.

During the reporting period, the Public Defender requested the Prosecutor General to consider criminal liability against Prosecutor Nino Tsikhiseli.

For more than one year, the Public Defender had been carefully observing the progress of criminal proceedings against Davit Badzgaradze, and while studying the case materials, he found out that Prosecutor Tsikhiseli had displayed negligence by not observing the principle of fairness prescribed by procedural law, which led to a gross violation of the Georgian legislation. As a result of inefficiency on the part of Prosecutor Tsikhiseli an innocent youth of 21 was unlawfully imprisoned for eight months.

On October 26, 2007, the public Defender received a letter from G. Latsabidze, Deputy Prosecutor General, saying that there existed no grounds for instituting the criminal proceedings against Prosecutor Tsikhiseli.

■

In the second half of 2007, more cases of an investigator and prosecutor "making conversations" with detainees were recorded. In the previous reports of the Public Defender, it had been indicated that the criminal procedural legislation does not prescribe oral questioning, or so called "conversations" as a procedural action. Quite often in cases where there was evidence of torture and inhumane treatment, the investigative bodies made so called "conversations" with victims instead of investigating the cases (see the Public Defender's reports for the second half of 2006 and the first half of 2007; and the case of M. Lomidze).

In many cases, the prosecution sent the Public Defender inadequate replies instead of copies of the requested materials on terminated cases (e.g. the acting prosecutor of the Batumi region refused to send the head of the Investigation and Monitoring Department of the Public Defender's Office copies of The case materials under the pretext of the absence of the Public Defender's special authority attached to the letter), which is a violation of Sub-paragraph (b) of Article 18, and Paragraph 3, Article 23 of the Organic Law on Public Defender (see Appendix #6).

The Public Defender sent a memorandum accompanied by a copy of the letter to the appropriate court.

It is noteworthy that the courts of eastern and western Georgia displayed different attitudes towards the same issue, particularly in their resolutions. The Batumi Regional Court and Kutaisi Court of Appeal refused to impose administrative fees, while the Rustavi City Court passed a resolution imposing an administrative fee upon Lasha Bregvadze, Director General of the High Security and Prison Regime Facility #2 in Rustavi under the Penitentiary Department of the Georgian Ministry of Internal Affairs.

Under Article 16 of the General Administrative Code of Georgia, "an administrative agency shall, within its authority and with the means available to it, render the necessary legal aid to another administrative agency based on a respective written request." Although according to Paragraph 1, Article 3 of the same code, "this code shall apply to the state bodies and the bodies of local self-government and government, as well as to the activities of such persons who are by this code regarded as administrative agencies", and "shall not apply to such activities of the executive bodies, which are connected with criminal prosecution initiated due to the commission of a crime or criminal proceedings" (Paragraph 4, Article 3). In the case of the Public Defender requesting copies of the materials on a terminated case, the Prosecutor's Office performs an administrative function, and since the requested criminal cases have been terminated, and are no longer subject to any investigatory or other procedural actions determined by criminal procedural law, thus have been transferred to the archive. The prosecution ensures the preservation and protection of archive documents, which is not a function assigned to the prosecutor' s office by constitutional or special law; its administrative function lies in the solution of different organizational issues and is in the field of institutional administration. Hence, the requested case materials represent public information covered by Chapter 3 of the General Administrative Code.

The Board for Administrative Justice and Appeal of Tax Cases at the Georgian Court of Appeal discussed a similar question in the case of Alia Ltd. (a newspaper) vs. Office of the Prosecutor General, concerning the withholding of public information by the Office of the Prosecutor General. According to the court's decision passed on August 6, 2003, the office of the Prosecutor General was asked to provide Alia with materials on the terminated criminal case. This decision was left in force by a ruling of the Supreme Court.

CONCLUSION

In general, based on the cases studied by the Public Defender, the Prosecutor's Office seems to be a biased institution, which in two similar cases takes different decisions. Moreover, it does not thoroughly study how torture cases are investigated, is extremely strict to ordinary citizens, and is definitely reluctant to punish offenders working within its own system.

10 MINISTRY OF INTERNAL AFFAIRS AND HUMAN RIGHTS

Following the Rose Revolution that took place in November 2003, the reforms carried out in the Ministry of Internal Affairs led to raising the public's confidence in the police. This can be accounted for by several factors, corruption was reduced among the lower orders of the police, which was a big achievement; serious progress was made in fighting crime, particularly organized crime; and the number of instances of beating and torturing prisoners in cells was considerably reduced.

Despite the above achievements, quite a few grave problems accumulated during the same period. One of the most serious complaints against the police was that instead of being a depoliticized institution, it has practically turned itself into an effective tool for persecuting political opponents, which uses the huge resources of the Ministry of Internal Affairs.

The Ministry of Internal Affairs carries out illegal wire-tapping of the government's political opponents, and uses the taped materials for discrediting and blackmailing, or to make groundless accusations on political opponents.

Political opponents of the present government are often unlawfully persecuted and arrested on trumped-up charges, falsified evidence, and case fabrication.

Cases of kidnapping and severe beatings by the police on the governments' opponents are also frequent (see the cases of Koba Davitashvili, Gocha Badzgaradze, etc.), and similar acts are committed in front of other police officers with their tacit consent Such behaviour and events are never investigated properly, if at all.

While dispersing the peaceful demonstration of November 7, 2007, the police applied excessive force against peaceful citizens and even used special weapons like rubber bullets. Moreover, according to an outside expert, three citizens were injured with firearms. It is hard to imagine and believe the cruelty with which the police special forces chased the peaceful citizens escaping them, or how they treated the journalists at the Imedi TV Company, which they broke into and destroyed. However, the government showed no political will to investigate or give legal assessment to the above events.

It has become a common practice for police officers to interfere with peaceful meetings and manifestations of citizens, which was particularly evident during the events of October and November 2007, and during the preparations for the January 13, 2008 manifestation. As a rule, such interferences are not investigated and no one is held responsible for them.

Before the January 5, 2008 presidential elections, Vano Merabishvili, the Minister of Internal Affairs, was personally in charge of presidential candidate Mikheil Saakashvili's election campaign. Merabishvili visited the regions where he met heads of local self-government institutions, chiefs of police and prosecutors, and analysed their action plans aimed at supporting Saakashvili. The police and Prosecutor's Office were actively involved in the election campaign, forcing citizens to support their candidate. This was particularly obvious in regions where law enforcers urged the local influential leaders supporting the opposition to stop their activities, or act in favor of Saakashvili.

Although police officers no longer beat every detainee, acts severe torture still occurred and most alarmingly, those events are not being properly investigated. This can be illustrated by the cases of Aleksi Bakhutov and the children from Akhalgori and Martkopi children's homes mentioned above in this report. The severe torture of Sandro Girgvliani and Levan Bukhaidze by representatives of the Constitutional Task Force Department of the Ministry of Internal Affairs in January 2006, which resulted in Girgvliani's death, which was not considered torture. The courts sentenced the murderers to 7 and 8-year prison terms, but during this reporting period, the Supreme Court reduced those terms by 6 months.

The police officers involved in the falsification of evidence concerning the case of Amiran Robakidze, who was murdered by police on November 2, 2004, have not been punished yet. Moreover, they still hold high posts at the Ministry of Internal Affairs (see the Public Defender's report for 2004; also the first and second halves of the report for 2006).

The act of the severe beating of Valeri Gelashvili, an opposition MP, in the center of Tbilisi, has not yet been investigated, which, if anything, at least attests to the inefficiency of police.

Additionally, there are cases when high officials at the Ministry of Internal Affairs have used their power for personal revenge and have not answered for such actions. Such was the incident described in the first half of the report for 2007, when Erekle Kodua, head of the Task Force Department at the Ministry of Internal Affairs, arrested three innocent youths for making a call on a mobile phone to his girlfriend at 2 a.m. Police tortured the young people and "put" drugs and hand grenades in their pockets, then fabricated their reports as if the detainees had resisted arrest. Additionally, false evidence was created at the Task Force Department as if the three persons were members of a well-organized criminal group. However, despite the obviousness and gravity of this crime, Erekle Kodua and his accomplices were not made answerable for their actions.

There have been quite a few cases when the police was used for carrying out illegal orders connected with politics, such as evicting IDPs from the accommodation lawfully occupied by them (Adjara, in 2006; Tbilisi, in 2007 etc.); and evicting entrepreneurs from the space lawfully occupied by them (e.g. Sony Center and café Rustaveli cases, see the Public Defender's report for the first half of 2007).

DISPERSAL OF A PROTEST ACTION

On November 7, 2007, employees of the Ministry of Internal Affairs, using firearms, batons, water-cannons and tear gas, dispersed the participants of the peaceful protest action on Rustaveli Avenue.

The Public Defender's representatives constantly watched the course of the peaceful manifestations that happened from November 2 to 7, and monitored the results. The Public Defender studied many statements made by the participants of the protest action, which led him to think that in many cases the force and methods applied by the police while dispersing the rally equaled to torture. Hence, the public Defender submitted a recommendation to the Prosecutor General of Georgia asking him to investigate the use of excessive force by police on November 7 (see in detail the chapter in this report on assemblies and manifestations).

The Human Rights Watch criticized the November 7 events noting that, "on November 7 hundreds of laws enforcers brutally dispersed the protest action held in Tbilisi by the opposition, and assaulted and closed the TV company

Imedi, inflicting injuries (in some cases severe) on about 500 people." Such actions caused a human rights crisis in the country. The report prepared by the Human Rights Watch titled, "Crossing the Line", describes four different cases of the police using a water cannon, tear gas and rubber bullets while dispersing a peaceful action. Representatives of the law enforcement bodies (some of them wearing masks) chased escaping demonstrators, regardless of their age, kicking them and beating them with fists, batons and other objects. The heavily armed forces broke into the office of the Imedi TV Company, forced the employees out of their offices, and damaged and destroyed most of the company's equipment. Later, the Georgian government claimed that the above actions had been aimed at preventing mass riots, although that could not justify the extent of the force applied.

The Human Rights Watch called the Georgian government for an independent and thorough investigation of the events of dispersing participants of the actions on Rustaveli Avenue and Rike, as well as on the use of excessive force by police and the events that occurred outside the Imedi TV studio. Furthermore, according to their recommendations, it is not enough to start investigations on particular cases, but it should be clarified whether the use of excessive force and firearms is in line with domestic and international law and standards.

■

During the reporting period, the institutions under the Ministry of Internal Affairs showed a tendency of leaving the letters from the Public Defender unanswered, which is a gross violation of Georgian legislation (see the Appendix: the cases of E. Kakabadze and Mziana Kolandaria).

Under Paragraph 3, Article 23 of the Organic Law on the Public Defender, "materials, documents and other information and explanations shall be delivered to the Public Defender within 15 days after receiving his request. If necessary, the deadline can be extended with the Public Defender's consent". Based on Article 1734 , a failure to fulfill the Public Defender's request shall cause a fine equaling from twenty to fifty minimum amounts of remuneration.

■

Following the Rose Revolution, the practice of confiscating cars from their owners and using them for personal needs became quite common for employees of the Ministry of Internal Affairs. Very often, law enforcers took expensive cars away from their owners. Such cases were most frequent at the Task Force Department of the Ministry of Internal Affairs.

During the reporting period, the public Defender studied the case of Dimitri Svanidze, from whom a Range Rover (model year 2002, state number DIT 001, identification number SALLMANA42A104062, registration number AE0081793) was seized unlawfully and without good reason to be transferred to the Ministry of Internal Affairs (see the Appendix: The case of D. Svanidze).

■

The Public Defender has studied the case of Citizen Aleksi Bakhutov, which is an example of unfairness, a gross violation of the law, and the use of torture and inhumane treatment by the police. The case has also revealed violations committed by other institutions. On August 24, 2007, the Telavi Regional Court sentenced Bakhutov to a six-year prison term for the premeditated murder of Chopikashvili, who is safe and sound and living in his house in the village of Jughaani. Being subjected to severe torture and offensive treatment by the police, Bakhutov, and his stepson Irakli Tsitsishvili, admitted the crime, which Bakhutov had not committed. At present he is serving a sentence for the crime, while the investigation on the torturing of Aleksi Bakhutov, Irakli Tsitsishvili and several more persons connected with the case, is practically suspended (see Appendix #7: The case of Aleksi Bakhutov).

MONITORING OF TEMPORARY DETENTION ISOLATORS AND POLICE UNITS OF THE MINISTRY OF INTERNAL AFFAIRS AND GUARDHOUSE OF THE MINISTRY OF DEFENSE OF GEORGIA

One of the priorities in the activities of the Public Defender of Georgia in the second half of 2007 remained the monitoring of police, revealing and responding to events of the violation of human rights. The monitoring group of the Public Defender's Office continued the implementation of intensive control over police regional divisions, sub-divisions, temporary detention isolators and the isolators under the Tbilisi Internal Affairs chief department. Monitoring group members focused their attention on events of physical and psychological pressure by law enforcers, other inhumane and degrading treatment, and compliance of the police with procedural norms set forth in the Criminal Code of Georgia.

From 1 July to 31 December, the representatives of the Public Defender visited 411 police units and temporary detention isolators in Georgia.

As a result, of the monitoring, no facts on non-existence of records in registers were reported. In western Georgia, incomplete registration of the detained persons and the violations of a three-hour administrative detention term were reported. It is noteworthy that since September 2007, the office of the so-called duty police officer has been abrogated in Internal Affairs police units and departments, and the duties have been performed by the district inspectors. Most of them had no experience in this field, which directly reflected the registration books of the detained persons and the registers of temporary detention isolators. During the monitoring, almost all of the district inspectors indicated that they did not have any relevant instructions. In the process of monitoring, the issue is thoroughly explained, instructing them on what data has to be entered in each graph, how to indicate the time of detention, and other details.

- During monitoring in the Kutaisi region, there were many cases reported when the detained person had been transferred from the police unit of Internal Affairs to the temporary detention isolator several hours later. According to one of the latest cases, the person who was detained on 16 December 2007, at 05:00 hours, was transferred to the temporary detention isolator only at 23:10 hours. In similar cases, the investigators say that it took a long time to identify the detained person (the detained person had no ID card, it was necessary to take a photo), to give an alcohol test and carry out medical tests that finally caused the delay in the transfer to the temporary detention isolator. It sounds logical when the detention takes place at

night, although, apart from the above reasons, the delay is caused by a number of investigative activities to be carried out (interrogation, identification, etc.), which takes place in the police unit, and only after this can the detained person be transferred to the temporary detention isolator.

- Several cases came to light during monitoring when the detained person was taken directly to the investigation office. In such cases, taking the person to the police control room, external examining their body, and entering data into registers are of formal character and take place only before leaving the police unit.
- During the monitoring on the territory of Imereti, it was revealed that the actions of police employees in the event of the detention of a wanted person were not uniform. Part of these police inspectors first register the detained person in the books of Internal Affairs and then make records in prison registry book, while some of them directly register them in the prison registry and then transfer them to the prison.
- One of the issues that caused arguments during the monitoring was connected with procedures during and after administrative detention. After the administrative detention, the person is transferred to the police department where they process documents and then take them to the relevant expertise establishments to be given drug and alcohol tests. Due to the fact that there are few of these establishments, it is impossible to carry out the so called three-hour examination, and the detained person writes a formal note that he would appear in the police department (or court) at an appointed time, while actually, the person is beside the policemen. According to the law, if the detention takes place after working hours or during the time off work, the detained person can be taken to the temporary detention isolator before s/he appears in court. Often, in such cases the detained person writes a note that he would appear in the court upon requirement and is released. The same law is applied before giving a drug test to determine whether this is the first or second consumption of drugs by that person. As the drug test takes three hours due to a long queue in relevant establishments, especially in the mountainous regions (Oni, Ambrolauri) the detention under Article 45 of the Code of Administrative Violations does not make any sense.
- There is no uniform practice of entering the data of persons under administrative detention in the books of the Internal Affairs units. For example, in the regional department of Abasha, the detained person's registration takes place only after the court proves him/her guilty and prescribes the sentence.
- The employees of temporary detention isolators often talk about abstinence symptoms of the detained person. Drug addicts suffer from strong pains during the withdrawal state. In such cases, the only mechanism of aid in the temporary detention isolator is limited to calling an ambulance or giving out a painkiller.
- One of the issues revealed during the monitoring of police units of Georgia is connected to a person's identification. The employees of the police department say that if the person does not voluntarily reveal his/her identity, the police have no grounds to detain her/him. On the other hand, it might be a wanted person or a crime suspect. Consequently, before the person is identified s/he in fact becomes a detainee.
- In the event of family violence, sometimes the conflict is so severe that the police have to take one of the parties to the police station so that s/he escapes the dangerous situation. In fact, taking a person from the family can be assessed as detention; however, the police themselves say that there are no legal grounds for the detention.
- Despite the fact that the Code of Administrative Violations directly states officials should get familiar with the documentation of the detained persons; but it becomes clear that the computation of time of the term of imprisonment varies. For example, some judges indicate the starting time of a prison term as the moment the person was placed in the temporary detention isolator and it is not clear whether these several hours should be considered as the term of imprisonment or not. In addition, it is necessary to specify what the starting point of time computation is when dealing with administrative sentences of persons in military service.

MONITORING OF TECHNICAL CONDITIONS OF POLICE DEPARTMENTS

As a result of monitoring by the Public Defender's representatives, it was revealed that technical conditions in the temporary detention isolators remain a problem. Although it is true that some of the premises have been repaired and the conditions improved relatively, it is still a fact that there are no showers in almost any of them, and the medical rooms, water supply and ventilation systems are remain out of order. As for the second half of 2007, there were 53 temporary detention isolators under the Ministry of Internal Affairs. Only 26 have been

repaired so far. As for the Dedoplistskharo, Mtskheta, Dusheti, Tianeti, Gori, Khashuri, Kareli, Gardabani, Adigeni and Ninotsminda temporary detention isolators, they are still in a deplorable state.

Despite the fact that the repairs have been made to Marneuli, Akhaltsikhe and Borjomi temporary detention isolators, they still have no windows, therefore there is no natural ventilation. Besides the above problems, the cells are too damp, which poses a threat to the health of prisoners.

The above problems are especially urgent for those persons who are under administrative imprisonment. They complain about the conditions in the Tbilisi temporary detention isolators. Despite the cosmetic repairs that have been made to the, there still are water, dampness and ventilation problems.

The Public Defender sent an address to the human rights and monitoring department of the Ministry of Internal Affairs and the human rights department at the Office of the Prosecutor General of Georgia regarding the inhumane conditions of the #2 temporary detention isolator where Kakhaber Kardava and Davit Gabelashvili are being detained. These people were not given the right to have a walk or wash. Moreover, the water they were given was not good for drinking and there was insufficient light in the cell. Despite the Public Defender's address about the above problems, the conditions have not been improved. The Public Defender did not get any notification from the Ministry of Internal Affairs or the Office of the Prosecutor General about how the above violations have been rectified.

Regarding lighting and ventilation, according to rule 11 of the standard minimum rules of the UN, "in all places where prisoners are required to live or work:

(a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation; and
(b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.

According to rule 13, "Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate"; and rule 15 reads: "Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness".

Similar principles are provided in the recommendation of # q(87)3 dated 12 February 1987, of the Committee of Ministers of the European Council for member states on the European rules, according to rule 15 of which, the places of prisoners' accommodation, especially sleeping facilities must satisfy hygienic and health requirements. Due attention must be paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

The Committee for the Prevention of Torture of the European Council states that due to insufficient lighting and air, conditions of degrading treatment are created. Therefore, the public Defender considers that the existing hard conditions in the temporary detention isolators are humiliating, and the rights of the detained persons are infringed.

MONITORING OF ADMINISTRATIVE ARREST FACILITIES ("GUARDHOUSE") OF THE MINISTRY OF DEFENSE

Representatives of the Public Defender's Office continued monitoring Administrative Arrest Facilities – "guardhouse" of the Ministry of Defense – in the second half of 2007. However, they faced constant problems. In

particular, they were not admitted to the territory of these guardhouses. Despite many promises on the part of the Ministry of Defense to eliminate the problem, nothing has changed.

On 23 July 2007, the representatives of the Public Defender's Office were conducting monitoring in the regional military police department guardhouse of Shida Kartli (Gori) where the head of the guardhouse did not allow them to examine the conditions for the reason that the head of the department was dismissed and the new head had not been appointed yet.

On 24 July 2007, the representatives of the Public Defender's Office did not manage to enter the territory of the Tbilisi-Mtskheta Mtianeti regional department guardhouse either. On 4 May 2007, they were refused the entrance in the guardhouse of military police located in Senaki.

On 11 September 2007, lawyers D. Khachidze and L. Chincharauli addressed the Public Defender for help as they were refused to visit the persons under their defense in the Mtskheta-Mtianeti regional department guardhouse.

Public Defender's representatives tried to sort out the situation on the spot. The guard standing in the entrance did not let them enter the place. Even though they showed their employee identification cards and explained that they had the right to be admitted to the premises, they were asked to leave the territory. As the military officials violated clause "a", Article 18 of the organic law on the Public Defender, and did not comply with the legal requirements of the Public Defender, based on the right delegated to them under Article 27 of the same law, the public Defender representatives filed a report on the law violation. According to article 1734 of the Code of Administrative Violations, non-compliance with the Public Defender's legal requirement is brought to administrative responsibility and is penalized in the amount of 800 to 2000 GEL.

According to part 1, Article 25 of the organic law on the Public Defender, "non-execution of duties provided by the present law, as well as creation of any obstacles for the activity of the Public Defender of Georgia, is punished by the law and shall be reflected in the annual report of the Public Defender of Georgia for further special hearing by the Parliament of Georgia".

The Ministry of Defense considered the facts of creating obstacles in the activities of the monitoring group of the Public Defender's Office representatives by military servants of regional departments. According to the letter received from the general Inspectorate of the Ministry of Defense, the employees of the military police of the Shida Kartli regional department, as well as the head of the guardhouse and three assistants of duty officers, were dismissed for creating obstacles to the Public Defender Office representatives during monitoring.

The guard of Tbilisi-Mtskheta-Mtianeti regional department was dismissed as well, and his supervisor was brought to disciplinary responsibility.

The obstacles Public Defender Office representatives came across during the monitoring of the Kakheti-Kvemo Kartli regional department guardhouse, on the words of the regional department head, were created due to the circumstances that at the time of the examination there were military trainings being conducted by foreign observers, and the duty officer was instructed not to admit anybody to the territory apart from training participants, for security reasons.

The leadership of the Ministry of Defense assigned the heads of the military police department to take relevant measures in order to avoid creating similar obstacles for the representatives of the Public Defender Office in the process of monitoring.

Despite the above facts, on 27 September 2007, Public Defender Office representatives were not admitted to the Tbilisi #4 brigade territory of the military sub-division, consequently, the public Defender Office representa-

tives failed to perform their official duties. In connection with the above fact, the public Defender Office sent a letter to the general Inspectorate of the Ministry of Defence in order to get the relevant response, and to obtain information about the events that took place on the territory of Tbilisi #4 brigade. According to the reply from the military police department, on 27 September 2007, on the territory of Tbilisi #4 brigade there was an argument between military servants, as a result of which sergeant T. Shaverdashvili was reprimanded. As for the fact of non-admittance of the Public Defender Office representatives to the territory, thematerials were sent off to the commanding officer of the #4 brigade for further consideration.

From July to December of 2007, Public Defender Office representatives paid nine visits to the existing guardhouse under the Ministry of Defense of Georgia. In five cases they were not allowed to conduct monitoring for the same reason – the heads of the department and the guardhouse were at a meeting in the military police department and it was prohibited to enter the territory without their permission.

As for the existing situation in the guardhouse, it is worth mentioning the 2007 report of the European Committee against Torture. The report highlights that according to a letter from the Government of Georgia dated 11 May 2007, the Tbilisi-Mtskheta-Mtianeti regional department guardhouse of the Ministry of Defence was closed down due to inappropriate conditions. However, the above information did not correspond to the truth as it was actually functioning. The European Committee against Torture was notified about the fact. The Tbilisi guardhouse was closed down. Out of six functioning guardhouses, only two of them – in Senaki and Vaziani – correspond to international standards. The rest of them have unbearable conditions that are degrading and humiliating. A new guardhouse has opened in Vaziani.

In December Public Defender Office representatives conducted monitoring in the newly built unit of the Kakheti-Kvemo Kartli regional military police department. The existing conditions meet international standards. At the time of the monitoring there were 24 military servants, 26 cells, among them two cells that accommodated four persons, and 24 for two persons. The floor space of a two-person cell was about 7m2 and a four-person cell was 14m^2, and the cells had windows and natural lighting. Besides that, the cell was lit by an electric bulb installed above the cell door and there was a heating system in cells, showers at the end of the corridor and lavatories. There was also a canteen where military servants were provided with three meals a day.

12 PENITENTIARY SYSTEM

In the second half of 2007, the representatives of the Public Defender Office paid 160 visits to the establishments of the penitentiary system and met 913 prisoners. In terms of rights, the situation in the penitentiary system compared to previous years has not changed much.

Overcrowding, strict treatment of prisoners, inadequate medical service, unsatisfactory hygienic conditions, and the non-existence of rehabilitation/reintegration programs are the problems that persist, even under this reporting period.

International standards of prison conditions are aimed not only at protecting the public against criminals, but they also aim to rehabilitate prisoners to a possible extent. The above aim is achieved through the perfection and humanization of the legislation, as well as via creating appropriate conditions in the system.

Under the reporting period, the issue of prisoners' release ahead of their term of service still remains the problem. A regular commission at the penitentiary department is functioning currently, which applies to the court on the cases of prisoners' release on probation or substitution of the rest of the service term with a lighter sentence (Article 68 of the Georgian law concerning imprisonment).

The issue of prisoners' release on probation is still problematic. The regular commission functioning at the penitentiary department has considered 653 applications regarding the above issue, out of which only 97 were sent to court, and 556 prisoners were refused their claims.

In the first half of 2007, the commission considered 686 applications concerning the release on probation ahead of the term of service, and only 182 were sent to the court. 504 prisoners were refused.

In the second half of 2006, the commission considered 401 applications concerning the release on probation ahead of the term of service, and only 56 were sent to the court. 345 prisoners were refused.

It is possible to regulate the above issue by reorganizing the system of discharging prisoners ahead of their term of service. Particularly, in compliance with the law in force, after serving a certain term of the sentence, the person is subject to release ahead of term on probation. The Public Defender considers that the discharge of a prisoner in the term defined by the law should take place automatically, without the interfer-

ence of the commission, provided only that the administration of the establishment shall have the right to lengthen the term for each disciplinary violation. This term will be deducted when released on probation ahead of the term of a sentence and will be added to the service term. For example, a person is sentenced to four years of imprisonment and the law stipulates that s/he can be discharged after serving half of the term of the sentence. Today the discharge is implemented through a rather rigid system in which the prison administration submits papers to the commission, which studies the case (this part of the process is often procrastinated), and if the commission considers it possible to discharge the prisoner, then it sends the papers to the court, which makes the final judgment. If a person has at least one reprimand, it can be sufficient to refuse their discharge ahead of their term. The system that the Public Defender proposes that a person who has not had any disciplinary violations, and was distinguished by good behavior, should be automatically released; however, the administration has the right to deduct certain days from early release and extend the term of imprisonment at the expense of these days. This term can be from one day (for minor misbehaviour) and up to 30 days or more (for serious violations). Such an approach will motivate the prisoners to not violate the discipline and be more oriented on reintegration.

As for the conditions in the penitentiary establishments, the situation of the old ones has not changed much in comparison to previous years.

Overcrowding is still a problem.

As of 1 December 2007, the situation was as follows:

- Ksani #7 prison: accommodates 1,336 prisoners, but has 1,814;
- Zugdidi #4 prison: accommodates 305 prisoners, but has 529;
- Batumi #3 prison: accommodates 250 prisoners, but has 1,033; and
- Tbilisi #5 prison: accommodates 2,020 prisoners, but has 5,276.

According to the number of prisoners in the Tbilisi #5 prison, we can say that the prison has a "rubber standard" –they would place as many prisoners as would come.

The #8 prison built in Gldani, which had to replace Tbilisi #5 prison, was built according to international standards. It consists of six blocks and a medical block. There are 594 cells for two to ten persons, and 37 isolation cells. The prison is designed for 3,592 prisoners. In December 2007, there were 2,478 prisoners.

Every block has two baths with eight showers in each. Heating systems, cold and hot water systems, and washing facilities are installed in the whole building. The cells have large windows. On the upper floor, there is a walking space for prisoners. There are 28 cabins for meetings. Forty-four rooms are for appointments with investigators and defense lawyers.

The Public Defender welcomes the fact that the new prison starts functioning and points out that every condition in the building avoids the violation of human rights and humiliation of inmates' dignity.

TORTURE OF PRISONERS

Under the reporting period, the facts of prisoners' torture and beating have decreased, but the problem persists. The attitude of the administration on this issue was clearly seen from the words of one of the employees of the Kutaisi # 2 prison, who mentioned during a private conversation that "of course, if not for strictness, and if we had not demonstrated force, they would not be addressing us respectfully as "Mr. Controller', rather they would call us "Hey, Kliuchnik"(key-keeper)".

Kutaisi prison #2 and the medical establishment for prisoners again used inhuman and degrading treatment, and tortured prisoners under this reporting period.

Generally, according to international practices, there are three criteria that the penitentiary system has to satisfy if it has the ambition of stability; they are security, control and fairness. "Security" means the obligation of the penitentiary department and the administration of the establishment to avert any turmoil caused by prisoners. "Fairness" implies the humane and fair treatment of prisoners in order to prepare them for reintegration.

The above criteria should be balanced so that it would make it impossible to disregard the law, use excessive force towards prisoners and violate their rights.

Violence is still an issue in penitentiary establishments, and often the investigation into the incidents of physical pressure over prisoners begins with an incorrect qualification of the event, or the investigative body dismisses the investigation due to non-existence of the signs of crime in the employees' actions, even if there are obvious signs indicating that the action was consciously intentional (see Appendix #8, the case of L. Managadze and G. Ghvinianidze, and The case of Z.Vibliani).

■

By amendments made on 28 April 2006, to Article 93 of the Georgian law concerning imprisonment, the status of regular commissions implementing control over penitentiary establishments was defined. Out of 18 establishments, only eleven are functioning.

According to clause 2, Article 93 of the law on imprisonment, "the objectives of the commission are to help penitentiary establishment administrations with accommodating, training, feeding, working, rendering medical service, supervising prisoners and other issues related to the enforcement of judgment".

Public control commissions play a significant role in this. Commission members, after having studied the situation in detail, submit their report about the existing problems to the Ministry of Justice and Penitentiary Department. It should be noted that the Ministry of Justice and Penitentiary Department have not responded to any of the reports of commissions so far.

Recommendation: The Public Defender considers it reasonable to pay more attention to the reports of the commissions in order to improve the situation in the system. Besides, commission members should get permanent training in order that they fulfill their function effectively; minimal resources (for fuel, stationary, telephone, etc.) should be allocated from the state budget for this.

■

On 5 January 2008, Georgia held presidential elections in which prisoners in penitentiary establishments were not given the opportunity to take part since they had no ID cards. The Public Defender considers that the administration of the penitentiary establishments violated Article 28 of the Constitution of Georgia, which states:

1. A citizen who has attained the age of 18 has the right to participate in referenda and elections of state and self-governing bodies. The freedom of constituents to express their will is guaranteed.
2. Only individuals who are confirmed as ineligible by a court, or who have been deprived of their liberty by the due process of law, are deprived of the right to participate in elections and referenda.

In penitentiary establishments of Georgia (Tbilisi #8, Kutaisi #2, Zugdidi #4 and prison for women and juveniles), out of 1,606 registered prisoners, only 55 were given the possibility to vote. According to Article 10 of the Election Code, a special list of prisoners in preliminary detention is made in which, along with other data, the personal number of a citizen is entered. According to clause 1, Article 6 of the provision on the rule of serving a sentence, it is necessary to submit ID when admitting a prisoner. Therefore, penitentiary administrations violated the legal requirement and could not ensure the prisoners' right to vote.

Recommendation: it is necessary to sort out the problems connected with prisoners' ID, so that in the future prisoners will be able to vote.

In pre-election period, prisoners must be informed about the election process, candidates, pre-election programs and the content of bulletins.

Legislative Changes:

1) An amendment was made to the Georgian law concerning imprisonment on 29 June 2007. Clauses 1 and 2 of Article 30^1 was worded as follows: "Harsh violation of internal regulations of the penitentiary establishment, or non-compliance with the requirements of the employee, when performing official duties shall cause the administrative arrest for not more than a 60 day and night term. The repeated violation of clause 1 of the same article shall result in the administrative imprisonment for at least 15, and at most 60, days and nights".

   It is impossible to understand why it was necessary to make such an amendment. Before the adoption of this change, the normative act stipulated that the prisoner would be brought to disciplinary responsibility for the violation of internal regulations (Georgian law concerning imprisonment, Article 30; orders #365, 366, 367 of the Ministry of Justice). In the event of non-fulfillment of the requirements of the official, the law prescribed criminal responsibility (Criminal Code of Georgia, clause 1, Article 378).

2) It is true that the orders #365 (approval of the provisions and internal rules of common regime establishment) and #367 (approval of the provision on prison regime) of the Ministry of Justice explain the term "harsh violation of internal rules", but the Public Defender considers that it would be reasonable if such a definition was given in the law as well.

3) According to clause 3, Article 305 of the law, "an administrative imprisonment term will not be counted as a term of sentence of the convict". The Public Defender considers this change unacceptable. The above means adding the sentence to an administrative sentence. No countries follow this model. Sweden, Hong Kong and Great Britain consider adding the administrative imprisonment to a total term of service, but the term is strictly defined. For example, in Sweden it is 10 days, in Hong Kong it is 30, and in Great Britain it is not more than 45 days.

4) According to clause 12, Article 301 of the law "within 24 hours after the issuing of the resolution on the sentence of administrative imprisonment, it is submitted to the authorized court, according to the location of the penitentiary establishment". Clause 13 of the same article specifies that "the judge single-handedly considers the resolution on the sentence of administrative imprisonment at the open session within 48 hours after the submission of the resolution. The justified decision shall be made immediately after the hearing. It is inadmissible to postpone the judgment".

The above amendment restricts a prisoner's chances to prepare for defense. If the prisoner does not have a lawyer, the given time is not enough for hiring a defence lawyer.

The Public Defender evaluates the amendment negatively and considers that it is not an acceptable form of making order in the penitentiary system. The above can be implemented through taking other measures. For example, reorganization of the system of early discharge shall create serious leverage for the administration in terms of the prevention of disorder (the above model is discussed in the first chapter of the Penitentiary System section of the report).

5) The amendment of 25 May 2007, to the Georgian law concerning imprisonment, clause 4, Article 6 states that "under-aged prisoners who were sentenced to deprivation of liberty are placed ... in the juvenile correctional facility between the ages of 12 and 14".

   The Public Defender considers that a 12-year-old minor, whose psyche is in the phase of development, must not be placed in the penitentiary system. It is reasonable to place such a person in an education-intensive care establishment. The above model is well practiced in many European countries.

6) The draft code on imprisonment has been ready for over a year and a half. It envisages many humanistic aspects (long-term meetings, holidays, etc.) that significantly relieve the conditions for prisoners in the penitentiary system. Local and international non-governmental experts have presented their views on the draft code. Despite the above, the draft was only discussed once at the human rights committee during the year, which speaks for the fact that the draft code is not a key priority of the Parliament of Georgia.

   The Public Defender addresses the Parliament of Georgia with the proposal that the draft code is adopted in the shortest possible time. The Public Defender considers it reasonable to see the number of meetings increased in the new code, as well in the current legislation.

Recommendations:

1) The Public Defender considers that more attention should be paid to commission reports in order to improve the situation in the system. Besides, it is necessary to train commission members on a regular basis for the higher efficiency of their performance. The budget should allocate minimal resources (fuel, stationary, telephone, etc.) for this.
2) It is necessary to settle the problem connected with prisoners' ID so that all prisoners enjoy the opportunity to take part in elections. In the pre-election period, it is necessary to inform prisoners about election procedures, candidates and their pre-election programs, and the contents of bulletins.

3

CAUSES AND FACTORS AFFECTING MORTALITY RATE AT GEORGIAN PENITENTIARY INSTITUTIONS

Mortality rate is a measure of the number of deaths (in general, or due to a specific cause) in a target population, scaled to the size of that population, per unit time. Mortality rate is typically expressed in units of deaths per 1,000 individuals per unit of time. Mortality rate differs from morbidity rate, which refers to the number of individuals who have contracted a disease during a given time period, or the number or individuals who currently have that disease, scaled to the size of the population.

Crude death rate refers to the total number of deaths per 1,000 individuals, which differs from standardized mortality rate or age-specific mortality rate, referring to the total number of deaths per 1,000 individuals within a specific age group (e.g. 21-30 or 65+). Standardized mortality rates are used to study general mortality rates and are applied to individuals from special risk groups.

With regards to the success or failure of medical treatment or procedures, one would also distinguish between early mortality rate, which refers to the total number of deaths in the early stages of an ongoing treatment, or in the period immediately following an acute treatment; and late mortality rate, which refers to the total number of deaths in the late stages of an ongoing treatment, or a significant length of time after an acute treatment (related to the treatment).

Note that the crude death rate (as defined above), if applied to the entire population, can give a misleading impression. For example, the number of deaths per 1,000 individuals can be higher for developed nations than in less-developed countries, despite standards of health being better in developed countries. This is because developed countries have relatively more elderly people who are more likely to die in a given year, so that the overall mortality rate can be higher even if the mortality rate at any given age is lower.

Studies have defined factors affecting death rate, and include:

- Age of individuals;
- Nutrition levels;
- Standards of diet and housing;
- Access to clean drinking water;
- Hygiene levels;
- Levels of infectious diseases;
- Levels of violent crime;
- Conflicts; and
- Number of doctors and quality of healthcare services.

From the medical point of view, to evaluate mortality and morbidity levels, special meetings (conferences) are convened to consider all the factors influencing the parameters above, as well as to discuss

the lessons learned from the treatment or other medical interventions conducted, and define the ways for improvement and their subsequent implementation.

Considering all the above-mentioned, the information provided on the official website of the Penitentiary Department of the Ministry of Justice of Georgia, "On the Dynamics of the Mortality Rates among Inmates", can be assessed as very "unprofessional".

First, the table published on the website refers to the "percentage indicator of mortality rate among inmates", which is unsubstantiated from the scientific point of view, since mortality rate is defined not in percentages, but in numerical values per 1,000 individuals.

Furthermore, the published indicators (even when expressed in percentages) are not comparable with the similar indicators from previous years, since a one year time period, in this case, should be considered as quite conditional and a debatable determinator.

This can be proven by the fact that the total number of inmates during a single year (in our case, during the year 2007) is not clear. The data presented in the table (19,244) corresponds to the total number of inmates as of 30 November. If we take into consideration that the total number of inmates in January constituted approximately 15,432 people (based on the information given in the table itself), it becomes evident that the number of inmates had increased by 3,821 during 10-11 months. This means that the variability of the total number of inmates was about 20 percent, which is quite high. If we also take into consideration that the number of deaths among inmates during 2007 was not stable according to months (two peaks were recorded in February and July), it becomes evident that the indicator calculated in such a manner is neither statistically reliable, nor convincing.

Considering the given example, we should consider the conclusion made by the leadership of the Penitentiary Department that the mortality rate in prisons has not increased, as absurd. However, the given conclusion is backed up by the statement that despite the increase in the number of incidents, the crude mortality rate remains unchanged because there were fewer inmates serving their sentences in the previous years.

In such circumstances, when the data provided by the Ministry of Justice is nothing but a collection of simple numbers having nothing in common with scientific principles, it is difficult to say whether the mortality rate in penitentiary facilities has increased or decreased. It should also be mentioned that the Ministry of Justice has not studied the importance of the factors affecting mortality rate (as mentioned at the beginning of the report). Conducting substantial research and collecting reliable statistical data towards this aim would be the only justified step towards shaping the Penitentiary System's policy and future decision-making in this area.

For a realistic assessment of the existing crisis and finding ways for its resolution, joining the efforts of all relevant institutions is required to implement several multi-central studies. For the assessment of mortality rate, and its causes at the penitentiary institutions, we find it necessary to have the data received through proven scientific approaches, compared with the average country indicators. This is the only method to see the real picture and define the ways for improvement.

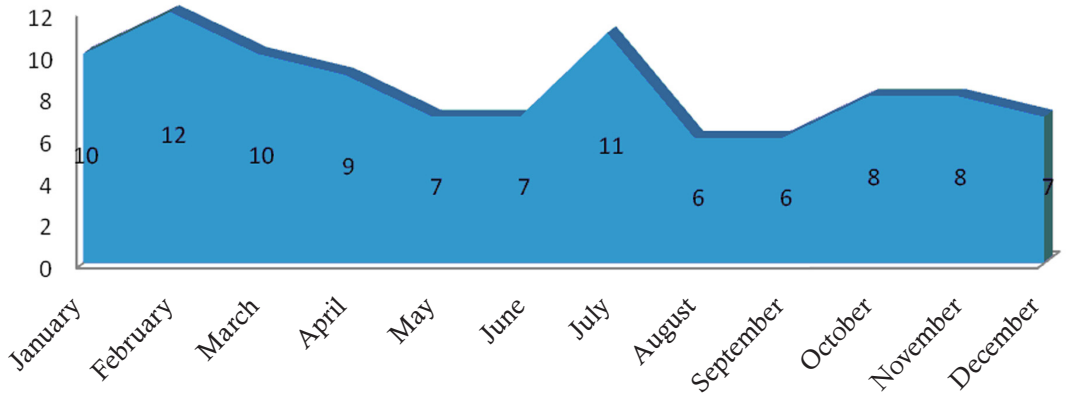
The given report is a modest attempt to reveal the major trends currently existing in the Penitentiary System of Georgia. It should be considered that, regrettably, none of the recommendations prepared in the previous reporting periods have been taken into consideration, and no follow up has been ensured on the facts revealed by us, with some minor exceptions, which have still not been brought to completion.

Despite the above-mentioned, we found it expedient not to repeat the facts and trends in this report that have been identified on many occasions in the previous years, but unfortunately are still widespread to the present day. Furthermore, responsible institutions are completely ignoring the recommendations forwarded by us. The result being that this year, as was the casein the previous reporting year, the causes of death among inmates

remains unchanged, and the incidents of death do not decrease in number. There have been no amendments made to any by-laws, which, in our opinion, to some extent contributes to the existing situation; and there has been no follow up on the obvious violations, including the facts that received the sharpest criticism.

One hundred and one inmates died while in custody of the Georgian penitentiary institutions in 2007. The number of deaths in the first half of the year (55) is nearly ten percent higher than the number of deaths in the second half of the year (46). Monthly mortality dynamics are as follows:

January	February	March	April	May	June	July	August	September	October	November	December
10	12	10	9	7	7	11	6	6	8	8	7
9.9%	11.9%	9.9%	8.9%	6.9%	6.9%	10.9%	5.9%	5.9%	7.9%	7.9%	6.9%



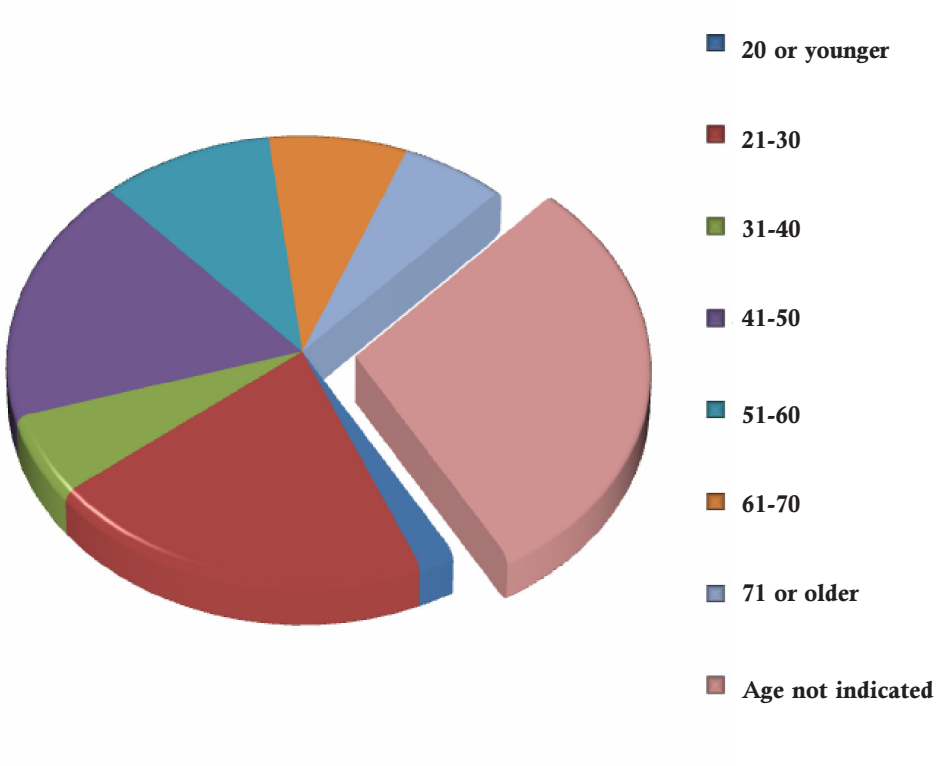
As the diagram shows, there were two peaks recorded during the year, in February and July, while the lowest rates, unlike previous years, were recorded in the August to September period. The specifics of this factor will be further discussed below.

Among the inmates who died in prisons, two (1.98%) were women, and 99 (98.02%) were men. According to the available data, the age of the deceased were recorded in 75 percent of the cases, and showed that the age of the inmates who died in prisons ranged from 16 to 85 years of age, while the mean average age of death was 43.6.

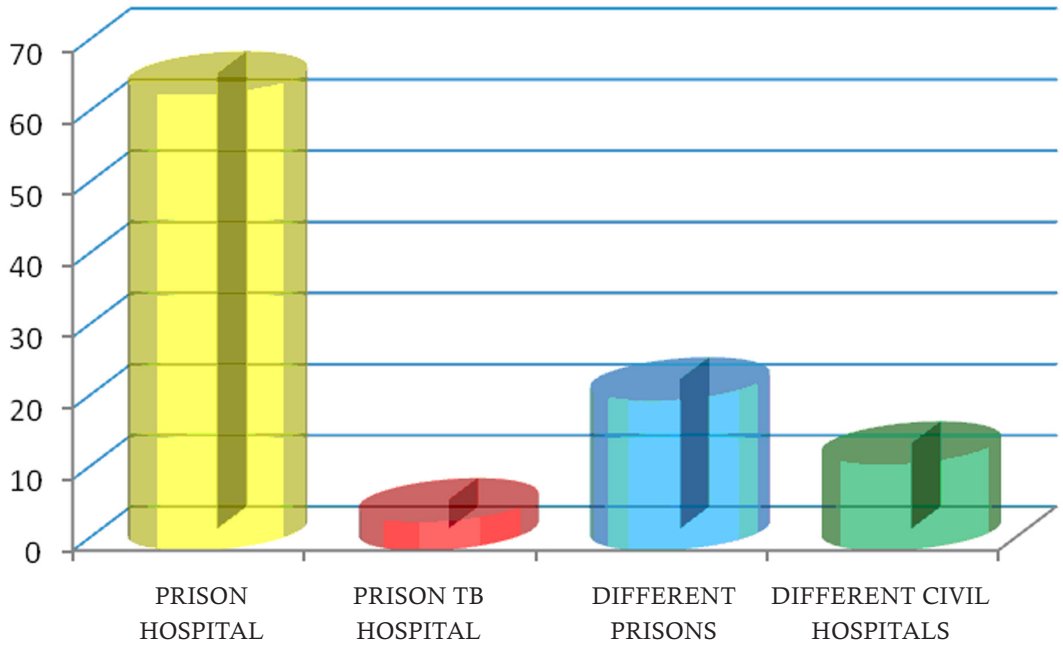
The highest mortality rate was reported among inmates in the 21 to 30 age group; while it is lowest among inmates below 20 years of age.

The table and diagram below shows the overall picture of the mortality rate among different age groups:

20 or younger	2	1.98 %
21-30	21	20.79 %
31-40	6	5.95 %
41-50	18	17.82 %
51-60	10	9.90 %
61-70	8	7.92 %
71 or older	6	5.94 %
Age not indicated	30	29.70 %



Similar to 2006, the majority of inmates died at the medical facilities of the Georgian Ministry of Justice for convicts and inmates (2/3 of deaths, 64 deaths – 63.4%). Four deaths (3.96%) were reported at the Medical Facility for Consumptives. One fifth of the cases were reported at various facilities of the Penitentiary Department (21 deaths - 20.8%), while 12 percent of the deaths were registered at various medical facilities (civil) in Georgia (12 deaths – 11.9 %).



The majority of inmates, regardless of the place of death, were registered at Prison #5 of the Penitentiary Department, while the same information concerning 42 other cases was not available at this time. The table below reflects the existing picture in this regard:

Prison #5	Tbilisi	12	11.88 %
#1 General and High Security Facility	Rustavi	6	5.94 %
Medical Facility for Convicts	Tbilisi	6	5.94 %
Medical Facility for Consumptives	Ksani	5	4.95 %
#6, General and High Security Prison	Rustavi	5	4.95 %
Prison #3	Batumi	5	4.95 %
#7 General and High Security Facility	Ksani	4	3.96 %
Prison #1	Tbilisi	4	3.96 %
#2 High Security Prison	Kutaisi	3	2.97 %
#5 Women and Juvenile Penal	Tbilisi	3	2.97 %
Prison #4	Zugdidi	2	1.98 %
#8 General and High Security Facility	Geguti	2	1.98 %
Prison #7	Tbilisi	1	0.99 %
#2 General and High Security Prison	Rustavi	1	0.99 %
Facility not reported	–	42	41.59 %

Analyses of the death incidents have revealed the causes of death. Although the Ministry of Justice and Penitentiary Department report cardiovascular or respiratory insufficiencies to be major causes of death in over 90% of cases, they are far from reflecting the reality of the situation.

"Cardiovascular insufficiency" (Heart Failure), from the medical perspective, is a syndrome rather than a nosologic entity (disease), which can be caused by various disorders of the cardiovascular system, as well as diseases of any other organs or systems (extracardial etiology). Ultimately, it cannot be considered as a cause, but rather a result (clinical outcome) of other diseases or conditions. Stemming from the above, citing "cardiovascular insufficiency" as the cause of death does not reflect anything. If we also consider that in any given situation or circumstance, an absolute majority of the deaths is accompanied with this syndrome, meaning the real causes of inmates' death remain unclear. Further studies have revealed even deeper inconsistencies. For example, in one of the cases the cause of death was reported to be "asystolia". Asystolia is a medical-clinical term that stands for cardiac arrest. In this specific case, the medical records tell us that the cause of the patient's death is cardiac arrest. However, nothing is said about what caused the heart to stop beating.

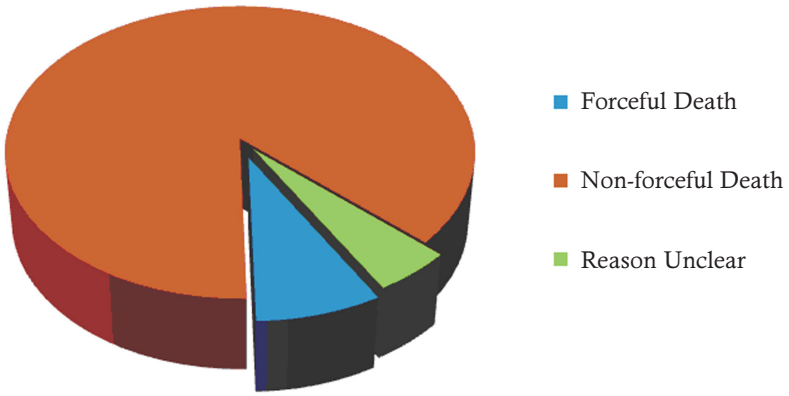
The table below shows the causes of deaths revealed as a result of our studies:

Pneumonia	14
Myocardial infarction	8
Cardiovascular defects	1
Epileptic condition	1

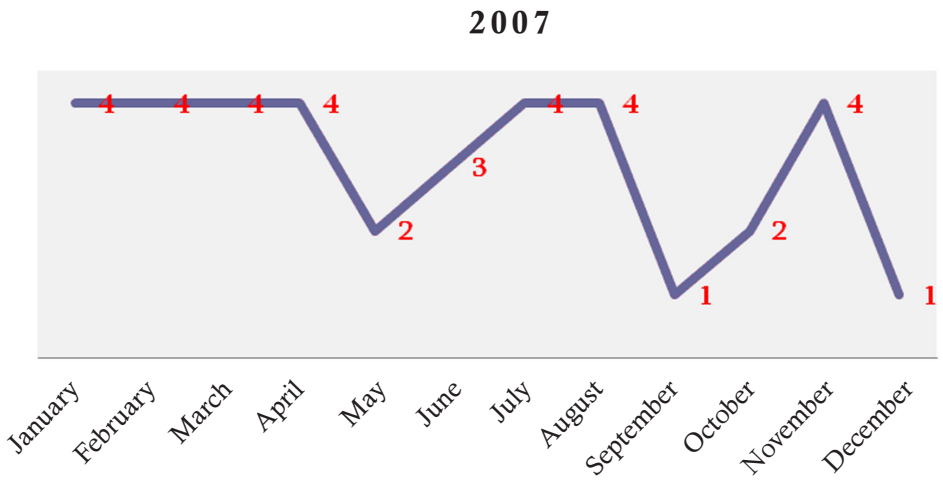
Meningitis	1
Stroke	5
Liver cirrhosis	1
Upper gastrointestinal hemorrhage	5
Bleeding wound	1
Peritonitis	4
Malignancies	5
AIDS	4
Compression of the neck (hanging andstrangulation)	6
Tuberculosis	37
Thromboebolism	2
Coma of unknown etymology	1
Intoxication of unknown etymology	1
Unidentified reason	4
Total:	**101**

As the table shows, the first four major causes of death are: lung tuberculosis, pneumonia, stroke and mechanical asphyxia through hanging by a noose. Following these are, brain blood flow disruption due to various reasons, upper gastrointestinal hemorrhage (from stomach and esophagus) and different malignancies. Four deaths resulted from peritonitis, which, based on the study of the post-mortem examinations and medical records, is directly linked with wrong treatment and unjustified surgical management. AIDS accounted for the same number of deaths. In two cases, the causes of death were thrombosis and embolism of major vessels. It should be noted here that we were unable to obtain documentation describing the causes of four death incidents, and two other deaths were ascribed to unknown etymology in the case of coma and intoxication. Due to the absence of nozologic identification, these last two cases were not classified in systemic groups and were singled out separately in the table.

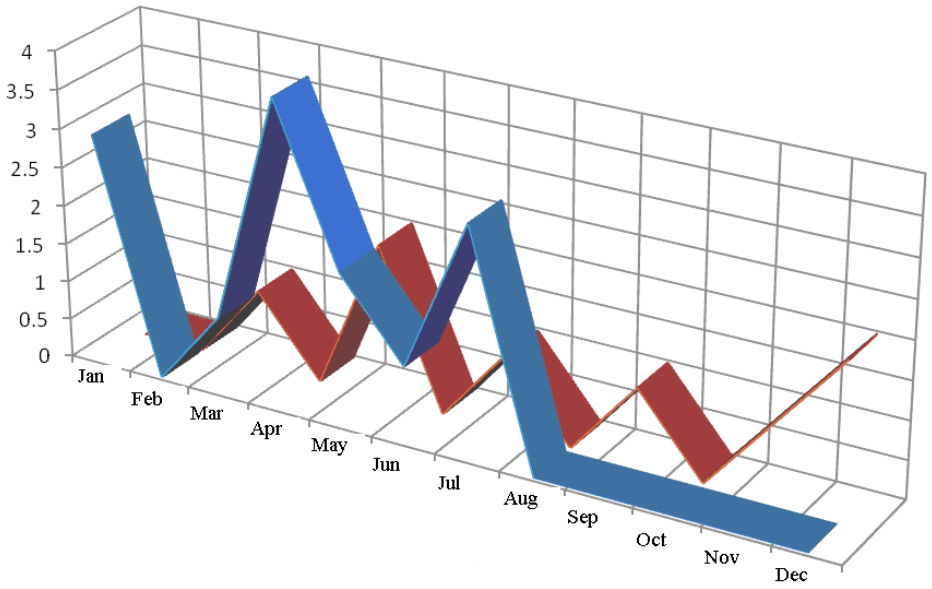
Thus, the analyses of the results show that during 2007, in Georgian prisons, there were eight cases of forceful death and 88 cases of non-forceful death. In five cases, we were unable to identify the type of death because the death incidents took place in the last month of the year and we were unable to obtain post-mortem examination results in time.



As already noted, most cases of prisoner deaths are attributed to tuberculosis, accounting for 36.6 percent of the total death rate at penitentiary institutions. Tuberculosis deaths account for four cases per month on a stable basis, though the number is considerably higher in the first half of the year. In terms of the monthly breakdown, the mortality rate caused by Tuberculosis is given in the diagram below:



As for pneumonia-related deaths (indicated by a blue line on the diagram) and stroke-related deaths (indicated by a red line on the diagram), the monthly distribution is as follows:

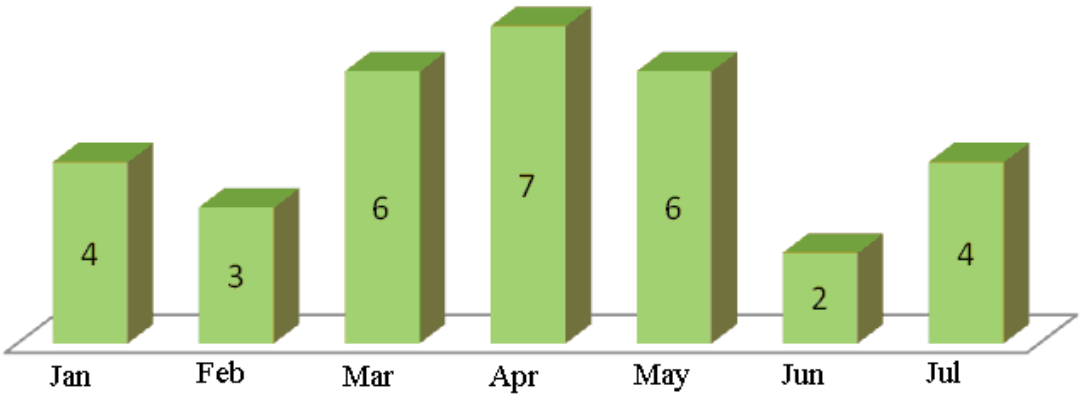


Despite the above causes of death, the review of the forensic (autopsy) reports of the deceased inmates has revealed that a majority of prisoners suffered from other accompanying diseases, which co-excisted with the progressing main diseases caused serious threats to human life and health. Apart from this, the same accompanying diseases, in most cases, can themselves result in the inevitable deterioration of a person's health condition, including death. Among the respiratory system diseases, pneumonia is the leading disease by frequency of occurrence and seriousness of the disease. This group does not include forms of pneumonia caused by tuberculosis. Two-sided cases of pneumonia are frequent, which is proven by the morphologic verification included in the post-mortem examinations. It should be noted that in the majority of cases, pneumonia was not

clinically diagnosed while the patient was alive, therefore, no treatment was provided, and as a result, nosology came in second place among leading causes of death.

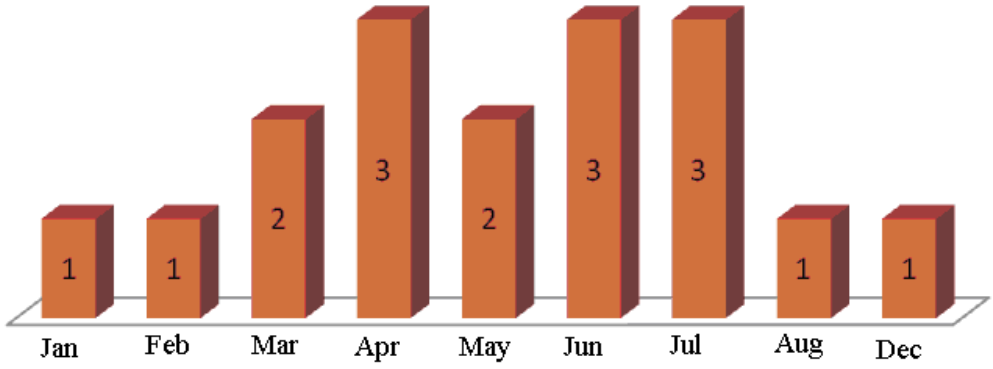
We studied forensic reports of the patients who died during the January to July period. In this period, 32 cases of pneumonia (as a principal and co-morbid disease) were revealed. The monthly morbidity rate of deceased with pneumonia is given in the diagram below:

PNEUMONIA



Pleuritis is the second leading cause of death among respiratory system diseases. For statistical purposes we have grouped all forms of morphologically identified pleuritis, including exudative and empyema. The diagram below shows the monthly breakdown of the pleuritis morbidity rate among deceased patients:

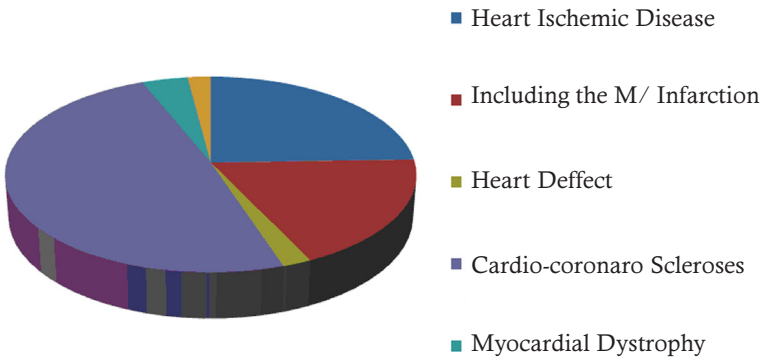
PLEURITIS



Clinical data analyses revealed that Pleuritis is often caused by deteriorated pneumonia, and sharply worsens the health condition of a patient. It is often accompanied by distinguished respiratory deficiency, high fever and other system deteriorations.

Among respiratory diseases, we have also encountered six cases of lung oedema, 3 cases of phevmothorax, 8 cases of (morphologically proven) exudative bronchitis, as well as single cases of: tracheitis, traumatic tracheal diverticula, pneumo-cirrhosis, bronchoectasy and lung emphysema.

Among cardiovascular disorders, as expected, the leading cause of death was Ischemic Disease of the Heart. Twelve various cases of the given disorder were identified through the morphology. Nine incidents revealed myocardial infarction, which resulted in eight deaths. Twenty-four cases of myocardial and coronary blood vessel sclerosis of varying degrees were identified by morphology study. Single cases of pericarditis and cardiovascular defects were also identified. The latter, despite providing treatment, resulted in death due to the complexity of the condition. The patient's life could have been saved only via surgical operation, which, unfortunately, was not conducted. The diagram below shows the breakdown of cardiovascular diseases:



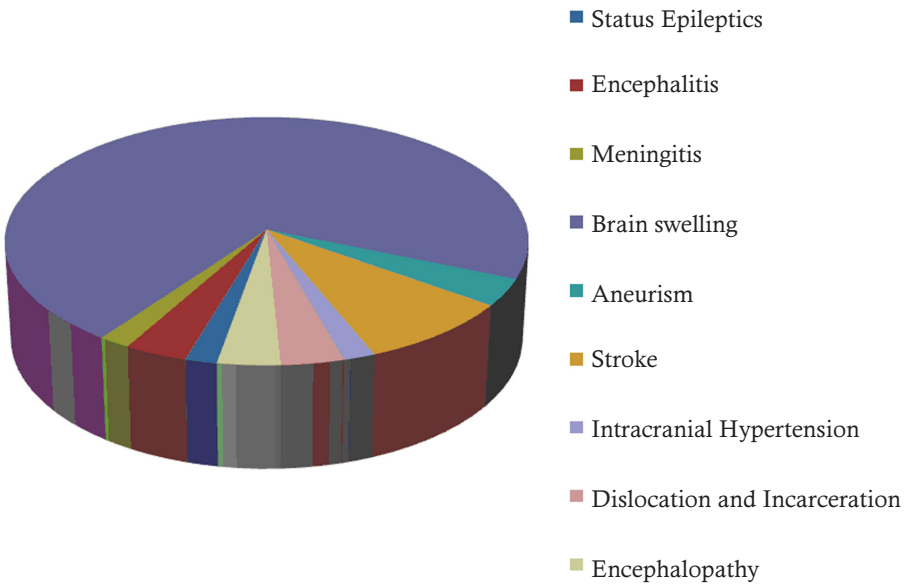
Neurological diseases also varied. First, in the majority of the deceased patients (40), brain swelling was morphologically proven, which on its own represents a life threatening condition. Dislocation and incarceration of the brain stem into the foramen magnum due to cerebral edema resulted in two deaths; although, while considering mortality rates, these two cases are referred to the main diseases that caused cerebral edema, dislocation and incarceration. Five cases of acute disruption of brain blood flow were reported. Among them, two resulted in the bursting of an aneurysm. Unfortunately, the mentioned conditions were not diagnosed due to the lack of tests conducted while the patients were alive, though the diagnosis was not aided by clinically expressed symptoms either. As an acute disruption of blood circulation, all five cases resulted in death. According to the forensic reports, hemorrhaging was observed in the cerebral fluid and the ventricles were also full of blood.

While studying the post-mortem examination reports, three cases of encephalitis and meningitis were revealed. Regrettably, even in these cases, diagnoses of the diseases were not made. Furthermore, in one of the cases, the processes caused by meningo-encephalitis were assessed as conditions pertaining to psychiatric competencies, and having undergone unjustified treatment, the patient died. The official causes of death were named to be tumors, though the criteria for such diagnoses seem doubtful and surprising.

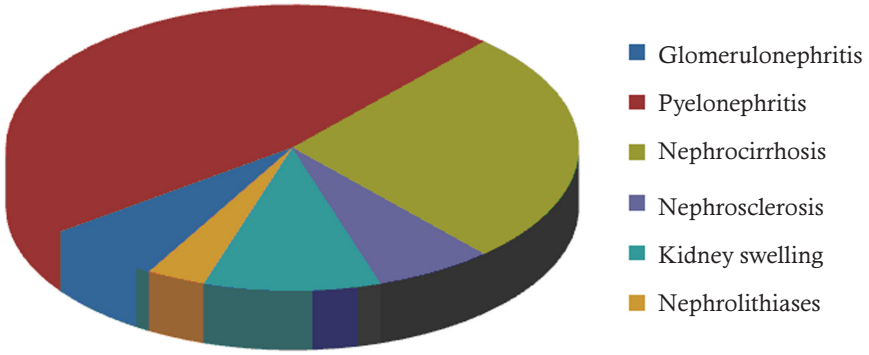
Among the nervous system diseases, epilepsy is quite widespread in penitentiary system institutions. During the monitoring conducted by us, many patients were identified as suffering from this disease, and in many cases, they remained untreated or without a consultation of neurologist. There are frequent cases of seizures turning into status epileptics, and the medical personnel in the prisons (if they are aware of these incidents) call the emergency service (033). There have been cases (also recorded in post-mortem examination records) when the patients were injured as a result of collapsing during epileptic seizures. During 2007, one patient died due to inadequate treatment provided for epileptic seizure (which presumably was status epileptics).

On several occasions, encephalopathy and intracranial hypertension were revealed because of various system diseases (mainly liver pathologies). The study also revealed damage to the brain and arachnoid membrane caused by tuberculosis, though these cases were classified under the systemic group of extrapulmonary forms of tuberculosis, which will be discussed later on.

Thus, single forms of nervous system diseases in the general spectrum are described in the diagram below:

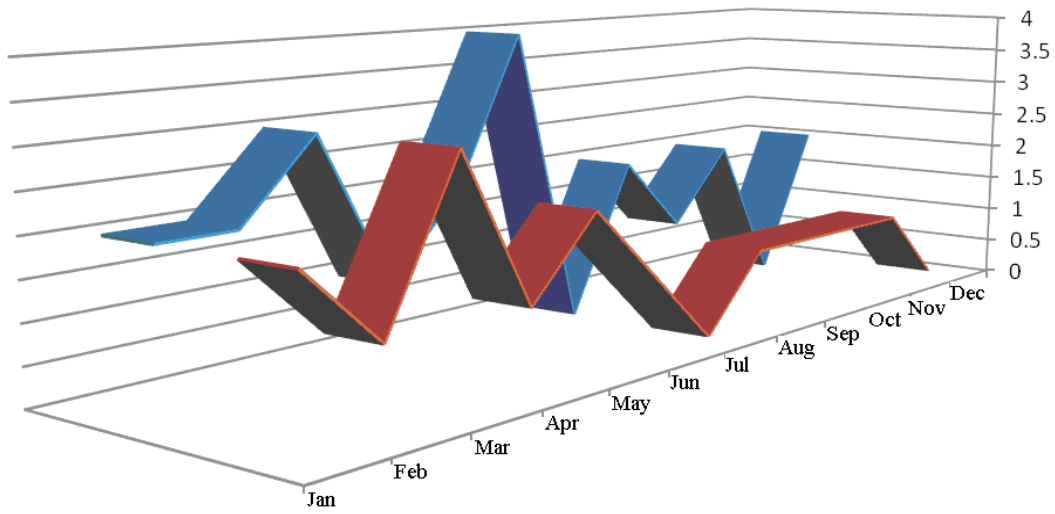


Among diseases of the urinary system, a special focus was put on kidney damage, expressed in various degrees and forms. From this point of view, pyelonephritis is a leading disease, which was morphologically identified in 14 occasions; in eight cases – nephrocirrhosis; in three cases – kidney swelling and autolysis; in 2 cases each – glomerulonephritis and nephrosclerosis; and in one case – nephrolithiases. The diagram below shows the spectrum of kidney damage types and their distribution:



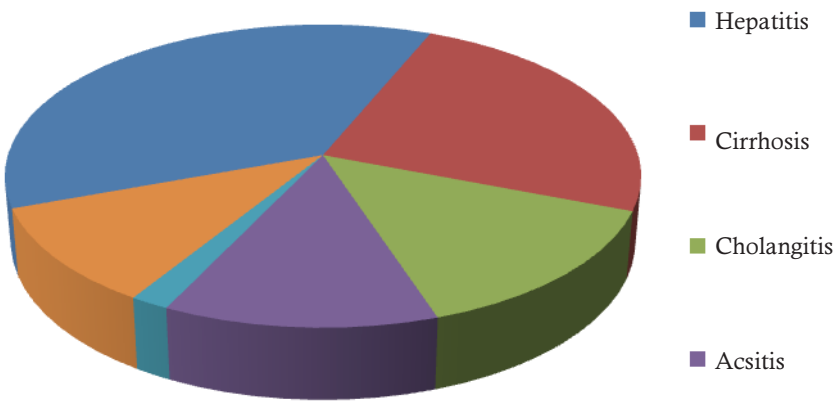
Among the lesions of the liver and billiary tract, the leading disease is hepatitis, as was expected. It should be noted that in the majority of cases the disease was not confirmed while the patients were alive, neither through laboratory nor clinical tests, and they were diagnosed morphologically (via routine histology tests) following post-mortem examination. Therefore, we can assume that the etiology of the hepatitis described in the forensic reports was viral. The most widespread of viral hepatitis in the prisons is "C" followed by the "B" hepatitis. Analyses of post-mortem examination reports revealed that several cases of liver tuberculosis were recorded under the group of extrapulmonic forms of tuberculosis. Regrettably, the inadequate treatment of tuberculosis is resulting in a sharp increase of non-respiratory forms, which are often lethal or provoke other life threatening diseases. According to the post-mortem examination reports, a great majority of the deceased patients suffered from various etiology of hepatitis, with subsequent liver cirrhosis. It should be noted that cirrhosis and severe bleeding from ruptured varicose veins of the oesophagus accounted for many deaths in 2007, while one patient died in an earlier stage of cirrhosis as a result of provoked diseases.

Seven deceased patients suffered from ascitis developed after cirrhosis. Due to the large volume of liquid accumulated, they had difficulty in respiration and problems with other systems. The monthly distribution of hepatitis and cirrhosis cases is given in the diagram below:

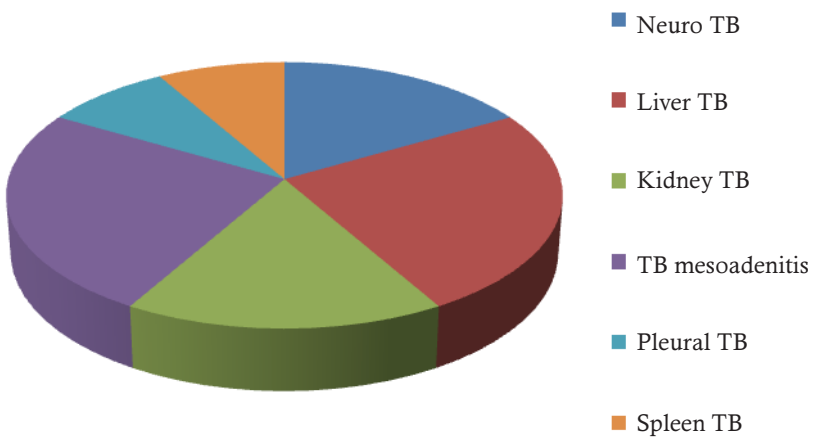


A blue curve on the diagram represents hepatitis dynamics, while the red one represents cirrhosis; both are according to months.

Apart from the diseases mentioned, damages resulting from inflamed billiary tract were morphologically identified in nine cases. In addition there was one case of portal hypertension and six cases of toxic dystrophy of hepatocytes and liver necrosis. Liver and billiary tract damages are graphically represented in the diagram below:



As for extrapulmonary forms of tuberculosis (TB), based on the information we obtained, among the inmates who died in 2007, 12 suffered from this diseases. The following types of extrapulmonary forms were revealed: two cases of neuro TB, three cases of liver TB, three cases of kidney TB, one case of pleural TB, one case of spleen TB, and three cases of tuberculotic mesoadenitis. The graph below represents this information:



Unfortunately, the revealed cases point at the lack of treatment and care provided to the inmate patients suffered with TB.

Out of 101 patients who died during 2007, oncological diseases were identified in seven cases (6.9%); tumors were the cause of death in five cases (4.95%), while in two cases, tumors were found during autopsy and the cause of death was other pathology. Among the malignancies, the cancer of the liver was revealed in 4 cases, lung cancer – 2 cases and gastric cancer – 1 case.

One of the inmate patients died as a result of severe hemorrhagic anemia. As we can learn from the press release issued by the Ministry of Justice, the inmate was admitted to the Kutaisi clinical hospital to get a cut wound in the left forearm treated. The cause of the death was said to be hemorrhagic shock, which developed due to the excessive loss of blood. Although the initial medical care was provided by an emergency unit that transferred him to the clinic, the patient still died. The mentioned case requires further investigation, mainly because the incident took place during the second half of December and the post-mortem examination report was still not available. In any case, even traumatic limb amputation, when carried out by the primary medical facility, should not result in a patient's death.

Based on the data available to us, two deceased inmates were diagnosed with type II diabetes mellitus; one had septic coxitis; and one had a false aneurysm of the femoral artery.

During 2007, AIDS accounted for the deaths of six patients in penitentiary institutions, of which four died of AIDS, while two deaths were caused by other nosologies. Despite the above-mentioned, this has been the second consecutive year when no autopsy was conducted for the deceased AIDS patients and no medical diagnosis was made. Experts point at the absence of safety procedures. Below are several examples of such cases.

Forensic Autopsy Report # 66/34

When pressing finger on the body surface the colour changes and (text not readable – translator's comment) ... in the projection area of the front side of the right elbow, a puncture wound (left from injection) is noticeable with the hemorrhage around it. There are no signs of mechanical injury on the corpse. The corpse could not be examined due to non-existence of safety guarantees and methodology of dealing with the corpses of AIDS patients.

Results: Forensic medical examination of ... Based on the external examination, no signs of mechanical injuries, other than the above-mentioned left by injection were observed. Due to non-existence of safety guarantees and methodology of dealing with the corpses of AIDS patients, corpse examination (autopsy) was not conducted.

Forensic Medical Expert – G. Alavidze

Forensic Autopsy Report #182/33/34

He was about average height, barrel-chested, abdomen is oval on the level of the ribs; normally developed external sex organs. There are no external signs of mechanical injury on the corpse. Due to non-existence of safety guarantees and methodology of dealing with the corpses of AIDS patients, corpse examination was not conducted.

Results: (Inmate) **** forensic medical examination – There are no external signs of mechanical injury on the corpse.

Due to non-existence of safety guarantees and methodology of dealing with the corpses of AIDS patients, corpse examination (autopsy) was not conducted.

Forensic Medical Expert – G. Maghradze

Forensic Autopsy Report #725/33/34

A medical record confirming the diagnoses of HIV/AIDS, category "C", left lung TB (+), cerebral coma, epilepsy.

Autopsy results: 1-2-3-4-5/ Due to non-existence of safety guarantees and methodology of dealing with the corpses of AIDS patients, corpse examination (autopsy) were not conducted. As such, causes of death were not identified.

Forensic Medical Expert – P. Jibladze.

As it can be seen from these examples, the experts directly state that the causes of death were not identified.

It was noted above that we reported on such incidents last year as well. It is interesting how come the Ministry of Justice is not responding to the request of experts to create a methodology for conducting forensic and medical examinations of the corpses of AIDS patients, and to set safety guarantees.

We have not yet revealed the cases of refusing treatment to inmates for the reason of being AIDS patients. The patients are being treated in specialized institutions, as well as in any other heath facilities and polyclinics across the country. They undergo surgical operations and are provided with other interventions required. If it is absolutely acceptable to provide treatment and conduct surgeries on live patients infected with HIV/AIDS, it is interesting to know why the autopsy of a deceased patient (who died of AIDS) poses an increased threat? This issue requires a more detailed look from a legal, ethical and professional point of view.

In compliance with Article 147 of the Georgian Law on Healthcare, "after death, the body is handled respectfully and taken care of with dignity", and so when an autopsy was denied because the deceased suffered from AIDS, this is discriminatory and offensive towards the deceased person.

During 2007, six instances of suicide were recorded in various penitentiary institutions. In all six cases, forensic medical examinations revealed asphyxia through hanging by a noose, which, from the forensic medical point of view, represents a form of forceful death. Two out of six cases were reported in Kutaisi #2 prison, one case in prison #5 (woman and juvenile penal), and one case in Prison #7. In these instances, the inmates used a bed sheet, belt, towel, linen, or rope as a noose. All the inmates were alone in the cell. In Rustavi Prisons #6 and #5, these instances happend at a medical department; at #5 women and juvenile penal, an inmate hanged himself in an isolation cell, where he was transferred to as a punishment. In Prison #7, a prisoner hanged himself despite the continuous video monitoring of the cell. Furthermore, during our monitoring activities, we revealed numerous cases of parasuicide attempts, which, fortunately, ended with the survival of the inmates attempting to commit suicide.

In our report of 2006, we referred to the incident, which the investigation concluded to be a suicide (forensic autopsy report #749). As the circumstances revealed, in the punishment cell of Tbilisi Prison #1, a controller found a corpse of a convict Z.I, who was hanging on the window bars. External examination revealed multiple cut wounds on both forearms of the inmate, as well as uneven bruises of red and bluish color around the eyes. In the waistline areas there were multiple crushing injuries, as well as "on the surface of the neck in the front, and at the level of thyroid gland" (typical strangulation lession). According to the autopsy results, the cause of death was mechanical asphyxia resulting from the blockage of upper airways with a noose. However, there is a discrepancy between the macroscopic and microscopic findings – there are no morphological descriptions of bruises or injuries that were incurred while still alive, based on the examination of the skin tissue (presumably) taken from the strangulation lession area. There is no indication of the age of the injuries found on the body recorded in the conclusion. Proceeding from the above, thereal cause of the inmate's death becomes questionable.

In any case, the responsibility for suicide incidents lies on both the Prison Administration and medical personnel. According to international standards, prison doctors, together with the administration should prevent suicide attempts, and with this aim should be providing relevant psychiatric and psychological assistance, especially when the prisoner is kept in isolation. Furthermore, the prison administration should take special measures in terms of avoiding suicide attempts. If we take into consideration the fact that the majority of cases took place at medical departments and isolation cells (sometimes even under constant video observation), there should be no doubt that there were no preventive measures or other efforts undertaken by the administration.

Analyses of the forensic reports of the deceased patients showed that in one instance there was soft tissue necrosis; in two instances, phlegmon of various parts of the body; and in one instance a purulent fistula was formed. Despite this, there were no signs of medical treatment or care taken while the patients were alive. It seems that penitentiary system healthcare is not familiar with the principles of treatment and care. A general analysis of the medical records gives us ground for such an assumption. It is clear that the reason for the above-mentioned cannot just be the lack of financial resources. In many cases, doctors had not requested or prescribed specific treatment. This could probably explain the occurrence of three cases of endotoxic shock, which had been recorded three times in the documents we studied; there were cases of peritonitis, which in four cases ended in death, one of them caused by the perforation of the duodenum. It should also be noted that medical records often mention that patients suffered from a ventral hernia in the abdominal area, a two-sided inguinal hernia, and eventeration. Regardless, there was no direct or indirect mention of these facts in the forensic reports. It speaks to poorly qualified experts or doctors, which to our belief, should be an interesting issue for investigation, though these cases have not yet attracted attention of law enforcement bodies.

While reviewing documentation concerning the deceased, especially press releases issued by the Ministry of Justice, we noticed frequent mentioning of "toxicosis" or "intoxication of unknown etymology", etc., as being the causes of death, while their reasons remain unclear and do not fit into any medical logic.

Forensic medical examination records reveal that alcohol was detected in the blood of four deceased inmates, while narcotics (mainly heroin) were traced in internal organs and urine in three cases.

We paid special attention to the nutrition status of the deceased. It was revealed, that out of 101 corpses, 40 were practically emaciated and had cahexy (39.6%). Seven corpses had bedsores and other injuries characteristic of chronic diseases that required specific care. (It can be assumed that many more of the deceased persons suffered from these conditions while they were alive). Taking this data into consideration, we can have a clear picture about the kind of treatment and care provided to chronic patients, or patients in critical condition, at penitentiary system medical departments, or so-called prison hospital.

We also looked into autopsy results, referring to the case circumstances. The study showed that the interval between the transfers of the patient from the prison to a clinic was 32 hours (1.33 days) on average. One third of the patients died on the second or third day since they were moved to the clinic, which means that patients are not moved to healthcare facilities until their conditions become critical. This organizational shortcoming can be considered as one of the main causes of death.

The study of the mortality spectrum at various facilities of the Georgian Penitentiary system gives us a clear idea of the kind of medical treatment provided to prisoners. From this point of view it can be stated that healthcare services in prisons are either non-existent, or not very accessible. In any case, their quality is beyond any criticism. Based on the results of the monitoring conducted in the reporting period, it can be stated that from a medical point of view the situation remains unchanged. In specific areas there are even signs of deterioration compared to the previous reporting period. Healthcare services are not adequate and access to doctors is at minimal levels, while the quality (if any) of treatment and care provided is absolutely inconsistent with normal standards and against human dignity.

For a better understanding of the statistical analysis and facts presented above, we found it expedient to bring several examples in the form of short excerpts from the forensic medical autopsy records, which give us insight into the existing reality.

Forensic Autopsy Report #71/33
Deceased inmate G.L., age – 40

By the conclusion of the examination, the direct cause of G.L.'s death was two-sided pneumonia. The report reveals that the investigation presented medical record (#84) copy, according to which, the patient died one day after being admitted to the Prison Hospital for Convicts and Prisoners. At the time of admission, the patient's condition was the gravest, which is why he was placed in reanimation. A doctor examined the patient. According to the official information, (a press release published by the Ministry of Justice), the cause of the patient's death was "acute cardiovascular insufficiency, accompanied by anemia". There is no mentioning of pneumonia anywhere. Furthermore, if the patient suffered from clearly demonstrated anemia, the only justified treatment should have been transfusion, while medical records reveal that "central arterial catheterization is impossible due to the absence of a catheter". It is interesting to note that a catheter in drugstores costs 1.50 GEL and the so-called Resuscitation Department could not allocate a catheter for a patient in terminal condition. It is also interesting to see what the other reanimation methods employed by the Reanimation Department of the hospital are when it cannot even ensure catheterization of a central vein.

Forensic Autopsy Report #82/33
Deceased inmate A.Sh., age – 21

According to the conclusion of the examination, the direct cause of A.Sh.'s death was "purulent and faecal peritonitis caused by caseous pneumonia". It should be noted first that it is absurd to claim that such peritonitis

could have been caused by TB, and is beyond any criticism. In such a case, when a cause and effect relationship between TB and peritonitis is claimed to be the case, the only justifiable measure to be taken should be the immediate dismissal of the expert from his/her post due to lack of competence. In reality, however, the patient was moved to the civil hospital in the most critical condition, where he died in a day's time as a result of acute intoxication caused by peritonitis. In this case, TB was an additional, and independent, accompanying disease, which, of course, could potentially worsen the condition. The answer to the question as to why A.Sh. eventually ended up in such a grave condition can be found in the medical records of the deceased patient. According to the records, the patients suffered from ascitis. On a single occasion 6 litres of liquid was excreted from the abdominal cavity. It is interesting to note that, according to medical records, "there were no pathologies detected on the lung tissues as a result of x-ray (roentgen) scanning". Furthermore, "cytological examination of the ascetic fluid" was not possible, which was why for "diagnosis and further treatment" it was deemed expedient to conduct a "diagnostic exploration". It seems like, with the patient's consent, a surgical operation was conducted under general anesthesia. According to surgical records (protocol of the surgery), "the tissues were deformed, resembling boiled fish; bleeding, covered with tuberculomes on the parietal and visceral peritoneum, and granular tuberculosis could be detected; tuberculosis was disseminated over the ganglion membrane with the tissues being extremely bloody; revision space was limited; epiploon covered with tuberculosis was recessed and the abdominal cavity was closed completely..." Apart from the fact that the given records are shameful, the management used with regards to the patient was absolutely incoherent. It can be speculated that faecal fistulas and severe peritonitis were directly connected with the unjustified intervention. The surgeon, a phthisiatrician invited as a consultant, suggested transferring the patient to a specialized healthcare facility. There are also records stating that the "examination is not possible due to technical reasons". In the end, with the assistance of the RCT/Empathy Centre working on the psycho-social rehabilitation of victims of torture, violence and expressed stressful conditions, the patient was moved to the respective clinic setting, though at that stage reversal of the condition would have been difficult, even theoretically. After several hours, a note appeared in the records stating that "due to the extremely grave condition of the patient in general, any surgical intervention would be strongly contraindicated".

It is interesting to note that after the patient died, a note was added to the medical records stating the diagnosis of "tuberculosis mesadenitis, intestine eventration following laparotomy, gastric (large intestine) fistula, and diffuse peritonitis" was confirmed. It is clear that the death resulted from the developments following the unjustified and groundless laparotomy, which, for some reason, remains vague in the forensic report.

The forensic examiner indicates "on the front wall of the abdomen, on the white line, an incision sized 20 x 10 cm, following the laparotomy, can be detected. The wound was open and swollen and the intestinal loops were covered with a yellow-grayish coating". The expert also mentions that "in the chest cavity there was 150 ml of a grayish smelly liquid". What did the expert mean by "chest cavity"? He/she should have mentioned any of the pleural cavities, the pericardial cavity or mediastinum. While describing the abdominal cavity, an expert adds that the incision was open (10 cm) and the "intestinal loops partially protruding from the wound were swollen, covered with a thin layer of yellow-grayish coating, and having a bad smell. Intestinal loops are not static, and at places disintegrate at the touch of the hand. Epiploon and menestery are of grayish color".

It is interesting that according to surgical records, greater suc was recessed, and it is hard to believe that during the period following the surgery the patient "developed" a new greater suc, which was described in the autopsy by the expert. Furthermore, an official press-release published by the Georgian Ministry of Justice states that A.Sh. "Suffered from chronic faecal peritonitis". It is worth noting that a branch of medicine called "surgery", in all of its history of development going back several thousand years, has no mention of "chronic faecal peritonitis". Who compiles the official information to be disseminated on behalf of the Ministry of Justice, and on what data does he/she base such diagnoses?

In this case, the only positive moment is that the investigation questions the forensic expertise, as to "how correct was the treatment of A.Sh."? However, the expert's answer is ungrounded, saying the "assessment of

the correctness in the treatment of A.Sh. falls under the competence of the forensic medical expertise commission". We are not aware if such expertise was ever requested, or what were its findings, though one thing is clear, all the doctors who participated in the treatment of the patient at the prison medical facility, and whose action or inaction caused the mentioned circumstances to be developed, cannot be allowed to treat any other patient. This is positively a crime. Respective bodies should immediately address the court with the request of annulling their medical licenses, allowing the mentioned persons to never pursue medical procedures (of course, if they have them in surgery at all).

Forensic Autopsy Report #162/33
Deceased inmate U.G., age – 66

According to the press release published by the Ministry of Justice of Georgia, the deceased suffered from "oesophagal cancer", while the autopsy states the patient had "liver adenocarcinoma". The autopsy does not contain a description of any direct or indirect indications of oesophageal cancer. Who diagnosed the patient having this kind of cancer? Oesophageal and liver cancers are characterized by very different clinical manifestation and require different management and care, and therefore it is of utmost importance for a patient's treatment to know which cancer he had. Proceeding from the above, it becomes evident, as to the level of "successful" treatment of the patient.

Forensic Autopsy Report #198/33
Deceased inmate A.G., age – 30

According to the press release published by the Ministry of Justice of Georgia, the cause of the inmate's death was tuberculotic intoxication. Forensic medical examination confirms two-sided lung tuberculosis as the cause of death. Despite this, however, it is interesting to note the circumstances described in the conclusion, namely the part describing the patient's medical records. According to them, A.G. suffered from piopneumothorax, and it is not surprising that he/she suffered from respiratory insufficiency. It is confirmed by a note in the medical records stating "on the right side, respiration is not possible at all".

TB was complicated by spontaneous pneumothorax (confirmed by x-ray examination). The patient's condition became critical, the respiratory insufficiency became more dominant, and subcutaneous emphysema increased. Later on, when reanimation measures were required, there was no indication anywhere, that the patient was intubated or moved to artificial respiratory systems (he was already diagnosed with open pneumothorax). We have to note here once more, the capacity and achievements of the so-called Reanimation Department in treating a patient who was in critical condition. If the patient was not intubated or moved to artificial respiratory systems we should assume that he suffocated due to progressing pneumothorax, or a certain role could have been played by the pain that should have developed due to a mediastinal shift.

Forensic Autopsy Report #204/33
Deceased inmate T.K, age – 29

As the study of the mentioned case revealed, the patient was moved from Prison #5 to the Prison Hospital for Convicts and Inmates with a delay. He was diagnosed with duodenal ulcer perforation and peritonitis. Peritonitis is a life threatening condition and it requires rapid surgical intervention. Furthermore, in 95% of cases, perforation entails a feeling of intense pain (resembling that of a stabbing with a dagger), which brings the patient to the condition of shock, and without proper care, the death of the patient in most of the cases is inevitable. It should be noted that the longer the interval of time since the start of the perforation, the lesser the chances of a patient's survival.

In this case, the delayed treatment of the patient is revealed by the fact that during surgery a perforated hole was identified, which was"surrounded with an inflamed pus coating", as was also evident on the liver. As the surgical records indicate, serious tactical mistakes were made during the patient's treatment. In particular, the perforated hole was sutured with catgut (absorbed thread/string). From the document at hand, it is not clear what kind of antibiotic therapy was prescribed to the patient (i.e.: whether a nosagastric tube was used for aspiration, etc.). It is logical that a sub-diaphragm abscess, due to suture insufficiency, developed, which required a repeated surgery. During this time, the body was suffering from intoxication resulting from peritonitis.

A much worse and unjustified intervention was made during the repeated surgery. No other kinds of surgical interventions were employed, such as an open suturing laparastomy. Instead, a repeat ulceroraphy was conducted (suturing an ulcer hole). It is appalling that the decision was made to re-suture (and it is absolutely unclear why). At the same time, as a rule, in case of stenosis, a nasoenteric tube should have been placed in the patient since any kind of re-suturing would entail the inevitable opening of stitches. In this case, there is an absolute risk of suture insufficiency. As a result of such unjustified and irresponsible tactics, the stitches, of course, opened, and universal acute peritonitis further progressed, which inevitably resulted in the patient's death.

It is absolutely appalling that doctors pay special attention (instead of taking necessary steps) to the patient's excited condition ("threatens to remove the tube... has torn bands and nosagastric tube", etc.). Such a condition is natural on the background of severe encephalopathy, which points to the patient's critical condition. When universal peritonitis is evident and the patient's general condition is extremely grave, Tailor's treatment is justified.

Erroneous interventions sped up irreversible processes and caused the patient's death. It is probably difficult to speculate whether it was possible to save the patient even if an alternative treatment was provided, though in this particular case, the patient's death and applied treatment is a cause and effect relationship. It is also worth noting that the expert was unable to describe the full picture of surgical intervention and altered anatomic condition. He/she cannot specify what kind of condition the other organs are in and what the medical conduct was like, etc.

Although the application of the sutures or excission of a perforated ulcer is technically attainable for all surgeons, and is not considered as a difficult technical intervention, it requires a very responsible attitude. Postoperative mortality after the suture of an ulcer, based on the available data, is 1 to 4.4 percent, which means that, in case of proper treatment, the patient's survival chances equalled nearly 96 percent, which in this case was not achieved

Forensic Autopsy Report #217/33
Deceased inmate Romeo Margvliani, age – 29

The presented case has been published and analyzed on numerous occasions in the recent months. It was discussed in parallel with the Public Defender's 2006 report as an additional case. Therefore, we will not delve on the details.

The Public Defender of Georgia addressed the State Regulatory Agency for Medical Activities under the Ministry of Labor, Health and Social Affairs, with the recommendation to study and investigate the medical records of a deceased patient and discuss the issues of professional liability of the doctors involved in. As the materials of the interim agency investigation reveals, the case was studied by a medical commission comprised of five experts. Below is an excerpt from the commission conclusions:

1. The quality of treatment provided to patient Margvelani was unsatisfactory;
2. The medical diagnosis and treatment provided to patient Margvelani was inadequate;
3. The processing of the medical documentation was inadequate;

4. The care provided to patient Margvelani at the medical facility for convicts and inmates was inhumane treatment;
5. A request should be filed to the State Medical License Awarding Board to medium and high medical and pharmacy personnel to take the strictest measures against the medical personnel who participated in the "treatment and care" of patient Margvelani, as well as the healthcare facility administration, in terms of their professional accountability; and
6. Apart from the described serious violations of a medical nature, there is clear evidence of the violation of the Georgian Criminal Code according to its various articles that is why, the issue should be forwarded to the Office of the Prosecutor General of Georgia for further investigation.

Despite the above-mentioned conclusions, the investigation of the issue has not been completed. The Public Defender, on numerous occasions, addressed State Regulatory Agency for Medical Activities under the Ministry of Labor, Health and Social Affairs, to obtain information on the progress achieved. However, numerous replies from the agency were of nearly the same content and clarified that Penitentiary Department of the Georgian Ministry of Justice has not yet (despite numerous requests) issued a permission to allow agency staff into the territory of the prison hospital. In reply to the Public Defender's enquiry to the Penitentiary Department regarding the reasons for delaying access to agency staff into the prison hospital, the department stated that agency staff does not require any specific permission and they can enter prison hospitals to study the matter. Both state agencies are being clearly irresponsible and are, violating Georgian legislation even more.

The latest written enquiry to the State Regulatory Agency for Medical Practices under the Ministry of Labor, Health and Social Affairs, from the Public Defender's Office was sent on 26 September 2007 (#1760/11); however, the reply is still pending. There has been silence from the Office of the Prosecutor General as well, where the case was forwarded for further investigation. This particular case makes us think that none of these agencies are interested in defining the causes of death of any patients.

Forensic Autopsy Report #207/33
Deceased inmate B.E, age – 73

In this specific case, the death of the patient was again caused by the lack of attention and accountability of the personnel of the hospital for convicts and inmates. The information was obtained during our monitoring from various agencies. The patient was mentally ill. He was clearly subjected to inadequate treatment. In the later period, he refused to eat. Instead of acting professionally and to place a nosagastric tube to feed the patient, the staff of the Psychiatric Department of Prison Hospital for Convicts and Inmates did not pay any attention to B.E, who practically died of starvation; though the autopsy stated the cause of his death was the acute disruption of blood brain barrier.

Forensic Autopsy Report #223/33
Deceased inmate L.A., age – 23

In accordance with the press release published by the Ministry of Justice, the cause of death of the prisoner was a result of an acute cardio-pulmonary insufficiency. The same is confirmed by the forensic conclusion; although from the medical point of view the descriptive part of the report does not corroborate the conclusion.

The history of the illness of the deceased patient also is proof of the mentioned inconsistency. As it becomes evident, the patient indeed suffered form lung tuberculosis, although it seems unlikely that in this particular case, tuberculosis at this particular stage had become the cause of death of a 23-year-old patient.

Medical card #247 of the patient, conducted in the medical facility for the convicted persons and the prisoners, shows that the patient complained of pain on the right part of the abdomen, nausea and vomiting, and the pain was increasing.

Finally, a diagnosis of an acute abdomen was made (with approximately a five-day delay) and surgery was performed. As it becomes clear from surgery protocol #79, about 400 ml serious excretion was encountered. Doubts also arise regarding the fact that five days later, after the beginning of the illness, the excretion was still serious. The surgery confirmed a case of appendicitis.

An appendectomy was performed and the "bullet had been turned into the pure-string suture". It is hard to understand what the "bullet" means.

It also is hard to imagine how it became possible to apply seven additional sutures over the pure string stitch. It is hardly imaginable from a technical point of view. According to the protocol of the surgery, the appendix is covered with a fibrinal coating and certain necrotic areas. "During the tearing of the top of the appendix has been cut, and the puss spilled out with coli bacillus smell (100.0), the top has been cut and removed. The abdominal cavity has been cleaned and dried". The given extract from the protocol points to the existence of a gangrenous appendix, or an empiema of appendix vermiformis, which has not been established either by the surgeon or the expert. In addition, there also had to be at least a local peritonitis. The criterion applied by the doctor's statement, defining the smell as colibacillus, is surprising as well. It is not clear what the surgeon means by this term. As it became evident, the appendectomy was performed with the presence of technical complications, which is reflected in the tearing of the top of the appendix vermiformis. That was when the amount of "100.0" (probably milliliters) spilled into the abdominal cavity. Conducting the cleaning of the abdominal cavity under the given conditions, considering that if primarily the excretion was just serous, is absolutely unjustified and leads to the spread of infection in entire abdominal cavity. Besides, it becomes unclear how the mentioned amount of puss had spilled into the abdominal cavity on the 11th day from the surgery, if the appendix vermiformis had been adequately framed.

The aggravation of the patient's condition was followed by his death. During the autopsy, the expert refers to the condition of the operation and the presence of 100 ml of a grayish-brownish liquid". The expert does not define the condition of the peg leg (stimp), which had a major importance. The expert also neglects to point to the character of the discovered 100 ml of liquid. It had not been sent for bacteriological analysis. All the above-mentioned facts give rise to the suspicion that the patient was also suffering from peritonitis, which could have become the reason for his death. We find it expedient to examine the case one more time with the consideration of existing case materials and a thorough analysis of the patient's illness history, which may help to define the true reasons of the death.

Forensic Autopsy Report # 304/33
Deceased inmate I.S., age – 51

In accordance with the press release published by the Ministry of Justice, the reason of the death of the prisoner was an "acute cardiovascular insufficiency developed in the background of a cardial insufficiency". The given statement is nothing more than a total marasmus. The "medical fantasies" of the Ministry of Justice have gone so far that they develop cardial insufficiency on the background of cardial insufficiency.

We have noted more than once in our previous reports that stating cardial insufficiency as the reason of death is inaccurate and does not describe the real picture. One more fact requires our attention, namely the diagnosis declared in the press release – "a large umbilical hernia and two-sided inguinal hernia". This represents a rather

serious diagnosis, although it is not reflected in the expert's conclusion, apart from the record: "umbilical hernia on the frontal part of the stomach of 10 x 12 cm". However, nothing is said about the double-sided hernia of the groin.

Besides, the conclusion points to the fact that "samples of inner organs were taken for the histological study"; however, additional examination data gives no description of the results that were defined after the histological analysis. The fact of the presence of a rather firm grayish tissue, similar to the scar on the interventricular septum, the heart of the corpse should also be considered a matter of great importance. Still, nothing is said about the age of the scar. As is known, myocardial infarction may become the reason of the presence of post-infarction scar, which may have been developed in the background of the described picture. However, the lack of the description of the commissura's (scar) age does not allow us to determine the approximate time of the development of myocardial infarction.

Forensic Autopsy Report # 315/33

Deceased inmate D.I., age – 48

In accordance with the press release published by the Ministry of Justice, the prisoner died in the medical facility for convicts (Prison Hospital) on the 2nd day of admission, from an acute disorder of brain blood flow. The given diagnosis was confirmed by the Forensic Medical Examination. Attention should be drawn by the fact that according to the record made in the patient's medical history, the neurologist points out justly that CT examination is required for the confirmation of such a diagnosis.

In cases when the facility fails to provide a specialized diagnosis, further continuation of the treatment is necessary in the neurological analysis. The given statement points to the fact that the clinical diagnosis was incomplete, and it is more than obvious that the patient was not receiving adequate treatment and care. The patient's treatment was symptomatic. The doctor's recommendation regarding the transfer of the patient to the qualified neurological facility had not been submitted either. Thus, all the above-mentioned facts became the cause of death of the patient.

Forensic Autopsy Report #323/33

Deceased inmate L.T., age – 30

In accordance with the information, L.T. was diagnosed with a "stab wound in the area of the epigastrium, entering the abdominal cavity", while the cause of his death was stated as "pulmono-cardiac acute insufficiency developed at the background thromboembolism of the pulmonary artery".

The same was confirmed by the post-mortem examination. However, certain circumstances draw our attention to the expert's conclusion: What kind of injury could a metal string inflict upon the greater sac and what became the reason for its removal? In the case of haemorrhage, ligation of the haemorrhageous area would have been appropriate.

Cleansing of the abdominal cavity, while there did not exist any trace of the epiploon injury or any other infectious complication, may also be regarded as a tactical error. It should be presumed that carrying out unjustifiable and extra manipulations in the abdominal cavity, especially after having previously undergone a laparotmy at the background of the existent adhessions, caused the surgery to become more traumatic, which increased the risk greatly. Why it became necessary to insert several drainage tubes into the abdominal cavity if no other kinds of damage were in existence, apart from those described, is also an issue of interest. Similarly interesting is the fact that the following was used for the evaluation of the gravity of the patient's condition: "Darkening of the upper part is observed … the upper part of the body is darkened". It is also recorded in the

epicrisis that the patient's heart stopped during surgery; however, nothing is mentioned regarding the measures the anaesthesiologist planned and carried out for resuscitation and in order to avoid further aggravations. The non-existence of the description of the epiploon after the surgery may also be considered the fault of the expert's opinion (which is pointed out in the surgery protocol).

Forensic Autopsy Report # 371/33
Deceased inmate K.Dz., age – 55

In accordance with the forensic medical examination, the prisoner who died in a cell of the prison's medical section, showed traces of multiple damages, which, in the expert's opinion had been inflicted not long before his death. Although the mentioned damages are not in connection with the cause of the death, the investigation should enquire into the character of the wounds described in the expert's opinion, and the circumstances under which the wounds had been inflicted upon the deceased.

Forensic Autopsy Report # 442/33
Deceased inmate G.Sh., age – 42

The official information dispatched by the Ministry of Justice, was that a strong haemorrhage developed as a result of progressive lung tuberculosis was stated as the cause of the prisoner's death. It is confirmed by the medical history of the patient. In accordance with the forensic medical examination, the case of tuberculosis is confirmed. It is also noted, that the presence of 1,000 ml of yellowish, opaque, cacodorous liquid was observed in the left pleural cavity. It also mentioned that the existence of 150 m of yellowish, opaque, cacodorous liquid was observed in the left pleural cavity. In the end, it is not clear which of the pleural cavities contains the liquid and in what amount. In any case, the described liquid was not blood.

If we also consider the fact that the airways, as well as the organs situated above the larynx, are free of blood, then it becomes unclear where the blood went, through the spilling of which the patient died. Bleeding is not mentioned in neither the forensic examination diagnosis nor the final part, which is an obvious incongruity between the clinical and forensic diagnoses.

Forensic Autopsy Report # 450/33
Deceased inmate N.K., age – 45

In accordance with the data provided by the Ministry of Justice, the patient was diagnosed with acute intestinal infection, infectious toxic shock 2nd, HIV/AIDS, and pharyngomycosis; but acute cardiovascular insufficiency in the background of intoxication is given as the cause of the patient's death.

In accordance with the results of the forensic examination, the cause of death was supposed to be disseminated tuberculosis, which involves damage to multiple organs. Thus, it becomes clear that the patient was diagnosed incorrectly, and accordingly, the treatment applied was conducted inadequately. It is equally unclear who diagnosed the patient with AIDS and why there is no reference of it in the expert's opinion.

Forensic Autopsy Report #598/33
The deceased prisoner K.S., age – 30

In accordance with the forensic results, there was a presence of multiple old scars on top of the patient's head, as well as "two bruised wounds on the right side of the neck, with swellings and bruises, which are a result of the interference of a solid blunt object"

If we take into account the data from the medical history, the patient developed an epileptic seizure. Although he was placed in the medical section, he presumably inflicted upon himself the mentioned traumas during the seizures. Due to the indifference of the medical personnel, it became impossible to avoid similar traumas. If we also take into account the fact that there is the presence of old scars, it can give us a clear picture of the care and treatment of the patient. It is highly probable that the burst aneurysm bled into the brain, swelling it, and thus dislocating and blocking, ultimately causing death. The medical personnel discovered the patient dead in bed only on the next day.

Forensic Autopsy Report #735/33
The deceased patient G.A., – 76

In accordance with the information of the Ministry of Justice, G.A. died in the medical facility (Prison Hospital) of the prison. He was diagnosed with colon cancer and a haemorrhage. The haemorrhage became the direct reason of death. The diagnosis of colon cancer is confirmed by the medical history records, according to which, was the tumour was a firm, granulated lump. The consultation with the proctologist also proved that fact. Despite the fact that the damage to the colon was described macro-morphologically, the colon cancer was not histologically confirmed by the final diagnosis made by the expert. The conclusion says nothing regarding this fact, while tuberculosis was named as the cause of death. The mentioned fact is a clear example of the inconsistency between the clinical diagnosis and results of the autopsy. There is also a trace of alcohol in the blood sample of the deceased.

Forensic Autopsy Report # 795/33
The deceased patient G.R., – 19

It is evident from the forensic examination (external examination of the body) that his testicle was swollen and increased in volume; however, there is no additional information regarding this fact, neither in the histological nor final reports. The given fact points to the inadequacy of the forensic diagnosis.

Forensic Autopsy Report # 894/33
The deceased inmate I.S., – 43

In accordance with the information disseminated by the Ministry of Justice, the patient I.S. was diagnosed with a "incisional ventral hernia with the uncomplicated ligature fistula of the scars and chronic bronchitis".

It has to be noted that a ligature fistula in itself represents a complication. As a result, the statement recorded in the diagnosis is void of any logic. In addition, it becomes clear from the forensic examination that the cause of the patient's death was myocardial infarction, and that traces of heroin were discovered. As for the incisional ventral hernia on the front wall of the abdomen and surgical scars, along with the ligature fistula, are not mentioned at all in the forensic descriptive part or the conclusion, which creates a serious distraction and should be regarded a major fault.

Forensic Autopsy Report # 899/33
The deceased inmate E.G., – 43

As it becomes evident, E.G. died in the medical facility of convicts (Prison Hospital), one day after his transfer to the facility. The patient was diagnosed with "adhesive disease, strangulation blocking of a small intestine, erosive gastritis, gastroduodenal haemorrhage, and lung tuberculosis", while the cause of death

was stated to be cardiovascular acute insufficiency, and in the background, general intoxication due to the acute bowel obstruction (strangulation)".

As it becomes known from the data provided by the medical documents of the forensic report, the disease started eight to ten days before the transfer of the patient to the medical facility, which was expressed by the pain in abdominal area that was later followed by vomiting a brownish emission. The patient had no intestinal motion for eight days.

A nasogastric tube had been inserted by the surgeon, and the content of the stomach was evacuated. Haemostatic treatment has been applied. Due to technical reasons it became impossible to conduct a fibrogastroscopy.

The fibroesophagogastroscopy conducted on the following day confirmed no traces of a haemorrhage and suspicion arose. Despite the grave condition of the patient, the surgery was performed. As it becomes clear from surgery protocol #102, a exploration was conducted, as well as the decompression of the intestines, sanation of the abdominal cavity. It is not specified in the surgery protocol why the opening of the intestine had been chosen (as a measure of decompression), and its clearing by the given method. The patient's highly grave condition in the early post-surgical period became further aggravated, finally resulting in death. It should be mentioned that the expert found "thick yellowish faecal masses", all at the background of the inserted nosagastric tube and an active aspiration and decompression of the contents. Grave tactical mistakes were made in setting both the diagnosis and treatment. As for the forensic examination results, they were inadequate. As it becomes obvious, the forensic expert fails to notice the difference between the altered anatomy of the organs, and at the same time he seems to be deprived of an elementary knowledge of the most important issues of operational surgery. The description of the organs is beyond any criticism, and as for the questions to the expert asked by the investigation on "whether timely medical aid was provided for E.G., or could his death have been a result of inadequate treatment", the expert answers that "there is a need to form a forensic experts commission". It still is unclear if such an endeavour has been conducted and what positive results have been achieved. According to the conclusions of the forensic experts, it becomes clear that the investigation puts forward an issue of evaluation of the adequacy of treatment before the forensic experts in 4 cases only. We believe that the questions asked are a result of an active demand from the side of the deceased prisoners' defence. However, despite the mentioned reason, the expert demands the study of the issue by the commission in all cases. The given fact is not considered illegal in itself, although further steps of the investigation remain unknown.

The forensic results, as in the former period, are characterized by major faults. In the first place, the faults are a direct consequence of the extreme low level of qualification of the forensic doctors.

The numbers of the decisions of the Prosecutors Judgtes or even Investigators are often absent, as well as the age of the deceased persons, the precise hours of the beginning and end of the exam are not pointed out. The measures of the organs are not recorded in several conclusions.

As a rule, the organs are not weighed and in majority of the conclusions there is no record of the organs' weight. Often, the colour of the organs or the colour of the surface of the sliced samples does not correspond with the described pathology of these organs. The description of an organ's colour has an importance only when it is mentioned under what kind of light the autopsy has been conducted –natural or artificial light. None of the conclusions include the description of light. At the same time, if there is no reference to the hour of the autopsy it becomes absolutely unclear whether the autopsy has been conducted during the day or in the condition of night light, which makes it impossible to evaluate the pathology of the organs when consideration colouration.

Some of the conclusions contain ridiculous mistakes in the description of inner organs. Very often, these errors are so absurd that the records do not seem to be made by professional doctors at all. In the majority of cases, attention is not paid to the description of the glands of inner secretion. Autopsy results are drafted

inadequately. The diagnosis should begin with the direct cause of death – main disease, which should be followed by the accompanying disease and background disease.

In most of the cases, this sequence is not observed. While in certain other cases, the diagnoses are beyond any criticism. In certain cases, additional examinations were not conducted, and the reason they had not been carried out is not explained; and in yet some other cases, the examination data is not taken into consideration and the reason is not indicated again...

In multiple cases, no histological examination has been conducted. There is a case of a histological analysis in which a reference is made to the intestine, but it is not clear which particular intestine is being referred to. The same information was transferred to the diagnosis.

There are cases when forensic diagnoses do not derive from the descriptive part of the act and histological diagnoses, and include terrible errors in the use of medical terms of the document and diagnosis. And finally, in some cases the cause of death is absolutely obscure.

As it becomes evident from the presented examples and statistical data, the medical services of the penitentiary system of the Ministry of Justice are facing a deep crisis, which accounts for the lives of hundreds of convicts annually. The mentioned crisis affects the health condition of the thousands of convicts in a most dreadful way.

Various recommendations and appeals have been submitted by the Ombudsman, which along with the reaction to these facts, addressing the problems existing in this given sphere in general. They have not brought any visible results.

On September 29, 2007, the public Defender of Georgia made a written statement to the Ministry of Justice in connection with the following issue, requiring the explanation:

1. *What is the organizational and legal form of the medical facilities (including the Prison Hospital) pertaining to the department of convicts of the Ministry of Justice of Georgia?*

According to the answer of the Deputy Minister of Justice, Mr. G, Mikanadze, in accordance with the July 22 1999, law of Georgia on the reform of the penitentiary system, proceeding from the requirement of presidential decree # 591 of October 22, 1999, and decree #10 of January 11, 2000, by the Minister of Justice of Georgia, that the following medical facilities for convicts are subordinate to the Penal Department, particularly, the so called Prison Hospital in Tbilisi and the Prison Hospital for convicts suffering from tuberculosis in the village of Ksani.

It should be noted that proceeding from sub paragraphs "T" and "N", paragraph 1 of the January 11, 2000, decree of the Minister of Justice of Georgia, "nine facilities in the village of Ksani have been appointed for tuberculosis patients"; "and the #15 facility, the Republican hospital in Tbilisi has become a clinical facility for the convicts and prisoners of the Penal Department.

The above-mentioned, so-called "appointed" facilities do not satisfy the real requirements of the Law of Georgia on "Health Care", and the acting legislation of Georgia in the sphere of health care does not extend over to them.

For some reason, the deputy Justice Minister turns a deaf ear to the given situation, and evades answering our persistent questions.

In accordance with Article 53, the"medical facility, which has an organizational-legal form, is allowed by the Georgian legislation and conducts medical activities in accordance with the accepted rules". In financial

resources, the share received from medical activities amounts to no less than 75 percent, while no less than 75% of the average annual cost of the existing main funds is retained for the performance of the functions described in paragraph 2 of the same article. In this particular case the problem lies in the fact that the so-called prison hospital represents the "appointed" medical facility, and on the basis of the statutory act of one of the ministers, that does not agree with the Law of Georgia on "Health Care", as it possess no organizational-legal form provided by the Article 53.

In accordance with Article 54 of the same law:

1. The license confirming the right to conducting medical activities in a medical facility is issued by the Ministry of Health Care;
2. The spheres of medical activities conducted in a medical facility is determined by a list provided by the license; and
3. The list of employment rights, and the medical personnel with the relevant education in the facility, is approved by the Minister of Labour, Health and Social Affairs.

Under the given circumstances, we deal with another important breach of law – the so-called medical facility has no license confirming the right to perform medical activities required by the law, while the Georgian law on "Health Care", and Article 56 in particular, states that a "medical facility is banned from conducting medical activities without the corresponding license".

Regarding this license issue, we addressed this problem on many occasions to certain agencies. In accordance with a number of answers received from the Medical Activities State Regulation Agency of the Georgian Ministry of Health, Labour and Social Affairs (# RS '017/32-540 15.03.2007), "the medical facilities of the penal department of the Ministry of Justice are not subject to licensing".

By the written answer received by the same agency #RS – 017/32 – 960 of May 21, 2007, they notify us that the issue of examination of the license terms cannot be carried out at this stage, as the Medical Facilities of the Penal Department of the Ministry of Justice are not subject to licensing, in accordance with paragraph 2, Article 1 of the Georgian law on "Licensing and Permission".

We would like to remind the state agency for regulation of medical activities of the Ministry of Health, Labour and Social Affairs of Georgia, that in accordance with the paragraph 2, Article 37 of the Georgian Constitution, the state exerts control over all health care facilities. As for the matter of how the control, management and regulation should be conducted, it is clearly defined in the Georgian law on Health Care:

Article 15:

Ministry of Health, Labour and Social Affairs is authorized to conduct the state policy in the sphere of health care.

Article 16:

The mechanisms for the state management in the sphere of health care are as follows:

a) Certification of the medical personnel and licensing of the medical facilities;
b) Control over the quality of medical aid;
c) State sanitary supervision and setting of hygienic norms;
d) Legal provision of relationships between the patient and the legal subject; and
e) Conduct of epidemiological control throughout the country's territory.

Proceeding from this, we believe that the Ministry of Health, Labour and Social Affairs evades the observance of these obligations determined by the constitution and law. As a direct result of this, we have to deal with the issue of the hundreds of deaths, and thousands of persons affected by illness.

The 2nd question from the letter addressed to the Minister of Justice by the Georgian Ombudsman was formulated in the following way:

2. *In accordance with Article 4 of the Georgian law on health care, one of the main principles of the state policy on health care is as follows: "Protection from discrimination of the patients held in primary detention and prison, and other persons suffering various diseases, during the provision of medical services". We appeal to you to supply us with the mechanisms that shall provide the establishment of this major principle, taken in accordance with paragraph 2, Article 5 of the same law, which states that the discrimination of a prisoner patient during the provision of medical aid is absolutely inadmissible".*

Regarding the given issue, Deputy Minister of Justice, G. Mikanadze, points out that "there is a law on imprisonment, and various decrees (such as #353 from May 16, 2002) regarding the ratification of the temporary decree on medical facilities of the Penal Department of the Ministry of Justice;. decree #532 of the Georgian Ministry of Justice, of July 2, 2002, on the adoption of the temporary resolution on the facilities of the Penal Department of the Ministry of Justice for treatment of tuberculosis patients; decree #593 issued by the Minister of Justice on July 12, 2002, on the adoption of a typical resolution for prison medical services; and decree #594 of July 12, 2002, on the adoption of a typical resolution for the medical services provided in general and high security facilities, shall forever eliminate the cases of discrimination in the sphere of prisoners' medical services. Every inmate has a right and a possibility to appeal for help to the medical personnel at any time of day or night. During a six-month period in 2007, thenumber of patients who received ambulatory services totalled 109,799. In accordance with the resolution of the medical facilities and medical consultations, 1,328 patients were offered services with the aim of conducting diagnostic examinations and specialized treatment, 1,546 inmates were transferred to the medical facilities of the penal department, and 42 were transferred to civilian medical facilities of the civilian sector".

Taking into account this response, and also considering the data of the Ministry of Justice of Georgia, according to which by October 13, 2007, (the date the letter was sent), there are 18,300 prisoners in the facilities of the Georgian penal system. If we count the number of doctors working in the system (approximately 90) it would add up to the fact that by the given period, one of the doctors provided ambulatory services to about 1,220 prisoner patients and there would be 203 prisoners per doctor; a rather envious number for any European country that is a member of the World Health Organization.

The number is not real. In accordance with the data accumulated as a result of our monitoring, even a single act of doling out a pill to a patient is recorded in the register. The Deputy Minister of Justice probably ascribed such facts to the ambulatory aid. However, by the definition of the World health Organization, ambulatory services and primary health care are different and complex terms.

The Ministry of Justice states that according to the mentioned documents, the"prisoner should be provided" with health care services, although the given answer does not reflect whether the patients are really provided by the mentioned services. Another matter is the quality of the health care services, which in the facilities of penal system are beyond criticism.

Besides, they only pointed out facts about the law not eliminating the possibility of discrimination while inmate patients receive health care services. The fact is that patients are being treated in unlicensed facilities, often by unlicensed personnel, which represents an act of obvious discrimination, as the requirements envisioned by the license represent the minimum requirements the state can offer to its citizens. If such requirements are not considered for inmate patients, then it is how the Georgian penitentiary system views its prisoners.

The next question the Georgian Ombudsman asked was the following:

3. *According to paragraph 1, Article 45 of the Georgian law on patient's rights, the affordability for the person in a primary detention or penal facility is provided with the aid of state medical programs". Please provide us with the full information regarding the implementation and conduct of the state programs in relevance with the programs adopted by the Georgian Ministry of Health, Labour and Social Affairs.*

The answer from the Minister of Justice refers only to the tuberculosis program, which is conducted within the framework of AIDS. As to how the given program is carried out, and what the achieved results are, may be seen from the death rate spectrum (tuberculosis is the direct cause of death of 39 percent of the prisoners, extra pulmonary cases among them), while four to six prisoners suffering from AIDS have already died.

According to the information provided by the Ministry of Justice, during the eight-month period of 2007, 225 prisoners have been examined for the presence of HIV/AIDS (presumably 1.25%), while in 2006, 363 inmates (presumably 2.13%) have been included into the program for the treatment of tuberculosis.

The persons included in the program in previous years were also added to the number, although it didn't change the statistics considerably. If we take into account the three main principles of the existence of the medical services, it becomes evident that none of the three components have been realized even at the minimal level. It should also be noted that the Health Care system is not restricted to tuberculosis and AIDS programs.

The Deputy Justice Minister evidently dodges the questions. We've asked him if there is a possibility of the penitentiary system affording the health care programs, which should be financed in accordance with the Georgian law on the State budget. The mentioned requirement is required by both the Georgian legislation and international obligations assumed by Georgia. In reality, the health care of the penal system is financed not from the budget set aside for the health care system, but from the budget set aside for the Ministry of Justice, which is one more example of the ill treatment of the prisoners. The second issue addresses the fact of whether the mentioned sum is sufficient to satisfy the minimal needs of the inmates' health. The question remains unanswered.

The Georgian Ombudsman asked about another issue:

4. *In accordance with Articles 40 and 41 of the law of Georgia on Imprisonment, they provide us with a list of the penal facilities, which have a contract registered with local or other medical facilities and other health care organizations. They also include the description of the services carried out in the first part of 2007.*

The Minister of Justice answered that the agreement on the provision of medical services has been signed with seven clinical facilities – the National Centre of Therapy, the O. Chkhobadze medical rehabilitation clinical regional centre for the handicapped and aged persons, the barnov hospital, Rustavi Emergency medical station #03, Children's polyclinic #5, and the Ckhakaia National Centre of West Georgia for interventive medicine.

Unfortunately, the justice Minister failed to answer the second part of the question (i.e. the information regarding the volume of activities carried out within the framework of the mentioned seven contracts). During our 2007 monitoring, multiple facts have been uncovered concerning when the penal department faced problems in transferring gravely sick patients to different medical facilities. We have participated numerous times in negotiations with the administrations of the medical facilities and managed to solve the issue successfully due to personal contacts or simply the factor of trust on the side of the administrations.

In the first place, thereasons are financial. Secondly, the basic guarantees for the observance of violations in the medical facilities, along with the respect for medical ethics from the side of the department, were non-existent. In several cases, the cost of covering expensive medical tests and treatment was paid by the NGO sector.

The Georgian Ombudsman asked the Ministry of Justice:

5. *In accordance with paragraph 2, Article 43 of the Georgian law on health care, "the rules of conduct for medical documentation is approved by the Ministry of Health Care"; and in accordance with sub paragraph "a", paragraph 1 of the same article, "the doctor and medical personnel are obliged to include medical records in medical documentation according to established norms".*

According to Article 67 of the Georgian law on medical activities, control over the conduct of medical documentation represents one of the ways the state supervises medical activities. It also stipulates the rules for medical documentation, record keeping, and storage for any medical facility, which have been approved by the Ministry of Health, Labour and Social Affairs of Georgia.

Despite the above said, in accordance with decree #486, issued on June 24 2002, by the Ministry of Justice, on the approval of the temporary forms of documentation for medical sections and medical facilities of the penal department of the Ministry of Justice of Georgia, different forms of medical documentation have been approved.

These disparities negatively affect the quality of treatment and health conditions of the patients within the penitentiary system. Could you please explain to us what activities are planned to be carried out in respect of regulation of the existing situation?

Article 37 of the Georgian law on imprisonment defines that the medical service of the penal system is part of the health care system. Proceeding from the above, it is only natural that the penitentiary system's health care mechanism has to be conducted along the same principles.

This is required by the acting legislation in the health care sphere and according to international agreements signed by Georgia. Subsequently, the fact that different medical documentation is applied to patients of the penal system, which is unfounded and unacceptable from the medical point of view, is absolutely unjustified.

In the opinion of Deputy Justice Minister, Mr. Mikanadze, themain medical documentation, which reflects the patients' health condition, treatment methods, etc., was not changed by the June 24, 2002, decree.

It is impossible to agree with that given assumption. It is sufficient to compare the records of patients. The Deputy Justice Minister does not even have a remote idea of the character and use of medical documentation. Despite the fact that the medical documentation is, to a certain extent, a matter of interest for the law enforcement bodies (in cases of need), it has to be intended in the first place for the protection of patients' interests. The majority of medical documentation forms in the facilities of penal system are definitely different; and in some other cases, a certain number of forms approved by the Ministry of Health Care are not filled in at all.

The final question of the Georgian Ombudsman was the following:

Paragraphs 1 and 2 of decree #717 of the Minister of Justice issued on September 11, 2006, on the transfer of prisoners and convicts suffering from tuberculosis, from the facility of the penal department to the hospital, or medical facility for the tuberculosis infected convicts calls for the diagnosing, examination and treatment of convicts and prisoners at the medical facilities of penal department.

From the medical point of view, the time factor has to be considered if the situation is an emergency or if it is planned. Each of these cases requires particular approaches and management, which is well known for the subjects of medical activities. It would be appropriate to explain how the Ministry of Justice manages to

settle the emergency medical conditions via planned activities. Has the irrelevance of the given decree become the reason for the death of a patient, or the reason for the acute deterioration of his/her condition? .

The Deputy Minister answered the question in the following way: "As for the settlement of emergency medical conditions, in reference to the decree, in cases of the acute condition of a disease and emergency cases, the transfer of a patient to the general hospital or medical facility for the prisoners is conducted upon the order of the head of department and the report of the facility director and head doctor."

In the first place, it has to be pointed out that the question remains unanswered. According to the data presented by us, organizational obstacles represent the main cause of mortality among inmates, which hinders and often makes it impossible to render help, or in better cases, the patient's transfer to the medical facility is delayed, sometimes on the 3rd or 4th day from the development of peritonitis, for example.

The majority of these patients die, which is confirmed by multiple incidents presented by us. By our calculations, the patients that died in the medical facilities for inmates spend only one or two days there. In other words, their death occurred within 36 to 48 hours of their arrival (admittance at the Prison Hospital).

The report, prepared by us regarding the medical aspects of the death of prisoners in the medical facilities of the penal system has been based on the data from several sources; we used the official information posted on the web pages of the Ministry of Justice of Georgia and the Penal Department.

We have also used the information we received from the penal department of the Ministry of Justice (10/11-13 491), which addressed the diagnosis and causes of death along with descriptions. The main part of the study was based on post-mortem results of the deceased convicts received on request (#20/01/13-7642) from the Levan Samkharauli National Bureau of Forensic Expertise.

Notwithstanding those facts, the given conclusions had several imperfect components – they lacked pages and some of the pages were illegible due to the poor quality of copies.

RECOMMENDATIONS:

1. The Department of Health Care of the Penal Department shall be reunited with the Georgian Ministry of Health, Labour and Social Affairs.

2. The Medical Services of the Levan Samkharauli Forensic Expertise National Bureau of the Ministry of Justice of Georgia shall be transferred AGAIN (!) to the management and regulation by the Ministry of Health, Labour and Social Affairs.

The law of Georgia on "medical activities" (Article 4) defines that the Ministry of Health, Labour and Social Affairs determines the list of medical specialities, and in accordance with the relevant normative act of the minister, forensic medicine represents one of the main specialties from the 21 medical specialties active in the country.

It is defined in the Georgian law on health care (Article 53, par 2) that forensic expertise represents the "function of the medical facility". In accordance with Article 1532 of the same law:

1) Forensic medical and forensic psychiatric expertise in the facility with the corresponding license may be conducted only by the doctor with the relevant specialty; and

2) The rules of the forensic medical and forensic psychiatric expertise and activities of the medical personnel of the forensic expertise centre are determined by the Ministry of Health, Labour and Social Affairs.

Proceeding from this, it becomes clear that a forensic medical expert is a doctor or the subject of an independent medical activity, and the facility represents a medical facility stated in the Georgian legislation (Article 53).

Forensic expertise represents the examination determined by the law and carried out by the doctor for the resolution of medical issues that arise in regard to a crime.

In accordance with decree #1549, issued on December 8, 2004, by the Minister of Justice, theNational Bureau of Forensic Expertise was established, into which the services of medical, psychiatric and narcological expertise were included as structural units. With the enforcement of the given normative act, the link of forensic medicine with the Ministry of Health was practically broken, which resulted in a crisis at the medicinal experts' professional level creating a deficit of personnel. The separation of forensic medicine from the health care system turned it into a so-called "law enforcement structure", and the doctors conducting their activities within that structure have become deprived of medical professional and ethical standards.

It is unclear why the forensic medical expertise should be representing the structural section of the Ministry of Justice, when the competence of a forensic medical expert includes only medical/biological issues, which are maintained by the legal bodies in the process of investigation or court procedures during the hearing of civil court cases.

Apart from those obvious irregularities, of the practice of forensic psychiatry is entirely separated from the medical sphere. In accordance with Article 24 of the Law of Georgia of the Georgian Parliament of July 14, 2006, on psychiatric aid, "it is forbidden to carry out forensic psychiatric examinations by the body conducting the preliminary investigation or the facility subordinated to it".

While according to the procedure Criminal Code of Georgia and Article 61 of the given code, the Ministry of Justice of Georgia represents the body conducting preliminary investigations of the affairs pertaining to the Criminal Code.

Proceeding from several examples, it is obvious that under the existing situation, thereturn of forensic medical expertise back into system of health care is of vital importance, both for the practice of medicine itself and the legal structure. Subordination of a doctor to any agency, and the Ministry of Justice in particular, creates a threat to the independence of the medical profession.

Article 30 of the Law of Georgia on health care determines that, while conducting medical activities, medical personnel shall be guided by the ethical values of the profession – the principles of recognition of human honour, justice and support; the ethical norms; and to be free and independent while making professional decisions connected with the patient's interests.

The given resolution is once again defined in the same law in Article 34, according to which "the profession of a doctor, in its essence, is a free profession. Under any condition, it is inadmissible for the representatives of state authorities or private persons to demand from a doctor to act against the principles described in the given law, notwithstanding the position or social standing of the requestor. Every action that interferes with the fulfilment of their professional obligations incurs the liability envisaged by the law."

3. The Ministry of Health, Labour and Social Affairs shall elaborate a plan, without delay, for the activation of programs following the post-graduate period, in collaboration with the Ministry of Education and Science, to provide the preparation of residents in the given sphere.

4. The Ministry of Health, Labour and Social Affairs shall begin taking active measures in the direction of improving the skills of forensic experts and their permanent professional development.

5. Medical examinations, with the participation of commissions, shall be conducted regarding every patient who dies within the penal department, and who were undergoing any type of treatment or were receiving medical services, in order to evaluate the quality of the treatment and to uncover medical errors, which as a rule become the cause of death of these patients.

6. The agency for the state regulation of medical activities of the Ministry of Health, Labour and Social Affairs, in collaboration with the professional medical associations and medical educational organizations, shall begin the complex study of the health care system of the penal system.

7. Epidemiological data of the health care system of the penal department shall be published periodically.

8. Decree #717, issued in September 2006, by the Minister of Justice of Georgia on the transfer of convicts and prisoners from penal facilities to medical facilities; and decree #486, issued on June 24, 2002, on the approval of temporary forms of documentation for the medical facilities of the penal department of the Ministry of Justice, shall be revised or abolished

9. The organizational-legal form of the medical facilities for convicts and inmates shall be defined without delay.

10. The Office of the Prosecutor General of Georgia shall begin the examination and respond to the incidents in which criminal traces were evident, quite a number of which have been sent by us.

11. The Association of Forensic Doctors of Georgia shall be asked to submit their decisions regarding the protocol of autopsy on deceased persons suffering from the AIDS disease with the consideration of security components.

12. The Agency for the State Regulation of Medical Activities of the Ministry of Health, Labour and Social Affairs shall be granted adequate working conditions in the penal system facilities with medical capabilities, and shall be hindered or interfered with by representatives of the authorities, as per the Constitution of Georgia, Article 37, paragraph 2.

14 PROTECTION OF THE RIGHTS OF PEOPLE LIVING IN CONFLICT ZONES

On the data of the second half of 2007, the situation in terms of the protection of rights of people living in conflict zones has not improved. Achievement of progress in the above issue certainly depends on the success of the legitimate government in the peacekeeping process and gradual restoration of its jurisdiction.

The existence of political conflicts on the territory of Georgia is a serious obstacle on the way to exercising full jurisdiction by the state, and in turn, an obstacle to the implementation of liabilities related to the protection of human rights in conflict regions. The territories of Abkhazia and South Ossetia remain beyond this effective control. In the opinion of the European Human Rights Court, the states that are under such circumstances should still have some commitments towards de facto territories. The European Human Rights Court indicated in the case, Ilascu and others v Russian Federation, that "if the state cannot exercise its power due to the existence of a de facto situation on its territory, such as an established separatist regime, in which it is also possible that there is a military take-over by another country, pursuant to Article 1 of the convention, jurisdiction of the state does not stop in this part of the territory. Despite the fact that such a situation lessens the scale of jurisdiction, the court views state commitments towards the people on the territory only from a positive angle. The state should use all available legislative or diplomatic resources with respect to foreign countries or international organizations in order to continue to guarantee the rights and freedoms defined in the convention".

In its resolutions 1547 and 1548, of 18 April 2007, the European Parliamentary Assembly notes that geographical "black holes" continue to exist, which make it impossible to implement the human rights of European Council. Among them are Abkhazia and South Ossetia.

It should be noted that the Public Defender lacks the possibility to fully and comprehensively study the facts of human rights violations in these conflict zones. In order to eliminate this drawback, we addressed the government repeatedly with the request to give the Public Defender the opportunity to get involved in the peace-making processes, as well as to open a Public Defender's regional office in Tamarasheni. The issue has not been solved positively yet.

HUMAN RIGHTS IN ABKHAZIA

The right to live and physical inviolability

That there is increasing evidence concerning the violation of the right to live on the uncontrolled territory of Abkhazia is the result of an outrageous regime that has been established for years. Mainly, the victims of the violation of this right are tourists from CIS countries.

On 2 August, in the village of Sida, in the Gali region, four armed persons broke into Nugzar Lezhava's house. They brutally beat up the family members, and took jewelry and 1,500 Russian Rubles.

On 14 October, in the village of Bedia, in the Gali region, a gang of four men attacked Razhiko Shelia's family to rob them. Razhiko Shelia resisted them and he was killed then and there.

Kidnapping and Disappearance of People

People are mainly kidnapped for extortion of money. For example, on 3 July, Demur Dzadzua of the village Otobaia, in the Gali region, was kidnapped by unknown armed persons and demanded a ransom from the family.

On 9 August, five to six armed men attacked the Shengalia family in the village of Chuburkhinji, in the Gali region, and kidnapped the head of the family, Jambul Shengelia, demanding a $50 000 ransom.

On 22 August, a local man from Tagilo, in the Gali region, was taken hostage. Court proceedings have been instituted.

On 23 August, Livter Arkania of Chuburkhinji was kidnapped. The case was brought before the court. Court proceedings were instituted on the case of Gocha Tsulaia's kidnapping in Chuburkhinji on 23 August.

Illegal Deprivation of Liberty and Arbitrary Detention

On 4 June, the employees of a separatist security unit detained the Arkania brothers from the villages of Kvitouli and Cheghali, in the Gali region. They were transferred to a Sukhumi isolator building.

Unofficial Taxes and Trafficking

The Abkhaz administration of the Gali region and the representatives of the Ministry of Internal Affairs of separatists make the local population pay unofficial taxes. During the nut season there is a tax imposed per family in the amount of 60 Russian Rubles to 100 kg. of nuts. The export of nuts from the Gali region to other regions of Georgia is restricted, and so the population has to sell nuts to local processing mini-factories at low prices.

Trafficking has become frequent in Abkhazia. Representatives at different levels of the administration of de facto Abkhazia, or other citizens on their sanctions, are involved in the exploitation of people's labor against their will. The victims of this crime are mostly ethnic Georgians or tourists who arrive in Abkhazia on their holidays.

Otar Turnanba, the deputy head of Gali police, has been forcing the inhabitants of Achigvara and Sheshleti villages to work without remuneration in his nut plantations by scaring them.

After Turnanba's death, his brother, Eric Turnanba, took over the business and he also forces people to work for him.

HUMAN RIGHTS IN TSKHINVALI REGION

Property restitution and compensation

On 29 December 2006, the parliament of Georgia adopted a law concerning property restitution and compensation for conflict victims in the former South Ossetia Autonomous District on the territory of Georgia.

The above legal act defined in its provisions, specific terms of law enforcement at each separate stage. Pursuant to Article 36, the commission for restitution and compensation issues must be established five months after the enforcement of the law. The commission must draft its own charter no later than two months after it has been established, and can start receiving applications nine months after the law becomes effective. According to Article 37 of the law, it started functioning from 1 January 2007.

According to clause 10, Article 9 of the law of Georgia on property restitution and compensation on the territory of Georgia for the victims of conflict in former South Ossetia District, "the rule of appointment of international legal subject/s by quota, and the implementation of authority by them, as well as the rule of holding competitions and conditions, is defined by the resolution of the Georgian government, in accordance with the memorandum signed by the participant international subject/s in the process of creating the commission".

The Public Defender, pursuant to the organic law of Georgia concerning the Public Defender, addressed (#2200/05-3) the Prime Minister of Georgia and asked for information about the implementation of the requirements indicated in the law. In particular, at what stage the process of implementation was, what measures have been taken by the Government of Georgia, a copy of the resolution and information about the implementation of the resolution.

On 13 November 2007, we received a letter (#19/512) from the head of the record management department of the State Chancellery, Levan Erikashvili, who informed us that the response of the Public Defender's letter was to be prepared by the State Minister of Conflict Resolution of Georgia, Mr. Davit Bakradze.

On 28 November, we received a letter (#02/31-638) from the State Minister for Integration, which said that the Ministry of Justice has been assigned to carry out preparatory works for the creation of the commission of restitution and compensation.

The establishment of the commission of restitution and compensation and its functioning is of vital importance for the proper implementation of the law of Georgia on property restitution and compensation on the territory of Georgia for the victims of conflict in Former South Ossetia District".

At the moment, the public Defender is considering the collective application (#1418-07) of the victims of conflict in former South Ossetia District about property restitution. However, due to the fact that the commission for restitution and compensation has not been established to this date, it becomes impossible to protect citizens' rights. Proceedings on the above case are suspended in the Punlic Defender's Office.

I address the government of Georgia with the recommendation to adopt the resolution in the nearest future about the rule of appointment of international legal subject/s by quota, and the implementation of authority by them, as well as the rule of holding competitions and conditions. The above normative act will in turn favor the establishment of the commission for restitution and compensation and its work for the victims of conflict in former South Ossetia District on the issues of property restitution and compensation.

The Right to Live and Physical Inviolability

On 28 August, armed groups of Ossetian separatists brutally beat up three Georgian shepherds near the village of Kverneti in the Tskhinvali region.

On 15 September, four members of Ossetian separatists opened fire to a car going in the direction of village Okoni, near Prone gorge. Paata Khachapuridze, 34, from the village of Totska was heavily wounded.

In the evening of 25 November, in Tskhinvali, police stopped a car in a raid. The driver was Gia Khabalov. As a result of conflict between them and Khabalov, Khabloc was physically abused. Later, he was transferred to the preliminary detention cell where he was subjected to more physical abuse and died as a result of the trauma sustained.

Unlawful deprivation of liberty and arbitrary detention

There are many incidents of detaining and kidnapping ethnic Georgians, as well as ethnic Ossetians, committed by the Tskhinvali de facto government. By exerting physical pressure, they often make those people give evidence in favor of the separatist regime.

On 26 August, members of Ossetian separatists armed groups detained three citizens near a village monastery in the Akhalgori region – Davit Galegashvili, the director of Tao Bank, Davit (Matsi) Kvaratskhelia, and a 13-year-old, Tsotne Broladze – who were released the next day after the interference of the Ministry of Internal Affairs of Georgia.

On 27 August, members of an Ossetian separatists armed group detained the film crew of TV companies Mze and Rustavi 2 near the village monastery in the Akhalgori region. On 29 August, at 8:00 hours, representatives of the Ministry of Internal Affairs detained the deputy commander of the Ossetian battalion of mixed peacekeeping forces, Murat Bichenov, warrant officer Vitali Valiev and sergeant Aron (Tariel) Khachirov, in the vicinity of the village of Bershueti, in the Gori region. The above persons were suspected of kidnapping the three citizens from the Mze and Rustavi 2 film crews on 25 and 27 August. Later, Bichenov was released.

On 11 September, Russian peacekeepers detained a taxi driver, Gia Khmiadashvili, from the village of Tirdznisi, and his passenger, Mindodashvili, at the sentry outpost of the Russian peacekeeping troops in the village of Meghvreki, in the Gori region. They were taken to Tskhinvali in an armored motor car via by-pass route.

RECOMMENDATIONS

1. I recommend the Parliament and the Government of Georgia open a regional office of the Public Defender in the village of Tamarasheni in the Kurta community, with the purpose of effective protection of human rights and freedoms.
2. I recommend the Parliament and the Government of Georgia to support the Public Defender's immediate involvement in the peacekeeping processes, with the purpose of advocating human rights issues.
3. I recommend the Government of Georgia to issue a resolution on the rule of appointment of international legal subject/s by quota and the implementation of authority by them, as well as setting the rules and terms of holding competitions, in the shortest possible time in order to commence the process of establishing the commission and implementing the law on property restitution and compensation for conflict victims in the former South Ossetia Autonomous District on the territory of Georgia".

15 PROTECTION OF THE RIGHTS OF INTERNALLY DISPLACED PERSONS

GENERAL EVALUATIONS

During the second half of 2007, the main attention was focused on the compulsory registration process of IDPs due to its unquestionable importance. Among the problematic spheres, the issues of IDP temporary housing and social security remain urgent. According to the data of the Ministry of Refugees and Resettlement of Georgia, some steps have been made towards providing gas and the necessary equipment at places of the compact settlement of IDPs. The Public Defender approves of all those measures directed at the improvement of IDPs' social conditions. However, the existing reality does not provide sufficient grounds to speak about the tangible progress in the sphere of human rights protection of IDPs. The Public Defender willingly agrees to cooperate with the Ministry of Refugees and Resettlement of Georgia, as well as with any governmental organization, in order to make a positive contribution to improvement of the situation of such a socially vulnerable group.

Due to multitude of problems and massive violations of IDPs' rights, based on the organic law of Georgia concerning the Public Defender, sub-clause "h", I sent a letter to the President of Georgia on 30 April 2007, addressing the fact that my own response measures are insufficient. On 8 October 2007, I received a letter (#17/41), from the head of the Prime Minister's office chancellery, E. Badridze. The letter included the response of the Minister of Refugees and Resettlement, G. Kheviashvili (#01/01-17/6513) to my letter to the President of Georgia.

In the first place I would like to note that pursuant to sub-clause "h" of article 21 of the organic law of Georgia concerning the Public Defender, the public Defender is authorized to address a letter to the President of Georgia on the basis of the results of examination, or can present a report to the Parliament of Georgia about massive violations of human rights and freedoms, if the means of response at the disposal of the Public Defender are insufficient". Taking into account the number of applications featuring the severity of problems, as well as the fact that the Public Defender's address to the Ministry of Refugees and Resettlement with recommendations or proposals, none of them entailed the restoration of the violated rights of citizens, or a justified refusal on the part of the Ministry. I considered that the resources of response measures at my disposal were exhausted. Thus, I decided to resort to sub-clause "h", Article 21 of the organic law of Georgia con-

cerning the Public Defender. The President of Georgia assigned the Prime Minister, Zurab Noghaideli, to study the facts provided in my letter, who sent off the letter for the consideration of the provided materials to the agency which I had criticized for its incompetence.

The above was responded by the Ministry of Refugees and Resettlement. The letter contained excuses, however, the situation did not improve, and the problems connected with the protection of IDP rights persist. Further, I sent my considerations related to the issues with G. Kheviashvili (#2399/01) in writing to the President of Georgia on 22 November 2007.

REGISTRATION OF IDPS

IDPs' compulsory registration was going on in the second half of 2007. There were many shortcomings during the implementation of this process. The Public Defender was addressed by numerous citizens in connection with the drawbacks of the registration process. The main problem consisted in entering precise information about IDP identification data. For example, Tsiyri Nodia's temporary residence was indicated as Tbilisi, Hotel Iveria. She did not receive any compensation at that time and today she has no shelter. At the same time, everybody knows that the former hotel has been vacated and nobody is staying there as there are repair works going on in the building. Larisa Dochia's document is registered at her old address; however, she got married in 2000, and currently lives in her husband's house. Many such facts in the process of registration of IDPs took place during 2007.

The precise indication of the place of residence in IDP identification cards is legally important. In such cases when the data are mistakenly entered, the general Administrative Code of Georgia envisages the possibility of correction of those errors. Consequently, the administrative body – the Ministry of Refugees and Resettlement – should properly use the adequate provisions of the law to correct the registration data and make them compatible with real data.

Pursuant to sub-clause "d", Article 2 of the General Administrative Code of Georgia, IDPs' identity cards represent an individual legal act, since it is issued by an administrative body on a legal basis and it asserts a person's rights and duties. The ID card of an IDP is the document that creates legal status for each IDP, and at the same time attests the fact of awarding the IDP status as a person.

According to part 1,Article 59 of the General Administrative Code of Georgia, "the administrative body is authorized to correct data due to technical and computation errors in the individual administrative/legal acts issued by the body". According to part 2 of the same article, "making corrections to the individual administrative/legal act means the issuance of a new individual administrative/legal act".

According to sub-clause "i", clause 2, Article 2 of the IDP certificate approved by order #124, of 1 November 2007, of the Ministry of Refugees and Resettlement, one of the pieces of data in the ID is the temporary place of residence of an IDP. This record entails significant results for IDPs – it makes the ownership of the dwelling space lawful and creates a legal basis for residing at the indicated place. In such cases, an IDP is protected against eviction, as well as in the process of court hearings. IDPs' identity cards are also important for electoral law and consequently is tied to legal results. In turn, the state ensures positive liabilities assigned by internal legislation and creates sufficient legal grounds for IDPs to live in residential spaces. Also, IDPs are given the possibility to present evidence in case of litigation to the relevant state bodies.

According to sub-clause "h", Article 27 of the General Administrative Code of Georgia, personal data are "public information that enables the identification of a person". Consequently, information about temporary residence of an IDP is the constituent part of their personal data. At the same time, pursuant to clause "h", Article 43

of the code, "During the collection of personal data, a public organization is obliged to address the person concerned, as well as to use all other sources, and if all possibilities of obtaining information from the original source are exhausted, except for the cases specified in Article 28 of the code, then the law directly grants the right to collect, process and store the data of certain category of persons". Taking into consideration the above provisions, in the process of IDP compulsory registration, the Ministry of Refugees and Resettlement of Georgia should maximally ensure their direct participation in the process of collecting identification data.

On 3 October 2007, the public Defender addressed a letter (#1865/05-3) to the Deputy Minister of Refugees and Resettlement of Georgia, I. Gorgadze, and asked for detailed information related to the IDP registration process. In particular, what expenses the state incurred per ID card, which company was in charge of the state order, and how many cards had been made. In addition, the public Defender requested copies of agreements signed with legal entities and detailed financial estimates. On 19 October 2007, we received an absolutely inadequate reply from A. Giorgadze (#01/01-17/6747). The Ministry did not provide the information requested. The letter said: "Concerning the approval of the provision of the Ministry of Refugees and Resettlement of Georgia via the #43 resolution of 29 May 2004, of the Government of Georgia, and by order #127 of the Minister of Refugees and Resettlement, the department for refugees of the Ministry of Refugees and Resettlement of Georgia implements IDP registration and issues the identification cards to IDPs".

I recommend the Minister of Refugees and Resettlement of Georgia, Mr. Koba Subeliani, to personally control the IDP registration process, and get directly involved in the consideration of all applications related to the violations revealed in the above process".

PROTECTION OF THE RIGHTS OF IDPS LIVING IN GALI REGION

In my reports presented to the Parliament of Georgia, I regularly review the situation in the field of protection of human rights of people in conflict zones. In general, I consider that the best way toward conflict resolution consists of respecting and protecting human rights. Taking the situation in Gali, these circumstances exemplify the need for implementation of human rights protection, in my mind, and would serve as the best example for all Abkhaz people so that they develop trust towards Georgian democratic and western political values. This is the way that will enable us to peacefully resolve conflicts and gain the trust towards the will of the State to protect each individual's right and dignity in spite of ethnic differences.

On 2 February 2007, the georgian government approved resolution #47, entitled "the state strategy towards internally displaced people. The 1st chapter of the document (general overview) states: "Abkhazia is a special case, where thousands of refugees returned to their dwellings either spontaneously, or live there seasonally to carry out agricultural work. Due to their insecure and ambiguous future, they maintain their IDP status. Also, certain numbers of refugees returned spontaneously to some of the villages in the Tskhinvali region. Special approaches needs to be taken towards the Zemo Abkhazeti population who have never abandoned their dwellings, and continue to live and work there at their own risk".

Apart from that, in Article 2, chapter 4, it is specified that "government bodies are working to ensure the security of IDPs who have spontaneously returned to conflict zones. To achieve the above, they resort to negotiations with conflicting parties, as well as receive assistance from international entities, in order to implement monitoring in the sphere of security and human rights".

Granting the status of refugee to the IDPs who returned to the Gali region, and guaranteeing their rights to the maximum possible extent, is the main interest of this state policy. Based on the data of the Ministry of Refugees and Resettlement, 77,654 IDPs from Gali are recorded in the central database of the ministry.

The action plan on the State strategy towards IDPs has not been approved yet. The Public Defender considered the elaboration of the strategy as a positive step, and welcomed the trend of taking a strategic view of IDP

problems, human rights and the prospect of their solution. However, it is doubtless that without an action plan, the strategy is only a declaration and it cannot turn into an effective mechanism for the protection of IDP rights.

PARTICIPATION ON SOCIAL PROGRAMS

Jumber Meporia applied to Public Defender. He is a displaced person from Abkhazia and lives in the village of Saberio in the Gali region. According to the applicant, he addressed the Ministry of Labor, Health and Social Welfare as he wanted to get registered in the database for families living below the poverty line but his application was not registered. At the same time, the employees of the above agency explained to him that state social programs do not cover citizens living in the Gali region.

Pursuant to Articles 18 and 23 of the organic law of Georgia concerning the Public Defender, the public Defender addressed a letter (#3477/05-3/1619-07) on 15 November 2007, to the Deputy Minister of Labor, Health and Social Welfare, Davit Lomidze, and asked for the following information, whether citizens of Georgia living in the Gali region participate in state-funded social programs, how many families are registered in the database that are living below poverty line in the Gali region, and if they face any difficulties regarding registration in the database or receiving social aid.

On 17 December 2007, we received the reply (#01-11/07/10946) from Deputy Minister Lomidze, which informed us that: "According to resolution #51 of 17 March 2007, of the Government of Georgia on the reduction of poverty levels in the country and the measures of improvement for the social protection of the population, the formation of the database is a single legal process which covers the applications of the families seeking aid and their processing, the evaluation of the family's socio-economic condition, and awards rating points. Consequently, the registration and decision about a family's participation in different social programs takes place only upon completion of the above procedures.

Since Meporia's family lives Saberio the agency representative is not able to enter the territory under Abkhaz control in order to evaluate the family's socio- economic state.

For this reason, Meporia's family cannot get registered in the database of socially unprotected families.

We consider that the state should maximally increase the availability of social programs for IDPs living in Gali region. Their interests should be taken into consideration when enacting the social policy. Formal barriers should not become the reason for cutting off and isolating IDPs in Gali region. They ought to be integrated into the legal space of Georgia through legal means.

Consequently, I address the Ministry of Labor, Health and Social Welfare to come up with the mechanism that will make it possible to consider the applications of IDPs living in the Gali region and to satisfy their needs.

PROTECTION OF SOCIAL RIGHTS OF IDPS

Monthly allowances

According to clause 1, Article 5 of the law of Georgia concerning internally displaced people, IDPs get monthly allowances.

In compliance with clause 1, Article 51 of the law of Georgia concerning the 2007 State budget of Georgia, the State monthly allowance per IDP residing in CCs amounts to 11GEL, and IDPs in private accommodations receive 14 GEL.

Pursuant to articles 18 through 23 of the organic law of Georgia concerning the Public Defender, on 8 August 2007, the public Defender sent a letter (#1429/05-3) to the chairman of the department of statistics of the Ministry of Economic Development, Grigol Pantsulaia, and asked for information on the date of the first half (or later) of 2007 about the minimum cost of living in Georgia.

On 21 August 2007, we received a reply letter (#7/1-06/46) from which we learned about the minimum cost of living in Georgia as per July 2007. In particular, for men of working age, the minimum cost of living was 112.9 GEL, for an average consumer it was 100 GEL, and for an average family it was 189.4 GEL.

Article 3 of the Georgian law about the rule of computing minimum cost of living, defines the cost of living. Pursuant to sub-clause "c", clause 1 of the same article, the minimum cost of living is a social target ceiling used to determine the minimum amount of wages, pensions, scholarship allowances, and other social payments".

Disproportion between monthly allowances of 14 GEL and the minimum cost of living of an average consumer (100 GEL) is rather obvious. The changes of the standard of living of the population must be reflected in monthly allowances to IDPs, and its amount must approach the minimum cost of living as much as possible. Therefore, I recommend that the Government of Georgia that revise the amount of monthly allowance for IDPs and reflect the new amount of the allowance closer to the minimum cost of living in the state annual budget draft law.

SINGLE ALLOWANCES

According to sub-clause "h", Article 11 of the Georgian law about IDP single allowance is "the sum determined by Georgian legislation that is paid to indigent IDPs on the basis of their application". However, neither the rules of payment of this type of allowance, nor the persons entitled to them are defined by any normative act, which creates a threat of arbitrary judgment by administrative bodies when paying out the allowance. In such cases, it is impossible to determine who was paid the allowance legally and who was not. Dry statistics and figures do not tell us anything about the issue. There is no mechanism to check the purposefulness of spending such state funds.

According to the data of the Ministry of Refugees and Resettlement, in 2006, half a million GEL was provided in the budget for IDP social aid, which was fully paid out to 5,000 IDPs being in extremely hard social conditions. It is unclear what criteria the Ministry used to determine "extremely hard conditions". In fact, in this aspect of the ministry's work, the issue of transparency creates a serious problem, which causes doubts that there is a selective approach on the part of the administrative body.

Overall, I recommend the Minister of Refugees and Resettlement to determine the rules and grounds of payment, as well as the persons entitled to single pecuniary allowances by a legal normative act.

PROVISION OF PENSIONS TO IDPS

Pursuant to determining the additions to state pension according to retirement age and the length of service, the government of Georgia issued resolution #181 on 29 August 2007, which determined the categories of additions to pensions. The above regulation caused a misunderstanding among IDPs from the beginning, as most of them were not able to submit the required documents.

On 10 October 2007, a relevant change was made to the above resolution, which regulated the issue of determining the amount of addition to the pension for IDPs. An IDP who is not able to prove by official papers that the termination of his/her work is connected with becoming an IDP is determined not according to the length of service but according to the age. Article 1 of resolution #181 has an added sub-clause (11) which reads: "Internally displaced persons, who are not able to prove by official papers that the termination of his/her working activity is connected with becoming an IDP, will then have the addition to the minimum

amount of his/her pension on the basis of age, as per 1 September 2007, and shall be determined in the following way:

a) For male IDPs:		
a.a.65-67 years of age	–	2 GEL;
a.b.67-69 years of age	–	4 GEL;
a.c.69-71 years of age	–	7 GEL; and
a.d.71 years and above	–	10 GEL.

b) Female IDPs:		
b.a.60-62 years of age	–	2 GEL;
b.b. 62-64 years of age	–	4 GEL;
b.c. 64-66 years of age	–	7 GEL; and
b.d. 66 years and above	–	10 GEL.

The above additions must be evaluated positively.

HOUSEHOLD ISSUES

In accordance with sub-clause "c", clause 2, Article 5 of the Georgian law about IDPs, the implementation of the rights at their temporary residence is guaranteed by the Ministry of Refugees and Resettlement, along with executive bodies and local self-governing bodies that help IDPs settle in social and domestic issues".

By the resolution #415 of 16 August 2007, of the Georgian Government about firewood supply to IDPs for the winter season, the Ministry of Refugees and Resettlement was assigned to allocate 500,000 GEL on the basis of the Georgian law on the 2007 Budget of Georgia, stipulating that IDP support for those residing in CCs is to provide firewood to the IDP families.

In October 2007, the public Defender was approached by IDPs residing in the building of kindergarten Tsisartkhela at #64 Guramishvili Avenue. According to them, the person who presented himself as the representative of the Ministry of Refugees and Resettlement left them some blank forms to be filled in with their personal information. The applicants were to indicate their name, surname and number of the IDP card. The forms turned out to be a transfer certificate, which proved that the IDPs received their firewood. The sections for the amount of the "delivered" firewood and the license numbers of the vehicles which delivered the firewood were blank. The IDPs were to take the filled forms to the ministry, but they did not follow the above requirement. The above incident raised doubts about the purposeful spending of the allocated sum by the ministry. The case is continuing.

I recommend the Minister of refugees and Resettlement of Georgia to investigate the above fact and take relevant measures.

RECOMMENDATIONS AND PROPOSALS

1. I address the Ministry of Refugees and Resettlement of Georgia with the recommendation to take personal control over the registration process, get directly involved in the examination of the applications that are connected with the violations in the above process.
2. I address The Ministry of Labor, Health and Social Welfare of Georgia to find a mechanism that will enable them to examine applications of IDPs living in Gali and the satisfaction of their social needs.
3. I propose to the Georgian Government that they revise the amount of monthly allowances of IDPs to reflect the new data that would approach the minimum cost of living in the budget.
4. I address the Ministry of Refugees and Resettlement of Georgia to define the rule of paying out, as well as the basis for it, and the persons entitled to single allowances in the normative act.

16 PROTECTION OF REFUGEES' RIGHTS

There were no considerable changes regarding the protection of refugee rights in the second half of 2007. In his previous report, the public Defender gave his evaluation on all legislative novelties that were implemented in the first half of 2007, and underscored the importance of the implementation of international liabilities undertaken by the State.

According to the assessment of the UN Refugees Highest Commissariat (UNRHC), over the past years the protection of refugee rights has seen considerable progress. The issuance of certificates of temporary residence and strengthening the legal status of refugees favored the improvement of the legal environment for local integration. These changes have not remained unnoticed by recipient countries, which, along with many other factors, have made the resettlement policy in the recipient countries for Chechen refugees living in Georgia more severe. The above has caused a change in attitude of the UNRHC.

According to UNRHC information, in the future, potential recipient countries will only consider the cases of those people who have substantial grounds. Non-existence of the prospect of integration in Georgia does not provide the grounds for migration anymore, and based on the fact that the situation, in terms of security, has improved in the Pankisi Gorge, only extraordinary cases connected with legal protection will be determined.

Despite some progress achieved, the allowances and benefits allocated by the state are not sufficient for refugees to improve their living conditions. Taking the existing inflation and consumer goods becoming more expensive, their social conditions are deplorable.

Persons seeking refugee status are very weakly protected by Georgian legislation. Article 3 of the law concerning refugees defines the rights and liabilities of people seeking refugee status. Clauses 1 and 2 of this article provide certain social guarantees. In particular:

1. Persons who get registered in the ministry in compliance with this article, are given the warrant of permission for a single free travel and luggage transfer to an indicated place of their temporary settlement within five days from the registration.

2. Before granting the refugee status to a person seeking it, the latter has the legal right (08.04.2005 N 1299) to:

a) Enjoy freedom of movement, live in the place of temporary settlement and use utility services;

b) Receive food stuff determined by the norm;
c) Receive a single allowance or any other aid in the amount as determined by Georgian law from the state budget; and
d) Take their children to the state nursery or secondary general education school.

The problem is that the above social guarantees are not supported by the law on the State budget, which makes it impossible to enforce the law or the implementation of positive liabilities undertaken by the state. According to Article 51 of the Georgian law on the 2007 State budget of Georgia there are no funds allocated for services and regulations of the repatriation process for persons seeking refugee status; whereas in 2006, 723.9 thousand GEL was allocated for the above purpose in the State budget of 2006. Consequently, sub-clauses 1 and 2, Article 3 of the Georgian law concerning refugees are invalid norms. This way the rights of people seeking refugee status, as well as supremacy of the law in the country, are under the threat.

It should be noted that the Pankisi Gorge is the main dwelling place for Chechen refugees. The economic and social conditions remain grave there. According to the report prepared by the Information and Documentation Center of Human Rights, refugees have to live under rather unpleasant conditions. Sanitary conditions are poor, especially in communal shelters that are under the supervision of different international humanitarian organizations in the Pankisi Gorge. The small number of the population who possess a plot of land in Pankisi get rather meager incomes from the barren lands. However, most of the refugees are deprived even of that, and consequently are forced to look for other ways of making a living.

Many refugees are willing to work in the production or service sectors. Only a few people are employed in international organizations. Some of the refugees are employed at schools as teachers or nurses. However, in this case, they do not get any pecuniary remuneration, rather they are reimbursed by receiving additional forms of humanitarian aid. The Chechens claim that when distributing jobs, the locals employ their relatives and friends and that they are being discriminated in this respect.

The problem of employment of refugees remains unsolved. According to sub-clause "c", Article 7 of the law concerning refugees, the executive and local self-governing bodies are liable to "render assistance to refugees with employment taking into account the rate of employment in the region, their specialization and qualification". On the basis of part 1, Article 12 of the same law, minimal standards of "housing, employment, education and security" are guaranteed, not only for refugees, but for those registered persons seeking refugee status as well. Article 17 of the Convention explains the following about the refugees' status: "Signatory countries shall create the most favorable conditions for refugees living legally on their territory in terms of the right to employment; a right that is equally enjoyed by citizens of foreign countries".

THE CASE OF AZER SAMEDOV

Pursuant to Article 34 of the Convention on the status of refugees, "signatory states facilitate the assimilation and naturalization of refugees as much as possible". However, Georgian legislation does not consider the facilitated procedure of awarding citizenship, which by itself contradicts the above provision. It is relevantly easier to get Georgian citizenship for refugees of Kisti origin, as several generations of these people were born and have lived in Pankisi to these days.

On 10 January 2008, Azer Samedov, a citizen of Azerbaijan applied (#0051-08) to the Public Defender. From 1988, he was heading the non-governmental organizations (NGO) Juma Mecheti, Islam Itakhidi and The Center of Consciousness and Freedom of Faith. The applicant's activities were connected with building up civic society in Azebaijan, and to uphold human rights protection. According to Samedov's, during the monitoring of the 2003 presidential elections, when he openly talked about the violations of the government, the forms of persecution

against him became evident, and as a result he had to leave his native country. Currently Samedov is in Georgia. He founded an NGO, the Caucasian Center for Freedom of Consciousness and Faith, and is conducting public activities. On 31 March 2006, Samedov was detained by representatives of the Counterterrorism Center of the Ministry of Internal Affairs of Georgia for the purpose of his extradition to Azerbaijan. After the search, he was deprived of money and personal things, which have not been returned to him so far. On 14 April 2006, Samedov was released by the decision of the appellate court of Tbilisi and was assigned a bail of 10,000 GEL.

On 17 August 2006, the Ministry of Refugees and Resettlement refused to award the status of refugee to Samedov. However, on 6 November 2007, the highest Commissioner of the UNHCR recognized Samedov as a refugee, which is attested by the certificate he presented.

On 25 December 2007, Samedov's lawyer, Lasha Chincharauli, filed a motion in the Office of the Prosecutor General of Georgia about the termination of the process of Samedov's extradition, as a real threat exists that Article 3 of the European Convention is being violated.

According to part 6, Article 231 of the Procedural Criminal code of Georgia, "the motion shall be considered and settled no later than three days and nights after the submission of a claim". Despite the requirement of the above law, the defence lawyer of the applicant has never received any reply to the motion.

Regarding Samedov's extradition, we should take international standards and Georgian legislation into consideration. According to Article 6 (3) of the Criminal Code of Georgia, "the extradition of a person who has been given asylum to another state, who is pursued on political grounds or pursued for an activity that is not regarded as a crime by the legislation of Georgia, is prohibited".

Article 47 of the Constitution of Georgia contains the same provision.

Based on the materials we have studied, the fact that Azer Samedov was pursued for political beliefs in Azerbaijan is doubtless. The above is also proven by events that have been taking place in Azerbaijan in the past years, and in particular those events taken against people who share Samedov's political orientation.

Amnesty International, a well-known international human rights watch non-governmental organization calls on the Georgian government to immediately stop the process of Samedov's extradition, as it may result in him becoming the victim of torture, which violates the commitment of the Convention Against Torture undertaken by Georgia.

Amnesty International explains that Samedov was conducting the monitoring of the 2003 presidential elections in Azerbaijan where a number of violations were reported to have taken place. The next day there was a peaceful demonstration that was violently dispersed by law enforcers. Samedov was at the manifestations for which he was accused of taking part and showing resistance against law enforcers. After that, Samedov took refuge in Georgia. In the case of extradition, he might share the same fate of his like-minded people who were subjected to inhumane treatment and torture in Azeri prisons.

The fact that Azerbaijan demands his extradition proves the opinion of Amnesty International that human rights advocates in Azerbaijan will be subjected to imprisonment and threat if they attempt to reveal violations that occurred at the elections, as well as violations that included the use of excessive force while dispersing the demonstration.

The U.S. State Department criticizes the presidential elections in Azerbaijan as they were accompanied by human rights violations:

"As a result of the 2003 elections, about 600 people were arrested. The next day a manifestation and assembly took place in Baku. The dispersal of the demonstration was violent and law enforcers used excessive force. As a result, four people were killed and hundreds of citizens were injured. The demonstrators under arrest did not enjoy a fair trial and some of them became victims to torture. Similar events took place in Azerbaijan after the Parliamentary elections".

The International Federation of Human Rights (FIDH) and the World Organization Against Torture (OMCT), in their report of a joint program, Observatory for the Protection of Human Rights Defenders, call on Georgia not to extradite Samedov, the advocate of human rights to Azerbaijan, as he may be subject to torture.

The report of the U.S. State Department makes it clear that human rights advocates in Azerbaijan, in particular those activists who were conducting monitoring and taking part in peaceful demonstrations, were subjected to torture and inhumane treatment. International human rights watch organizations unanimously indicate that Samedov's extradition to Azerbaijan is inadmissible due to the above circumstances. The international community appeals that in case of extradition, Georgia will violate the international agreements ratified by the State.

It should be noted that apart from internal legislation, Georgia has undertaken a number of commitments regarding extradition through various international acts:

According to Article 33 of the convention about the status of refugees , the State is obliged to not evict or return the refugee to the border of the country where his/her life or freedom may be under threat due to his/her race, religion, nationality, belonging to a certain social group and political belief.

The European convention on extradition has been in force for Georgia since 2001. According to Article 3:

1. Extradition shall not be granted if the offence, in respect to which it is requested, is regarded by the requested party as a political offence, or as an offence connected with a political offence.
2. The same rule shall apply if the requested party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons.

Georgia has also ratified the convention against torture, according to Article 3 of which:

1. None of the participant parties should exile, return or extradite any person to another country without any substantial grounds to doubt that he/she will be threatened by torture.
2. To establish such grounds, competent governments take into account all the circumstances of the case, among them the permanent practices of harsh human rights actions or indignant and massive violations in the given country.

According to the precedent law of the European Court of Human Rights, the extradition of a person in another country is prohibited, if as a result of extradition Article 3 of the convention may be violated, according to which, "no one shall be subjected to torture or to inhumane or degrading treatment or punishment". In the resolution of 7 July 1989, in The case Soering v. the United Kingdom, the European Court of Human Rights explained that European Convention member states (among them Georgia) are prohibited to extradite a person to another country if there are no sufficient grounds for believing that this person may be subjected to torture or inhumane and degrading treatment or punishment. Such practices are also observed in other cases, such as Varas v. Sweden, and Chahal v. the United Kingdom.

According to the U.S. State Department report, in 2005 in Azerbaijan, 107 people died as a result of scary prison conditions and torture.

The European Court of Human Rights in its resolution of 11 January 2007, in The case Mamadov v. Azerbaijan, established that Azeri law enforcers tortured the applicant. Mamadov was Samedov's associate. He is the representative of the opposition party who considered the 2003 elections to be falsified. Therefore, we think that there is a reasonable doubt that in the case of extraditing Samedov, like Mamadov, he may become a victim of torture.

From the letter of the UN High Commissioner for Refugees we learn that the UNHCR has substantial grounds to believe that Samedov will become a victim of torture due to his religious and political beliefs.

Based on the above, on 15 February 2008, the public Defender sent off the materials under his disposal to the Office of the Prosecutor General and addressed its members with the recommendation (#710/05-5/0051-08), pursuant to sub-clause "b", Article 21 of the organic law on the Public Defender, to terminate the process of Samedov's extradition. No response has been received so far. The case is continuing.

RECOMMENDATIONS

1. I recommend that the Government of Georgia, in order to implement social guarantees to refugee status claimants, should add relevant funds in the annual budget draft.
2. I recommend the Office of the Prosecutor General terminate the process of Azer Samedov's extradition.
3. I recommend the Office of the Prosecutor General to ensure the release from bail prescribed to Azer Samedov as a measure of restraint.
4. I recommend the Office of the Prosecutor General of Georgia to return to Azer Samedov his possessions and money that he was deprived of during the search.

17 FREEDOM OF INFORMATION

The Public Defender closely watches that information from administrative bodies is made available in a timely manner and without impediment. Today, information posters printed by the Public Defender's Office, with the financial support of the OBSCE, are displayed all over Georgia containing the necessary rules and terms about obtaining public information, and to notify citizens that everybody has the right to get familiar with public information available in administrative bodies. Other awareness raising activities in terms of transparency of information are also conducted by the Public Defender's Office.

28 September is the international day of freedom of information. On 28 September 2007, Public Defender Office representatives delivered an open-door lesson for upper class pupils in #2 Gurjaani public school on public information; they also met with Gurjaani Municipality local office employees. A round table was held in the Public Defender Office, which was attended by persons in charge of releasing public information from different public organizations. The problems discussed at the meeting were the ones that are most frequently featured in applications addressed to the Public Defender.

One of the problems was the violation of the terms of information release. As it became obvious, thereason is that public establishments are rather disorganized. It turned out that there is an appointed person in charge of the release of information; however, that person cannot make independent decisions. They are not allowed to supply information without prior agreement with senior officials, which takes long time.

Naturally, such bureaucracy causes the violation of the determined terms as according to the General Administrative Code, which states that public information must be delivered immediately. That is why citizens have to wait for months until they obtain the necessary information. Many recommendations have been sent to different bodies in this regard, but the situation remains unchanged (see Appendix #10).

It is especially difficult to obtain information from the agencies that are subordinate to the Ministry of Internal Affairs and the Office of the Prosecutor General of Georgia.

According to the internal rule of the Ministry of Internal Affairs and the Office of the Prosecutor General, therelease of information by the bodies under their subordination is admissible only through a centralized procedure. For example, if a citizen or an organization (among them the Public Defender) applies to one of the regional Prosecutor's Office or police department in or-

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der to obtain information, it is possible that they are replied by the administration of the Ministry of Internal Affairs or the Department of Human Rights of the Office of the Prosecutor General. The reason is that letters requesting information and replies to them are sent not to the addressee, but to higher bodies that ensure the release of information. However, it is not too difficult to guess that the introduction of such a rule contradicts the general administrative code principles, violates legal terms and slows down the process of obtaining information.

The Ministry of Internal Affairs and the Office of the Prosecutor General apply similar practices with the Public Defender, due to which information is never available within the 15-day term prescribed by Article 23 of the organic law on the Public Defender. Moreover, high-ranking officials who are in compliance with Article 18 of the above law are obliged to provide personal explanations, documentations, materials or other types of information to the Public Defender. Instead they disregard the law norms and consistently observe the rules set forth by higher bodies.

Non-compliance is frequently practiced and the Public Defender's lawful requests are never fulfilled in the due term. In response, the public Defender applies administrative leverage and often files a report of delinquency against high-ranking officials, which is envisaged by Article 1731 of the Administrative Code of Violations.

In this respect, we should note the cases of administrative violations of the head of the Georgian Bureau of Interpol, Lasha Giorgidze, and the regional prosecutor of the Isani-Samgori district, Davit Gagnidze. Both cases concern non-compliance with the law that requires the fulfillment of the Public Defender's lawful requests.

As was noted above, the Ministry of Internal Affairs and Office of the Prosecutor General act upon the set rules when releasing information, and it is the rule that they appeal to at court hearings when discussing the case of administrative violation. In one instance, Judge Thea Tadashvili quite lawfully shared the arguments of the Interpol bureau about the centralized rule for information release. The judge proved the head of the service, Lasha Giorgidze, was guilty of administrative violation, and assigned a penalty of 800 GEL to him. In another instance, the judge Ilona Todua, for some reason, considered the internal rule of the Prosecutor's Office more important than the organic law concerning the Public Defender and dismissed the case for the reason of non-existence of the violation.

It must be noted that from court practices having developed while considering the administrative violations reports filed by the Public Defender, a distinct trend can be seen – judges never recognize prosecutors as violators, whereas they do with regard to any other officials in similar cases. In this respect, the courts develop miscellaneous practices which contradict court reform principles of developing a uniform practice.

Based on the above, it is still a big problem to obtain information from the Prosecutor's Office.
Therefore, I consider that all administrative bodies should settle their internal problems in order to protect the right to freedom of information granted by the Constitution.

RECOMMENDATION

I address the Parliament of Georgia to make changes to the Administrative Code of Violations, according to which the violation of the term of information release will be considered as administrative violation and the organization that infringes this law, along with the obligation to release information, will be assigned financial sanctions.

18 VIOLATION OF THE RIGHT TO PROPERTY

The right to property is granted and protected by the Constitution, but in real life this right is often violated. In civil law, the right to property is also called an absolute right, which implies that everybody is obliged to restrain themselves from misappropriation.

Over the last four years, the right to property has been violated in many different forms. In most cases, the facts of violations of property rights were not undisclosed, as property owners (to be more precise, former owners) are afraid to talk about the violation of their rights, as they expect the worse to happen. Besides, the property owners hold back because of the fact that whoever started to fight for their rights has not achieved any results, and some of them even became victims in this fight (for example, Shurman Maisuradze, see Nodar Maisuradze's case in the Public Defender's reports 2004-2007).

There are a lot of incidents when property owners were arrested only for the reason that they had property, and were released only after they gave their property to the government as a "present".

There are many incidents when property owners were summoned to the Prosecutor's Office where they were made to sign the agreement of the deed as a gift of their property. Property owners were threatened by telling them that if they did not do it, they or their family members would be arrested under any pretext – for example, as if they had drugs – or their business would be examined by tax inspectors or financial police, who would find some pretext for arrest.

There are many incidents when the state carries out construction works, for example children's stadiums or water reservoirs, on the territory of a private owner without any reimbursement.

Very often, the representatives of self-governing bodies have destroyed private property without any legal basis or compensation – they have pulled down restaurants, merchandise kiosks, and garages. Part of these constructions were absolutely legal and there was no legal ground for their destruction. Other buildings were illegal and their dismantling was possible if the rules set forth in the law was followed. But self-governing bodies violated the administrative proceedings here as well. In this respect, we can single out the supervisory service of the Mayor's Office of Tbilisi.

What is more, most of the cases of flagrant violations which the Public Defender recommended to con-

sider have not been responded at all, and neither have the culprits been punished nor have the rights of property owners been restored. Such serious facts of violations of property rights, as were the case of Hussein Ali (see Public Defender's report, second half of 2006), the cases of Schinhoffer and Badagoni (see Public Defender's report, second half of 2006), and many others that have not been investigated to this date. The fact that such cases are uninvestigated and the culprits go with impunity, violates not only the rights of particular persons, but has a negative effect on the country's international image and hinders its attraction to western investments.

TABUKASHVILI STREET

Citizens residing at #50 through 52, Tabukashvili Street, addressed the Public Defender in March 2006 about the unlawful demolition of their building, and infringement of their rights. It should be noted that the Municipality of Tbilisi took the Public Defender's recommendation into account and stopped the unlawful actions of the supervisory municipal service that took place and dismantled the building. It must be said that the high rise building on Tabukashvili Street survived; however, on 20 July 2007, they started to dismantle the building again and 24 families were left under open air.

The Supervisory municipal service issued a resolution on 20 July 2007, for the immediate dismantling of the building. The resolution was submitted to the tenants the same day, and exactly on that same day, the demolition started. The owners of the flats were not given any reasonable span of time to leave their home, or figure out how to defend their rights. They were abused and evicted; their furniture and other property was damaged, and they suffered huge material losses and emotional distress. The grounds of the resolution, which was issued and executed so promptly, is rather questionable. It is true that the court has not considered and interpreted the terms specified in clause 4, Article 6 of the law on the enforcement of supervision over architectural/construction activities, but I am deeply convinced that the demolished building was less dangerous for people's lives than other older buildings on Tabukashvili street, or in other old districts that are crumbling down. The demolition of the building on Tabukashvili Street was aimed at achieving one specific goal that had no legal grounds.

The gift of a deed, at first glance, is a harmless agreement of private law. It is logical that a person making such a gift as giving away his/her private property has to have special intentions. According to the current legislation, there are many ways of managing property; however, when a person or family remains without a source of income after having shown such good will, creates some grounds for doubts of such generosity.

Citizens point out incidents of coercion revealed by high-ranking state officials (mainly psychological). Citizens mention for example, the employees of the Prosecutor's Office; the president's authorized representative, and the Gamgebeli to be involved in this process. A classic example of the above is the case of Gela Bezhashvili, who was forced to give away the land under his ownership in Sighnaghi (see Public Defender's report, first half of 2006). Despite many of the Public Defender's attempts and addresses, Bezhashvili's case has remained unattended to, and his right to property has been violated. A similar case is that of Badur Milashvili (see Appendix #11).

THE CASE OF DAVIT TSIBIRASHVILI CONCERNING COMPULSORY DEED OF GIFT

From the materials of the case record, it turned out that the applicant is the founder and director of Gogirdis Abano LTD (Sulphur Baths). Davit Tsibirashvili owned the immovable property located at #2 Bath Street until 14 December of 2006, which 233 square meters.

According to Tsibirasvhili, he was asked to give away the property to the government for free. As he had no wish to make such a gift, the employees of the Prosecutor's Office of Tbilisi – Valeri Latsuzbaia and Giorgi Khvedelidze – regularly threatened Tsibirashvili that they would accuse him of a crime under some pretext and arrest him. The

negotiations took place in the Ministry of Sports, Culture and Monument Protection, after which the applicant and his family members went to notary officer, Nino Ginturi, accompanied by the representatives of the Prosecutor's Office, where they signed over the deed as a gift, against their will, on 20 November 2006.

A similar case is that of Grigol Khizaneishvili, the founder and director of Gogita LTD, a bath house. He owned the land of 708 square meters and the business standing on it, located at #2 Bath Street until 20 November 2006. The same notary officer, Nino Ginturi, notarized the case, and her name is mentioned in many other similar cases (for example the deals with restaurants in Rikhe).

Citizen Jemal Tsiklauri's rights have not been restored yet, which is mentioned in all the reports of the Public Defender (see appendix #11).

Apart from compulsory gifts of deeds, the public Defender's Office has discussed such cases when property owners were made to sell their property against their will. For example, in Sighnaghi, Manana Macharashvili and Tamar Tarashvili were threatened and scared, and as a result sold their property. The buyer was the same person as mentioned earlier.

Since 1995, Manana Macharashvili and Tamar Tarashvili had been the owners of the land and the shop on it at #5 Davit Aghmashenebeli Street, in Sighnaghi, which they were forced to sell.

Macharashvili says that she got a warning directly from the financial police to sell the shop. She was threatened that if she did not accept the proposal, her husband would go to prison, Tarashvili would have to pay a large penalty, and they would not be able to continue the business (see Appendix #11).

BREACH OF CONTRACTUAL COMMITMENTS BY ADMINISTRATIVE BODIES

The Public Defender has often been addressed by applicants complaining not about the violation of their property rights, but about the breach of contractual commitments by administrative bodies.

In civil law, administrative bodies do not implement legal authority; however, the public Defender is obliged to react to the unlawful actions of an administrative body if the respective participant of legal relations makes it disputable.

In most instances parallel to the discussion of the case in the Public Defender's Office, the case is still proceeding, although this does not exclude the Public Defender's reaction. When the breach of commitment by an administrative body is obvious, and it is impossible to deny, the public Defender does not wait for the court decision, but he, on his own discretion and recommendation plays the role of mediator between parties. To be more precise, the organic law on the Public Defender allows him to do so. However, none of the recommendations have been shared so far, while it is possible that administrative bodies share recommendations through complying with procedural mechanisms of the counterclaim.

The appendix of the cases of Sony Center Tbilisi LTD, Café Rustaveli LTD, Lazeri-2 Tbilisi LTD, and Links LTD contains vast information on the aforementioned problems.

EVICTION

A lot of applications are received by the Public Defender's Office concerning unlawful evictions. The cases refer to the misinterpretation of order #747 of the Ministry of Internal Affairs by its law enforcers, as well as the carrying out of harsh violations of procedural rules set out in the order.

On the amendment of 12 December 2006, a third part was added to Article 172 of the Civil Code of Georgia which reads: "If invasion on, or other interference with, the ownership of an immovable property occurs, the owner can demand from the invader to stop the action. If such action continues, the owner can demand to suppress the action without the court decision, by presenting a written document from the law enforcement agencies, except the cases of presentation of the written document proving the legally established ownership, rightful ownership and/or usage by the alleged invader" (8.12.2006 N3885).

In accordance with the change, sub-clause "v" was added to Article 9 of the Law concerning police procedure, which determined that "in the event of presentation of documents by the person proving his/her ownership, without a court decision, the suppression of invasion on the immovable property owned by the person, or any other interference, shall be ensured, with the exception of the presentation of a written document, proving the rightful ownership or usage of the immovable by the alleged offender. Administrative appeal of the warning given by police authorities to the alleged offender does not suspend the implementation of restraint measures and the validity of the written warning (administrative act)" (4.07.2007 N5211)

These changes were followed by issuing order #747 by the Minister of Internal Affairs, where the rules of restraint of invasion, or any other interference, with the ownership of immovable property are specified. The implementation of the said measures is the responsibility of the criminal police.

From the applications considered by the Public Defender's Office, it was found that the police often act unlawfully, as they do not make the correct legal judgment about legal documents of ownership or the use of property. That is why law enforcement bodies react too promptly and illegally, or on the contrary, slow down the process, and do not implement eviction when it is within the interest of a private person (see Appendix #11: The case of Nadia Kordelia).

The Public Defender has addressed special letters to the Parliament of Georgia concerning the infringement of citizens' rights of ownership; however, no real results have followed.

The Public Defender once again addresses the President of Georgia, the parliament and the Office of the Prosecutor General to reconsider all the aforementioned cases, and give a proper response so that the infringed rights of ownership of the citizens harmed are restored. All the cases (Schinhoffer, Badagoni, Hussein Ali, Jemal Tsiklauri, Gela Bezhashvili and other proprietors) should be investigated, and the offenders punished. I also address the Minister of Internal Affairs with the recommendation to ensure the improved enforcement of his order (#747) in practice, not to admit the infringement of property owners' rights while evicting people.

19 SOCIAL PROTECTION

A significant part in the Public Defender's parliamentary report of the first half of 2007 is dedicated to citizen complaints concerning the Social Subsidy Agency and Poverty Reduction Program. The problem was topical in the second half of 2007 as well, due to shortcomings of the mentioned program (see details in the report of the first half of 2007). The practice clearly showed that the principal imperfection lied in the standards used for estimating the material status of a family. In most cases, the family needing help could not get on the State Program of support for those below poverty line.

According to the International Transparency Georgia Resolution in the beginning of 2003, Georgia, supported by the World Bank Mission, developed its own program for economic development and reduction of poverty, though the government failed to implement the program effectively. The mentioned resolution also indicates that 50-55% of Georgia's population lives below the poverty line, while 15% live in extremely poor conditions (based on the data of The Statistics Department of Georgia, 2004).

Exactly the same data were recorded by the Open Society Georgia foundation publication of 2007 (Monitoring Results of Medical Relief State Program for People Living below Poverty Line), which stated that unemployment was the major cause of poverty.

Most of the complaints received by the Public Defender's Office indicate that the applicants' families suffering extreme financial difficulties could not get on the Unified Program of Poverty Reduction. The Public Defender's Office has studied many similar cases, such as the case of Nikoloz R.

Nikoloz R. is a 79-year-old man, who has a wife of 75 years. They are disabled people (2nd group disabled) and due to their health condition need expensive medications. One of them needs a gall bladder operation. Nikoloz's very old sister of 86 years lives with them is paralyzed. Nicoloz's grandchild, who was dismissed from his job due to staff reduction, also lives with the family that now suffers hard financial difficulties. Their only income is from the pensions of the elderly members. Despite of all this, the family is not recorded in the unified database of socially unprotected families. We addressed this issue with the Social Subsidy Agency. Their reply #01/08-1866 states that an authorized representative of the agency investigated the social and economic condition of Nikoloz R.'s family. It should also be noted that presently the agency processes

newly obtained data by a new technology in accordance with the acting legislation, and the applicant will be notified about the final results.

The situation is similar to Marina Ch.'s case who lives in a one-room apartment with her sick mother and 4-year-old child. Her family is in an extremely poor condition. She also suffers from epilepsy and hence has no permanent job and cannot afford public transport because of the rise in prices. Marina Ch. addressed the Agency of Social Assistance and gained high rating points, yet in spite of our appeal to the agency, she is still without any social assistance.

Valia B. has the same problems, and unfortunate information found in her case became the grounds to suspend the means of subsistence to her family.

Valia indicated in her declaration of August 29, 2007, that in 2006, her family consisted of three members: husband Jamal D., (1st group invalid), daughter Ekaterina D., sick with cerebral paralysis, and Valia herself. The family's grave financial situation forced Valia to submit an application to the Social Subsidy Agency. According to the rating points (51280) in 2006, her family was allotted 42 GEL as a means of subsistence. After this, her husband died, and she informed on the fact the above Agency. In 2007 she was repeatedly visited by a social agent, who filled out the family declaration, and after this the means of subsistence to the family was discontinued. As the applicant states, nothing had changed in her family except the death of her husband. The only income of the family is her of the sick daughter's pension, since Valia is unemployed and has not reached the pensionable age. After cancellation of the aid she repeatedly applied to Vake-Saburtalo District Department of The Social Subsidy Agency, though never received an answer.

In regard to Valia's application, we addressed the Social Subsidy Agency and were advised that according to the information obtained by the agency in May 2007, due to the demographic changes in Valia's family (the death of a family member), and according to the acting legislation, thesocio-economic conditions in her family needed to be re-evaluated. A new family declaration was filled out and included in the unified data base of socially unprotected families. The family was rated 75,280 which, according to the acting legislation, is below the lowest passing score for receiving means of subsistence.

According to the agency, the only cause for cutting the assistance to Valia's family is the death of the applicant's husband, though the financial situation of the family has not changed. It is incomprehensible how the mentioned "demographic change" could raise the family's points by 51,280 to reach 75,280 that made the assistance to the family impossible.

The above case proves once again that the rating system, or the formula, used for calculating the passing score is incomplete, and does not reflect people's real financial position, and hence does not meet their needs.

The staff of the Public Defender's Office personally checked the information contained in Etheri K.'s complaint.

Etheri explains that she is a mother, has a two-year-old child, a brother, disabled parents, and no husband. All the family members are unemployed, so the family has no income.

The introduced documents show that Etheri applied to the Dusheti Regional Department of the Social Subsidy Agency, but despite the grave financial position of the family, it was not properly rated to receive means of subsistence.

As we have already mentioned, the Public Defender's Office representatives personally double-checked the situation of the family. It can be said that visually, the house is not in a very bad state, and has elementary living conditions. One of the family members, the applicant's brother, has an income of approximately 300 to 400

GEL. Her father works as well, but does not bring any income as his employer does not pay for the work. It was not possible to assess if the parents were disabled as they were not home.

An analogous complaint was received by the Public Defender's Office from Kakhaber J., who indicates that he lives in a rented apartment. His mother and his wife are both sick, and he has a very young child. All members of the family are unemployed. Kakhaber notes that quite often he is not able to pay the rent.
He himself has health problems and needs surgery, but his treatment requires expensive medications.

His extreme family situation made him apply to the Social Subsidy Agency, but the family could not get on the unified database of socially unprotected population.

Kakhaber's family situation was examined by the Public Defender's Office representatives. His family lives in a one-room apartment. Visual observation proved that the house is in a very bad state; old furniture is placed around the room (a wooden couch, an iron bed and a sofa), there is also a TV set, which, according to Kakhaber, belongs to the landlord. He and his wife are unemployed, so it can be said that the family is below the poverty line and deserves means of subsistence.

Based on the verification and Kakhaber's application we addressed the Social Subsidy Agency, from which the following information was received: The Public Defender's recommendation was satisfied, and the family was registered in the unified database as an aid recipient.

A problem of a different character was found in Nanuli B.'s case. She is a lonely pensioner living in an unfinished (skeleton) apartment, in extremely poor conditions. Nanuli applied to the Social Subsidy Agency. The documents show that in reply to her application of August 29, 2006, a social agent filled up a family declaration and on May 16, 2007, the applicant was rated 35,240 points. A certificate verifying this rating was issued on May 22, 2007. Nanuli's family declaration was filled out for a second time and on September 19, 2007, she was rated 44,450 points. In both cases, the rating did not exceed the fixed limit, but in spite of this, she was not given means of subsistence. We inquired at the Social Subsidy Agency as to why this was not happening.

In their reply dated December 26, 2007, they informed us that the agency double-checked Nanuli's social status several times, and found that the applicant does not permanently live at 22 Kerchi Street, because the apartment is unfit for living. Mainly it is just a skeleton - no glass in the windows and no sanitary arrangements. There are few domestic utensils symbolically placed in the room. It is also noted that she lives with her sister on the first floor of the same building, which is why she will not be entitled to any living aid.

As a result of the inquiry carried out by the Public Defender's Office it was ascertained that Poti citizen Shuquri L., an elderly woman, has lived alone since 1975. After her house was destroyed, she lived in a small self-made lean-to, furnished with just an iron bed. Because of her extremely hard conditions and financial need, she addressed the Social Subsidy Agency. She was granted an allowance on April 28, 2006. However, it was stopped in August of the same year on the grounds that she lived in her brother's family. The applicant does not agree with this and states that her brother's family just helps her sometimes with food because they live on the same street.

The cases of Nanuli B. and Shuquri L. point to the tendency that frequently families are merged rashly, as a result of which, actual needy people who live alone cannot get social aid.

There are problems that indicate the improper management of the Social Subsidy Agency. An example of this is Marina L.'s case. Marina has been applying since September 24, 2007, with the request to double-check her family situation. Until now, no social agent has visited them. After the Public Defender's involvement, Marina's situation was double-checked and she was granted social aid.

Svetlana F. indicates that for a long period she was making a living by selling her old belongings; nowadays, the only source of living for her was the gathering of bottles in dustbins and checking them in at collection

stations. Svetlana is and elderly woman who lives alone. She has two children, one of whom is disabled, and the other has financial difficulties. For the reasons given above Svetlana applied to the Social Subsidy Agency. A social agent filled a family declaration twice, though her rating exceeded the established limit both times. According to the applicant, the telephone at home served as the cause for the agent to highly evaluate her family situation, though it had been cut off for non-payment long ago.

It occurs frequently that aid is automatically refused to a family in possession of a mobile phone. According to the Subsidy Agency, the problem had been solved, though we believe that the problem still exists. The above case, where the issue is not a mobile phone but landline phone could serve as proof. Lately, having a computer, even if received as a gift, has become a factor to automatically refuse aid. The Agency is assuring us that this problem will be solved as well.

HOUSING ISSUES

Housing issues are paid due attention in the Public Defender's reports of all periods, as this is the problem that citizens frequently address with him. The reasons causing housing problems vary – disaster, accident, financial difficulty, etc. In all cases, people are left without a roof over their head, and the government is responsible for providing them with adequate living conditions.

In the reporting period, applications of citizens left without a roof as a result of disaster – avalanche, landslides and earthquake – were prevalent. The family of Otar Geladze fell pray to an avalanche in the Khulo region on February 11, 1971. Eight members of the family were killed, only Otar Geladze and his parents survived, but became disabled. Since 1971, until today, the government has not paid attention to the Geladzes, who to this day are being sheltered by their relatives.

Their housing problem is still awaiting a solution (see attachment #12)

In addition, nothing has been done to solve the housing problems for those injured as a result of earthquakes that took place in recent years. The case of Elene Baratashvili, who suffered from the 1991 earthquake in the Chiatura region, is one such example. Tamar Svanidze's house in the Oni region was destroyed as a result of the 1991 earthquake as well. Citizens Odisharia, Tamliani and others, who suffered from the 2005 Tbilisi earthquake, had been temporarily accommodated at 22 Kerchi Street. At the moment, their housing problem is the order of the day as they are under the threat of eviction from their temporary home (see the attachment).

Still other applicants, who became homeless due to grave financial situations, address the Public Defender's Office with housing problems (see attachment #12; case of citizen Kakhaber J.).

Proceeding from the above, the recommendation is for local governments to set up a housing fund, and as a priority, to open shelters, thus ensuring the protection of a person's housing right.

SALARY DEBT

Unpaid salaries remain one of the major problems for such high budget organizations as Ministry of Internal Affairs and Defence Ministry. Despite the Public Defender's repeated addresses and recommendations, the problem persists. As a rule, all answers to the recommendations are standard: "Allocated from the State budget do not contain funds to cover the salary debt accumulated during the previous years, hence the Ministry cannot meet the demands of its staff" (see attachment #12 , cases of Zaur Vibliani and Giorgi Lomaia).

Tsisana Khetsuriani has similar problems with the joint stock company, United Power Distribution Company, which has not paid off the salary debt owed to her dead husband Vakhtang Tsomaia.

The Ministry of Finances owes a salary debt to Teimuraz Metskhovrishvili, who had been working for many years at the Chiatura Regional Tax Inspection office.

VIOLATION OF LABOUR RIGHTS

The right to work is an essential right of a person. Protection of a person's free right to work is one of the most important social rights. The concept of labour is inseparable from the concept of employment as a means of making a living and surviving financially.

In all democratic countries, the right to labour is protected to the maximum extent by a range of statutory acts where special emphasis is put on the importance of having a stable work station.

Nowadays unemployment is considered a major problem in Georgia. Almost all relative studies indicate that unemployment is the main cause of poverty.

At the same time, many cases concerning the unlawful dismissal of employees at various organizations have been addressed.

(See the incidents of labour rights violations in attachment #12; The case of Nana Lomtadze, the cases of the directors of Gori nurseries/kindergartens, the case of Meskheti field office employees, and the case of Nani Mgebrishvili).

20 RIGHTS OF DISABLED PEOPLE

Wide consideration was given to legal statute of disabled people in the Public Defender's half-year parliamentary report of 2006. A great number of problems in the mentioned field remain unsolved.

In the second half of 2007, therights of disabled people were frequently ignored, which impeded the process of their integration into public life. Disabled people are the most vulnerable part of the society.

As of January 1, 2007, data showed there were 229,410 disabled people registered in Georgia, and by February 1, 2008, only 157,047 were registered. As a result of restricting the list of diseases that qualified a person as disabled the number of disabled people was reduced by 72,363.

The level of disabled people's activity is very low. In fact, they do not take part in the public and political life of the country. Despite the total violation of disabled people's rights, the low incidence of disabled people's addresses to the Public Defender causes anxiety. Today, these people are in complete isolation, and constitute a section separated from the society. A great majority of them are deprived of the possibility of self-expression and a chance to live a full life. They do not consider themselves as a full and valuable member of society. This is because of many factors, such as the absence of a unified national policy with respect to disabled people, as well as the lack of an adapted infrastructure.

1. NATIONAL POLICY WITH REGARD TO DISABLED PEOPLE

A major problem for disabled people is the absence of a coordinated and long-term national policy.

The absence of a common strategic vision and weak inter-departmental coordination create a discriminatory state against the disabled, thus making it impossible for them to fully participate in society. Disabled people, with rare exceptions, are bound to their living place and do not have the ability to move and be socially active.

The Ministry of Labour, Health and Social Security of Georgia by its decree (#102/n) of March 26, 2007, approved national programs for the year 2007 to support the social rehabilitation and medical/social examination of disabled persons, the elderly, and uncared-for children. It is noteworthy that these programs were directed towards preserving the already existing situation, rather then improving it. At

the moment, there is no data available in the country on disabled people, and no data-handling system exists. The real picture in this field is unknown due to the absence of such a database. The programs cannot adequately reflect or meet the demands of the potential beneficiaries.

The starting point for the programs, as stipulated in the above decree should have been April, 2007, until December 31, 2007. In reality, most of the programs started in the summer and fall of 2007. Representatives of the Ministry of Labour, Health and Social Security confirmed the fact that a tender on most of the programs was held only at the beginning of December 2007. That is why it became impossible to completely use the allocated funds, which were returned to the budget. Such a situation, which resulted from organizational carelessness, is inadmissible. The above-mentioned group of people, otherwise devoid of any comfort, should receive the sum allocated to them.

Such programs need more publicity. The people and potential beneficiaries of these programs should be better informed. It is noteworthy that, as disabled people stated in their conversation with us, they get information on certain services or programs mostly by word of mouth, rather than from official sources or government agencies.

The Ministry of Labour, Health and Social Security of Georgia, in cooperation with non-governmental organizations, worked out a concept of social integration of disabled people. This concept represents a unified approach towards the social integration of disabled people, the study of existing problems, and would highlight the main priorities for the government in this field. Based on the given document, a strategy, and within its framework, measures for its implementation, should be developed. According to the concept, distribution of functions and responsibilities between different agencies shall be carried out through the action plan. The concept was considered at the Parliamentary Committee on Health and Social issues and enjoyed a favourable reception.

The above concept reflects four priority directions:

1. Education
2. Employment
3. Creation of an inclusive environment
4. Self-expression (i.e: creative work, sports)

We consider that harmonization of the existing legislation in this sphere should become a priority. The document, which analyses certain problems connected with disabled people, speaks about the inefficiency of legislation and considers this to be one of the major problems.

In the first half of 2007, we talked about the ratification of the Convention of December 13, 2006. A Georgian translation of the convention was made by the Public Defender's Office and was delivered to the Ministry of Labour, Health and Social Security of Georgia and the Ministry of Internal Affairs. According to representatives of the International Law Department of the Ministry of Foreign Affairs, the convention ratification procedure had began and the ministry was awaiting comments on the above convention from the Ministry of Culture, Monument Protection and Sport, as well as from the Ministry of Economic Development.

2. EMPLOYEMENT

According to the law on social protection of disabled people, the government should create conditions for disabled people's self-expression and realization of their creative and working abilities. In a long term prospective, it is financially more advantageous for the State to engage in creating jobs for disabled people, thus involving them in an active lifestyle, rather than providing them with social aid. Though, it is obvious that, in case of

disabled people, the main criterion and stipulation is not of a financial interest, but their social integration and self-confidence.

Disabled people have more obstacles when finding employment than other people. A majority of the disabled are unemployed. At present most of them are occupied in non-governmental organizations and unions that are working with these target groups. The Association of the Blind unites 4,000 disabled members. Only 250 of them are employed, 135 of which work within the association. The lack of jobs is the prevailing reason for this situation, though the creation of jobs for a portion of these people would be possible provided adequate support from the government. Though the program for social rehabilitation of disabled people, the elderly, and uncared-for children for the year 2007, stipulated measures for the employment of the disabled. Unfortunately, according to the Ministry of Labour, Health and Social Security, the employment component of the program did not work. It is necessary that in the shortest term, a competent agency in the sphere of employment is set up and measures for supporting employment of the disabled are worked out.

3. ADJUSTMENT OF ENVIRONMENTAL CONDITIONS AND INFRASTRUCTURE TO THE NEEDS OF DISABLED PEOPLE

Another major obstacle for disabled people is that the infrastructure is not adjusted to their needs. We repeatedly emphasized this problem but nothing has actually changed. The absence of an adequate infrastructure does not allow disabled people to move on their own. There are no ramps, or signboards made in Braille or that are easily understandable for disabled people, at the entrances of organizations.

In fact, it is impossible for a disabled person, sitting in a wheelchair, to use municipal transport, where there are special seats for them but no access since the vehicles are not equipped with special lifts.

Most of the recently constructed buildings are not fitted to the needs of disabled people. The main reason for this is the inefficiency of a legislative mechanism.

According to Article 8 of the Law of Georgia on social protection of disabled people, it is impermissible to plan or build in settled areas, to establish new residential areas, to make design solutions, to construct and reconstruct buildings and facilities, including educational institutions, cultural and entertainment venues, sports and recreational facilities, airports, railways, and to create individual means of communication and information, unless they are adjusted to the needs and demands of disabled people".

As provided for in Article 1781 of the Code of Administrative Offence of Georgia, failing to create conditions for the disabled, as stipulated by the law, is a fineable offence of 300 to 500 GEL. Article 1782 of the same code stipulates a fine of 500 to 800 GEL for disregarding the needs and demands of the disabled when planning and constructing facilities. According to p. 45, Article 239 of Code of Administrative Offence, the report on violation of Articles 178^1 and 178^2 of the same Code shall be drawn up by the respective service of the Ministry of Labour, Health and Social Security.

In spite of these special provisions, this kind of service still does not exist within the Ministry of Labour, Health and Social Welfare. Hence, the above articles are in fact "dead" provisions of the legislation. Regardless, it should be noted that the sanctions provided for by the articles are very mild.

4. INCLUSIVE EDUCATION

Since December 2006, the Ministry of Education has launched an 18-month pilot program at 10 public schools in Tbilisi. The Program is financed jointly by the Ministry of Education and the Government of Norway. The aim of the program is to support students with special needs in their right to receive an education. Nowadays,

the above project has successfully been implemented at public schools # 67, 24, 10,180, 87, 60,181, 21, and 160. Within the framework of the project the following has been fulfilled:

- physical adaptation of the schools – installation of ramps, arranging sanitary units, establishing of a school bus special service;
- further training of teachers; and
- training with parents – it is remarkable that parents of disabled children need to be trained also, frequently they wrongly perceive their own child's state, thus unknowingly preventing their children's integration.

This program is a step forward for integration, though it concerns only 10 schools. We do hope that the national strategy, worked out within the framework of the program will allow for wider and longer-term measures that will cover the whole territory of Georgia. As representatives of the Ministry of Education and Science informed us, similar projects are being planned for implementation in the regions. It is also worth noting, however, that the program did not envisage the implementation of an inclusive education system for children with impaired vision or hearing. Nothing has been done about this for now, and a lack of financing for training a specialist is said to account for this problem.

Inclusive education for children with differing abilities should not be limited to the certain-term programs. The respective Ministry should secure a step-by-step introduction of inclusive education throughout the country. The systematic development of inclusive education and an increase in the number of children included is necessary.

Professional education is one of the most important preconditions for the future self-expression of disabled people, but it is not included in the current process of inclusive education. We deem it appropriate that the ministry work out a certain system in this very direction.

The program launched by the Tbilisi Mayor's Office, which envisages the adjustment of all kindergartens to the needs of disabled children, is an innovation in the field of the inclusive education.

5. ROLE OF MEDIA

The attitude of society towards disabled people varies. Disabled people mention that members of society, for the most part, are friendly to them, though compassion on their side often becomes annoying and offensive, and makes disabled people feel isolated. This is because people are uninformed and ignorant of the problems that disabled people face. Therefore, it is important to make informational and educational arrangements, which on one hand will help disabled people feel like full members of society, and on the other hand will teach the rest of society that they are equal in their rights to the disabled.

The role of media in this regard is very significant. The press and TV provide important leverage in the formation of public opinion, and can play an important role in the mental adaptation of wide sections of the population. The media has enough means and possibilities to transfer the mindset of a society from the physical and psychological helplessness of the disabled, to their intellectual and physical abilities. The information disseminated by mass media often reflects a so-called "frame", within which the society interplays with disabled people. Proper presentation of their problems would help to break stereotypes. Attention should be paid to the proper use of terminology related to the disabled in the media, as well as aspects such as the style of a production, etc.

RECOMMENDATIONS:

- The Ministry of Labour, Health and Social Security should work out subprograms to define the services envisaged in the programs, only after the investigation of the needs of the disabled persons;
- The Ministry of Labour, Health and Social Security should keep the target groups informed on national programs;

- Special service within the Ministry of Labour, Health and Social Security should be set up, or any existing body to be tasked as provided for by p. 45, Article 239 of the Code of Administrative Offence of Georgia should implement the terms of reference provided for by Articles 178' and 178² of the same code;
- The Ministry of Education and Science of Georgia should work out the system and programs that would envisage professional education of the disabled persons; and
- The Ministry of Labour, Health and Social Security should define a competent body within the field of employment, and work out the disabled persons' employment facilitating programs.
- The Public Broadcaster should take appropriate measures to actively and adequately cover the disabled persons' problems.

SOCIAL ASSISTANCE

The Public Defender has not scrutinized a single application referring to the problems of social assistance to children and their families. As it became evident, the pressing problems for socially vulnerable families in Georgia are health care, housing and elementary education.

A new system of social welfare has been introduced in the country that should provide help to families below the poverty line. The Centre for the Rights of Children of the Public Defender's Office studied the problems of families, who for one reason or another could not be covered by this program. Obviously, families in abject poverty should be covered, but it still seems impossible to provide them with the simplest aid.

Local and state authorities can see only one way out, offering to set them into children's homes. The deinstitutionalization program being carried out in Georgia and full mobilization efforts made by the Ministry of Education and Science in this direction, seems to be an extraordinary occurrence.

The deinstitutionalization program implies the return of children living at state institutions to their biological families. It is due to financial hardship that forces families to put their children into children's home.

The aim of the government is to return children from state institutions to their homes. The main goal of the program is to persuade parents to look after their children. There are also foster families participating in this program. These families stand ready to take care of these children for certain remuneration. 92 social workers have been trained and more than 2,400 children have been rendered help within this program.

After 2005, the number of children entering children's homes has decreased by 30 percent. According to Ministry of Education and Science data, today there are 3,800 children at 24-hour childcare institutions, of which 1,287 are children with disabilities. This data notwithstanding, quite some work has been done in the sphere of child welfare. Caserne-type children's homes of the Soviet period are being renovated which has a beneficial impact on a child's development.

The Public Defender's previous reports to the parliament (2005, 2006) describe comprehensively the situation at childcare institutions as the direst in Georgia. Previous reports describe violations at childcare in-

stitutions and point out unbearable living conditions. Not much has improved, and the only positive change has been the tender to fill a post of directors of these institutions, which allowed the recruitment of more qualified personnel.

Families covered by the institutionalization program receive welfare for six months. Hence, there is a risk of returning these children to childcare institutions at the expiration of this period. It is evident that such an attitude to the problem is not enough to overcome it – provisional aid is too small to ease the life of a family not living in poverty.

Families confronted by such problems often apply to the Public Defender's Office. There are a number of applications from homeless families whose children cannot enter into studies. They cannot afford manuals, school supplies, or clothes for their children. However, homelessness is the most pressing problem. Unfortunately, the government, as well as local authorities, do not offer any solution to such problems.

The UN Convention on the Rights of Children is the paramount document to protect the rights of a child. And by agreeing to undertake the obligations of the convention, national governments have committed themselves to adjust their declared principles to the state legislation.

The Law of Georgia on social aid seems not to spell out the help to the child as a single unit. It is not adjusted to the requirements stipulated in the UN Convention.

According to the convention, the participating states should ensure the social security of the child. Regardless of the child's location, there should be criteria to assess his/her living conditions. The standards of solving problems threatening the child's health, education, or welfare in general should be set forth.

Article 26 of the Convention spells out the child's right to social security:

Article 26

1. State parties shall recognize, for every child, the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.
2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

   Georgian legislation should clearly indicate the parameters of a child's social security; all necessary measures that shall be carried out should the above-mentioned needs occur must be spelled out; and the child should be singled out as one of the beneficiaries, otherwise the children's welfare system cannot be considered complete.

The program of overcoming poverty implies that families living below the poverty line should provide financial help (e.g. covering public utilities use taxes). Though a range of families who have children and are living below the poverty line are not covered by this program, the reason being that the criteria for entering the program are rigid. On the other hand, many of these families failed to present all the necessary documentation in order for their family to be considered a beneficiary of the aid. There are families still not aware of the existence of such a program.

The program does not ensure aid to homeless families and their children; one of the criteria for becoming a beneficiary provides for the existence of a fixed abode or a temporary residence. This discrepancy adversely affects the child's living conditions. It is homeless children who are the most vulnerable. It is these children that should be the beneficiaries of the aid, and the UN Convention obliges the state to be responsible.

It is clear that the program fails to help the families where children, due to social helplessness, are devoid of the opportunity of physical, mental, spiritual and social development. The above-mentioned system is not well established, since it cannot ensure the basic rights of a child.

In Article 27 of the UN Convention, it is spelled out that "state parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development".

1. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
2. State parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programs, particularly with regard to nutrition, clothing and housing.
3. State parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, State parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements"

   The above implies that in case the parents of a child cannot ensure appropriate living standards for the child, then the State should undertake the responsibility to provide help. In our country, the estimates are not calculated and no aid is set aside.

ALLOWANCES FOR DISABLED CHILDREN

The program mentioned in the previous chapter covers, though scantly, children from socially indigent families. Disabled children from zero to 18 years are granted an allowance, though very minor (22 GEL). From 2008, the allowances for different categories will be cancelled and there will be only one indicator considered – living below poverty line. This innovation should be commended, as it will allow for the even distribution of expenses.

Though, as it has already been mentioned, the criteria for entering the program are rigid, which means that many disabled children may not be covered; however, the program is for socially unprotected families and children living in poverty. There is another discrepancy in the work of the State structures. On one hand, there is an attempt to take care of disabled children by a deinstitutionalization program which is very difficult and expensive for the State. On the other hand, needy parents, who, with little means, try to rear their children at home are deprived of the State aid they enjoyed before.

The above-mentioned shows that the State should take better care of the child's social problems. Children's welfare should be considered separately; this is the only way to set up the valuable system of childcare. Child protection for all children, set by State bodies should take place. Coordinated work of the bodies, related to the child, needs to be improved in order to excise systematic problems.

DISCRIMINATION

The problem of street children, and their social rehabilitation and reintegration, remains unsolved in Georgia.

All the reports of the Public Defender give consideration to the violations of rights to children. They also mention that street children are neglected by the State.

The Ministry of Education and Science has started the implementation of relief programs for uncared-for children, including deinstitutionalization and prevention of child abandonment programs. The programs, though, do not cover children, who due to their poverty and economic problems, end up in the street.

The State fails to face the reality of the existing problem of begging and stray children in the streets. There are a number of NGOs working with such children, and they need their utmost efforts to gain the confidence of these street children. It is difficult to make these children interested in social activities, which would facilitate their further social integration.

Though unconceivable, there are people who not only hinder the process of solving the problem of the street children, but, on the contrary, insult, humiliate and persecute them since they are different from other children. The below example illustrates that there are people in our society who cannot tolerate the fact that people different from them exist.

In 2006, the owner of the Khidashlebi Restaurant in the Mtskheta region refused to let disabled children enter the restaurant for the reason that they were disabled. A similar event took place at the end of 2007.

Another example of this humiliation and discrimination happened on 28 December at the Rustaveli Cinema, where the local administration kicked out the children who had bought tickets as members of the administration uttered insulting phrases such as, "they are gipsies, thieves, strays, and they stink".

The executive director of the cinema could not hide his aggression towards street children in his conversation with the Public Defender either. He did his best to make the children social outcasts. The factual background of the event is as follows:

On 28 December 2007, Nana Iashvili, President of the NGO, Child and Environment, called the Public Defender to inform him that her staff members intended to take 14 uncared-for children to see an animation film at the Rustaveli Cinema. They bought tickets but the administration did not allow them admission. The security staff and the executive director, David Bezhitashvili, explained to the NGO staff that "such children would disturb others and hence could not be admitted".

Bezhitashvili categorically demanded from the teachers that they leave the cinema, that the cinema is his property and he will admit people according to his own will.

Even after the interference of the Public Defender's Centre for the Rights of Children personnel, the executive director did not change his mind, refusing to give any explanation. A statement of the case, with a record of Bezhitashvili's position was drawn up. Bezhitashvili added that should the administration be informed about the NGO's plans beforehand they would arrange a special performance for "such children", where other spectators would not be present.

The above fact is a glaring example of child discrimination. The teachers stated that these children, because of extreme poverty, are deprived of the sincere affection and family conditions necessary for normal development and for each of them, going to the cinema was a special event as it was the first time they were ever given such a chance. This was discrimination on the basis of ethnic and social attributes. The children fell victim to inhumane and disgracing treatment by the cinema's administration.

AVCHALA UNDERAGE PENITENTIARY INSTITUTION

On 13 August, at about 10:00 p.m., the head of the Public Defender's Centre for the Rights of Children was informed about the riot at the Avchala underage institution of the penitentiary department. By the moment

they arrived there, the injured were being transferred to a patient care unit. The Special Task Detachment was deployed beyond the courtyard. At the gate, the parents of the convicts were trying to understand what was going on and were trying to learn from local officials about their children's state. Ambulance vehicles started transporting children to the Gudushauri hospital and patient care units for convicts. This further agitated the parents.

According to the convicts, on the morning of 14 August, the head of the penitentiary department, along with other officials of the same department, visited the Avchala underage institution. They selected from the marshalled underage convicts the ones who would be transferred to the Rustavi high security settlement. According to the convicts, part of them were selected on the basis of their appearance. As a result, a total of 107 underage convicts were transferred to the above-mentioned settlement. The Public Defender's Office representatives met with the convicts of whom 16 were under 16 years of age:

1.	D. Beka	–	14 years
2.	G. Tamaz	–	15 years
3.	Ch. Zura	–	15 years
4.	Kh. Vano	–	15 years
5.	D. Gagi	–	15 years
6.	A. Aleko	–	15 years
7.	O. Dato	–	15 years
8.	K. Lasha	–	15 years
9.	Ts. Rezo	–	15 years

Four out of the above listed underage convicts – G. Tamaz, Ch. Zura, O. Dato and K. Lasha – were returned to the Avchala institution. The others were gradually transferred as well. On 27 August, the Public Defender's authorized representatives met with Rezo Ts. at the #2 Rustavi high security settlement.

According to p. 12, Article 26 of the Ministry of Justice Order No. 358, "on the approval of the routine inspection of underage institutions" it is forbidden to transfer convicts younger than 16 years of age to prison cell type boxes. With regard to each specific convict, the Public Defender recommended the head of the Penitentiary Department to investigate each case and take appropriate measures within the law.

On 14 August, Public Defender's representatives and Maka Jishkariani, president of the NGO, Empathy, met with 12 underage convicts at the patient care units and talked to them. NGO doctors and psychiatrists examined the children.

All 12 underage gave almost similar versions about the 13 August events. They stated that the riot started upon the arrival of the special task detachment. Children started to injure themselves; they stated that the reason for advancing the special task detachment was unknown to them. As for the reason for self-injuring, they all mentioned the fear factor – that was the only way to defend themselves from violence. They all denied any fact of verbal arguing before the advancement of the special task detachment. They also mentioned that after the evening inspection at the Avchala settlement they all went up to their rooms and soon electricity was switched off; they then saw vehicles, some of them belonging to the head of the penitentiary department and his officers, in the courtyard and the special task detachment deployed at the checkpoint.

At the sight of masked people, the children became panic-stricken; in their talk with the Public Defender's representatives most of them recalled facts of violence and hard beating by the special task force and security officers when serving sentences at other prisons. Many of them knew from personal experience that in such cases the best defence would be self-injury. The underage convicts injured themselves with splinters of glass scattered all over the courtyard. One of them declared that he himself smashed the glass; two convicts injured themselves with razors.

Gocha A. told the Public Defender's representatives and Maka Jishkariani that he had not been beaten at the #6 Rustavi prison. Khvicha Kh. stated that he injured himself out of fear as he expected use of force by the special task detachment. According to Tariel V., before he was transferred to the Avchala settlement he served his sentence at Kutaisi #2 prison where he was never beaten by prison administration officers. Therefore, he was frightened to see the special task force people and cut his hands with splinters of glass.

Lasha G., one of the underage convicts transferred to the Rustavi #2 common and high security prison, recalled that during the 13 August riot, his cellmate Edgar V. afraid and panic-stricken, fainted in an epileptic coma. Edgar V. confirmed that fact and added that he was beaten by special task officers when serving his sentence at #5 prison for females and underage persons. In October 2006, he fainted when being beaten.

The underage convicts state that the best way out for them was self-injury; this was more bearable than beatings by special task officers.

The interpretation of the events before the advancement of special task officers from the director of the Avchala underage institution varies from that of the convicts involved in the incident. In his explanation to the Public Defender's representatives, 17-year-old convict, Otar Kh., states that on 13 August he squabbled with the institution officer, Lasha Tkemaladze. According to Otar, Tkemaladze is known for his roughness. Otar recalled in detail the 13 August events. He said that for quite some time there was a water supply problem at the Avchala institution, and two days prior to the 13 August events there was no water at all. The very day that the water-carrier came and the pool in the yard was filled, many convicts were in the yard, but Tkemaladze ordered and shouted at the convicts to put away the hose. The children found it difficult to do so quickly and Tkemaladze continued to shout at them. According to Otar, Tkemaladze perceived this as the children's' oppression and remonstrated against it. He explained to Tkemaladze that the children did not know how to roll the hose. Tkemaladze did not stand the remonstration and insulted him; Otar responded in kind. In about one hour after the above incident, Otar approached Tkemaladze sitting in the courtyard to ask him to explain his behaviour. Otar categorically denies the allegations of urging the children to group together in their rooms.

The director of the underage institution, Ramaz Kakushadze, in his explanation given to the Public Defender, stated that at about 20:30 hours on 13 August, during the evening inspection, convict Otar assaulted Officer Tkemaladze verbally and physically, striking him in the head and face. The director notes that convicts Avtandil G. and Nodar K. were with Otar at that moment and they threatened Tkemaladze with punishment should he dare to report them to the administration. After that, the convicts went up to their rooms and called other victims to disobey security requirements and make noise.

The director also indicates in his explanation that Tkemaladze showed the proper patience and restraint obligatory for a public worker, and reported the incident to Deputy Director D. Kharabadze. Kharabadze called the director, who reported the event to the head of the penitentiary department who, accompanied by his officers, went to the Avchala underage institution to investigate immediately.

The director in his explanation does not mention the advent of the special task detachment. He only indicates that by the time they arrived there was noise, loud insulting, yelling, and the smashing of windows by the underage convicts. Some of them injured themselves with splinters of glass, and others were injured through carelessness.

Interviews with two underage convicts – Lasha J. and Mindia M. – were televised. They stated that the cause of the riot was the conflict between the convicts and the following physical assault of the security officers. Both convicts indicated that before their meeting with the journalist, the head of the Penitentiary Department, Bacho Akhalaia, talked to them, asked for their names and the interview took place in the security department room. In his explanatory paper, Lasha J. mentions that he did not hear any squabble or swearing, and knows

about the incident from what others have said, though he does not remember particularly from whom. And Mindia M. says that he saw the conflict between Otar and Tkemaladze and heard Otar swearing at Tkemaladze, though is at a loss regarding the physical assault.

With regard to the events at the Avchala underage institution, a criminal investigation is underway by the Ministry of Justice penitentiary department investigation service as stipulated in part one, Article 378 of the Criminal Code of Georgia. By 22 August, no specific convicts were charged with crimes.

It was impossible to see the personal files of the convicts who were transferred to the Rustavi #2 prison, though according to Ramaz Kakushadze he had sent the files to the prison on 15 August. And according to the director of the Rustavi #2 prison, neither on 15 August nor on the next were the files received.

TORTURE OF INMATES OF MARTKOPI INSTITUTION

The Public Defender studied the case of torture of the inmates at the Martkopi orphan and uncared-for children's institution.

On 17 October 2007, a court person of the public law and the director of the Martkopi orphan and uncared-for children's institution, Tekle Peradze, addressed the Public Defender to inform him about the violation of the rights at the institution by Rustavi police officers. In response to this appeal the Public Defender representatives on 18 and 19 October took evidence from the institution inmates and teachers.

On 16 October 2007, two young girls and a man arrived at the Martkopi orphan and uncared-for children's institution in an Opel car. They inquired about A.K., found him and forcefully put him in the boot. At the same time, theabove-mentioned girls (one of whom was tall with curly hair and the other had short, tied hair) went up to the second floor, found Kh. K, introduced themselves as social workers, forcefully took him out of the building, pushed him into the same car and headed towards the village school. At this moment, inmates Theona Kh., Gocha K., Th. U. and Th. M. were returning from school. The above-mentioned car reached them, the captors pushed Theona Kh. and Gocha K. into the car and continued towards the exit from Martkopi. The children were seated in four different cars. After that, the strangers returned to the same Opel car, forcefully dragged Th. U. from the canteen and left the site.

At the village exit, they rearranged the children in the cars, A. K. was taken towards Rustavi and Th. U., along with Theona Kh. was taken to Tbilisi. On the way to Tbilisi they urged Theona Kh. to call the former inmate of Martkopi institution, L. Nazarev, to make an appointment at the Didube Metro station. Nazaraev kept the appointment and there he was arrested by police officers. Nazaraev, in turn, was urged to make an appointment with R. Kh. The latter also came to the place and was also arrested and taken to the Rustavi police station. Inmates of the uncared-for children's institution G. K., Kh. K. and A. K. suffered indignity, as well as physical and psychological violence, then were interrogated after midnight and were returned to the Martkopi institution. Late after midnight, Theona Kh. and Th. U. were also returned to the boarding school. The latter were not even questioned as witnesses.

On 17 October, the chief investigator of the Kvemo Kartli Police Department, G. Ustarashvili, in gross violation of the requirements of the Criminal Code of Georgia detained as suspects L. N. at 02:50 hours, and Ruslan Hadzhimuratov at 03:20 hours, interrogated them and put them in the Gardabani temporary isolation cell. On 18 October, the public prosecutor of the Kvemo Kartli regional office, Z. Mantkava, passed a resolution on the release of the suspects from their place of detention. The resolution reads: "During the investigation it was not proven that L. N. and R. Kh. committed murder and there is no cumulative evidence for reasonable suspicion of their guilty participation in the crime". On 18 October, on the basis of the public prosecutor's resolution, the suspects were released.

Teachers at the Martkopi institution witnessed forceful apprehension and humiliation of the inmates. The two girls and man assaulted the teachers and threatened them with "putting them in the same place next to their inmates" in case of resistance, or making the incident public. They justified their action on the fact of the killing of a young man in the village.

Other witnesses to this incident are Th. M., A. C., T. U., as well as teachers Nino Gugunashvili, Shorena Bochorishvili, Nino Adikashvili, Gulchina Gordashvili and the cook, Nino Tsofurashvili. As for the detention of L. N. and R. Kh. in Tbilisi, it can be proven by evidence given by the detainees as well as by Th. U. and Theona Kh.

From the explanations it is clear that former and present inmates of the Martkopi orphan and uncared-for children's institution were arrested by Kvemo Kartli regional policemen, who in violation of Georgian legislation, used insulting and degrading methods. In addition, the papers obtained by the Public Defender prove the beating and assaulting of the detainees at the Rustavi Police Station.

Proceeding from the above, theactions of law enforcers imply signs of the offence stipulated in Articles 147 and 144³ of Criminal Code of Georgia.

Even if the policemen had reasonable suspicion that their detainees could put some light on the circumstances of the murder in the village, they were obliged to observe the regulations set forth by Georgian legislation with regard to the rights and responsibilities of underage persons. In particular, Article 646 of the Criminal Code of Georgia, which provides that "an underage person shall be summoned to the investigator, public prosecutor or court through their parents or other legal representatives, or else through the administration of the institution where the underage is brought up or studies."

Instead of applying to the orphanage administration on the possible interrogation of their inmates, Kvemo Kartli police officers assaulted the teachers and unduly took the inmates to the police station where M. Khidasheli, teacher of the Rustavi #2 Public School was allowed to be present at A. K.'s interrogation. Later the evidence given in his presence was destroyed, which contained signs of the offence stipulated in Article 368 of Criminal Code of Georgia.

By the actions of law enforcers, part 2, Article 306 of Criminal Code of Georgia, which provides that "the interrogation of an underage person shall be carried out in the presence of a teacher or a legal representative" was violated.

Alongside this unlawful custodial restraint, A. K. and Kh. K. underwent torture, beating, and intimidation by the officials in order to obtain the avowal of guilt of murder or any other information related to above-mentioned crime. These actions violate Articles 147, 144' and 144³ of the Criminal Code of Georgia.

The Public Defender sent the documents at his disposal to the Prosecutor General of Georgia, Ministry of Education and Science, and to the head of the Human Rights Department of the Office of the Prosecutor General for further response. As for A. K. and L. N., who fell victim to inhumane and humiliating treatment, they were examined by psychiatrist Mariam Jishkariani, president of the Empathy centre, an NGO.

22 GENDER EQUALITY ISSUES

On 26 October 2007, a 2007 to 2009 action plan was approved by Georgian Government Resolution #539. The plan envisages the creation of laws for gender equality, the elimination of legislative shortcomings, and the promotion of gender equality and the raising of awareness in this sphere.

On 26 September 2007, the Georgian government passed resolution #211, according to which an interdepartmental committee was set up to work out the gender equality policy. According to the resolution, the committee shall secure:

"a) Coordination of the State policy in this sphere and monitor the implementation of the Gender Equality Action Plan, and the consideration of gender equality principles by the ministries in their policy and programs; and

b) the administration of gender equality related problems (such as trafficking, family violence, etc.), the study of the present situation, elaboration of the State policy and monitoring of action programs implemented by the government in this sphere".

Adoption of the action plan, and setting up the committee, is, undoubtedly, a progressive move on the side of the government, but there are shortcomings in the plan that require more consideration and there is room for improvement. First of all, no changes are envisaged in such important fields as economics, health care and politics. Besides, the action plan provides for the "elimination of gender asymmetry" in the legislation. In our opinion the wording, "ensuring gender equality", would be a more acceptable wording as it implies the introduction of gender equality oriented laws rather than amendments to the existing ones.

On 18 January 2008, the public Defender demanded from the State Minister on Reforms Coordination, Kakha Bendukidze, then responsible for the gender mainstreaming of the policy, the information on implementation of the action plan provisions on the activities of the Interdepartmental Committee and the arrangements taken up. After the changes in the government on 6 February 2008, the same request was sent to the Prime Minister. We received no reply in the first case, and the Prime Minister's response letter dated 15 February 2008, says that Bendukidze had been tasked to take up the issue. It should be noted that nothing has been said in the abovementioned plan about the appointment of women to decision-making posts.

2007

Though women account for the majority of those adversely affected by war, their knowledge, experience, and qualification is not put to good use by official structures dealing with the peaceful settlement of conflicts. At the same time, they are quite successful in confidence building and peace processes through people's diplomacy. Women have gained enough experience to strike at the root of problems in different formats of peaceful initiatives.

Peacemaking is not a privilege of one or several groups. Peace is related to the collective security hence, in a democratic state, all groups of society, including women, should posses the leverage to effectively influence the processes.

This approach implies full use of female resources in conflict resolution and sustainable peace as required by social justice, and pledges taken without reservation by the Georgian government as stipulated in the UN Security Council resolution No. 1325 and the Convention on action against discrimination.

It is the UN Security Council resolution No. 1325 that reflects the importance of women's equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution.

The importance is to give consideration to all problematic issues, to discuss on national and international levels the arrangements to guarantee women's full participation in the peace process, maintenance and promotion of peace and security.

Owing to structural problems, women in Georgia do not participate in official negotiations. In particular, a very low representation of women at decision-making posts prevents them from pursuing good offices in the negotiation process. It is important that the problems of women as one of the most vulnerable and interested parties are addressed during official negotiations on the peaceful resolution of conflicts.

The national peace network, Unity of Women for Peace, founded under the support of the UN women's foundation, maintains active contact with the Public Defender's Office and unionizes women leaders all over Georgia. Among them are NGO representatives, community leaders, teachers, representatives of IDP communities, etc. All these women are concerned with the peaceful resolution of conflicts on the territory of Georgia, the formation of a non-violent mentality and positive peace, as well as an increase in the role of women in the peace process.

The above network worked out the concept of women's participation in the peace process in November 2007, and a package of recommendations on the peaceful settlement of the conflicts. These documents were introduced to the State Minister on Conflict Resolution Issues.

The above documents provide the following:

- Make special arrangements, including legislative ones, to insure women's participation in the peace process;
- Look into the official negotiation format and ensure the participation of women in civil society;
- In order to secure consistency and coordination of the peace process, create a mechanism responsible for that. This would synchronize the State policy in this sphere, as well as facilitate the participation of civil society in the peace process and the monitoring of it;
- Good offices for women already in governmental posts shall be required;
- Note should be taken of all international documents and tests calling upon participating states to ensure the full participation of women in conflict prevention and peace building.

23 VIOLENCE AGAINST WOMEN IN GEORGIA

Violence affects the lives of millions throughout the history of humankind. Most often women, children and elderly people fall victim to violence. Violence against women manifests the inequality of rights of men and women. Violence takes a variety of forms like aggression, cruelty, abuse, constraint, encroachment, torture, threat, etc. Violence suppresses freedom, infringes on personal dignity and liberty, and threatens one's security.

Gender imbalance all over the world and gender violence, as a rule against women, is considered to be an interesting and pervasive phenomenon. It is characteristic to all socio-economic and educational classes. It cuts across cultural and religious barriers and impedes women from participating fully in society.

Poverty and the disturbance of social welfare and health care mechanisms, together with other problems, provoke different forms of violence.

Of all personal violence, rape is the most dangerous and offensive crime. Women usually are at the highest risk – offending their dignity and human worth, and violating their sexual freedom is the target of such violence.

The problem of rape in Georgia is taboo, especially when it concerns minors. The belief is that the Georgian mentality does not allow for these cases and so Georgians cannot conceive of minors being victims of sexual violence. Besides, the victim of such an act seldom goes to the law.

Lack of appropriate rehabilitation centres aggravates this problem, and policemen and investigators do not have the necessary evidence to establish guilt in case of rape, and they do not have the appropriate skills to treat the victim.

According to the Ministry of Interior's official statistics, there were 180 rapes and attempts to rape in 2006, 15 of them of minors; and in 2007, there were 258 cases, 29 of them of minors. Below are the figures of registered rapes and attempts in 2006 and 2007 provided by Ministry of Interior:

2007

RAPE AND ATTEMPT OF RAPE

Regions	2006		1st half of 2007		2nd half of 2007	
	women	minor	women	minor	women	minor
Tbilisi	64	12	36	4	49	11
Kvemo Kartli	10	-	5	1	12	2
Shida Kartli	9	-	4	-	15	-
Mtskheta-Mtianeti	11	-	-	-	1	-
Kakheti	17	1	8	1	13	-
Samtskhe-Javakheti	5	-	10	2	15	3
Imereti	18	-	10	2	15	3
Samegrelo-Zemo Svaneti	18	1	6	1	13	3
Racha-Lechkhumi, Kvemo Svaneti	-	-	-	-	-	-
Guria	1					
Ajara	10	1	8	-	20	1
Abkhazia	2	-	1	-	-	-
Total	**165**	**15**	**83**	**9**	**146**	**20**

Though women mostly fear unknown violators, the cases studied prove that the victim knew the violator or even had close relations with them. Cases of rape frequently are done with the aim of marriage.

There still exists the tradition of bride kidnapping in Georgia, which itself violates the right of a woman to make her choice. Kidnapping is a gross violation of human rights, but when it comes to bride kidnapping, it is not interpreted as such. The families enter into negotiation, agree on concealing the incident, and carry on with the forced marriage. Here we have multiple offences of kidnapping, rape and forced marriage. Unfortunately, our society is excessively tolerant of this kind of crime, which makes boys believe in their impunity.

According to official statistics:

- In 2004, 59 cases of deprivation of liberty with the aim of marriage; and
- In 2005, 283 cases of deprivation of liberty with the aim of marriage.

Below are the statistics provided by the Ministry of Interior on the deprivation of liberty with the aim of marriage:

ILLEGAL DEPRIVATION OF LIBERTY (WITH THE AIM OF MARRIAGE)

Regions	2006		1st half of 2007		2nd half of 2007	
	women	minor	women	minor	women	minor
Tbilisi	143	22	85	20	42	22
Kvemo Kartli	33	20	3	1	11	3
Shida Kartli	13	1	4	-	10	2
Mtskheta-Mtianeti	15	5	1	-	7	2
Kakheti	6	2	5	1	9	4
Samtskhe-Javakheti	16	4	2	-	8	-
Imereti	33	11	5	1	11	4
Samegrelo-Zemo Svaneti	31	11	4	-	11	2
Racha	1	-	-	-	-	-
Guria	7	-	2	-	3	2
Ajara	28	1	7	-	8	8
Abkhazia	-	-	-	-	-	-
Total	**326**	**77**	**118**	**23**	**120**	**43**

Right here is the data of the Office of the Prosecutor General:

#	Deprivation of liberty with the aim of marriage (kidnapping) Article 143 of Criminal Code of Georgia	2006	Jan. – Oct. 2007
1.	Total number of cases under investigation	609	537
2.	Total number of people who filed suit against perpetrator	200	148
3.	Preliminary investigation over, prosecution	77	89
4.	Cases finished with plea bargain	30	23
5.	Convictions	69	35
6.	Verdicts of "not guilty"	0	1
7.	Release of minor from criminal liability due to reconciliation with the victim	0	0

According to official statistics, in most cases, the board of Criminal Cases of the Tbilisi City Court brings in a verdict of a suspended sentence or fine. This is the result of a conciliatory attitude of both the society and law enforcement bodies towards the institute of bride kidnapping. Unfortunately, the latter is not considered a serious crime.

A study of cases of violence against women in Georgia revealed that violence against women in the family occurs quite often, but it has long been considered a private matter by bystanders. However, such private matters have a tendency to become psychologically egregious and need effective measures taken by the government.

The law on elimination of domestic violence and protection and help of victims of domestic violence is very important, but it is not enough to solve the existing problem. The State should ensure that the law, once adopted, does not go unenforced.

It was only on July 30, 2007, that an action plan by the Georgian government for 2007 to 2008 was approved. It should be noted that the plan needs further improvement, as in some cases the impression is that it is general and does not provide for specific activities. Besides, it does not provide the building of shelters and rehabilitation centres from 1 January 2008, which means that not only is the law not observed, but there is also no political will to solve the problem.

The Public Defender, in his half-year parliamentary report of 2007, addressed the government to undertake the arrangement for the implementation of p. VI, Article 8 of the law on the elimination of domestic violence and protection and help of victims of domestic violence. The government is responsible for creating community support services for the victims of domestic violence, as well as to provide counselling and rehabilitation for perpetrators. To this effect, the government should have distributed functions among the ministries with regard to specific provisions of the Plan, which has not been done to date.

The Public Defender's recommendation on introducing changes to this law, as well as to the related legislative enactments that would provide for the administrative responsibility for nonfeasance of the binding warrant, has not been carried out. Shortcomings in the existing legislation prevent the implementation of court decisions providing for the supervision of the fulfilment of the protective and binding warrants issued.

On 9 February 2007, the Georgian Ministry of Health and Social Welfare passed order #43/o to set up a working group on the problems of elimination of domestic violence, protection and help to victims of domestic violence. This group worked out a conception of community support services and the training of social workers. The conception provides for the necessary arrangements for setting up an institute for social workers, creating a database, study the causes for domestic conflicts, working out rehabilitation policies, etc. Unfortunately, the conception has not been approved as of yet.

According to the ministry, a draft order on the minimum standards for creating shelters for the victims of domestic violence and rehabilitation centres for perpetrators has been drafted and sent out to the appropriate ministries for co-ordination. The order will be passed and entered into force after the legal approval of the Ministry of Justice.

According to Ministry of Interior statistics, police patrols have uncovered 3,254 domestic conflicts in 2005; 3,665 in 2006; 1,103 in the first half of 2007; and 1,285 in the second half of 2007. 219 binding warrants have been issued.

PATROL POLICE DATA FOR THE FIRST HALF OF 2007:

	VII		VIII		IX		X		XI		XII		TOTAL	
	Dom. Conflict	Binding warrant	Dom. Conflict	Binding warrant	Dom. Conflict	Binding warrant	Dom. Conflict	Binding warrant	Dom. Conflict	Binding warrant	Dom. Conflict	Binding warrant	Dom. Conflict	Binding warrant
Tbilisi	57	45	86	24	87	20	144	25	128	22	149	19	651	155
Imereti	11	-	8	1	14	-	10	-	10	-	12	-	65	1
Kakheti	1	-	-	-	12	-	2	-	-	-	10	2	30	2
Shida Kartli	-	3	-	7	-	12	3	6	2	3	2	-	7	31
Kvemo Kartli	50	2	55	-	65	-	48	-	64	-	63	-	345	2
Ajara	13	5	41	7	28	7	3	1	24	-	23	3	132	23
Samegrelo-Zemo Svaneti	7	-	2	4	14	1	8	-	3	-	21	-	55	5
Total	**139**	**55**	**192**	**43**	**220**	**40**	**218**	**32**	**236**	**25**	**280**	**24**	**1285**	**219**

In second half of 2007, 18 applications for the issuing of protecting warrants arrived to the board on administrative cases. In 12 of those cases, warrants were issued. In two cases, the victims were male; in all other cases, the victims were female, two of whom were minors. Eight protecting warrants were issued in order to stop physical and psychological violence; four were issued to stop psychological violence.

As for the other six applications, two of them were not met due to the refusal of the victim, three applications were rejected, two were dropped, and one of them was due to the death of the perpetrator. One warrant was appealed by the victim but was not allowed. Out of the 12 protecting warrants, the court approved six binding warrants.

In the second half of 2007, 156 petitions were submitted for the approval of binding warrants – 148 were fully met, four of them were met partially, 13 applications were rejected, and one was dropped. Three binding warrants were appealed by the perpetrators, of which two were not met, and one was met partially.

According to court statistics, binding warrants have been approved in order to stop the violence by a family member (perpetrator). In 151 cases, the victim was another (female) member of the family; in five cases the victim was a man. Besides those, three binding warrants were approved by the court on the fact of violence by a family member against a woman who was a minor.

Issuance and approval of all the above protecting and binding warrants was crucial in order to stop the kinds of violence described by the law. In a range of cases, we see two or more kinds of violence, psychological and physical being the dominant kinds.

The statistics of different violence when the court approved binding/preventing warrants are as follows:

- Physical – 12
- Psychological – 66
- Physical and psychological – 75
- Economic, physical and psychological – 4
- Psychological and economic – 3
- Physical and psychological compelling – 3
- Physical, psychological, and economic compelling – 1
- Psychological compelling – 2
- Physical, psychological, and sexual – 1

24 PROBLEM OF TRAFFICKING IN GEORGIA

The 2007-2008 Georgia Action Plan for fighting trafficking was approved on 25 January 2007. It is aimed at three key problems – the prevention of trafficking, protection of victims of trafficking, and criminal prosecution of perpetrators.

It should be noted that the criteria for the assessment of its implementation has been worked out by international and national NGOs and independent experts.

The Office of the Prosecutor General coordinated the activities against trafficking in the second half of 2007, in compliance with the national referral mechanism. Good cooperation between the different agencies facilitated the perfection of the referral mechanism.

Amendments and changes to the Law of Georgia in fighting trafficking in order to legalize procedures protecting minor and under-age victims of trafficking have been introduced.

In particular, the draft law provides for adding an article on the social and legal protection, aid and rehabilitation of minor and under-age victims of trafficking. Within the initiation of these law proceedings, the draft has been presented to the Parliament and at the moment is undergoing the approval of different agencies.

During the reporting period, Georgian legislation against child pornography was examined and a package of legal changes was drafted. Primary discussions on it took place at the Office of the Prosecutor General in October 2007.

Recommendations on the legal and political aspects of effectively fighting trafficking are being worked out in cooperation with international and national experts.

The Office of the Prosecutor General is facilitating voluntary and secure repatriation and reintegration of victims of trafficking. In October 2007, its efforts resulted in the secure repatriation of two victims of trafficking, one of whom was a Kyrgyz citizen, and the other a citizen of the Russian Federation. The Prosecutor's Office investigated the facts related to their trafficking, detained the traffickers, and initiated their criminal prosecution. The Georgian Ministry of Foreign Affairs and Georgian National Foundation for Protection and Aid to the Victims of Trafficking were actively involved in the repatriation process. Secure return was arranged in close cooperation with the International Organization for Migration (IOM).

A rehabilitation and social reintegration strategy for victims of trafficking was worked out and approved at the Coordination Council sitting on 19 July 2007. The Co-

ordination Council appealed to non-governmental and international organizations to participate in the effective implementation of the above document.

Attached to the document approved by the Coordination Council on Reintegration Strategy was a questionnaire for an individual reintegration plan for the filling out by a social worker and the victim. Alongside with the information on reintegration components and the service proprietor, the questionnaire stipulates the indication of the victim's code name, the date the social worker was assigned, as well as other information important for the efficient reintegration of the victim.

At the same time, in order to facilitate coordinated activities, a working version of the list of rehabilitation services for the victims of trafficking was drafted. It is being updated by the National Foundation for Protection and Aid to the Victims of Trafficking. The list includes updates of organizations providing rehabilitation and reintegration services, the services they provide, terms of services, etc.

The strategy is aimed at the facilitation of the full implementation of the rehabilitation and reintegration of the victims of trafficking, in compliance with their individual needs, taking into account the availability of resources.

Rehabilitation of the victims of trafficking in Georgia is carried out only on the basis of written consent by the victim and official Georgian authorized organizations in close cooperation with non-governmental and international organizations.

The rehabilitation and reintegration strategy covers victims of trafficking whether they are put in shelters (Batumi and Tbilisi opened shelters in September 2007), or help the investigation.

The strategy is based on the Georgian law on fighting human trafficking, according to which "the State contributes to the escape trafficked people, protection of human rights of the victims of trafficking, their help and rehabilitation, and takes up the arrangements against human trafficking" (Article 4.2).

It should be mentioned that the Georgian Ministry of Foreign Affairs is negotiating signing an agreement on readmission. This often creates necessary prerequisites for signing bilateral agreements with other countries on labour rights and legal employment. On 6 September 2007, a readmission agreement was signed between the Federal Republic of Germany and Georgia. Bilateral negotiations have been carried out with Latvia, Belgium, the Netherlands, Luxemburg, Austria, France and Estonia. Talks on readmission agreement are continuing with Lithuania, the Czech Republic, Sweden and other EU countries.

One of the methods to prevent human trafficking is education to sensitize the public about the essence of the crime and methods of fighting it.

Activities in this matter were quite diverse, and included the preparation of video clips, radio programs and printed materials, public discussions were conducted at educational institutions of Georgia, and trainings were organized for special target groups, consisting of students and teachers, prosecutors, Ministry of Internal Affairs investigators, border police staff, judges, Ministry of Health personnel and Trade Union representatives. In addition, the Office of the Prosecutor General set up a separate target group consisting of military personnel.

On 8 May 2007, an amendment was introduced into the Criminal Code of Georgia. According to the new (143^3) article, customers of the victims of trafficking shall be punishable. In order to educate the public on legal innovations and to facilitate preventive measures, a video clip was recorded. It provided information on the legal punishment of customers of the victims of trafficking and it called upon everyone in possession of knowl-

edge on possible incidents of trafficking to inform the National Foundation, Office of the Prosecutor General or Ministry of Internal Affairs via their hot lines.

The video clip emphasises that not only the trafficker, but any person abusing the victims' services, is committing a crime.

We would like to highlight the importance of the meetings with public school teachers, students and high school pupils in the Kvemo Kartli region with an ethnic minority population, where the interest was very high on the protection and aid to the victims of trafficking. The importance of raising trafficking awareness among ethnic minorities and representatives of different confessions should be stressed.

In order to acquaint the public on the newest methods of fighting trafficking special trainings were held for target groups consisting of border guards, military and consular personnel, district police officers, as well as Ministry of Health and trade unions' representatives.

Small-size booklets for soldiers serving abroad were handed out. The booklet contained the information on the crime of trafficking, as well as contact telephone numbers in case of discovering alleged events of trafficking.

At the initiative of the National Foundation for Protection and Aid to the Victims of Trafficking, with the help of appropriate international and local agencies and with OSCE support, a coordination group for the study of trafficking-related issues was set up in June 2007.

The aim of the group is to coordinate trafficking-related research studies in order to avoid overlap and ensure conformity of different research initiatives. This is one of the constituents of the 2007 to 2008 action plan for fighting human trafficking.

Special trainings for prosecutors, lawyers, the Ministry of Internal Affairs special operation department workers, and border police officers were carried out in order to familiarize them with the specificities of the crime of human trafficking and to fight it. New knowledge in this sphere should help law enforcement officials in the successful fighting of the crime, thus enabling Georgia to observe minimum international standards.

During the reporting period, the standing group with the Coordination Council granted the status of victims of trafficking to two people. Five people were at the Foundation shelter, among them were two children. In December 2007, two inmates of the shelter were repatriated to the countries of their origin.

In addition, the National Foundation for Protection and Aid to the Victims of Trafficking opened its second shelter in Tbilisi, where there are four victims, among them is one child.

According to the Office of the Prosecutor General, in 2007, criminal investigations on 38 cases of trafficking started, 17 of them in the second half of 2007. In 2007, court hearings of 18 criminal cases took place, 13 of them in the second half of 2007. In the same year, the imprisonment sentence was passed on 15 criminal cases of trafficking, five of them in the second half of 2007. The sentences ranged from 13 to 14 years in length.

25 FREEDOM OF RELIGION

In the reporting period, the number of religious-based violence and discrimination incidents decreased as compared to the first part of 2007. Most of the 13 appeals that arrived at the Public Defender's Office refer to Jehovah Witnesses. It should be mentioned, though, that in the second half of 2007 there were nine statements on religious persecution of Jehovah Witnesses, which is less as compared to the 20 statements during the first half of 2007. Two applications concern the discrimination of Muslims, in particular their right to use the mosque and the impediments related to its reconstruction.

It should be mentioned that the activities of the Ministry of Internal Affairs and the Prosecutor's Office were more effective in terms of protecting the freedom of religion. The law enforcement bodies responded to events of religious-based violence and discrimination more efficiently as compared to previous years. At the same time, it often took the involvement of the Public Defender's Office to gain a quick response. The law enforcement bodies start investigation on these cases under Article 142 of the Criminal Code of Georgia (violation of equality of humans). Out of the nine incidents against Jehovah Witnesses, four were investigated under Article 142 (I). In two cases, Articles 118 (less serious damage to health on purpose) and 239 (hooliganism) of the Criminal Code of Georgia were requalified to p. 1, Article 142. One case was qualified under Article 155 of the Criminal Code of Georgia (illegal interference into performing religious rite), and on the Zaza Berishvili case, the inquiry started under Article 156 (persecution).

There were no applications on the facts of discrimination at public schools in the reporting period. Only one statement refers to teaching religion at Gardabani municipal kindergarten #3, which is in conflict with the freedom of religion of majority of the children there, as a result of examination, though, this fact was not proven to happen.

Negative and stereotypical coverage of religious minorities in Georgian media should also be mentioned.

The problem of "questionable churches" remains open. It refers to the churches taken away from Armenian Apostolic and Catholic churches during the Soviet rule, and the problem of their ownership has not yet been solved. It seems that the dialogue on this issue started in 2007, but no real changes followed. The National Committee, with participation of interested parties, should be set up to make impartial decisions with consideration of the reconstruction of historical truth and other factors.

No progress has been achieved in solving the problems related to the Constitutional Agreement between the State of Georgia and the Apostolic Autocephalous Orthodox Church of Georgia. In particular, the State has not met its pledges to recompense the church, at least partially, for the damage occurred to the church in the 19th and 20th centuries as stipulated in Article 11, as well as to hold negotiations with other States on the protection, maintenance and ownership of all Georgian Orthodox churches and monasteries, their ruins and other religious constructions, as well as the church placed on their territories" (Article 10).

26 RECOMMENDATIONS

Political Pursuit

The recommendation is for the Office of the Prosecutor General of Georgia to investigate, in the shortest possible time and in all objectivity, each criminal case in order to ensure punishment of all those participating in the above processes.

Freedom of Assembly and Manifestations

1. Bearing in mind the experience of European Case Law, the recommendation is for Georgian courts to refrain from applying Articles 166 and 173 of the Code of Administrative Offences of Georgia unless the incidents of violence on the side of the demonstrators is ascertained by infallible proof.
2. The recommendation is to bring up a question of the Minister of the Interior's, Ivane Merabishvili, political responsibility for the use of rubber bullets. Also, to investigate the case and raise the question of criminal liability for those who made the decision of using rubber bullets, as well as those who carried out the order.
3. The recommendation is for the Office of the Prosecutor General of Georgia to carry out unbiased investigations on the cases of Rati Maisuradze, Koba Chitanava, Nika Machutadze, Bichiko Mshvidobadze and others injured during the 2-7 November events.
4. The recommendation is to establish the identity of law enforcement personnel who violated the principle of political neutrality of police bodies by loudly supporting one political leader and shouting anti-Semitic pronouncements towards the other leader with the purpose of their disciplinary punishment.
5. The recommendation is for the Office of the Prosecutor General of Georgia to investigate if each case of applying tear gas, rubber batons and special paint was proportionate to the violation.
6. The Recommendation is to investigate each fact of offensive behaviour towards journalists and return the confiscated equipment and video material to them.
7. The recommendation is to start an introductory investigation and institute criminal proceedings against the respective law enforcement officials on who exceeded their power in the inhumane and humiliating treatment towards Avtandil Jorbenadze, Nino Soselia, Dachi Beridze, Teimuraz Topuria, Otar Mujirishvili, Vakhtang Inasaridze, George Tevdorashvili, Nika Didishvili, George Topuria, and others injured on 7 November.

8. The recommendation is to study the grounds for the involvement of the Ministry of Defense armed forces and rapid reaction special service of the Ministry of Justice Penitentiary Department in the dispersal of the 7 November action of protest, and institute proceedings against the appropriate officials.
9. The recommendation is to institute criminal proceedings against Megis Kardava, Deputy Chief of the Samegrelo-Zemo Svaneti Regional Police Department, and Koba Narsia, Deputy Chief of the Zugdidi Police Department, for neglect towards incidents of physical assault against opposition representatives on 28 October 2007, in Zugdidi.

Freedom of speech and expression

To the parliament of Georgia:

- The recommendation is to work out and pass efficient legal guarantees in order to secure editorial freedom in the media; and
- To introduce the following changes to Article 160 of the Criminal Code of Georgia: The person should be released from responsibility for the infringement of the sanctity of a home if he did this action for the sake of the protection of public interests.

Supreme Council of Justice of Georgia

- The recommendation is to institute disciplinary proceedings against Judge George Shavliashvili for passing the order of 7 November 2007, on sequestering the Teleimedi property and banning its license.

Prosecutor General of Georgia

- The recommendation is to start a preliminary investigation against Judge George Shavliashvili on exceeding his commission and forging official documents;
- The recommendation is to start a preliminary investigation against case investigator G. Kajaia on exceeding his commission and forging official documents;
- The recommendation is to study the legitimacy of breaking into the Imedi TV Company building and institute criminal proceedings against the officials who made the decision to do so;
- The recommendation is to study the legitimacy of suspending the broadcast of TV Kavkasia and Batumi TV-25, as well as that of Radio Imedi and institute criminal proceedings against the officials who made decision on cutting off the signal of the above media sources;
- The recommendation is to drop the criminal case on the fact of infringement of sanctity of Nana Japarashvili's home by journalists;
- The recommendation is to start a preliminary investigation and institute criminal proceedings against the officers of the special task force detachment who applied excessive power during the offensive at Imedi TV;
- The recommendation is to institute criminal proceedings against Isako Tskipurishvili for intimidating Radio Hereti. He should be charged with criminal liability for threatening, physical assaulting and impeding the professional activities of journalist Khatuna Gogiashvili on 5 January 2008; and
- The final recommendation is to start a preliminary investigation on the act of falsification of National Communications Committee certificate #20 and minutes #66 of extraordinary special sitting, both occurring on 7 November 2007.

National Communications Committee:

- The recommendation is to take care of setting up equality before law practices in compliance with p. 3, Article 4 of the General Administrative Code of Georgia and restrain from the preferential treatment or discrimination of license holders; and
- The final recommendation is to ensure, if needed, the modification of Maestro TV Company's license, instead of sanctioning it.

January 5, 2008 extraordinary Presidential elections – facts and recommendations

In order to ensure democratic election procedures it is recommended to take into account the voters' strong will to immediately participate in the formation of the state government through equal, free and fair elec-

tions. In order to secure democratic standards of expressing this will, and its adequate reflection in the election results, immediate measures by the authorities are needed. In particular:

- The recommendation is for the Office of the Prosecutor General to investigate, in an orderly and law observant fashion, all the facts related to the violations during pre-election, election and post-election periods. Based on the results of the investigation, it should punish the lawbreakers with all the force of the law in order to create serious precedents and eliminate the impunity practiced in this field. It should also make the information public on the measures taken in this matter;
- The recommendation is to further perfect the election legislation –commensurate with international standards and the Constitution; mutually exclusive provisions and other shortcomings should not be admitted in order to rule out diverse interpretations of the Election Code provisions;
- The recommendation is to take into consideration the recommendations of international organizations with regard to the election system for Parliament and the election barrier. The joint opinion on the Election Code of Georgia by the Venice Commission and the OSCE is that the so-called "winner takes all" system is quite unusual and they recommend that the Parliament carefully consider the appropriateness of this electoral system. It is necessary to bring the Georgian election barrier into line with European standards, which vary from three to five percent. Resolution 1477 (2006) of the Council of Europe Parliamentary Assembly calls upon the Georgian government to lower the barrier to five percent.
- The recommendation is for the authorities of different level election administrations be clearly limited in their powers. This concerns primarily their competence to administer complaints and to make appropriate decisions. It is recommended that precise and complete regulations be set up for submitting appeals on election violations and the administration of said appeals, in order to ensure that the appeal formal mechanism becomes an efficient instrument;
- The recommendation is that it be clearly established that intimidation, or other forms of pressure, over election process participants is prohibited and appropriate measures against lawbreakers shall be taken;
- The recommendation is to clearly delineate between the ruling party and the governmental structures in order that all election entities enjoy equal rights. In this regard, the legal basis for the use of administrative resources in the election process should be strengthened. The issues of participation of central and local government officials in election campaign should fall under legal control and stiff punishment measures should be established.
- The recommendation is that relevant authorities take all necessary efforts and an integrated approach in order to compile an accurate list of voters. An adequate amount of time prior to elections needs to be setup so an opportunity can be ensured for observers, election entities and citizens to double-check the electronic database of the general voters list; no additional lists should be admitted in future elections;
- The recommendation is that all appropriate measures are taken to ensure transparency and publicity of all election procedures. These measures should not be confined to formal acts of law – it is important that their efficient implementation be guaranteed. Maximum transparency and publicity should be ensured when opening the ballot boxes, tabulating the results of voting, compiling the summary protocol of voting, as well as at consolidation of the election results and the administration of appeals;
- The recommendation is to legally regulate campaign contributions and election campaign funds so that not only the amount and sources of financing, but also the expenditures, be reported. This information should be public both before and after the elections; and
- The final recommendation is that amendments to the law are introduced so that the election administration has time to draft and implement training programs for its staff.

The procedures for adjudicating election disputes should be improved significantly to provide sufficient guarantees of transparency and consistency for protecting electoral rights. The judiciary should observe the principle of impartiality while interpreting the law. We would like to emphasize the importance of the implementation of all above-mentioned arrangements in order to revive public trust in free and fair elections. It is the voter who should legitimate the election results based on the principle that the citizens of a state are the source of its government.

Human Rights Observance at Psychiatric Institutions – Election Rights

Psychiatric institutions

- The recommendation is to continue sorting out the problems related to the patients' ID cards in order to ensure the participation of capable patients in elections;
- The recommendation is that the patients are better informed in the pre-election period of the election process, the candidates and their programs, and the contents of the ballots; and
- The final recommendation is that steps should be taken in order that compulsory treatment patients, who have committed a crime, are granted suffrage.

Central Election Commission

- The recommendation is that the disabled be better informed on the election procedures by means of simulation plays or demonstrating special information video-clips; and
- The final recommendation is that the CEC carry out special training on human rights in order to avoid incidents of disgracing voters on behalf of commission members.

Penitentiary System

- The Public Defender deems it expedient to draw attention to the reports of the committees in order to improve the situation in the system. At the same time, it needs to carry out permanent training of committee members, for which minimum resources from the budget (fuel, stationery, telephones etc.) can be assigned; and
- The final recommendation is that the problems related to the convicts' ID cards be settled in order to ensure granting suffrage to all convicts.

Death Rate in the Penitentiary Institutions, Factors, influencing it and the Causes

- The recommendation is that the health care system of penitentiary institutions be subordinated, as before, to the Georgian Ministry of Labour, Health and Social Security; and
- The final recommendation is that Levan Samkharauli conduct a national forensic inquiry of the Ministry of Justice and that its medical, narcological and psychiatric expertise be subordinated to the Ministry of Labour, Health and Social Security, as it was before.

(Clarification)

The Georgian law on medical practice (Article 4) reads that the Georgian Ministry of Labour, Health and Social Security determines the list of medical professions. In compliance to the appropriate statutory act of the Ministry, forensic medicine is one of the 21 leading medical professions in Georgia. Besides, the Georgian Law on health care" (Article 53, p.2) says that forensic inquiry is the "function of a medical institution". According to Article 153² of the same law:

1. Only a doctor of the appropriate profession can hold forensic medical and forensic psychiatric expertise at a licensed medical institution; and

2. Rules of procedure of forensic medical and forensic psychiatric tests, and the code of conduct of medical personnel shall be determined by the Ministry of Labour, Health and Social Welfare.

Hence it is clear that the forensic expert is a doctor (i.e. the entity of independent medical practice) and the body ("examination institution" as the Criminal Code defines it) is a medical institution as stipulated in Georgian legislation (Article 53 – a medical institution is a juridical person who carries out medical practice in accordance with established procedure).

Forensic inquiry is concerned with the application of principles of pathology to the investigation of the medical/legal aspects of a crime (i.e. forensic pathologists are medically qualified doctors and forensic inquiry is practical part of forensic medicine).

In compliance with the Order by the Minister of Justice (# 1549) dated 8 December 2004, the forensic Examination National Bureau was set up in order to carry out medical, psychiatric and narcological examination services. By entering it into force, forensic medicine lost touch with the field of health care, which entailed a lack of experienced personnel. Forensic inquiry became a so-called "coercive structure", and the doctors there lacked professional and ethical standards.

Proceeding from the above, it is unclear why forensic inquiry should be a part of the Georgian Ministry of Justice when the competence of a forensic pathologist as a medically qualified doctor spreads over medical and biological problems as needed in legal matters.

Besides, clear legal discrepancies emerge during practical activities, a striking example of which is the practically "constrained" area of forensic psychiatry. Article 24 of the Law of Georgia on psychiatric aid, passed by the Georgian Parliament on 14 July 2006, states that "institutions and their lower bodies, carrying out preliminary investigations are prohibited to carry out forensic psychiatric examination". On the other hand, the Ministry of Justice of Georgia is an institution that carries out preliminary criminal investigation as provided for by Article 61 of the Procedural Criminal Code of Georgia.

The above examples illustrate the vital importance of the return of forensic medical inquiry to the health care system, both for justice and the field itself. It should be borne in mind that a forensic expert is a doctor first of all, and his subordination to the Ministry of Justice threatens the independence of the medical profession. Article 30 of the Georgian Law on health care explains that medical personnel, in their activities, shall be guided by ethical values – respect the dignity and worth of human beings, principles of correctness and sympathy, and the norms of professional ethics, one of which is to be free and independent in making professional decisions related to the patient's interests. Article 34 further strengthens the above provision by saying that "a doctor's profession is free in its essence. Any interference of an official or private person urging to violate the principles articulated in this Law, or actions contradicting professional ethics, is impermissible, regardless of the title or official standing of the person urging. Any activities hindering medical personnel in performing their duties shall be legally punished".

- The recommendation is for the Ministry of Labour, Health and Social Security, to draw up a plan to activate forensic medicine postgraduate programs and, in cooperation with the Ministry of Education and Science, to secure the training of residents in the above field;
- The recommendation is for the Ministry of Labour, Health and Social Security to start the implementation of programs to train forensic medicine experts and their uninterrupted professional growth;
- In order to appraise the quality of given medical treatment and reveal possible mistakes that could have become the cause of death, the recommendation is that commissioned forensic medical tests be carried out with regard to all persons at penitentiary institutions who underwent medical treatment before death;
- The recommendation is for the Agency for Monitoring Medical Activities of the Ministry of Labor, Health and Social Welfare to start examination of penitentiary institutions' health care systems, in cooperation with professional medical associations of Georgia and medical education agencies;
- The recommendation is that epidemiologic evidence bulletins on penitentiary system health care services be published periodically (on the basis of appropriate studies and other arrangements);
- The recommendation is that order #717 of 11 September 2006, by the Minister of Justice of Georgia on the transportation of sick prisoners from penitentiary institutions to general hospitals, tubercular prisoners and convicts medical treatment institutions, and prisoners and convicts medical treatment institutions", and order #486 of 24 June 2004, on approving provisional forms of documentation for medical units of the Ministry of Justice Penitentiary Department, be reconsidered, nullified or changed.
- The recommendation is that the organizational and legal status of prisoners' and convicts' medical care institution be defined (without delay);
- The recommendation is that the Office of the Prosecutor General of Georgia start studying and reacting to the facts where a crime could be tracked (we have sent a number of such cases to the Office of the Prosecutor General);

- The recommendation is that the Association of Forensic Doctors be requested to present their views on security measures during the autopsy of patients who died of AIDS; and
- The final recommendation is that adequate conditions of work be created at medical units of penitentiary institutions for the Medical Activities Regulating Agency with the Ministry of Labor, Health and Social Welfare, as the National Controller, and the personnel shall be punished if they prevent the carrying out of its constitutional function to supervise every health institution within Georgian jurisdiction (Constitution of Georgia, p.2 Article 37).

On Protection of the Rights of Conflict Zone Population

- The recommendation is for the Parliament and the Government of Georgia to create a Public Defender field office in Tamarasheni village of the Kurta community in order to secure efficient observance of human rights and liberties in the conflict zone;
- The recommendation is for the Parliament and the Government of Georgia to involve the Public Defender's Office in the peace process with the aim of popularization of human rights issues; and
- In order to set up the Commission and start implementation of the Law on restitution of property or compensation to those affected by the conflict in the former South Ossetian Autonomous Region of Georgia, therecommendation is for the Government of Georgia to pass the resolution on the international entity (entities) quota to the above commission.

Protection of IDP rights

- The recommendation is for the Minister for Refugees and Accommodation to take under personal control the IDP registration process, and to involve himself in administering complaints related to violations in this field;
- The recommendation is for the Ministry of Labour, Health and Social Security to create a mechanism to make it possible to consider the appeals from Gali region IDPs and to meet their social needs;
- The suggestion is for the Government of Georgia to reconsider the monthly benefit amount for IDPs, and to create new rough data on the cost of living in the draft Law on the Yearly Budget; and
- The final recommendation is for the Minister for Refugees and Accommodation to pass a statutory act to define the rule and grounds for paying out an extraordinary grant and its beneficiaries.

Protection of Refugees' Rights

- The recommendation is for the Government of Georgia to show the expenses on implementation of social guarantees for refugee status competitors as stipulated in Law of Georgia on refugees;
- The recommendation is for the Office of the Prosecutor General to stop Azer Samedov's extradition process;
- The recommendation is for the Office of the Prosecutor General to nullify Azer Samedov's release on bail penalty; and
- The final recommendation is for the Office of the Prosecutor General to return to Azer Samedov his personal belongings and money extracted during a search.

Freedom of Information

The suggestion is for the Parliament of Georgia to introduce amendments to the Code of Administrative Offence of Georgia, according to which the violation of terms of providing public information shall be

considered an administrative offence and the court will apply financial sanctions to the organizations violating the above provision, together with obliging the organizations to provide the information.

Rights of Disabled Persons

- The Ministry of Labour, Health and Social Security should work out subprograms to define the services envisaged in the programs, only after the investigation of the needs of the disabled persons;
- The Ministry of Labour, Health and Social Security should keep the target groups informed on national programs;
- Special service within the Ministry of Labour, Health and Social Security should be set up, or any existing body to be tasked as provided for by p. 45, Article 239 of the Code of Administrative Offence of Georgia should implement the terms of reference provided for by Articles 178' and 178² of the same code;
- The Ministry of Education and Science of Georgia should work out the system and programs that would envisage professional education of the disabled persons; and
- The Ministry of Labour, Health and Social Security should define a competent body within the field of employment, and work out the disabled persons' employment facilitating programs.
- The Public Broadcaster should take appropriate measures to actively and adequately cover the disabled persons' problems.

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ANNEX #1
POLITICAL PERSECUTION

The case of Murman Kontselidze

On 3 December 2007, in Batumi, police officers detained Murman Kontselidze, a member of presidential contender Badri Patarkatsishvili's party. According to Konstelidze, at 12.15 p.m. he was talking to his friend Gocha Gelovani in the courtyard of Batumi police station No.2. Murman Kontselidze asked why he and Gelovani were being detained by four policemen without any reason. They were then taken to the Batumi Internal Affairs Administration where, under Article 166 of the Code of Administrative Offences of Georgia (Petty Hooligan Actions), officials drafted Konstelidze and Gelovani's offence. During the court hearings, none of the eyewitnesses in the courtyard was questioned. The court fined Murman Kontselidze 100 GEL.

Detention of representatives of the youth wing of the joint opposition

On 3 December 2007, at 12.00 p.m. in Batumi, Mindia Jaiani and Gogita Tavartkiladze, representatives of the youth wing of the People's Party; Ruslan Kontelidze, chairperson of the youth wing of the Conservative Party; and Conservative Party members Gelodi Beridze and Garik Tamarian were detained. According to the detainees, they gathered in front of the Batumi Nautical Academy at 12:00 p.m. and made their way towards the Batumi drama theatre where a peaceful protest was planned to take place.

A black Mercedes stopped in front of the detainees; four people dressed as civilians came out and verbally abused them. There were approximately 18 witnesses to the event and some young people ran towards the street where they noticed some policemen, whom they asked for help. The policemen did nothing; instead, they detained the young people, transported them to the 2nd division of Batumi Interior Administration, and fined them 100 GEL each under Article 166 of the Code of Administrative Offences of Georgia (Petty Hooligan Actions).

The administration charged that Mindia Jaiani, Gogita Tavartkiladze, Ruslan Kontelidze, Gelodi Beridze and Garik Tamaryan used bad language and disturbed the public order while walking from Rustaveli St. to Griboedov St.. The 18 witnesses said that no such action took place by the detainees, but the court did not interrogate any of them. The court only interrogated district police officers Z. Tsulukidze and Tengiz Tetrashvili. The statements given by the two police officers cannot be corroborated, and the use of

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bad language by the detainees was a fabrication. The young men state that the police officers recognized them as party members and so detained them because of their political views. As a result of their detention, the peaceful protest was disrupted.

The case of Merab Ratishvili

The Special Operational Department of the Georgian Ministry of Interior is in charge of the criminal case against Merab Ratishvili, who is charged with a crime that falls under part 3 of Article 260 of the Georgian Criminal Code.

According to Merab Ratishvili, on 28 October 2007, he was returning home in his car from a meeting. In front of him was a Jeep that stopped suddenly at Kiacheli St. Several young men dressed as civilians, unknown to Merab Ratishvili, came out of the Jeep and approached his car. They started to beat his windscreen with batons, demanding he open his door (him to open his door). As soon as Ratishvili left the car, the young men knocked him down, handcuffed him, walked all over him and twisted the thumb on his right hand. Ratishvili then felt a prick in his right leg. For several minutes, he lay on the asphalt. His assailants then put him into the Jeep, in which were more unknown young men. Ratishvili asked them to remove his handcuffs since they were tight and painful. One of the young men turned Ratishvili towards him and Ratishvili felt a second prick in his right leg. The young man opened the right door of the car and presumably passed the syringe to another assailant.

Afterwards they brought him to a different car where he was detained by Special Operational Department (SOD) officers. They stated that Ratishvili was suspected of illegal use of narcotics. The SOD officers videotaped his detention and the search of his car, in which they removed a syringe containing drugs. Merab Ratishvili states that the syringe lay on his book and had been shifted. The officers demanded Ratishvili to lead them to his home. His wife was home and opened the door. Merab Ratishvili entered the flat accompanied by ten SOD officers who searched the flat,. Merab Ratishvili was not allowed to be present during the search, and neither where his neighbors, even though he insisted on the presence of witnesses and his lawyer. His requests were refused; and he was not allowed to contact his lawyer after he was taken to the SOD building. While being interrogated, Ratishvili felt unwell but was refused a doctor. At the interrogation, he learned that during the search of his flat, the drug Methadone was taken out of his jacket pocket. After the interrogation, he was tested for drug ingestion and it was determined that he had illegal drugs in his system.

After the detention, Ratishvili was taken to prison No. 5. Two days later, the prison administration summoned him to meet with two unknown persons who did not identify themselves, although they mentioned in conversation that they were Ministry of Interior officers. The officers offered to close his case, if he collaborated with them.

Merab Ratishvili believes he was detained due to his ties with opposition leaders. According to him, before the detention, he was being shadowed, his telephone was tapped, and he noticed on several occasions that objects in his office had been shifted and his computer had been accessed. Merab Ratishvili is president of the Georgian Golf Association. Ratishvili is also a political analyst who studied Georgian internal policy. According to Merab Ratishvili, the Ministry of Interior officers were mainly interested in the information contained in his office and computer. They were also curious about his connections and cooperation with opposition leaders, his activities in the Russian Federation, and the opposition plans. The officers recorded the conversation and demanded that Ratishvili keep these meetings secret, threatening him with unbearable conditions if he did not. The officers also mentioned that the activities of the opposition serve in Russia's interests, which had been turned down by Merab Ratishvili.

After the first meeting, Ratishvili was taken to prison cell No. 2, which was cleaner and living conditions were better than his previous cell, but after he rejected all the offers made by the officers, he was moved to another

prison cell and suffered much psychological pressure. He was taken first to prison No. 5, then prison No. 8, and finally to the No. 6 prison in Rustavi where he is serving his sentence.

Ratishvili met with more unknown people for another eight to nine times, the last of which took place on 20 November 2007. They demanded evidence against opposition leaders and let him listen to a recording of a telephone conversation between him and one of the opposition leaders. It should be noted that in his explanation given to an authorized member of the Public Defender's Office, Ratishvili refrained from naming the opposition leader. The unknown persons physically threatened him and tried to force him to give the evidence they needed; they did not show up since that last meeting.

As for the suspicious drug charge, after Ratishvili's detention, his office was raided and his computer was analyzed. If there was a criminal drug suspicion on the part of Ratishvili, such evidence would not be in his computer. Ratishvili also notes that no investigative action took place during this period and investigators did not inquire about the origin of the drugs.

The case of Revaz Kldiashvili

From 11 August 2005, to 3 April 2007, Revaz Kldiashvili was deputy chief of the Military Police Department at the Ministry of Defense General Staff; he also holds the rank of colonel. Revaz Kldiashvili is a friend of former Defense Minister Irakli Okruashvili and a member of the Party for a Unified Georgia.

According to Kldiashvili on 13 November 2007, at 11:00 a.m., he and his neighbor, Valiko Gagnidze, were traveling in his car in the Nadzaladevi District. As they approached No. 3, Zhizhiashvili St., 16 military police officers in four vehicles attacked them; among them were Karlo Dolidze, chief of division of the Military Police Department and Paata Paksashvili, chief of the operational department. A man by the surname Chelildze hit Kldiashvili in the head with a pistol, and Kldiashvili states that the men put an AK-75 machine gun in his car boot, as well as a Walter type gun in the rear pocket of his pants. They then moved him to the No. 2 isolation ward where he awaited his trial.

On 15 November, legal proceedings took place and Kldiashvili was sentenced to two months of confinement before his trial. During the court hearings, Kldiashvili learned that a search was held at his home where an F-1 hand grenade was illegally placed. He states that prior to his detention, he noticed that he was being shadowed, and attributes his arrest and the placement of weapons in his car, house and on his person to his membership in the Party for a Unified Georgia and his participation in the November rallies in Tbilisi.

It is highly unlikely that a man with all his experience would travel in a vehicle with illegal arms in the boot; especially when his party leader, Irakli Okruashvili, and his associates were being criminally prosecuted and a state of emergency was in place. It should also be noted that Kldiashvili is a police colonel who knows very well the consequences of owning weapons, and human rights observers note they have yet to find him guilty of conducting any crimes.

The case of Tamuna Tlashadze

MP Teo Tlashadze petitioned the Public Defender stating that her sister Tamuna Tlashadze had become a victim of political persecution. Tamuna Tlashadze worked as a lawyer at the Shida Kartli field office of Energo-Pro Georgia, Ltd. According to Tamuna Tlashadze, on 12 November 2007, her office director, Tariel Mazmishvili, summoned her and asked for her resignation. He said that he had to demand her resignation due to pressure from regional authorities, which he did not name. In a private conversation, Tariel Mazmishvili explained to Tamuna Tlashadze that her sister's (Teo Tlashadze) political activities enervated the authorities.

They demanded that Tamuna Tlashadze be fired since "the enemy's family member should not get a salary". Tamuna Tlashadze refused to turn in her resignation.

During the 2008 pre-election period, Teo Tlashadze was appointed as head of presidential contender Levan Gachechiladze's headquarters in Shida Kartli. As a result, the pressure upon Tamuna Tlashadze increased and she had to finally submit her resignation to Energo-Pro Georgia's general director, Jaromir Tesar. In her resignation, Tamuna Tlashadze mentioned suffering psychological pressure, which forced her to quit, and stated that Tariel Mazmishvili openly said that he was running a personal risk if she failed to resign. The Public Defender representatives contacted Tariel Mazmishvili but no explanation has been obtained so far.

The case of Nani Mgebrishvili

On 14 November 2007, Nani Mgebrishvili applied to the Public Defender. Since 2006 she worked at the Tbilisi City Oversight Service. Her last job was as a leading specialist in the Administrative Violations and Internal Oversight division, but was discharged from the office due to her family relationship with Irakli Okruashvili.

A study of her case revealed that Nani Mgebrishvili served in many different positions at the Tbilisi City Service for more than 25 years, during which time no disciplinary action had ever been taken against her. Moreover, she was promoted within her job from specialist to leading specialist, which speaks to her professionalism and experience.

Nani Mgebrishvili was discharged from her office on 7 November 2007, by the chief of administration of the Tbilisi Mayor's Office, under order No. 1620, in accordance with p. 3, Article 99 of the Georgian law on public service. This discharge was preceded by a paper submitted by the chief of her division, which read that Mgebrishvili lost Ina Sarkisova's petition No. 1545, dated 3 September 2007, together with the reply to it, grossly violating her official duties, although he had no proof. It should be noted that three reorganizations took place in the Tbilisi City Oversight Service, and accordingly, three redistributions of duties should have taken place. However, with regard to Nani Mgebrishvili, only one order No1-o of 5 January was passed, at which time she was a leading specialist of the General Services division. At no further stage of reorganization – neither on 2 July 2007, nor on 22 October 2007 – was an order for redistribution of duties passed for the staff.

Regardless all the above, Mgebrishvili does not deny the fact that she worked in the office and fulfilled her duties in accordance with office instruction, but notes that there is no signature of hers on the document in question. But she also explains that she does not know who lost the document, or when and how Ina Sarqisova's petition was lost as it was not her who registered the document and the handwriting on it is not hers. It became evident during the case that T. Oniani, chief specialist of her division also handled such office documents.

As soon as it was revealed that Sarkisova's petition was lost, officials at the Tbilisi City Oversee Service should have started administrative proceedings according to p. "b", part one of Article 76 of the General Administrative Code. At the same time, in accordance to p. 2 of Article 13 of the same code, Mgebrishvili should have been a part of this process. That portion of the code states that "the interested party should be informed about administrative proceedings and his part of the process should be safeguarded".

Should it be determined, during administrative proceedings, that it was Mgebrishvili who lost Sarkisova's petition and its reply, or that she had some part in the loss of the document, then her statement should have been sought under part one of Article 13 of the General Administrative Code, which states that "an administrative agency may review and solve a matter only if the interested party whose right or legal interest is restricted by the administrative decree has been enabled to present his opinion, except as provided by law." Only then would Mgebrishvili's dismissal have been legal and rightful.

Part one of Article 53 of the General Administrative Code, states that "an administrative decree shall include a written justification". Accordingly, order No. 1620 needed justification, inasmuch as part 5 of the same article states that "an administrative agency may not ground its decision on the circumstances, facts, evidence, or arguments that have not been examined and analyzed during the administrative proceeding". Furthermore, it became evident during the proceedings that Sarkisova, living at No. 6, Ruispiri St., whose petition about the legacy of a building and the boundaries of her property had not lived at the indicated address for more than 20 years, and that she had left for Ukraine.

On 27 November 2007, an authorized representative of the Public Defender visited the above-mentioned address, where he learned from tenants, Rima and Vagenag Arutinians that Sarkisova never lived there. Sarkisova's mother-in-law, who died 25 years ago, lived there, but Sarkisova lived in Ukraine. Therefore, Sarkisova could neither write nor submit her petition to the mayor's office on 3 September 2007.

By the time of Mgebrishvili's dismissal, it had yet to be ascertained who wrote the petition on behalf of Sarkisova, as well as the person, time and how the petition was registered Proceeding from the above inasmuch there were no legal ground for Nani Mgebrishvili's dismissal from office, I applied to Gigi Ugulava, mayor of Tbilisi, for the nullification of the dismissal under p.1of Article 601 and to restore Mgebrishvili to her position. We have not yet received any response.

The case of Shalva Tlashadze

Shalva Tlashadze participated in the Tbilisi rallies at Rustaveli Ave from 2 to 5 November 2007, and returned to Gori thereafter. The following day at 9:30 p.m., as Tlashadze and his friend, Joseph Botsvadze, were going shopping on Agmashenebeli Ave., a white Niva car approached them and two masked men dressed in black exited the car. The men were after Tlashadze, who took shelter in one of the nearby shops, inside which was two women who worked in the shop and a male customer. The male customer blocked the entryway of the shop, but one of the masked men was able to get through, reaching Tlashadze, who was hiding under the counter. The masked man threw Tlashadze down to the ground and started stabbing him in the face and head, while Tlashadze tried to cover his head with his hands. As a result, he was stabbed in the hands and wrist, and the masked man stabbed him in teeth and then again in the head. The beating lasted about 30-40 seconds and it was witnessed by the two female shop workers; the male customer by then had been taken out of the shop. Inquiries into this incident are ongoing.

The case of Zaal Kochladze

Officers of the Didube-Chugureti police station arrested Zaal Kochladze on 8 November 2007, and accused him of the "illegal manufacture, purchase, storage or illegal use, without a doctor's prescription, of narcotics and analogous substances or precursors," under Article 273 of the Georgian Criminal Code, as well as resistance, threat or violence to officials, under p. 1 of Article 353.

According to lawyer Leila Koberidze, people dressed in civilian clothing detained Kochladze in front of his house No. 6/3, in the Digomi region of Tbilisi. It later became evident that they were the following officers of the Didube-Chugureti police station: M. Macharashvili, D. Besiashvili and D. Tsotskhalashvili. He refused to undergo a drug test and was accused of violating Articles 273 and 353 of the Georgian criminal code, though witnesses testify that neither during nor after the detention did Kochladze put up any resistance. Kochladze had already been arrested once for illegal use of narcotics and was issued a fine that he had yet to pay.

After Kochladze obeyed the policemen's demands, they started talking to him about the rallies in which he participated. According to his wife, Kochladze's participation in a rally in Zugdidi is the reason for his arrest.

Kochladze was sentenced to three months imprisonment before his trial, and is serving his sentence in the Rustavi No. 6 prison.

The case of Teimuraz Khubuluri

On 10 November 2007, police officers from the Old Tbilisi district arrested Teimuraz Khubuluri under suspicion of committing a crime under Article 260 of the Georgia criminal code. According to Khubuluri, officers detained him as he was leaving the Europe Hotel. The officers twisted his hands, threw him down to the ground and without performing a search, took him to the police station. The transcript of the search reads that narcotics were withdrawn from Khubuluri.

The court sentenced him to jail, after which he was taken to prison No. 5. According to Khubuluri, Bacho Akhalaia, chairman of the penitentiary department of the Georgian Ministry of Justice and several other officials (whom he could recognize but does not know their specific names), visited him in his cell. Khubuluri states that he was arrested on political grounds as his father, Temur Khubuluri is Irakli Okruashvili's friend. Bacho Akhalaia and his retinue demanded cooperation from the Khubuluri to discredit Irakli Okruashvili and physically threatened him if did not cooperate. They also mentioned his participation in the November rallies. He was transferred to prison No. 6 and was visited several times by Bacho Akhalaia after that. He is still serving his sentence in the same prison.

28 ANNEX #2. FREEDOM OF ASSEMBLY AND MANIFESTATION

The case of Irakli Japaridze and Others

On 16 October 2007, theYouth against Violence movement was founded in tandem with opposition political parties and non-governmental organisations. After the presentation, the participants organised a rally starting from Tbilisi Concert Hall to the Parliament building. During the rally, four protestors were detained: Irakli Japaridze, Irakli Gaprindashvili, Irakli Chukhua and Giorgi Mestumrishvili.

At the court session of 17 October 2007, while giving his testimony, Roland Soselia, the patrol inspector who filed a law infringement protocol against Irakli Japaridze, said that on 16 October 2007 a group of people attempted to block the road near the Marco Polo restaurant by stepping onto the motorway. The drivers, he said, expressed their dissatisfaction, which soon resulted in a heated verbal exchange.

(Court Session protocol # 4) Soselia also explained that he was patrolling in crew vehicle 105 when the squad leader ordered him to approach the above-mentioned area. Irakli Japaridze stood at the given place. Initially, Soselia issued a verbal warning to Japaridze, asking him to clear the area. The infantry patrol required the same after they got out of the car. Soselia repeated the verbal request to Japaridze several times. After this, he placed him into the patrol vehicle.

Soselia pointed out that the actions of the participants were hindering traffic, which is why the drivers expressed dissatisfaction. One of the drivers got out of his car asking them to clear the way because his son was experiencing health problems. According to the patrol-inspector, therally participants insulted the drivers referring to them as slaves and traitors.

From the explanatory note of the patrolling inspector, Mamuka Balakhadze, who drafted a protocol against Irakli Gaprindashvili, he arrived at the site of the Marco Polo restaurant along with his partner, Shmagi Jachvadze, in a patrol car. There he witnessed the rally moving along one part of the avenue where there are three lanes for traffic.

One part of the road was entirely occupied and several patrol crews had been there before Balakhadze's arrival. The patrol crews told the demonstrators to leave the traffic lane and move to the pedestrian side of the avenue. The drivers demanded to be allowed to continue their movement, while the rally

participants called them rats, banged their fists on their cars and asked them to join the action. Several rally participants lied down on the road, among them the patrolling inspector noticed a young girl.

The video footage of Rustavi 2 clearly shows inconsistency in the claims made by Soselia. In the first part of the video footage, it could be clearly seen that one part of the motorway in front of the Academy of Sciences was fully occupied by the rally participants. It also becomes evident that the rally participants made no attempt to block the road near the Marco Polo restaurant; on the contrary, they had been there before. The fact that patrol police appealed to the rally participants gathered at the Academy of Sciences to move to the pedestrian side of the avenue cannot be proven by the video footage.

The same video footage also shows journalist Ilia Chachibaia, head of the Zugdidi branch of the Equality Institute, being taken away by the patrol police crew from the motorway. At the same moment, the patrol police crew members forcibly pull up Giorgi Mestumrishvili, who had fallen down, and put him in their patrol vehicle. The warning issued by the police to the rally participants to clear the road cannot be seen on the video.

It cannot be determined from the video footage, whether Mestumrishvili fell accidentally or intentionally . In his explanatory note to a representative of the Public Defender, Mestumrishvili declares that he had fallen down; while patrolling inspector Koba Khosharauli claims the fall was intentional. Khosharauli also points out that his crew member picked up Mestumrishvili without a preliminary warning and put him into the patrol vehicle. The Public Defender's representative obtained an explanatory note from Imedi journalist Nino Sakvarelidze, who said rally participants lied down on the ground in protest near the Marco Polo restaurant. In this case, it becomes clear that the police demanding Mestumrishvili to get up on his feet and clear the road had not given him enough time to obey the command.

Rustavi 2 video footage also shows the attempts of Irakli Chukhua, Irakli Japaridze and Irakli Gaprindashvili, to rescue the detained Mestumrishvili from the police. At that moment, Soselia grabs the back of the sleeve of Japaridze and detains him. Gaprindashvili is also detained and seated in the patrol vehicle. It cannot be determined from the video footage whether the detainees were given the order by Soselia and Bliadze to clear the road. Thus, in reality, the reason for the arrest of Japaridze, Gaprindashvili and Chukhua, lies not in the fact that they neglected a legal demand of law enforcement officers, but that they resisted the police while they were detaining Mestumrishvili.

Rustavi 2's video footage also fails to prove the fact that the rally participants were trying to stop the vehicles moving on their side of the traffic lane. It is clearly visible that a white car passes on the road at the place where journalist Ilia Chachibaia is kneeling. Thus, the presence of rally participants on one side of the road did not hinder the movement of traffic. The fact that patrol police demanded rally participants move to the pedestrian side of the road before reaching the Marco Polo restaurant is proven both by the explanations given by the patrolling inspectors and journalist Nino Sakvarelidze. However, the demand was made not only to the four persons in question, but to all the rally participants.

Imedi correspondent, Nino Sakvarelidze, remained with the rally participants from the beginning of the manifestation to the very end, covering the events of the rally. According to her explanations, she had not witnessed any insulting actions from the part of the rally participants, or declarations regarding the drivers or the patrol police. Insulting statements towards the citizens or to the patrol police at the moment of the detention of Irakli Japaridze and other participants of the rally had not been recorded by Rustavi 2 cameras

The video footage does show a young participant of the rally, who, after the detention of his friends, shouts "murderers" at the police. There is no evidence of any verbal insults uttered against the citizens on the part of the detainees, which points to the fact that the evidence given by the Balakhadze and Jachvadze is fabricated. Their statements are not proven by any other evidence, and the use of obscene language is conjured up by the

patrolling inspectors with the aim of misleading court authorities and aggravating the administrative punishment of the four members of the Youth Against Violence movement.

In accordance with the Tbilisi City Court Administrative Cases Board, traffic had been hindered, which angered the drivers. The four young men insulted the drivers using obscene language. The judge determined the circumstances on the basis of the evidence given by the two patrolling inspectors. The act of using obscene, insulting expressions by the rally participants is not proven by the video footage of Rustavi 2.

The use of verbal insults by the felons under Article 166 of the Administrative Criminal Code had to be determined by the judge on the basis of the study and verification of evidence obtained from both sides. The evidence produced by the patrolling inspectors should not have been accepted as a source of complete and objective truth. The explanations provided by them had to be verified using video footage from Rustavi 2, as well as evidence produced by journalists and witnesses. However, the court disregarded the existing video footage and witnesses had not been questioned.

The video footage provided by Rustavi 2 shows clearly that the detention had been carried out after Mestumrishvili had been picked up to his feet forcibly, while the rest of the young people had been detained after they attempted to free Mestumrishvili from the grasp of the police.

The case of Manuchar Putkaradze and Others

On 29 October 2007, Zugdidi Regional Administration District Inspector Zviad Elarjia drew a protocol for an administrative offence against Manuchar Putkaradze.

It is specified in the protocol that on 28 October 2007, Putkaradze used rude and obscene insults against citizens, and was physically violent, thus disrupting civil order. He ignored the legal demand of the police authorities to put an end to his misbehaviour. The activities of Putkaradze were qualified in accordance with Articles 166 and 173 of the Administrative Offence Code. The offence protocol is appended by the protocol of Putkaradze's detention, which says that the detention of an alleged offender took place at 11:20, on 29 October 2007, in the city of Zugdidi, on Zviad Gamsakhurdia Avenue, due to various acts.

The offence protocol is supplied with notes and explanations provided by Putkaradze regarding the protocol of administrative offence, which point to the fact that on 28 October 2007, opposition parties held a meeting in the city of Zugdidi. Putkaradze attended this meeting and voiced his protest in a peaceful way. According to his statement, after the meeting Parliament members, Bidzina Gujabidze, Bezhan Gunava, Lasha Chkhartishvili, member of the Equality Institute, and Soso Robakidze used the obscene expressions. He stresses the fact that after the abovementioned acts, he and his friends insulted the protest rally members both verbally and physically.

The case also includes reports submitted by the District Inspectors of the Zugdidi Interior Ministry Regional Department, M. Changelia, Z, Elarjia, S. Sikharulidze, and V. Chikovani. All the policemen, with the exception of Changelia, state that there had been verbal and physical offences on the part of Giorgi Samushia, Irakli Mikaia, Biktor Mikaia, Giorgi Mania, Manuchar Putkaradze, Akaki Rogava, and Goga Ghurckaia. Changelia confirms only the fact of verbal offence.

The investigator of the Zugdidi Regional Administration of Criminal Police, Paata Gvalia, questioned Ilona Epsia and Rusudan Kurashvili, two shopkeepers, who state that at 20:30 hours, on 28 October 2007, Deputy Bezhan Gunava rushed into their shop followed by five young men who hit him several times in the face. Epsia and Kurashvili forced the five young men to leave their shop. According to Kurashvili, one of the television companies recorded the incident.

The offences perpetrated by Putkaradze have been investigated by the judge of the Zugdidi Regional Court, Irakli Abshilava. The motivation part of the decision, which includes only six sentences, states that at 21:00 hours, on 28 October 2007, on Gamsakhurdia Avenue, in Zugdidi, Putkaradze was using obscene expressions and was insulting citizens verbally and physically, thus violating civil law and order, and refused to obey the legal orders of the police to put an end to his offensive activities. Putkaradze, as Judge Abshilava stated, admitted his guilt and even repented. Putkaradze was proven guilty of perpetrating the acts provided in Articles 166 (minor hooliganism) and 173 (ignoring the legal orders of law enforcement bodies) of the Administrative Procedural Code. He was charged with a fine of 400 GEL and a labour sentence not to last longer than ten months.

The decision does not specify the evidence the judge used to make his decision. The judge had not displayed interest towards the fact that the report presented Changelia, confirming the fact that Putkaradze made an administrative procedural offence due to his verbal insults, contradicted all the other evidence in the case that proved the verbal and physical offences, which in itself is not an administrative offence, but an act covered by the criminal code.

It should also be pointed out that the term "physical", which is encountered in the offence protocol is entirely removed from the court decision. In this way, Judge Abshilava purposely evaded specifying the form of insult in the decision in order to avoid imposing charges on offenders under the criminal code.

In accordance with Article 237 of the Code on Administrative Offences, a judge evaluates statements depending on his/her inner belief, which is based on the full, multilateral, and objective investigation of all aspects of investigation taken together. What were the grounds that allowed Judge Irakli Abshilava to lessen the charges against Putkaradze and others, and charge them with the administrative sanctions only, when the unanimity of the evidence points to the fact that physical offences were perpetrated by the abovementioned persons?

Bictor Mikaia inflicted physical offences upon citizens, which is proven by the protocol of administrative offences, administrative detention protocol, reports of the policemen, and the questioning of Epsia and Kurashvili. Mikaia appended to the offence protocol his notes and explanations, in which he points out that he inflicted physical and verbal offences upon the Members of Parliament, Bezhan Gunava and Bidzina Gujabidze, as well as the member of the Equality Institute, Lasha Chkhartishvili, and a citizen, Soso Robakidze, after they verbally insulted his mother and family, President Mikheil Saakashvili and the residents of Zugdidi.

The administrative offence protocol drafted against Mikaia on 29 October 2007, was examined by D. Kekenadze, a judge of the Zugdidi Regional Court. It is clearly stated in the court decision that Zaur Elarjia, who drafted the protocol, repeated at the court session the facts that had been stated in the protocol of Administrative offence. The alleged offender agreed with the explanations of the protocol drafter. However, the circumstances that had been accepted by the judge as stated are not present in the motivation part of the court decision.

The decision simply states that the evidence presented in the case proves the administrative offence committed by Mikaia. Thus, the decision reached by Judge Kekenadze does not deny the fact of the physical offence committed by Mikaia against the citizens. Yet, the penalty imposed upon Mikaia for the misdemeanour was a fine of 400 GEL, and he was not held responsible for the criminal activities.

The protocol for similar administrative offences and detention has been drafted against Goga Gurckaia as well. Identical acts as those by Putkaradze and Mikaia are described in the given protocol. The administrative offence protocol is appended by similar questioning protocols and reports by the same policemen. Ghurckaia added that he fled after physically abusing the Parliament members and as the police arrived, who previously warned him to stop the above-mentioned activities. Neither the court sessions protocol nor the court decision point to the presence of an order to stop the offensive activities directed against the citizens. The court charged

Ghurckaia with 20 days of administrative imprisonment for committing an act of minor hooliganism; and a fine of 400 GEL for ignoring the legal order of a law enforcement authority.

In the process of examining the case materials, it becomes evident that the act committed by Ghurckaia had not been individualized by the court, this was done with the aim of avoiding the aggravation of the charges against him. He was proven guilty of breaching civilian order at the place of gathering and of verbal offences committed in a group (i.e. the same offence that had been committed by his accomplices, Manuchar Putkaradze, Biktor Mikaia, Irakli Mikaia, Giorgi Mania, and Akaki Rogava);. However, unlike Ghurckaia, they had been sentenced with a far less rigorous penalty; they only had to pay a fine. The facts had not been stated by the court, which, unlike the case of his accomplices, aggravated Ghuckaia's guilt, and made it necessary to apply a sentence of administrative imprisonment against him.

In this case, the sentencing process was a gross violation of the law. Article 36 of the Administrative Offence Code provides two rules for imposing sanctions during the examination of several offences. The first one is a general rule: "In the case of committing two or more administrative offences, the offender shall be sentenced to administrative punishment for each of the offences separately." In the second part, we encounter a special rule for imposing sanctions for cases when simultaneous examination of more than one administrative offence is conducted by one and the same body (authority).

The Judge had resorted not to the second part of Article 36 but the first part of the same article, which shall be applied in the following cases:

1. Different bodies examine different administrative offences committed by the same person;
2. One and the same body separately examines the different offences committed by one and the same person;
3. One and the same body simultaneously examines several administrative offences committed by a single person, but the relevant article of the Code on Administrative Offences envisages sanctions of similar gravity.

Under these circumstances, the second part of Article 36 should have been applied, since one and the same body (Zugdidi Regional Court), one and the same authority (Judge D. Kekenadze), had been examining two different offences committed by the same person. In particular, the minor act of hooliganism and disobedience to the legal order of the law enforcement authorities by Ghurckaia. In accordance with the second part of Article 36 of the Code of Administrative Offence shall provide the following rule:

"Sanctions against the offender shall be applied within the limits set for a more serious misdemeanour. Under the circumstances, the main sanction may be strengthened by one of the additional sanctions, which are envisaged by certain articles specifying the responsibility for any type of the committed offence." In this particular case, committing the act under Article 173 represents a more serious offence, as the latter, contrary to Article 166, envisages a fine, from 10 times the daily minimum wage, which totals 400 GEL. While Article 166 envisages the sanction of a fine totalling 100 GEL. Both articles envisage 30-day imprisonment terms as an alternative to the monetary penalty.

The judge was obliged to apply only the sanction provided under Article 173, a fine totalling 400 GEL, a labour sentence up to a period of 6 months, or an administrative imprisonment up to a 30-day term. Deriving from the second part of Article 36 the judge was obliged to abstain from the application of additional sanctions envisaged by Article 166. The second part of Article 36 still envisages the possibility to apply two articles, if one of them provides the additional administrative sanction. In accordance with Article 25 of the Code on Administrative Offences, the fine and administrative imprisonment, which have been applied simultaneously in the case of Ghurckaia, may be used as a principal sanction. In accordance with the same article, the confiscation of personal items represents an additional administrative sanction. Neither Article 166 nor the Article 173 envisages the confiscation of personal items as measures of additional sanctions.

In reality, Ghurckaia's actions, along with those of Giorgi Samushia, were most vicious of all. Samushia kicked Bezhan Gunava several times after the latter had fallen. Gunava rose and fled to the supermarket owned by Ilona Epsia where he was followed by another activist of the National Movement, Ghurckaia.

Ghurckaia hit Gunava on the head several times with his fist. Gunava rushed into the supermarket where Ghurckaia followed him and kept on hitting Gunava with his fists. The acts perpetrated by Ghurckaia, (hooliganism against a representative of the government) represents a crime envisaged by subparagraph "b", 2nd paragraph, Article 239 of the Criminal Code. Consequently, the administrative imprisonment of Ghurckaia was excessively mild and by no means proportional to the act committed by him. The judge had given no due specification to the factual circumstances of the offences perpetrated by Ghurckaia in the court decision and failed to pay due attention to the cruelty that made his actions different from those of the other offenders.

Proceeding from the above-mentioned facts, we believe that the sanctions imposed upon Ghurckaia have no legal grounds.

The protocol of administrative offences and other evidence in the case clearly point to the fact of physical offence committed by him against Parliament members and other persons. Regarding the above circumstances, there did exist a confession made by Irakli Mikaia himself. It becomes clear from the explanatory note of Changelia that Mikaia was only using obscene expressions and addressed people in a loud voice.

As Changelia, inspector of the local subdivision, specified at the court session that he only implied swearing. The case of Mikaia is different from the cases of the other administrative offenders because the authority body who drafted the protocol indicated precisely what was meant by the term "physical offence" – "they all tugged at each other this way and the other". Thus, those having drafted the protocol excluded the existence of a criminal act that envisages any punishment provided by the criminal code, particularly several assaults with fists or feet, which provides the grounds for imposing criminal responsibilities.

Nevertheless, the video footage filmed by so many television companies clearly shows that there was no tugging of the Parliament members but a straightforward, cruel beating. Thus, the facts had been falsified by the inspectors of the police subdivision. When asked by the judge what Mikaia implied by the term "physical offence", he explained that he had been deeply insulted and that became the reason to push the offender, but there had been no act of beating on his part.

Judge Amirido Gelantia listened to the explanations presented at the court session and found no reason for the investigation of additional evidence in order to establish the objective truth regarding the given case, which involved the examination of the existing video footage and the evidence provided by the witnesses.

The Court decision specifies that on 28 October 2007, at 21:00 hrs, on Gamsakhurdia Avenue, in Zugdidi, Mikaia was swearing and shouting obscene expressions to people, and fiercely ignored the demand of the police authorities to put an end to his activities.

In accordance with Article 260 of the Code on Administrative Offences, the body investigating the case is responsible to investigate whether required additional materials have been obtained.

In accordance with the terms provided by Article 230 of the same code, the objectives for conducting cases of administrative offences are the timely, complete, and objective investigation of the circumstances of each case, which, as mentioned previously, implies the complete and objective study of all the existing evidences in detail (Article 237). Taking into account the above norms, Judge Gelantia was obliged to study the additional evidence by making the videotapes public and examining the witnesses. In doing so, the judge, in accordance with Article 264, would have been able to determine whether Mikaia was to be subjected to the administrative

offence or whether there were any grounds for transferring the case to the bodies of preliminary investigation or the Prosecutor's 'office, in the case of any existing traces of the offence provided by Article 238.

The grounds for imposing administrative offence sanctions against Samushia are identical to the administrative responsibility imposed against Ghurckaia. Evidence used in connection with his case was similar to that used in the cases of other persons. The measure applied to him was administrative imprisonment for 20 days for minor hooliganism, while the fine, for the disobedience of legal order of the law enforcement representative, totalled 400 GEL. Samushia took active part not only in the beating of Gunava, but also inflicted bodily damage upon Bidzina Gujabidze.

In accordance with the above-mentioned, the examination of the cases against Giorgi Mania and Akaki Rogava were conducted as well. J. Morgoshia, the Zugdidi Regional Court judge, conducting the case against Mania, and Judge I. Abshilava conducting the case against Rigave. They applied the following sanctions: A fine totalling 400 GEL for committing minor hooliganism, as described above, and disregarding legal orders of the law enforcement body.

The Deputy Head of Chief Administration of the Interior Ministry of Samegrelo-Upper Svaneti, Megis Kardava, and the Head of the Zugdidi Interior Ministry Regional Administration, Koba Narsia, witnessed the act of inflicting bodily harm upon Bezhan Gunava, Bidzina Gujabidze, Soso Robakisze, and Lasha Chkhartishvili.

They had taken no measures to provide safety for the members of opposition parties or curbing the criminal activities of the National Movement activists. Kardava noticed the breach of law when the wife of Gujabidze slapped one of the offenders in the face, for which Kardava detained Maka Sakhuria. Thus, on the part of Kardava and Narsia, there is a case of professional negligence, an act covered by Article 342 of the criminal code.

The case of Teymuraz Kakabadze

Teymuraz Kakabadze resides in the village of Lower Sakara in the Zestapini region. He is a driver of a minibus (registration number 276) and on November 1, 2007, he arrived in Tbilisi, along with a caravan of rally members, to participate in the planned protest action at the Parliament building.

In accordance with the evidence given by Kakabadze, the caravan encountered no resistance on its way to Tbilisi. The vehicle he was driving had not been stopped. When he arrived to Tbilisi, he stationed himself at Republic Square. At about 1 o'clock at night he was all alone in his minibus. The passengers of his bus were at the Parliament building staying with the rally participants. At that particular moment, he was approached by a man in his mid forties and asked him for help. He was asked to help carry flags from Hero's Square in his minibus. Kakabadze agreed and followed the man to get the flags. Upon the request of the stranger he took the first turn before crossing Queen Tamar bridge and stopped the car. The stranger specified the precise place where he had to stop his minibus.

It was pitch-dark at the particular place, as the street lights were out. The stranger asked the driver to turn off his car lights. As soon as the lights were turned off, the person hit him. Simultaneously, theminibus doors opened from the outside and four people stood by the minibus, got Kakabadze out of the vehicle, pinned him to the ground, and kicked him brutally.

According to the explanations provided by Kakabadze, he failed to identify the persons or remember the attire they were wearing due to the darkness. He was kicked for about ten minutes, and his assaulters asked him several questions about why he was in Tbilisi and how many people came with him. At the same time, they talked to each other saying that the minibus was quite a large vehicle and there was enough room to drive 15 persons. Finally, he

was hit with a baton. They also hit the windscreen of his minibus with their batons at least three times, and cracked it. The stranger warned the driver not to move the car. Meanwhile, they got into their Jeep. Before leaving the place, one of them ordered him to turn around his vehicle so he could not see the direction they were going or the registration plate numbers.

After the particular incident, Kakabadze drove back to Republic Square. When he told his friends about the incident they called Imedi TV and the police. The journalists were the first to arrive. They filmed the cracked windscreen of the minibus and talked to Kakabadze. After that, the police arrived. Kakabadze had not paid any attention to the plate numbers of the patrol car. Nor had he asked the names of the policemen. They asked him to show them his vehicle documents, which he did not have as they were taken away while he was being beaten. He was told by his assaulters that he would be sent the documents on the next day.

An ambulance had been called by the police and had finally arrived. He was offered to be transferred to the hospital, but he refused. The police called the criminal unit for help and four members arrived. They talked to Kakabadze and told him to proceed with them to the office in order to make sure the windscreen had really been cracked by a truncheon. Two passengers of Kakabadze got into the car and together they drove to the nearest Department of Criminal Police.

When they arrived at the yard of the police department, a Jeep approached them from the rear. The person sitting in the Jeep told Kakabadze not to drive into the yard. Kakabadze left the yard and stopped the car at the entrance. The person that got out of the Jeep told him that the Saburtalo District Police Department was authorized to conduct the investigation and the victim had to address the mentioned investigators. At the same time, he reproached the other policemen for bringing other persons to the department (the two passengers).

Kakabadze turned back. After driving about 20 metres, a man in civilian clothes standing in the street began to throw stones at his car, which hit the windscreen. At the same time, the path for his minibus was blocked by a Jeep. Kakabadze kept flickering his headlights to get the Jeep to move, but it was in vain. The driver locked the car doors in order to protect himself from the assault. The doors were tampered from the outside, but as the assailants failed to open it, they broke the side windows of the bus with the butt ends of their weapons. Kakabadze increased his speed and drove towards the Jeep to escape. The Jeep gave way to avoid collision.

A while later, Kakabadze was approached by a Mercedes belonging to the members of the Criminal Police (state registration number 640), while he was standing at Republic Square. These were the staff members that took him to the police department previously. The representatives of the Criminal Police asked him for some explanations and offered him to go with them, but Kakabadze refused to follow them as he had been informed previously that the case had to be investigated by the Saburtalo District Police Department.

The case of Besik Javakhadze

Besik Javakhadze is a driver of a minibus taxi (car state number 721). According to his explanations, at about 14:00 hours, on 1 November 2007, he was driving along Youth Avenue in the city of Kutaisi, on his way to Tbilisi. At the exit of Kutaisi, he was stopped by patrol police (vehicle number WKW 511).

The policemen did not disclose their identity and demanded his vehicle documents. After receiving the driving license and the technical passport of the minibus, the policemen told the driver that the minibus had to be transferred to the penalty parking area for the reason of an unpaid fine. Javakhadze denies that he had an unpaid fine and consequently regards the statements of the police officers to be groundless. According to the evidence he had given, the policemen returned his documents and the passport after the arrival of media representatives and Member of Parliament Zviad Dzidziguri. They noted down the place of his residence.

The case of Badri Ugrekhelidze

Badri Ugrekhelidze lives in the city of Kutaisi. On 1 November 2007, Ugrekhelidze was driving to Tbilisi to take part in the planned meeting at the Parliament building. According to his explanations, his minibus was stopped by patrol police and inquired where the passengers were going. After the policemen learnt that they were travelling to Tbilisi to support the National Council, they took away the driving license from the driver along with other documents, saying that he had failed to pay a fine. Later, a caravan of cars moving in the direction of Tbilisi appeared at the exit of Kutaisi, which was followed by Deputy Zviad Dzidziguri. After his intervention, the police returned the documents to Javakhadze.

Upon the recommendation of 29 January 2008, regarding the fact of seizure of documents from Javakhadze and Ugrekhelidze, thus restricting their freedom of movement, the public Defender sent the case materials to the Office of the Prosecutor General for the initiation of a preliminary investigation.

The Events of Ajara

A caravan of car passengers headed towards Tbilisi from Batumi, on 1 November 2007, with the aim of participating in the protest action on 2 November. The caravan travelling in the territories of Ajara and Guria was under surveillance by Giorgi Charkviani, a representative of the Public Defender's West Georgian Regional Office. He uncovered several facts:

1. On 1 November 2007, he talked to the drivers, Guram Zoidze and Vakhtang Gvianidze. In accordance with their statements, unfamiliar law enforcement persons (not in uniform) confiscated their cars.

   Before the confiscation of their vehicles, their driving licenses and vehicle registration documents were confiscated. According to the drivers, all these acts had an aim to restrict their movements.

   As their documents were confiscated, the drivers were told by the representatives of the law enforcement authorities that their vehicles were to be returned to them on November 3 and a protocol had been drafted regarding the fact.

2. On 1 November 2007, a caravan of cars moving from Ajara in the direction of Tbilisi found the road blocked with building materials near Makhinjauri village. The caravan stopped. Soon policemen from Batumi Interior Ministry inflicted physical abuse at the drivers of the caravan and confiscated their keys. The incident led to a traffic jam. The police representatives were in a 2007 Zhiguli white car (number 738), a black minibus (number 513), and a black Jeep, theserial and the number of which could not be defined. Witnesses to this incident are Temur Davitadze, Zhuzhuna Saridze, Malkhaz Beridze, Zaur Ghambashidze, Malkhaz Davitadze, Davit Robakidze, and Shota Muptishvili.

3. A procession of cars moving towards Tbilisi found Duppel nails strewn on the road at the Chakvi crossing. For this reason, cars of both the passengers going to the action and those of ordinary citizens were damaged, among them two patrol police vehicles. A protocol had been drafted regarding this incident, which is signed by witnesses Temur Tsilosani and Malkhaz Tsilosani.

4. The mini busses moving from Batumi to Choloki heading to the action were intensively being stopped by patrol police officers, allegedly with the aim of checking documents. When asked why they were performing the checks, the patrol police officers abstained from making any comments and did not give their names. The police were trying to disperse the caravan and made maximum efforts to hinder their movement. Attempts to confiscate the cars had been made. The patrol police made five attempts to hinder the

movement of the caravan in the section between Batumi and Choloki. Protocol had been drafted regarding this incident.

5. In accordance with the information provided by the representative of the Public Defender, Giorgi Charkviani, a caravan heading towards the rally of November 2 was followed by police vehicles (two 2007 white Zhiguli cars, with plate numbers 667 and 669) and a black BMW with plate number 506 and a black Jeep with plate number DIN 982.

Upon the recommendation of the Public Defender on 29 January 2008, he required from the Prosecutor General a preliminary investigation regarding the restriction of movement of citizens travelling from the Ajara region.

The case of Mamuli Bukhrikidze

Mamuli Bukhrikidze made a statement for the representative of the Public Defender. According to his statement, he had made a deal with ten persons on 2 November 2007, promising them to take them to the action to be held in Tbilisi.

On the same day, the passengers gathered at the office of the People's Party. Bukhrikidze drove them in the direction of Tbilisi in his minibus. A passenger car was cruising the place where the passengers got into the minibus, moving around the minibus, watching the vehicle closely. One of the passengers remarked that policemen were in the car. Under the explanation made by M. Bukhrikidze, the car in question followed them up to the Osiauri village in the Khashuri District, and when they reached the village, it made a turn in front of the minibus to look at the placard of the bus. The placard read "Tbilisi". They then stopped on the motorway. The passengers arrived at the Didube minibus station, then the driver found eight passengers and travelled back towards Khashuri.

On 5 November 2007, at about 11:30 p.m., Bukhrikidze's family was asleep and was awakened by a terrible noise. The head of the family got up and looked out of the window and saw nothing, then he went onto the balcony and turned on the light. Still he could see nothing. His car was still in the front yard. There was a five-storey, destroyed building in front of the house. They concluded that the noise was coming from the house, which was falling apart under the heavy downpour.

At 8:00 in the morning, Bukhrikidze's wife informed her husband that his car windows were shattered. They called the police who questioned the entire family. Photos of the car photos were taken. Bukhrikidze believes that the incident is connected with his travel to Tbilisi and taking the passengers to the protest rally of November 2.

The representative of the Public Defender was given evidence by Bukhrikidze's neighbour, Mary Chubinidze. According to her, on 5 November 2007, at midnight, she heard noise from the side of the street. She feared that the noise would wake up her child and so looked out of the window. At first, she thought that the five-storey building was falling apart. Still, some time later, she saw a young man that at first stared at her house and then ran away. Other persons also passed the house running. They all got into a car and drove away. In the morning, she learnt that the car windows of Bukhrikidze's vehicle were shattered. Chubinidze heard at her work that the same was done to a certain Godelov, the driver, who, similar to her neighbour drove several passengers to Tbilisi on November 2.

Preliminary investigation has been initiated regarding this event.

The case of Zaza Godelashvili

Zaza Godelashvili gave evidence to a representative of the Public Defender. According to him, he promised several persons that he would drive them to Tbilisi so they could participate in the rally organized by the united opposition.

On November 2, at about 10:00 a.m., the passengers gathered at the office of People's Party. Godelashvili seated them in his minibus and drove in the direction of Tbilisi. At about 7:30 p.m., on 5 November 2007, Godelashvili was visiting his neighbours and heard a noise but ignored it. Sometime later, his children informed him that the windscreen of his minibus had been shattered. The neighbours told him that they saw four youngsters ran in the direction of a car that was parked nearby.

Godelashvili contacted Khashuri District police immediately, who arrived and took pictures of the vehicle. The case is being investigated by Beso Chinchaladze. After finding out that similar incidents happened to the rest of the drivers, Godelashvili is sure that the given incident is related to the transport of people to Tbilisi on November 2.

A third driver residing in the Khashuri region also found himself in the same situation, but refused to give his identity.

The case of Rati Maisuradze

The representatives of the Public Defender's office collected evidence from the Chairman of the youth organization of the Labour Party, Rati Maisuradze. According to him, he systematically participated in the protest rallies organized by the united opposition. At 1:40 at night, on 3 November 2007, he purchased cigarettes near the conservatory and decided to return to the rally.

At #2 Lesya Ukrainka Street, where the office of the National Movement is located, he noticed two cars, which backed up towards Atarbegov Street. The street was blocked by representatives of patrol police. However, Maisuradze stated, the patrol police opened the way to the mentioned cars, which disappeared between Lesia Ukrainka and Atarbegov Streets. About ten persons with masks and truncheons got out of the cars. Maisuradze fled towards A. Zichi Street. At the same moment, the masked persons fired three shots in his direction, Maisuradze fell down, and the mentioned persons abused him physically.

They beat him with truncheons, fists and the butts of their weapons for about one minute. The assailants placed Maisuradze in the car bonnet (BMW 444). The other car was an Opel Vectra, the rear number plate of which was missing. The assailants drove Maisuradze to an unknown location, from which only the television tower could be seen. He was beaten once again, pushed into the bonnet again, and taken to the Mukhatgverdi Cemetery. There they beat him up again with truncheons and the butts of their weapons. He was hit on the head and legs. After that they left him at the bridge in the neighbourhood of the cemetery.

In about ten minutes, a taxi passed near the place and drove Maisuradze to the office of the Labour Party. As Maisuradze explains, the mentioned events took place about 15 metres from the patrol police crew vehicle; nevertheless, the patrol police took no notice of either the shots or the beating. Maisuradze was transferred to the Hospital # 1.

The Public Defender sent the case materials to the Old Tbilisi Interior Ministry Main Department for initiation of preliminary investigation.

On 24 December 2007, we were notified by the Old Tbilisi Interior Ministry Main Department in a written form that the preliminary investigation had begun in the main department of the Vake – Saburtalo District in Tbilisi, bearing case #07075049, pertaining to the Criminal Code of a covered by the first part of Article 118. Presently the case is under the investigation, and operative/investigative measures are being taken for the identification of the perpetrators.

The case of Koba Chitanava

The representatives of the Public Defender received an explanation from Koba Chitanava, Chairman of Sokhumi University Self Ruling body. He took active part in the protest rallies organized by the united opposition. According to Chitanava, on 3 November 2007, at about 2 o'clock at night, after the final address to the action participants, he decided to go home and went to the Rustaveli metro station. He was accompanied by a person he just acquainted at the rally. They stopped to drink some water at the water fountain near the Biline office.

All of a sudden the person grabbed Chitanava's hat and threw it away. Chitanava asked him who he was, to which he answered that he was a local. Chitanava asked him whether he was alone or was accompanied by someone else. The person pointed at a car located nearby. In the car, a dark coloured BMW X5, there were people dressed in special uniforms and outside there stood two or three more persons. They pushed Chutanava to the ground and beat and kicked him. After the incident, Chitanava was transferred to the hospital.

The Public Defender sent the case material to the Office of the Prosecutor General for the initiation of a preliminary investigation. Letter # 04.01.2008/55 of the Legal Provision Department of the Office of the Prosecutor General states that on 26 December 2007, a preliminary investigation was started regarding criminal case # 10078340, regarding the abuse of power towards Chitanava, covered by the first part of Article 333 of the Criminal Code.

The Cases of Bichiko Mshvidobadze and Nika Machutadze

The representatives of the Public Defender received the explanations of the participants of the action organized by the united opposition, Bichiko Mshvidobadze and Nika Machutadze. According their statements, on 3 November 2007, at about 2 o'clock in the evening, they were returning home from the action. Near the opera, they noticed a Jeep, in which individuals dressed in special uniforms were seated.

According to the statement by Machutadze, those seated in the Jeep, among them the Director of Legal Administrative Department, Bacho Akhalaia, insulted him verbally and physically. Both Mshvidobadze and Machutadze saved themselves by escaping the assailants.

The Public Defender sent the evidence submitted by Mshvidobadze and Machutadze for further reaction to Georgia's Office of the Prosecutor General.

Letter # 06022008/69 from the Legal Provision Department of the Procurator General's office states that the explanatory notes provided by Mshvidobadze and Machutadze had been appended to criminal case # 06078035. An order for their questioning is sent to the department of supervision on investigation activities.

The case of Giorgi Lekishvili

Giorgi Lekishvili is one of the active members of the protest rallies conducted in front of Georgian Parliament. According to his statement, on 3 November 2007, at about 10 o'clock at night, he stood in front of the Parliament building with other protesters. A car drove up Jorjiashvili Street, by the side of Kashueti Church. A

smaller group of rally participants went in the direction of the car. Lekishvili also went in the same direction, in order to stop them and avoid a possible clash between the police and the rally participants. He walked down to the 9th April garden (formerly Alexander's garden) where he saw that there was a heated argument between the police and several persons. He states that the policemen were swearing and ordered the people to disperse.

Lekishvili explains that he intervened in the argument by positioning himself in front of the rally protesters, pushing them back in order to stop the argument. Lekishvili stood facing the rally participants trying to pacify them. At that moment, a blunt object hit him from the direction of the policemen, in the armpit area of the chest. There were four policemen. Lekishvili could not breathe for several seconds. When the rally participants asked him how he was, he answered that he was feeling all right. Meanwhile, the policemen ran away. Later the doctors of the ambulance told him that several of his ribs were fractured. He was transferred to the Ivane Javakhishvili Tbilisi State University clinical (formerly Mikhailov) hospital, where The case of his illness was registered.

The case of Beka Zaridze

Beka Zaridze is a member of the Republican Party. He participated in the manifestations conducted at the building of the Georgian Parliament. On 4 November 2007, during the daytime, he was at the protest rally holding the banner of the Republican Party. In the afternoon, at about 13:30, Zaridze walked down to the 9th April garden to drink some water. According to his statement, he was alone and carried the banner across his arm. He slowly came up to the water fountain and drank from it. Approximately 30 metres away stood a group of 15-20 young men wearing civilian clothes.

When they saw Zaridze, they began to insult him verbally, swearing and shouting, " you Republican". Then they approached him slowly. He tried not to pay attention at the way the mentioned group behaved and increased his pace. He was going in the direction of Rustaveli Avenue. After having walked about ten metres, he believed he felt a stone thrown at his back, so he ran. When he was running up the steps of 9th April garden he dropped the banner. After ascending the steps near Kashueti Church he looked back and saw one of the youngsters that was running after him. As he reached Rustaveli Avenue he felt wetness on his back, and after touching his back, he saw that it was blood. At that moment, he ran past a patrol police car. He was pursued by two men, his hands were covered with blood, and as he went past the patrol police representatives they paid no attention to the incident. Beka Zaridze claims that he had not paid any attention to the plate number of the patrol police car. The patrol car was stationed at the place to block Archil Jorjadze Street.

After the mentioned incident, Zaridze went up to the headquarters of the Republican Party at Griboedov Street. He notified the party members regarding the details of the incident. The victim approached the ambulance stationed by the Kasheti Church for first aid. The doctors told him that the cut was deep and it would be better to go to the hospital. Zaridze went to the clinical hospital of Iv. Javakhishvili State University. There he was told that the cut was 2.5 cm deep, and all evidence pointed to the wound being inflicted by a knife. After cleaning the wound, two stitches were applied.

On the next day, Zaridze arrived at the hospital for the removal of the drainage tube. At the hospital, he gave an interview to Imedi, Rustavi 2, and public television journalists. After the interview, he left the hospital and noticed the same group of young people in the yard that had wounded him the previous day. Zaridze returned into the building and left again with members of the Republican Party.

The case of the Sakartvelos Gza Activist

On the night of 4 November 2007, a protest rally was held in front of the Parliament building. Patrol police representatives took advantage of the small number of rally participants and headed in their cars towards the Parliament building from the Marriott Hotel. The three vehicles drove past the action members near Kashueti

Church and the Parliament building, which provoked a portion of the rally participants into action. They headed towards the Marriott Hotel, shouting. Members of the Interior Ministry were stationed there. In order to avoid possible clashes between the police and rally members, one section of the activists of the political parties arranged a human chain at the first Classical Gymnasium, assumed a place between the two opposing sides, and prevented the action participants from getting near the police. One of the activists from political organization, Sakartvelos Gza, who at this present stage asked the Public Defender to keep his identity confidential to remain safe, was standing in a chain. This activist, standing with his face towards the rally participants, was approached by a staff member of the Criminal Police from the rear and was hit by a truncheon on the head. After that, the activist turned and noticed only an inscription "Criminal Police" on the back of his assailant. This event was noticed by other Sakartvelos Gza activists.

Illegal Detention of the Rally Participants in Khobi

On 5 November 2007, a passenger minibus travelling from Zugdidi to Tbilisi in order to attend the protest rally was stopped by the patrol police at Khobi. The driver of the minibus was taken to undergo a drug test, and the male passengers of the bus were taken away for an identity check to the Interior Ministry Khobi Regional Department, from where they had been dismissed after the identification procedure and photographing. Journalists of the Discusi paper, Marina Demenia, Natia Berulava, Khvicha Akhalaia, Sofio Khubulava, and Lela Khubulava had not been subjected to similar restrictions.

The mentioned parsons were travelling in the same passenger minibus. Marina Damenia, Natia Berulava, and Khvicha Akhalaia contacted the west Georgian office of the Public Defender staff member, Bagrat Kiria, who drove them back to Zugdidi in his personal car. Sometime later, the journalists encountered the formerly detained passengers, who were detained once again, this time by the Zugdidi Police. Kiria arrived at the Zugdidi regional department of the Interior Ministry to meet the detained persons, but was not admitted into the building by the contract military servicemen guarding the facility.

The detention was conducted without any grounds of suspicion. The persons going to the protest rally were allegedly identified as persons under trial. Their rights and security had been violated by the detention, their escort to the police headquarters, and the photographing. Despite these facts, at present they are not suspects in committing any crime, and a protocol of an administrative offence has yet to be drafted. The fact that a group of the same people became a subject of an investigation in such a short period of time is of great interest. It is obvious that the objective of the check was to frighten them from participating in the rally. I strongly believe that on the part of the members of Samegrelo Upper Svaneti Interior Ministry bodies, there is a straightforward incident of the abuse of power regarding the minibus driver and the passengers (Article 333 of the Criminal Code), of premeditated illegal detention (first part of Article 147), and of the violation of human equality for political reasons.

It is absolutely clear that the illegal detentions carried out by the law enforcement bodies served the sole reason of preventing the people to join the protest rallies. The above-mentioned activities were motivated by the intolerance of opposition political believers. The freedoms and rights of expressing, gathering, and rallying, as well as the freedom of movement, have been violated by the Interior Ministry department staff of Samegrelo Upper Svaneti.

The above-mentioned events once again point to the serious problems existing in Georgia regarding issues of political pluralism.

Not allowing the Public Defender representative admittance violates the Organic Law on the Public Defender, which states "the Deputy Public Defender of Georgia and the office members conduct their activities in accordance with Articles 18 and 19 or its part under the special authorization of the Public Defender of Georgia"

(paragraph 1, Article 27). In accordance with Article 19, the public Defender of Georgia checks the conditions of the observance of human rights and freedoms at the places of detention, preliminary imprisonment, and other places of freedom restriction. He meets personally and talks with the detained persons being held under preliminary arrest and the offenders; and checks the documentation connected with their detention". The refusal to observe the legal demand of the authorised person of the Public Defender to be allowed to meet the detained persons requires action to be taken in accordance with Article 1734 of the criminal code.

The case of Andro Gogoladze

After the dispersing of the rally on Rustaveli Avenue on 7 November 2007, Andro Gogoladze went to the Metekhi Church at the time when a squad of special troops arrived. Gogoladze, along with the rest of the rally members proceeded to the Baratashvili Bridge, where policemen dressed in yellow raincoats insulted him physically and verbally.

The case of Nino Silagadze

Nino Silagadze is a journalist for the paper, Georgian Times. In accordance with her statement, on 7 November 2007, she was in Tbilisi, at Rikhe, conducting her professional responsibilities. Rally participants and leaders of the opposition parties had gathered there after the morning action near Parliament had been broken up. According to Silagadze, she was accompanied by her colleague, Shorena Civkarashvili. In about 30-40 minutes from the beginning of the rally the meeting began being broken up by special troops. Rikhe was surrounded by special troop squads and patrol police. They began to break up the rally without issuing any warning. From the information provided by the journalist, it was practically impossible to escape from the territory. The policemen beat the people, and the brigade descending down the hill did it with particular maliciousness. They shouted "Misha, Misha" and swore at everyone who was there. Silagadze and Civkarashvili were with the Rustavi 2 crew. A man was pushed down to the ground right before them, and his leg broke as a result of the beating. The journalists were attacked by four special squad members. Initially, they had been shot at by rubber bullets from a distance of about 20 metres. Silagadze was hit by the rubber bullets in the neck and leg. Then they were approached by four special squad members who called them "oppositionists", and tried to drive them out of the territory.

When the media representatives informed them that they were journalists, the special squad people became even more aggressive and began to use their truncheons. One of them hit Silagadze in the stomach. Another journalist shouted at him to calm down as she had already been hit by rubber bullets. The assailant shouted back that she probably had not been hit well enough". After that, a young man approached them trying to defend them. After a brief wrestling bout, the special squad members left them alone.

From the Silagadze's account, it becomes evident that patrol police cars were stationed at Rikhe. The policemen in the cars never reacted to the beating of the young ladies or the physical abuse. They simply watched the events from a distance.

The case of Trialeti TV Company

In accordance with the information given by Trialeti TV, on 7 November 2007, while filming the protest events, video cameraman Giorgi Kvrivishvili was beaten by police and his camera (Panasonic NV-JF 300 DV-99129) was taken away from him while he was performing his duties as a journalist. He had undergone one day of medical treatment at the Republican Hospital.

The statement given by the Public Defender says that Tinatin Beruashvili, journalist from Trialeti, confirms that on 7 November 2007, they were beside Kvrivishvli to cover the events unveiling in front of the Parliament building. At the moment when the rally protesters went onto the traffic lanes of the road, he followed them to film the activities. T. Beruashvili tried to contact Kvrivishvili but her telephone was turned off.

After the use of water cannons and tear gas to break up the rally, she was called by the head of the information department and was informed that the cameraman had been beaten, his camera was confiscated, and he was transferred to the hospital. Beruashvili watched the film on Imedi TV where she saw how the cameraman was seated in the ambulance. After contacting the Kronika information studio, she learnt that Kvrivishvili was transferred to the Republican Hospital. Beruashvili visited him in the hospital.

Kvrivishvili left the hospital as soon as he had been given medical aid. He informed Beruashvili that while filming the events at the Parliament building, a policeman dressed in a yellow raincoat first took away his camera and then abused him physically.

The next day, Beruashvili contacted the press centre of the Interior Ministry and provided them with the information regarding the confiscation of the camera. In accordance with her story, the staff of the above-mentioned body gave her the numbers of Zurab Gvenetadze and Shota Khizanishvili, and advised her to approach them. Gvenetadze denied keeping the camera belonging to Trialeti TV, and it was impossible to contact Shota Khizanishvili.

The Evidence Provided by Davit Usupashvili Regarding the Dispersing of the Rally in the Morning of 7 November 2007

Davit Usupashvili made a statement for the representative of the Public Defender. On the morning of 7 November, he was at the Parliament building with the rest of the rally participants. At about 7:00 hours, the vehicles of the city cleaning services arrived at the site. There were approximately 8-9 big vehicles and about 10 smaller vehicles, all followed by approximately 200 dustman. Usupashvili states that the sight was really strange since during the rally gatherings about 7-8 sweepers appeared usually to clean the territory of the Parliament building, and they always were given the possibility to clean the premises, often being helped by the rally participants. At that particular hour of the morning, there were about 16 hunger strikers at the premises. Since it had been raining throughout the night, there was a blue tarp spread over them. There were around 200 rally supporters at the site at the time.

As stated by Usupashvili, he and Giorgi Meladze talked to the head of the cleaners' group, Tariel Khizaneishvili, who told him that they were there only with the aim to clean the territory. He knew nothing else.

At about 7:45 a.m. the garbage vans left the site. Right then 2-3 yellow busses arrived from the direction of the Tavisupleba metro station, and policemen clad in yellow raincoats got out of them. Other law enforcement representatives appeared from the other side as well and occupied the traffic lanes of the avenue. Usupashvili states the authorities met no resistance from the side of the demonstrators, they only asked questions in order to find out what the reason was for their arrival. The rally participants moved quietly to the pedestrian side of the avenue.

Meanwhile, the police squads also moved to the pedestrian side of the street and charged into the group of the protestors. The rally participants stood with their hands raised around the hunger strikers. Goga Khaindrava stood in the corner where the representatives of the law enforcement bodies were going, and they threw him down. Then the policemen broke up the iron fence and began to force the hunger strikers out of their places. They grabbed the hunger strikers and threw them out, often kicking them. According to Usupashvili, they had

not heard a single warning from them. The demonstrators asked the policemen questions, particularly which law they had been violating, although no answers were given.

In accordance with the information provided by Usupashvili, Levan Gachechiladze and Bidzina Gegidze sustained the most injuries inflicted by the police. The demonstrators were trying to rescue the hunger strikers though the law enforcement officers were hitting them too. The policemen were simultaneously grabbing and taking away the cameras of the filming groups of different television stations, and breaking them on the spot. The breaking up operation was filmed only by 5-6 cameramen of the Interior Ministry. The demonstrators asked one of the unit cameramen which TV Company he represented and he answered that he worked for Kavkasia, but when he was asked his name and asked for his ID card, he began to swear at them and called the policemen. They surrounded him and helped him to escape the premises.

The case of Koba Davitashvili

Koba Davitashvili is Chairman of the Peoples Party. The organization is a member of the unified National Council. The council organized the protest action of 2-7 November 2007, on Rustaveli Avenue in Tbilisi. Davitashvili watched from the roof of the Parliament building the break up of the protest rally on Rustaveli Avenue with the use of tear gas. Trying to settle the problem of the microphones, after the dispersion of the mentioned protest action, the National Council of the unified opposition gathered at the headquarters of the Republican Party, where a decision was made to hold a protest meeting at Rikhe as there was no technical equipment for the rally. Davitashvili, along with three members of the Conservative Party, went to purchase the required equipment.

The salesman warned Davitashvili that the tax people, dressed in plain clothes, and members of the Rurua brothers group[131], had been raiding the market since the early morning. They warned the people against going to the protest rally. In one of the shops selling the equipment, Davitashvili and the persons accompanying him purchased the necessary items. When they were getting out of the shop, about 20 persons approached the shop. Seven of them went into the shop and began beating Davitashvili without issuing a single warning.

The mentioned persons were wearing black civilian clothes. Davitashvili cannot remember how long the beating lasted. He was hit with chairs, iron rods, and some unidentified objects. Then he was taken outside and the beating continued. Davitashvili asked for help addressing a clerical person and some strangers at the market. After this, the people surrounded the assailants. According to Davitashvili, because of the resistance by the people, the assailants found it impossible to approach their car. They took the driver of a minivan parked nearby, pushed Davitashvili into the rear part of the van, and made the driver drive to Gori, via Gldani District.

The van was white and meant for carrying goods, and the driver probably was selling tyres, as the truck was filled with tyres. In the van the assailants continued to beat Davitashvili. As he says, he was frightened by the fact that the assailants were not hiding their faces. The given circumstances made him think that they had a plan to kill him, which they confirmed during their conversation. Davitashvili asked them that if they intended to kill him, why were they taking him to Gori? He asked them why he was not being taken to Kaspi as it was his native region. To which the assailants answered that "they would do it gladly if he offered a meal". Davitashvili lost much blood during the drive. As he was sure that he was going to die soon he said his prayers and forgave his assailants. This, in his opinion, had an effect upon them, as they made the driver stop the car, fetched some

[131] Nikoloz Rurua, member of the Georgian Parliament and Chairman of the Defence and Security Committee, along with his brother Giorgi (Zhorik) Rurua, headed one of the sections of the non formal armed military formation, Mkhedrioni, theso-called "brotherhood of the evils", during the coup d'état in 1991-1992. The latter participated in the Abkhaz war of 1992-1993 and the 1993 civil war in Samegrelo Upper Svaneti. According to the statements of the opposition leaders, Giorgi Rurua presumably participated in the breaking up of the protest rally on Rustaveli Avenue on November 27, 2007.

water, and washed away the blood from his face; they also bandaged his wound with a handkerchief. Upon the assailants' order, the driver drove the van to the road at an unfamiliar place and approached some shrubs. The assailants got out of the car and talked on the phone for a while. After this, they transferred Davitashvili to a black Toyota Jeep. The car was damaged on the driver's side, the window did not work, and the windscreen was also smashed.

Davitashvili also noticed a red BMW. In the Jeep 2-3 assailants followed him and there were two more strangers in the Jeep. During the drive, they contacted a certain stranger from time to time and made him listen to the moans of Davitashvili. Davitashvili overheard during one of the conversations the following statement: "There are the three of us, and Alik is also here". Finally, the assailants told Davitashvili that he had nothing to worry about as they were taking him to the hospital. Soon they drove him to the military hospital in Gori. It should be mentioned that the car drove into the hospital yard without any complications. Davitashvili was laid on a stretcher and taken to the intensive care unit. The victim states that the medical personnel could hardly hide their surprise on seeing him there. The doctor insisted on surgical interference, which was refused by Davitashvili. He underwent many tests; however, despite the absence of damage to internal organs and any kind of serious trauma in the area of the head, he was kept in the intensive care unit.

Here he was in a total isolation. Despite multiple demands, he was not given the possibility to make phone calls. The next day he learnt that the Bishop of Gori, Andria, was trying to contact him. The doctor however, told Bishop Andria that the condition of the patient was so grave that he would be unable to talk on the phone. According to Davitashvili, his relative working in the hospital managed to bring him a cell phone and he contacted his family and Kakha Kukava, a Member of Parliament. His whereabouts became known after that. Davitashvili states that an investigation is being conducted into this incident, although he was only questioned once on 14 November.

The case of Otar Mujirishvili and Levan Mosashvili

On 8 November 2007, Public Defender representatives visited the Temporary Detention Isolator # 2 of the Central Department for Human Rights Protection and Monitoring of the Georgian Ministry of Internal Affairs, and interviewed detainees Otar Mujirishvili and Levan Mosashvili.

According to Mujirishvili, he was going to meet his friend in Dighomi on 7 November 2007. The road was blocked, so he decided to get out of the taxi and continue on his way by walking. According to him, he was attacked near the hospital premises by members of the special task force, and eventually started beating him. He was then dragged to the territory of the Imedi TV Company and they continued their physical abuse. Mujirishvili noted that one of the members of the special task force asked him if he had a knife, and having received a negative reply, he told Mujirishvili, "you will have in your pocket whatever I want there to be". As Mujirishvili stated, he was handcuffed to an unknown person, with whom he allegedly committed a crime. Then he was forced into a car, was driven to a damaged vehicle (he could not recollect the car model) and following a face-to-face conversation, was taken to the Didube-Chughureti Police Department.

Mujirishvili sustained injuries that could be observed by visual examination. Particularly, he had redness on the right side of his forehead, redness and a bluish bruise close to his right eye, a peripheral haematoma on his head, and redness on the his back in the form of lines.

According to the account of Mosashvili, on 7 November 2007 he was in his private flat (Tbilisi, Dighomi Massivi, Kv. 4, Bld. 5A). Around 23:00 hours, he heard some noise, looked down from his balcony and saw around 150-200 persons chanting the word, "Sakartvelo" (Georgia). He went down to the yard. There were young men with bottles and stones in their hands threatening to damage police vehicles. According to him, he

managed to convince the young men to throw the mentioned items away. Less than ten minutes later, members of the special task force appeared from the direction of the TV Company premises. They threw tear gas at the protesters, which caused them to disperse.

Mosashvili notes that he remained in the yard with his neighbours when he was approached by members of the special task force. They started to beat him with rubber batons. He went on explaining that he was a former staff member of the Security Services, which irritated the members of the special task force even further. He was handcuffed, and with the help of police services, was transferred to the Temporary Detention Isolator.

The letter from the Office of the Prosecutor General #g15012008/8/' states that as a result of developments having taken place in Tbilisi on Rustaveli Avenue and at the Rikhe territory on 7 November 2007, a preliminary investigation into criminal case #06078035 was launched on the incidents of physical injuries sustained by several persons, as stipulated by the Criminal Code of Georgia, Article 118, paragraph 3.

The letter also indicates that Mujirishvili was questioned as an eye witness in the above-mentioned case, and a forensic medical examination was ordered to reveal the degree of his physical injuries.

On 7 November 2007, a preliminary investigation into the criminal case #02073801 was launched at Tbilisi City Didube-Chughureti District Police Department of the Georgian Ministry of Internal Affairs, investigating the incident of hooliganism and the damage of a police vehicle by Mujirishvili.

In compliance with Article 1, paragraph 1 of the Georgian Law on Amnesty, the criminal prosecution against Mujirishvili was stopped, due in part to the charges envisaged by Article 187, paragraph 1 of the Criminal Code of Georgia.

On 28 December 2008, a Plea Agreement Procedure was applied, which was approved by the Tbilisi City Court. Mujirishvili was sentenced to two years of imprisonment, substituted with probation of the same duration and an additional fine of 2,000 GEL.

Mujirishvili does not admit committing the crime, and, according to him, his agreement to the Plea Agreement Procedure should be explained by the impossibility to win a case against the Prosecutor's Office.

The case of Vladimer Khutsishvili

On 12 November 2007, Public Defender representatives visited the Temporary Detention Isolator # 2 of the Central Department for Human Rights Protection and Monitoring of the Georgian Ministry of Internal Affairs, where they interviewed detainee Vladimer Khutsishvili.

According to Khutsishvili, on 11 November 2007, around 21:00 or 22:00 hours, he was purchasing medicine at the pharmacy, located at the turn to the Temka Settlement on Guramishvili Avenue in Tbilisi. Two or three persons dressed in civilian clothes, unknown to him, entered the pharmacy. They seized Khutsishvili by his throat and forced him out of the pharmacy. Five or six other persons were outside. He was immediately seated in a vehicle – a white Niva – where he was physically abused. He was beaten in the face and back and was demanded to return a rubber baton. He was then taken to the Ministry of Internal Affairs. The policemen turned on a video recording of the events that took place at Rikhe on 7 November. The recording showed Khutsishvili holding a rubber baton. He explained that he snatched the baton from one of the members of the special task force who was wearing a mask and beating protesters during the dispersing of the protest rally. Then 5-6 policemen physically abused him for around five minutes, using their fists and feet. That is why, along with other body injuries, several of his teeth were also broken. While beating him, the policemen demanded from him to name the persons who

accompanied him at the rally. Then one of the policemen ordered the others to stop beating him. According to Khutsishvili, he hit a glass table placed in the room with his head. Three policemen took him down to the entrance hall, put him in the car and drove to the Tbilisi Main Division of the Ministry of Internal Affairs where he was interrogated by an investigator. He was not physically abused at the Tbilisi Main Division of the Internal Affairs. Following the interrogation, he was moved to the Temporary Detention Isolator.

Currently, Khutsishvili is under preliminary detention at Rustavi Prison # 6. An accusation was filed against Khutsishvili, which was forwarded to the Tbilisi City Court Administrative Cases Board for further follow up. The accusation filed states that Khutsishvili is accused of the crimes as defined by Article 273 (illegal preparation, purchase, or keeping of small quantities of narcotics; its analogy or precursor for personal use, or their use without a doctor's prescription; perpetrated after awarding an administrative sentence for such practice) and Article 225 (participating in mass disorders) of the Criminal Code of Georgia.

According to the accusation, Khutsishvili's alleged crime under Article 273 was based on the decision of 21 December 2006, by Natia Gujabidze, a Judge of the Tbilisi City Court Administrative Cases Board, according to which he had committed an administrative offence.

On 14 May 2007, Khutsishvili was detained by the members of the special task force of the Georgian Ministry of Internal Affairs and was accompanied to the Narcotics Department. Khutsishvili was diagnosed of using Buprenorphine and other opiates.

On 1 October 2007, the5th Department of Vake-Saburtalo District Police Department of the Ministry of Internal Affairs administratively detained Khutsishvili who was examined at the Narcotics Department and diagnosed of using drugs.

Based on these two incidents, the Tbilisi Prosecutor's Office accused Khutsishvili of allegedly committing the crimes as per Article 273 of the Criminal Code of Georgia.

The accusation described factual circumstances of the actions defined by Article 225, paragraph 2. Particularly that during the dispersing of the protest rally on 7 November 2007 at Rikhe, Khutsishvili, close to the entrance of the automobile tunnel, used a rubber baton and caused physical injury to Paata Gelashvili – a member of the special task force of the Ministry of Internal Affairs.

The Prosecutor's Office also claims that on 11 November 2007, at the time of his detention, Khutsishvili was confirmed of using Buprenorphine and other opiates.

On 18 February 2007, Khutsishvili's preliminary detention was substituted by bail in the amount of 2,000 GEL.

The case of Dachi Beridze

On 12 November 2007, Public Defender representatives visited the Temporary Detention Isolator # 2 of the Central Department for Human Rights Protection and Monitoring of the Georgian Ministry of Internal Affairs, where they interviewed detainee Dachi Beridze. According to his accounts, on 7 November 2007, around 21:00 hours, he was trying to catch a taxi at the bus stop in front of the Avlabari metro station. Meanwhile, policemen dressed in yellow raincoats came down from a white bus parked nearby. One of them hit him on his head with a rubber baton, and other policemen immediately surrounded him. According to the information provided by the detainee, he could not recollect how he got inside the white bus. He was then transferred in the same vehicle to the Parliament building, where he was moved to a police car and taken to the Temporary Detention Isolator # 2.

Beridze has a peripheral haematoma and swelling on his head. The police state that he was detained for the violation of the Code on Administrative Offences, Article 173.

The case of Shorena Shelia

The representatives of the Public Defender interviewed one of the detained women, Shorena Shelia, while monitoring the temporary detention facilities. According to her accounts, on 8 November 2007, she was in Tbilisi at a booth on 7A Kizikhi Street where she works as a shop assistant. At midnight she was approached by two District Police Inspectors who told her that the fine she paid was not registered by the bank, and to clear this matter, she had to accompany them to the Police Department Office. Shelia explained that she had paid the fine in time, though despite thorough search, she could not recover the receipt confirming her payment. She decided that she could verify the fact that she had paid the fine according to the information provided in her ID. She went to the police department where she learned that she was being detained because she was captured in the camera footage of the protest rally on 7 November 2007. A detention protocol was compiled and she was transferred to the Temporary Detention Isolator #2.

On 9 November 2007, Tbilisi City Court Administrative Cases Board considered, that Shelia's actions did not show signs of violations defined by Article 116 of the Code on Administrative Offences and decided to stop the proceedings.

The case of Elizbar Basishvili

On 7 November 2007, the representatives of the Public Defender visited the Forensic Main Division Office of Drug Research of the Georgian Ministry of Internal Affairs where they interviewed detainee Elizbar (Kakha) Basishvili. According to his accounts, on 7 November 2007, by 8:00 hours, he was attending a peaceful rally in front of the Parliament building, together with those who were on hunger strike. He was on hunger strike himself for three days. At that point representatives of law enforcement approached and started raiding the rally and beating those on hunger strike. The policemen pinned him down on the asphalt and started beating him. He was injured on his right ankle. Oedema could be observed on his lower left limb. As stated by the detainee, the policemen were beating him with their hands and feet on his head as well. Elizbar Basishvili stated that there was no resistance from the part of the protesters against the policemen. He was forced down to Rustaveli Avenue, pushed into the police vehicle, and moved to the Drug Laboratory. Basishvili refused to give sample of urine, due to which he was diagnosed of being under the influence of narcotics, to which he disagrees.

The case of Malkhaz Jolokhava

On 9 November 2007, Public Defender representatives interviewed M. Jolokhava. The contents of the interview show that on 7 November 2007, around 05:30 hours, he was walking from Tavisuplebis Moedani (Freedom Square) to Kolmeurneobis Moedani (Flower Square), when two men dressed in criminal police uniforms forced him into a brown BMW, where he was verbally and physically abused. The person dressed in criminal police uniform, who was sitting in the car when Jolokhava was pushed into it, sprayed an unidentified substance into his face from a deodorant-spray-like container. It caused his eyes to burn and tears to flow. According to Jolokhava's account, they were intensively piercing the middle finger of his right hand with a needle-like object and at the same time were warning him to stop joining protest rallies. As a result of intense physical pain, Jolokhava lost consciousness and did not remember how he appeared lying on the asphalt near the house at 6 Laghidze Street. First, medical assistance was provided by the residents of the building. Later, after approximately 12 hours, Jolokhava returned to the rally in front of the Parliament when the raid of the protesters started, and was again beaten up by policemen with rubber batons. Meanwhile, he recognised the two police-

men who illegally detained him in the morning. As stated by Jolokhava, he can identify these persons since he had seen them on numerous occasions on Rustaveli Avenue. During the raid, Jolokhava fell sick, lost consciousness, and was transferred to Republican Hospital.

Public Defender representatives visited the Neurosurgical Centre of the Tbilisi State Medical University where they obtained Jolokhava's medical records. According to the medical records, he was admitted to the medical centre on 7 November 2007, with the diagnoses of a closed-head injury and concussion, as well as a haemorrhage under the nail of the right hand middle finger.

The case of Gia Sherazadashvili

On 7 November 2007, around 14:00 hours, Gia Sherazadashvili was admitted to the Reanimation Department of the Republican Hospital. He was unconscious and heavily injured during the raid of the rally in front of the Parliament.

Representatives of the Public Defender visited the Republican Hospital and obtained the medical records of Sherazadashvili. According to the medical records, he was admitted to the medical centre on 7 November 2007. He was unconscious and was diagnosed with polytrauma, acute closed craniocerebral trauma, epidural haematoma on both hemispheres, subdural haematoma at the left temple, subarachnoidal haemorrhage, fracture of cranial bones and base of the skull, closed trauma of the abdominal cavity, fracture of the third segment of the liver, and nasal excoriations.

On 7 November 2007, at 15:00, Sherazadashvili underwent craniocerebral surgery, and on 8 November he was operated on his liver. As of 6 March 2008, he was still undergoing treatment at the Rehabilitation Centre.

Sherazadashvili did not take part in the protest rally. On 7 November 2007, he was standing outside his house on Griboedov Street in Tbilisi. Policemen, who were following protesters escaping from Rustaveli Avenue to Griboedov Street, mistakenly considered Sherazadashvili as a participant of the protest action and ruthlessly punished him.

The case of Natela Nemsadze

On 9 November 2007, Natela Nemsadze was interviewed by Public Defender representatives. According to the content of the interview, on 7 November 2007, between 08:00-09:00 hours, she was walking near Kashueti Church when she was attacked by three persons armed with rubber batons who physically abused her. They were hitting her with their rubber batons at the base of her skull, back, and shoulders. Due to the intense physical pain, Nemsadze lost consciousness. When she recovered she found herself at the park down from Kashueti Church. Nemsadze went towards the Rustaveli Metro station when she witnessed the dispersing of the protesters by members of the special task force. Since she was experiencing excruciating pain as result of the physical abuse, she addressed the emergency services staff on the site and was moved to Republican Hospital.

According to her, she had been participating in the protest actions in front of the Parliament from 2 November, and almost every evening, male protesters, after visiting toilets nearby Kashueti Church, were returning beaten up. According to their words, they were physically abused by policemen dressed in civilian clothes.

Public Defender representatives visited the Neurosurgical Centre of the Tbilisi State Medical University where they obtained Nemsadze's medical records. The medical records state that she was admitted on 7 November 2007, with the diagnoses of closed craniocerebral trauma and concussion.

The case of Mamuka Mdinaradze

On 8 November 2007, Public Defender representatives interviewed Mamuka Mdinaradze. According to his account, on 7 November 2007, around 14:30 hours, he left his home and went to 9th April Park since he was interested on what was happening at the rally. During the raid of the protesters, Mdinaradze ran away. One of the policemen, who happened to be by his side, tripped him with his leg and made him fall. Around fifteen policemen were mercilessly kicking Mdinaradze who had fallen down, and were telling each other, "let me kick him too". The policemen stopped abusing him only when clergymen, who accidentally were passing by, intervened. As Mdinaradze was not feeling well, he went to the Clinical Hospital of Ivane Javakhishvili Tbilisi State University. As a result of the beating, Mdinaradze sustained lung injury and underwent surgery. After the surgery, a drain tube had to be installed. He had multiple injuries on his limbs, back and head.

The case of Nino Soselia

On 7 November 2007, Nino Soselia was interviewed by the representatives of the Public Defender. According to her account of the events, on 7 November 2007, around 12:30 hours, she was at the protest rally in front of the Parliament when police starting dispersing the protesters by using water cannons and tear gas. At that moment she was standing on the side of the Parliament, in front of the First Secondary School, when one of the masked persons in an army uniform hit her in her head with a rubber baton, gave her a slap on her face and with his full force pushed her against the school wall. After this incident, Soselia went home. Later she started bleeding from her left eye and felt agonizing pains in her head and arm. On 8 November 2007, she went to Tbilisi State University Clinical (formerly Mikhailov) Hospital. After consultations with the doctor, it turned out that she had a skull fracture in the temple area.

The case of Dusheti Street

On 12 November 2007, Public Defender representatives visited the Kopinashvili family living at 7 Dusheti Street in Tbilisi. According to the account of the mother, Diana Jamaspishvili, at 19:30 hours she was at home with her three small children – Elene Kopinashvili, 5 years of age, 2-year-old Luka Kopinashvili, and one-month-old Ani Kopinashvili. Ms. Jamaspishvili said that after people started to run towards Sameba Church they tried to find shelter on Dusheti Street. At that time, unknown persons threw teargas in Kopinashvili's yard. As a result, the children got intoxicated and were transferred to Iashvili Central Hospital by emergency services. The children were also remembering what had happened.

On the same day, to follow up with the notification received, Public Defender representatives visited Nino Khurtsidze's family residing at 4 Dusheti Street. According to her account, on 7 November 2007, while people started running from Baratashvili Bridge towards Sameba Church an unidentified person threw a tear gas container on their balcony, which fell at the door of Khurtsidze's balcony. Khurtsidze has a seven-month-old baby. To save the infant from poisoning the parents wrapped the baby in a blanket and put it in the wardrobe. The emergency service doctors examined the baby and concluded that there were no signs of poisoning. The family did not take part in the protest rally.

The case of Zurab Tskovrebashvili

On 7 November 2007, Zurab Tskovrebashvili was attending the protest rally organised by the united opposition. He joined the protest action around 13:00 hours at Kolmeurneobis Moedani where there were clashes between people and the special task force. At the time of the clashes, there was a strong stench in the air caused by the tear gas. He was carrying a Georgian flag, and because of that he was hit with a rubber baton on his back several times,

and could hear swearing directed purposefully at him (i.e.: you standard-bearing mother f***er). At the same time, an unidentified object hit his head. After this, people decided to gather at Kashueti Church, but the road was blocked at the National Library. Then they tried to access Kashueti Church from the side of Tavisuplebis Moedani, though the road was blocked there too. On the way, he met a member of the special task force who snatched the flag from his hand, pushed and yelled at him, ordering him to leave the territory. He asked for the special task force member to return the flag. He was hit several times instead. Meanwhile, a young man was pinned down on the ground and was beaten up. Tskovrebashvili tried to help him, but he was also pinned down and was hit several times himself. After this, he left the rally site.

On 9 November 2007, two policemen visited Tskovrebashvili at his place and demanded from him to accompany them to the Didi Lilo District Police Department, in relation to a complaint allegedly filed by him. There he was told that he was organising the protest action of 7 November 2007. Law enforcers were demanding from him a list of the persons who took part in the rally. Then he was taken to the Didi Lilo District Police Department and told that he would be charged with a 15-day imprisonment, though ultimately he was freed. He was told that they would get in touch with him again. On Sunday, 11 November 2007, they called upon him at his home and once again demanded a list of like-minded persons. They were interested to receive information on Iago Lobzhanidze and Gegeshidze. When they received his denial that he did not know any of these individuals, Tskovrebashvili was freed. On 12 November 2007, at 12: 00 noon, he was again taken to the police department and once again the police demanded information on the participants of the rally. Following his refusal, a protocol was compiled and he was moved to the court, which penalised him 100 GEL.

The case of G.R.

Following the events of 7 November 2007, G.R. received a court notification. The notification was informing him that he was charged with an administrative offence for hooliganism. A protocol was compiled based on the testimony of the policemen, claiming that they recognised G.R. while reviewing the footage captured by the video camera. G.R. told the court that he was not on Rustaveli Avenue on 7 November and requested to see the video footage. The court did not satisfy his request. He was charged with hooliganism and an administrative penalty of 100 GEL. He was also made to write a note in which he gave his word to vote for Mikheil Saakashvili at the Presidential Elections. G. R. was verbally warned that if he did not do so, "he would pay dearly", as there would be secret video cameras installed at the polling stations, which would document everything. Furthermore, while at the police department, G. R. saw a list, in which he was number 180 among the others, who were charged with the similar offence. G.R. received a court judgment; however, he was refused a copy of it. Concerned about his personal security, G.R. requested to keep his identity confidential.

The case of Manana Iashvili

Manana Iashvili appealed to the Public Defender of Georgia. She stated that after disbursing the rally on the streets of Sololaki and Mtatsminda Districts there were gas capsules left behind, which had a negative effect on the health condition of the residents, especially children. The children developed panic and asthma attacks.

The case of Irakli Pirtskhalava

On 14 November 2007, Public Defender representatives visited the Temporary Detention Isolator #2 of the Central Department for Human Rights Protection and Monitoring of the Georgian Ministry of Internal Affairs where they interviewed the detained Irakli Pirtskhalava.

According to his account, on 13 November 2007, he was at work when two policemen of the Criminal Police Department visited him and requested him to accompany them to the Police Department for interrogation, to which he agreed. He was then moved to the Vake-Saburtalo District Police Department where they spoke with him about the rally held in Tbilisi. According to the law enforcers, Pirtskhalava was recorded on video when he was taking part in the protest action. Later, he was moved to the Tbilisi Temporary Detention Isolator #2 of the Ministry of Internal Affairs. He was interrogated there as witness and detained as a suspect. It was explained to him that he was a suspect in the criminal offence of participating in the mass disorders. Pirtskhalava does not agree to this charge and considers himself innocent.

Later, criminal proceedings against Pirtskhalava were suspended due to the absence of signs of the crime. The case was forwarded to the Tbilisi City Court Administrative Cases Board. On 15 November 2007, Pirtskhalava was charged with the offence of not complying with the demands of the law enforcement agency defined by Article 173 of the Code on Administrative Offences, and was given a 15-day imprisonment sentence.

The case of Levan Kapanadze

On 14 November 2007, Public Defender representatives visited the Temporary Detention Isolator #2 of the Central Department for Human Rights Protection and Monitoring of the Georgian Ministry of Internal Affairs where they interviewed the detained Levan Kapanadze.

According to his account, on 13 November 2007, he was in the yard of his house when four policemen in a car (VAZ 2107) approached him and asked his name and surname. Having identified him, he was taken to the Second Dighomi District Police Department of the Ministry of Internal Affairs. Later it was clarified to him that the basis for his detention was a criminal offence committed by him; particularly, his participation in the coup attempt on 7 November 2007. That same day, he was moved to Tbilisi Temporary Detention Isolator #2 of the Ministry of Internal Affairs where he was interrogated as a witness, and a protocol on his detention as a suspect was compiled. Kapanadze considers himself to be innocent and states that he did not take part in the coup attempt.

On 15 November 2007, criminal proceedings against Kapanadze were suspended. On the same day, the Tbilisi City Court Administrative Cases Board charged Kapanadze with the offence defined by Article 173 of the Code on Administrative Offences and imposed a fine of 400 GEL.

The case of Nikoloz Kemoklidze

On 14 November 2007, Public Defender representatives visited the Temporary Detention Isolator #2 of the Central Department for Human Rights Protection and Monitoring of the Georgian Ministry of Internal Affairs where they interviewed the detained Nikoloz Kemoklidze.

According to his account, on 14 November 2007, he was at home when two policemen visited him and took him to Isani-Samgori District Police Department # 8 of the Ministry of Internal Affairs. Then he was moved to the Isani-Samgori Department of the Ministry of Internal Affairs where he was allegedly charged with physically abusing policemen. Kemoklidze claims that he did attend the rally in front of Parliament, but his objective was not to take part in it, but rather to view a concert which was held there with his friends, during which no incidents took place.

On 15 November 2007, the Tbilisi City Administrative Court charged Kemoklidze with the offence defined by Article 173 of the Code on Administrative Offences and imposed a fine of 400 GEL.

The case of Zaal Sikharulidze

On 14 November 2007, Public Defender representatives visited the Temporary Detention Isolator #2 of the Central Department for Human Rights Protection and Monitoring of the Georgian Ministry of Internal Affairs where they interviewed the detained Zaal Sikharulidze.

According to his account, on 13 November 2007, he was at home when a policeman, Giorgi Sidamonidze, accompanied by an unknown colleague, visited him and took him to the Didube-Chughureti Police Department of the Ministry of Internal Affairs. There they spoke about the rally that took place in Tbilisi, played a video recording that captured the protest action and Sikharulidze was among the participants. After viewing the footage, he was moved to Tbilisi Temporary Detention Isolator #2 where he was interrogated as a witness and detained as a suspect. It was explained to him that he was a participant of the massive disorder, to which he does not agree to and maintains his innocence.

On 15 November 2007, the criminal prosecution against Sikharulidze was suspended. The case materials were forwarded to the Tbilisi City Court Administrative Cases Board. On the same day the court charged him with a fine of 400 GEL for disobedience of the legitimate requests by law enforcement representatives.

The judgment of the Tbilisi City Court Administrative Cases Board Judge Inga Kvachantiradze of 15 November 2007 states that on 7 November 2007, citizens organised mass riots at Rikhe in Tbilisi. The judge says that there were cases of violence, raiding, purposeful damage and destruction of property, resistance against policemen with objects used as weapons, and their physical and verbal abuse. The judge considers the fact that Sikharulidze was at Rikhe to be proven, and did not comply with the legitimate requests of law enforcement representatives to maintain public order. The judge stated that Sikharulidze reacted to this remark rudely and provokingly. The court decision indicates materials of The case(presumably this should be the judgment of Prosecutor Salome Januahsvili of 14 November 2007, regarding the suspension of criminal prosecution against Sikharulidze, and a protocol of administrative offence) and accounts of the parties. The court decision does not specify whether the judge heard the account of patrol police inspectors who compiled the protocol. The judgment states that at the court hearing Sikharulidze did not agree with the protocol on the administrative offence and demanded the suspension of the proceedings. It is not quite clear if the judge heard Sikharulidze at the court hearing because the judgment refers to the accounts of the parties in plural. At the same time, it is surprising why the judge used the explanation provided by Sikharulidze in court as evidence proving the offence if the suspected offender did not agree with the protocol on administrative offences.

In Sikharulidze's judgment, Judge Kvachantiradze copied a standard text from the indictment issued by Prosecutor Salome Januahsvili, which was used against individuals detained in relation to the events of 7 November. Judge Kvachantiradze states that Sikharulidze was provocatively reacting to the legitimate requests of the police, but she does not specify the specific action the police requested him to stop. Was it violence, raiding, purposeful damage or destruction of property, resistance against policemen with objects used as weapon, physical and verbal abuse, or something else? It is not clear from the court decision that Sikharulidze committed any of those actions. However, it is clearly written that while committing these actions, Sikharulidze was at Rikhe and was provocative in his actions. These circumstances do not qualify as an offence. The judge should have clearly proven the specific illegal action which the police requested Sikharulidze to refrain from.

The Public Defender considers that the judgment of Judge Kvachantiradze of imposing an administrative penalty on Sikharulidze is not evidence-based.

The case of Revaz Chkhikvadze

On 14 November 2007, Public Defender representatives visited the Temporary Detention Isolator #2 of the Central Department for Human Rights Protection and Monitoring of the Georgian Ministry of Internal Affairs where they interviewed the detained Revaz Chkhikvadze.

According to his account, he was at home on 13 November 2007, when he was visited by a District Police Officer together with the two other policemen, who requested him to accompany them to the Police Department, and to which he agreed. He was then taken to Vake-Saburtalo District Department #5 of the Ministry of Internal Affairs. There they spoke about the rally that took place in Tbilisi, played the video recording that captured the protest action and Chkhikvadze among the participants. After viewing the footage, he was moved to Tbilisi Temporary Detention Isolator #2 where he was interrogated as a witness and detained as a suspect. It was explained to him that he was a participant of the massive disorder and resistance against police representatives.

On 15 November 2007, the criminal prosecution against Chkhikvadze was suspended and the materials of the case were transferred to the Tbilisi City Court Administrative Cases Board. The latter charged Chkhikvadze with the administrative imprisonment of 30 days for non-compliance with the legitimate requests of law enforcement representatives.

The case of Irma Kardava

On 13 November 2007, Public Defender representatives visited Irma Kardava's family at the Security Academy Dormitory in Gldani, Tbilisi. According to her accounts, on 7 November 2007, at around 11:00 hours, she was with the other protesters in front of Parliament. She was accompanied by her under-aged children – N.U who is nine years of age and G.U who is seven years old. After the special task force representatives used tear gas, Kardava and her children found shelter at the Youth Palace, where they stayed for about 15 minutes. There were security guards, local staff, and about twenty citizens. After 15 minutes, the policemen told Kardava that a capsule of tear gas was thrown inside the building and those inside were forced to leave by the back door. In the yard they found the gates locked from the outside by the security guards. The younger son lost consciousness. A woman helped him to recover with water. Kardava recalled that only after lengthy pleading they managed to have the gates opened. Having left the yard, they continued towards Chitadze Street and were approaching the State Chancellery building when the special task forces blocked the way there as well, and used tear gas. According to Kardava, they were besieged. Kardava and her children were in quite a serious condition due to the effect of the tear gas. At that point they were assisted by the emergency medical service doctors. When Kardava was placed in the emergency vehicle she lost consciousness. She and her children were transferred to Iashvili Children's Central Hospital, and were discharged from there the same day.

At the time of the interview the children were suffering from a sore throat and headache.

The case of Nato Maskharashvili

Public Defender representatives visited the Luarasabishvili's family at 22 Niko Mari Street in Tbilisi. They met and interviewed Nato Maskharashvili. Maskharashvili is a mother of two – an 18-month–old, G.L., and a seven-year–old, O.L. On 7 November 2007, they were attending a rally in front of Parliament. They saw smoke and people running towards them. They were being poisoned by the tear gas and so Maskharashvili decided to enter the Youth Palace, but they were not allowed in by the law enforcement representatives. They continued their way towards the metro station. The children got scared. The seven-year-old was asking its mother if they were going to die. At that time, an unknown civilian person drove them in his car towards Kolmeurneobis Moedani. Patrol police vehicles were parked there. Maskharashvili addressed them for help and asked them to call emergency medical services, but the policemen left the territory without providing any assistance. After some time an emergency vehicle drove by. Maskharashvili stopped it, and the children were moved to Iashvili Children's Central Hospital where they were provided with first-aid medical treatment.

The case of Morison Kobalia

On 11 December 2007, Morison Kobalia filed an application to the Public Defender. Kobalia has been involved in political activities since the 1980-ies and is the Chairman of the People's Unity Party ("Xalxta Tanamegobrobis Partia").

On 15 November 2007, two representatives from Lilo Police Department IV took Kobalia to the police station. There he was asked if he attended a rally on 7 November. Kobalia answered that at the time of the dispersing of the rally he was at a meeting in the office of the People's Unity Party, along with other party members and guests. That is why it was late when he passed by the place the rally was staged, and since there were policemen on Rustaveli Avenue, he took a parallel street to reach Kolmeurneobis Moedani, where he took a minibus home.

Kobalia was not asked any additional questions, but he was arrested on 16 November under the allegations of an administrative offence, which stated that on 7 November 2007, between 13:003-14:00 hours, Kobalia, with a flag in his hand, was encouraging people to block the road and at the same time was swearing, abusing, and beating policemen. Kobalia was identified by a police employee, Mikheil Petriashvili. According to Kobalia's statement, it was precisely this person who was asking others to show them who Kobalia was, when at that moment the latter was standing right in front of Kobalia. And it was the latter himself, who disclosed to Kobalia his own name and surname.

In front of the judge, Petriashvili confirmed that Kobalia had abused policemen. While Kobalia told the judge that there were many witnesses who could testify, that he did not attend the rally on 7 November 2007, and when later that afternoon, at 16:30 hours, he walked down the street parallel to Rustaveli Avenue, the meeting had long been dispersed, and he did not get involved with the police at all.

The judge stated that there was not enough time to call the witnesses and imposed a fine of GEL 400 as a penalty.

The case of Tsiala Kedelashvili

On 29 November 2007, 70-year-old Tsiala Kedelashvili appealed to the Public Defender's office. She stated that she was affected by the earthquake and had to endure the harshest living conditions for the last six years. The government never replied to her petitions and that is why she was regularly attending protest actions.

On 7 November 2007, when the special task force dispersed the protesters using tear gas and water cannons, Kedelashvili was among them. She said that law enforcers wearing masks physically abused her and she was hit with a rubber baton on her head. As a result, she lost consciousness and was assisted by the emergency medical services. Since then, Kedelashvili has been undergoing treatment and is being administered medications.

The case of Zurab Petriashvili

On 13 November 2007, at around 09:00 hours in the morning, Zurab Petriashvili was visited by a policeman from the local police department at his home in Didi Lilo. He was asked to accompany the policeman to the department. After an hour from the time he was escorted to the department, he was moved to Isani-Samgori District Main Department of Sadguri Lilo, where he was questioned by several persons regarding the rally of 7 November. As clarified by Petriashvili, on 7 November 2007, he was walking to his office on Rustaveli Avenue. When he saw people gathered in front of Parliament, he stopped. At that point, tensions began to rise between the gathered people and police. He tried to avoid the situation and headed for the metro when the dispersing operation of the protesters started. It turned out that Tavisuplebis Moedani metro station was not operating. After approximately 15 minutes, he took a bus to Metro Samgori, and from there he took a mini bus home to Lilo settlement.

He gave the accounts of the events on 7 November to the policemen, who did not believe him and told him that he would be taken to the court and penalised. They were blaming him for the disobedience of the police on 7th

November, and that he was trying to block the street. One of the policemen advised him to accept the allegations and pay the fine, otherwise the court would not favour him and, if he persisted, other influencing measures would be used against him. After this conversation, he was left alone in the room for about 30 minutes, and then he was freed.

Petriashvili noted that there had not been an incident of verbal abuse on the part of the policemen.

The case of Valerian Darchiashvili

On 16 November 2007, Valerian Darchiashvili appealed to the Public Defender, stating that on 6 November 2007, at around 16:00 hours, he met his friend and together they entered Kashueti Church. Meanwhile, an opposition meeting in front of Parliament was under way. On 11 November, at around 17: 00 hours, theapplicant was summoned to Vake-Saburtalo District Police Department #6 and confronted with allegations of making a speech at the rally and abusing the government. Darchiashvili requested documented evidence of the allegations. He was told that district policemen had filed a complaint that Darchiashvili was swearing among the protesters and was disrupting the public order. However, he was not presented with the mentioned complaint. The applicant said that he was accused of minor hooliganism and the case was sent to the Tbilisi City Court Administrative Cases Board. On 11 and 12 November, the applicant was detained and kept at the Tbilisi Main Department Temporary Detention Isolator.

The administrative offence protocol compiled on Darchiashvili states that on 6 November 2007, the offender was present at Rustaveli Avenue in Tbilisi and was using foul language. The protocol does not indicate, however, the context in which the mentioned language was used.

On 12 November 2007, R. Topchiashvili, a Tbilisi City Court Administrative Cases Board Judge, without verifying any evidence or hearing witness accounts, considered the case. The decision stated that the judge heard only the explanation provided by Giorgi Miladze, patrol police inspector, who compiled the protocol, and that Darchiashvili used bad language. Similar to Irakli Japaridze's and the others' case, the court did not verify the truthfulness of the explanations provided by the patrol police inspector by any other evidence, and considered Darchiashvili to be an offender and fined him 100 GEL.

The judge should have stopped the litigation, provided it was proven that while making a speech, Darchiashvili used offensive phrases in the political context addressed to the representatives of the government. However, Judge Topchishvili did not bother to identify the factual circumstances of the matter. In the end, administrative sanctions were imposed on the person who was using his right to freedom of assembly and association, guaranteed by Article 25 of the Georgian Constitution and Article 11 of the European Convention on Human Rights. The gross violation of this right took place based on a court order lacking evidence and not having investigated irrefutable proofs.

The case of Shio Kobidze

On 15 November 2007, Alexandra Tevzadze appealed to the Public Defender, stating that her son, Shio Kobidze, in poor health from the Abkhaz war, was present at the rally in front of Parliament on 7 November 2007. During the raid of the protesters by the special task force, he shielded one of the journalists, for which he was brutally beaten and his ribs were broken. Kobidze underwent a course of treatment at the War Veterans' Hospital.

The case of Teimuraz and Giorgi Topuria

Public Defender representatives interviewed Giorgi Topuria, his father, Teimuraz Topuria, and Levan Khuntsaria, in connection with the dispersing of the protest action in front of Teleimedi on 7 November 2007.

Giorgi Topuria is the leader of Akhalgazrduli Student Movement. His written account states that following the appearance of Givi Targamadze aired by Imedi, he suspected a possible raid of Imedi. Together with the other 50 members of Akhalgazrduli, Khuntsaria among them, he went to the Imedi premises. At the gate of the TV Company, Teimuraz Topuria was also present. After 15 minutes since Giorgi Topuria's arrival, a special task force appeared. Khuntsaria explained that he saw an emergency medical services vehicle drive up to the building, but the special task force would not let it in. Teimuraz Topuria saw that several policemen were beating one person and tried to defend him. He remembers how a policeman turned to him and called him "a servant of the Jew", and raised his rubber baton at him. Following which, Teimuraz Topuria lost consciousness; when he recovered, he realised that he was mercilessly beaten up. Giorgi Topuria says that he rescued an unknown woman from a policeman's hands. At that point, he saw 8-9 policemen following his father. He was an eyewitness to the fact that policemen were kicking Teimuraz Topuria when he fell down on the ground.

When the policemen dispersed, Giorgi Topuria put his father into a car. Having driven approximately 30-40 metres, the police again blocked their way. Giorgi Topuria said that one of the law enforcers opened the door of his car and ordered them to swear at Badri Patarkatsishvili. In reply to the refusal, the policeman hit him with a rubber baton, called him "a servant of the Jew", and once again ordered him to swear. Giorgi Topuria closed the door, but around 50 policemen started to beat on the car. They broke open the car, took out Teimuraz Topuria from the vehicle and physically abused him. They hit Giorgi Topuria with a rubber baton in his head and threw a stone at him. They tore the number plate off the car. The policemen extracted 2,000 GEL from the car boot, and having found the money, said the offenders were "being bribed by the Jew". Finally, Giorgi Topuria managed to start the vehicle and left. The special task force was shooting rubber bullets at them. Giorgi Topuria drove his father to the Republican Hospital, where they remained for several hours.

According to Giorgi Topuria, the incident of beating Teimuraz Topuria was captured by Rustavi 2 TV, while the fact of breaking into the car was captured by Mze TV.

The brutal beating of Teimuraz Topuria by the policemen dressed in yellow raincoats was captured by Rustavi 2 at the time of live coverage by journalist Manana Manjgaladze. It can be clearly seen in the video footage how the policeman was hitting Temur Topuria with his baton, and how he falls down after that. The policemen continued kicking Teimuraz Topuria while he was down. Teimuraz Topuria was covered by his son, who was kicked by the law enforcers as well. It is also clearly visible in the footage how the other journalist of Rustavi 2, Nata Nizharadze, is trying to help Giorgi and Teimuraz Topuria.

The case of Anna Tsilosani

Teleimedi employee Anna Tsilosani appeared on the premises of Teleimedi where a protest action was in progress, when she learned about the takeover of the company by special task force. When approaching the gate of Teleimedi, thespecial task force members were addressing them with the following words: "Patarkatsishvili's dogs", "Patarkatsishvili's whores", and "traitors".

The case of Nikoloz Vadachkoria

Kronika operator, Nikoloz Vadachkoria, was not in the building at the time of the break-in. He met his colleagues leaving the building at the gate and proceeded towards Mayakovski's statue in Dighomi. Having approached a crossroad, special task forces started shooting teargas and rubber bullets at him, following that he ran away with his colleagues to Iashvili Clinic.

The case of Rusudan Tabatadze

Imedi TV Company programme editor's, Rusudan Tabatadze, working day ended at 19:00 hours, though she had to return to office after she learned about the takeover of the building by the special task force. Her friend

got in touch with her while at the gate of the company, and informed her that policemen dressed in yellow raincoats and armed special task force members were approaching the TV Company premises. Tabatadze headed for the church close to Imedi with the aim of leaving the protest action, but she found special task force representatives there. The special task representatives called Tabatadze and a person accompanying her, "Patarkatsishvili's whores", they then beat them with rubber batons and shot teargas at them. Tabatadze got hurt by the baton at her waist, while an unknown man next to her was shot with a rubber bullet in his eye. Tabatadze found shelter at the entrance of the building and could clearly see how law enforcers were dragging people out of their cars and kicking them.

The case of Salome Arshba

Following the Kronika news broadcast at 20:30 hours, special task forces took over the Imedi TV Company. Imedis Dila anchor, Salome Arshba, and the correspondents of the same programme, Nino Kvantrishvili and Viktoria Bukia, drove to the TV Company premises. While approaching the building they saw how patrol police members were putting on medical masks. Imedis Dila journalists ran to the left side of the building and stood at a distance of 100 metres. This time shooting broke out. Arshba, Kvantrishvili, and Bukia ran into a residential block of flats at 2Akhmeteli Street, where strangers sheltered them. Arshba called her friend, who was supposed to drive her home. At that point, an additional group of special task force members appeared on Akhmeteli Street, where they used teargas. Arshba, Kvantrishvili, and Bukia left the flat and went in different directions.

The case of Maia Antelava

At the time of the special task force takeover of the Imedi TV Company, Maia Antelava, Human Rights Inspector of Imedi TV, was not in the building. As soon as she got the information, she immediately rushed to the TV Company. At the time of her arrival, on the side of Akhmeteli Street, participants of the protest action in support of Teleimedi started to gather. Then she was informed that special task force members were taking out staff members from the other entrance on Ljubljana Street. On Akhmeteli Street she saw persons in yellow raincoats and masks descending from a yellow bus. Antelava asked them what happened with the people detained inside the building. In response, the mentioned persons raised their batons at her and called her "Jew's whore".

Meanwhile, a vehicle (Niva) drove to the building and two young persons from the car asked what was happening inside the building. In response, the masked representatives of the Ministry of Internal Affairs wearing red bands physically abused them and damaged their car. At that time shooting broke out. Then the special task force representatives used teargas. Antelava approached a policeman dressed in a yellow raincoat and asked him to stop beating a person on the ground. The policeman hit her with a baton over her shoulder. When he raised his baton again, Antelava was shielded by an unknown man.

Antelava ran away. Policemen shot six rubber bullets at her. One reached her, hit her on the ankle, tripped her, and she fell down. The residents of the nearby houses were trying to shelter the escaping people, but the escaping people were unable to enter the building because the special task members were catching them and brutally beating them. Special task force members stopped following people only after several kilometres away, close to Mayakovski's statue. Having been shot with the rubber bullet in her ankle, Antelava found it difficult to walk for a long period of time.

The case of David Sikharulidze

The incident of dispersing rally participants from Ljubljana Street is confirmed by Teleimedi employee, David Sikharulidze, who came to the office after he learned from a Rustavi 2 broadcast that Teleimedi was knocked

off the air. Having been followed by law enforcers, he, along with the others, found shelter in Iashvili Clinic, which he left at 23:00 hours.

Tinatin Bakradze's Account

Teleimedi Translator/Editor, Tinatin Bakradze, left the office at 20:55 hours. On the way, she heard some noise close to the building of Kartuli Pilmi. She returned, but could not enter the Teleimedi premises as the gates were closed and a special task force was deployed on the entire territory. There were several other Teleimedi employees with Bakradze, who were asking to be allowed in the building. At the gate, several staff members of the security services of Teleimedi appeared and said that they were brutally beaten up. By that time Bakradze was informed that her mother was in bad health. She went to one of the residential houses and spoke to her mother on the phone to calm her down. When Bakradze returned to the Teleimedi building the special task force was already raiding the protesters. Bakradze felt a strong pain in her back, though she cannot specify whether it was a stone that hit her or a rubber baton. She found shelter at one of the residential houses and from the window observed the developments unfold. She saw how the special task force members were chasing the participants of the protest action who were escaping from the site to residential yards and entrances. Special task force members were following the people who were running away into the yards and hitting them mercilessly with their batons. In the end, Bakradze left her hideout and while approaching the Dighomi Bazaar she saw how law enforcers were hitting juveniles with their rubber batons. At the same time, tear gas was used and Bakradze fell sick.

The case of Maia Shatashvili

Teleimedi employee Maia Shatashvili decided to return to the TV Company after seeing the televised address of Giorgi Targmadze. When she arrived at the Teleimedi gate, special task force members pushed her and dragged her out. Shatashvili was accompanied by her colleague, Nino Lolashvili, and his spouse. Policeman dressed in yellow raincoats verbally abused the women, and physically abused Lolashvili's spouse. When the rally was being dispersed, Shatashvili saw how a policeman beat a juvenile of around 12-years old.

The case of Giorgi Mdivani

Giorgi Mdivani, Dubbing Director of the Teleimedi Movie Department, was taking part at the protest action near the Teleimedi premises. He left the building several minutes prior to the takeover of the company by special task forces. He said that there were no incidents of violence towards law enforcement representatives from the part of protest action participants. After the dispersing of the rally, Mdivani ran away to escape. He stopped for several minutes on Akhmeteli Street to rest. At that moment he was attacked by special task force members and shot at with rubber bullets.

The case of Tamar Kvantaliani

Tamar Kvantaliani, Assistant to the Teleimedi General Director, came to Teleimedi premises as soon as she learned about the takeover of the company by a special task force. She explained that the dispersal of the rally outside the TV company took place without any preliminary warning. During the raid, she found shelter at one of the flats in the residential block of flats nearby. After half an hour, she left in the direction of the Ludis Moedani restaurant. On the way, she met young people who were followed by special task force members. This is when teargas was used.

The case of Ekaterine Bakradze

Ekaterine Bakradze, Translator/Editor of the Teleimedi Movie Department, on 7 November 2007, stayed at work late since there was an information that a raid on Teleimedi was planned. At 20:20 hours, the situation relatively calmed down, which made Bakradze decide to leave the office. She left the building from the exit on Akhmeteli Street when she learned that special task forces broke into Teleimedi from Ljubljana Street. According to her account, she learned that the Teleimedi security guards at the Ljubljana Street entrance were physically abused. They were made to lie on wet asphalt for 40 minutes. She first noticed policemen dressed in yellow overcoats and then special task force members who were wearing masks. They went through the crowd of rally participants, entered the Teleimedi yard, and started shooting tear gas capsules from there.

The case of Ketevan Vashakidze

Ketevan Vashakidze, Translation-Editing Manager of the Movie Department, left the Teleimedi building when the storming of the building had just started. She saw a security guard who was in pain and a mark of a boot from kicking was visible on his abdomen. Vashakidze decided not to leave the premises of the TV Company. In a short time, the territory near the gate was full of people. The people gathered outside the TV Company were demanding for the broadcast signal to be restored. Following a phone conversation at the site Vashakidze's child left. They saw how a policeman was kicking a man who fell down on the ground. Special task forces mobilised at the TV Company premises and used teargas. Vashakidze ran away. Special task force members besieged the escaping people and were not allowing them to peacefully leave the premises.

The case of Irakli Nizharadze

Irakli Nizharadze, Editor of Imedis Dila, was also at the Imedi TV premises. During the dispersal of the rally, he rescued a young girl from the hands of special task force representatives who were mercilessly hitting her with batons. Near the TV Company, on Akhmeteli Street, there was a small shop on the ground floor of a residential block of flats where a small group of residents of the same building had gathered. Special task force representatives fired teargas at them.

The case of Nino Lolashvili

On 7 November 2007, Nino Lolashvili, Dubbing Director of Teleimedi, left the office at 21:00 hours, and went to parking lot. A silver colour BMW X5 with no registration plate drove on the parking lot and blocked the exit. At the same time, people dressed in black clothes appeared there and asked everybody to lie down on the ground. The intruders made the employees leave the security check point at gun point and made them lie down on the ground. Meanwhile, Lolashvili's spouse and colleague, Maia Shatashvili, joined her. Law enforcers verbally abused the ladies, to which Lolashvili's spouse protested. He works at the Georgian Public Broadcaster. Following his protest, they tore off his Georgian Public Broadcaster's staff ID and physically abused him. Two law enforcers twice hit Lolashvili with a baton to her shoulder. Lolashvili and her spouse ran away to escape. The law enforcers fired a teargas at them.

The case of Giorgi Murjikneli

Giorgi Murjikneli, a dubbing actor of Imedi TV Company, went to the TV Company office when he heard the live address of Giorgi Targmadze that special task forces broke into the company. After some time, the dis-

persal of the rally participants started. Special task force members used a rubber baton to injure Ana Mamulashvili, a Teleimedi journalist, on her head. She was taken to Iashvili Clinic by Giorgi Murjikneli and Imedi employee Otar Tsirkvadze.

General Information on the Patients Admitted to Tbilisi Hospitals on 7 November 2007

On 8 November 2007, Public Defender representatives visited the Academician O. Ghudushauri National Medical Centre. The management of the mentioned medical facility provided them with the list of patients admitted on 7 November 2007. The document shows that on 7 November 2007 the hospital accepted 46 patients, of which 10 were policemen. Six policemen were diagnosed of poisoning, while the other four had various physical injuries. Out of 36 civilians, 26 were admitted with the diagnosis of poisoning, one of them had multiple traumas in addition to poisoning, and the rest (nine) had various physical injuries.

As of 8 November 2007, there were three patients still remaining at Academician O. Ghudushauri National Medical Centre, from those admitted on 7 November 2007. Of those, two were policemen. One of them, Giorgi Tabatadze was diagnosed with poisoning. He explained that he lost consciousness during the dispersal of the rally in front of Parliament, though he cannot recall why and at what time. He refused to give his account of events to the Public Defender representatives and to sign a protocol compiled by them on the given matter.

The second policeman, Gocha Gvaramadze was also admitted on 7 November 2007, and remained in Academician O. Ghudushauri National Medical Centre. He was diagnosed with craniocerebral injury and concussion. He said that he participated in the dispersal of the rally in front of the Parliament on 7 November 2007. In reply to the Public Defender representatives' questions as to how he was injured, he said that he did not remember anything. He also refused to give any explanations on the given matter and sign a protocol compiled by the Public Defender representatives.

The third person was a civilian, Avtandil Jorbenadze. He was participating in the rally and fell victim to the raid. He received various injuries. He was not feeling well when the Public Defender representatives visited him; therefore, at that point, he refused to give his accounts due to health considerations.

At the 1st Clinical Hospital Emergency Medical Services, 63 persons injured during the raid of the rally at Rikhe on 7 November 2007 were admitted. Five of the injured persons were immediately operated upon, and four of the injured remained in the hospital.

As of 8 November, ten of the persons poisoned by the teargas fired at the rally participants were still undergoing inpatient treatment. Out of the total number of the injured who were admitted at the 1st Clinical Hospital, three were juveniles: 11-year-old T.P, 17-year-old K.A, and 16-year-old Kh. M. All three juveniles were poisoned by teargas used to disperse the rally. They were suffering from nausea and burning eyes and throat.

As Rikhe rally participant, Vakhtang Inasaridze, recalls, thespecial task forces besieged the protesters and he saw how the masked persons were brutally beating rally participants. Inasaridze, along with Nikoloz Didishvili and Giorgi Tevdorashvili, sustained leg injuries. Though neither the doctors nor the patients themselves can specify what kind of bullets were used by the law enforcers to disperse the rally. Due to his health condition, Tevdorashvili could not speak with the Public Defender representatives.

On 8 January 2008, Independent Forensic Laboratory Centre,Vektor LTD sent copies of forensic expertise conclusions of Vakhtang Inasaridze, Nikoloz Didishvili, and Giorgi Tevdorashvili, to the Public Defender.

An alternative forensic medical examination states that "considering the presence of foreign objects, theinjury should have been caused by some kind of exploding object carrying considerable kinaesthe tic energy". A

similar conclusion is stated in the expert conclusion in connection with Vakhtang Inasaridze – "the injury should have been caused by the combined effect of a fire arms component and an exploding object carrying considerable kinaesthe tic energy".

One of the injured was Levan Pitskhelauri, a representative of the special task force of the Penitentiary Department. He refused to meet Public Defender representatives and give them his account of the events.

On 12 November 2007, Public Defender representatives visited Tbilisi Clinical Hospital #1 where they met the citizens injured as a result of the dispersal of the peaceful rally of 7 November. They met with the injured Nikoloz Didishvili and his mother – Juli Beria, theinjured Vakhtang Inasaridze, and the injured Giorgi Tevdorashvili's father and brother. They also met with the heads of the medical facilities where the mentioned persons were admitted.

During the interview it was clarified, that none of the injured persons was informed as to who would cover their medical treatment charges. They noted that a part of the medication required for the treatment was being purchased by themselves.

Public Defender representatives met with the management of the hospitals. They said that they were not officially informed by the state bodies regarding the reimbursement of expenses. Following this, Public Defender representatives got in touch with the hotline of the Ministry of Labour, Health, and Social Affairs to verify the information. An operator confirmed that all the medical care costs of the rally participant's injured as result of the dispersing would be covered by the State. Public Defender representatives requested the management of the hospitals to verify the information through official channels and inform the participants accordingly, as well as to clarify the issue of expenses already borne. Only after this, did the management of the medical facilities (Traumatology Clinic – Director T. Nozadze, and Vascular and Emergency Micro- Surgery Clinic – Director T. Buachidze) personally informed the injured persons that their healthcare costs would be covered by the State, while the expenses already borne by the patients, would be reimbursed according to a defined rule.

It is also worth noting that all three patients undergoing treatment at the 1st Clinical Hospital had severe injuries of limbs, the treatment of which would not end even after being discharged from the hospital. It is important to ensure the coverage of further treatment and rehabilitation costs.

The Dispersing of the Protest Rally in Batumi

On 8 November 2007, at 9:00 hours, a protest rally was held in front of Batumi Shota Rustaveli State University with the participation of the students of the mentioned university and Batumi Marine Academy. The gathering was dispersed by persons wearing special uniforms and masks. They beat the students participating in the rally and used teargas. The protesters ran towards the 2nd Public School of Batumi, pursued by special task force members. Part of the escaped people found shelter in the kindergarten next to the school, while approximately 20-30 of the protesters entered the building of the 2nd Public School.

On 8 November 2007, four participants of the protest rally held in front of Batumi Shota Rustaveli State University, Nika Kakhidze, Giorgi Beridze, Lasha Bazhunashvili, and Mamuka Mamulashvili, sustained various physical injuries. Beridze had peripheral haematomas at the right temple, with a small amount of bloody discharge. Kakhidze also had peripheral haematomas at the right temple. Mamulashvili suffered from chest pain. Bazhunashvili was beaten with a fist on his face, and was hit with a baton on his back. As a result of the physical abuse, his spectacles got damaged and scratched his brow. He was diagnosed with a right eye contusion.

At the Batumi Charkviani Maternity Hospital, Tamila Bajelidze, a participant of the protest rally held in front of Batumi Shota Rustaveli State University, was in her seventh month of pregnancy. During the dispersal of the

rally, she was physically abused, which resulted in a foetal injury. In order to avoid intoxication, Bajelidze was offered to abort. Bajelidze's foetus survived, though they could not save the foetus of the other pregnant young girl. The latter was chased by a special task force. She ran into the university building and special task force members followed her up to the third floor.

On 8 November 2007, the police detained and compiled a protocol of an administrative offence for the participants of the rally held in Batumi in front of the university, and for Mamuka Solomindze for allegedly using bad language and swearing loudly on the university premises, as stipulated by Article 166 of the Code on Administrative Offences. Batumi City Court Judge Gocha Putkaradze charged Solomindze with allegations of administrative offence and was sentenced to 30 days imprisonment.

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ANNEX #3. FREEDOM OF SPEECH AND EXPRESSION

Nana Japarashvili versus TV Company Imedi and Gela Mtivlishvili

On 22 August 2007, thenewspapers Alia, 24 Hours, Rezonansi and Akhali Taoba, published information regarding the opening of a preliminary investigation by the Gurjaani Department of Internal Affairs into the breach of the right of inviolability of a residence by journalists. The investigation was based on the application of Nana Japarashvili. She claimed that regional correspondents of the TV Company Imedi, Zhana Didebashvili, operator Kakha Gogilashvili and the journalist of the Human Rights Information and Documentation Centre, Gela Mtivlishvili violated the right of inviolability of her residence.

On 23 August 2007, the public Defender interviewed the journalist of the non-governmental organization Human Rights Information and Documentation Centre, Mtivlishvili, and the journalist and operator of the TV Company Imedi in the Kakheti region, Didebashvili and Gogilashvili, as well as Japarashvili.

Based on their explanations the following circumstances were established:

On 12 August 2007, the employees of the Gurjaani Department of Internal Affairs arrested juvenile G.J. residing in Gurjaani, and brought a charge against him for stealing, in December 2006, scrap metal from the house owned by Japarashvili's deceased mother, under the crime envisaged by the Criminal Code of Georgia, Article 177, part 3, paragraph c. Due to the fact that some time after this case Japarashvili got back the stolen items, she did not inform the bodies of the Internal Affairs Department about the crime. The police learned about the mentioned case only several months later, through operative information received. The information was confirmed by Japarashvili's application and the measures envisaged under the Criminal Procedure Code were taken towards juvenile G.J. The Gurjaani district court assigned a bail of 5,000 GEL as a restraint measure for the accused juvenile. The accused was sentenced to imprisonment to guarantee the bail, in accordance with the Criminal Procedure Code, Article 168, part 6.

On 15 August 2007, Didebashvili, Kakheti regional correspondent of the TV Company Imedi, learned the details of the criminal case brought against the accused. The following day, Didebashvili arrived in Gurjaani and checked the information received from her own source with G.J.'s parents. Mtivlishvili got interested in The case of the accused juvenile as well.

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According to Didebashvili's explanation, she contacted G. J's lawyer, Mikheil Shioshvili. He stated that the accusation against the juvenile regarding storming into the house was not justified, as the house, where allegedly the unlawful appropriation of the scrap metal took place, was not used for living due to its condition, and entering it was not a problem. In order to define the appropriateness of the qualification of the criminal case, theMtivlishvili and Didebashvili decided to examine the house where allegedly the crime was committed. They wanted to find out whether it was possible to enter the house without any obstacles.

According to Mtivlishvili, Didebashvili and operator Kakha Gogilashvili, the shooting group of Imedi interviewed Japarashvili before going to the house. They claim that after recording the interview Japarashvili suggested they go and examine the house, which became the subject of the ft. According to Mtivlishvili, taxi drivers standing near Japarashvili's trading place witnessed the mentioned suggestion. Mtivlishvili cannot identify the taxi drivers. Consequently, the fact of prior consent or agreement by Japarashvili to film her house could not be established. Until proven to the contrary, we consider that there had been no consent from the side of Japarashvili to enter the yard of her house.

Japarashvili denies any initiative from her side regarding the filming of the house registered in her mother's name. She claims that there was no agreement with her to enter the house and to film there; and that TV Company Imedi took an interview from her only after they had illegally entered the house.

On 16 August 2007, the news programme, Kronika, of the TV Company Imedi, broadcast Didebashvili's reportage on the unreasonableness of imposing a bail (amounting to 5,000 GEL) on G.J. for stealing scrap metal, which cost only 24 GEL. The report highlighted the harsh living conditions of the juvenile, who could not afford paying the bail. It also outlined that G.J's intent was deliberately aggravated, as he entered the house, which had been abandoned rather than secured, and therefore could be entered by any person without any extra effort. In order to show the public the complete picture of the house, the report showed the path leading to the house, the entrance, the walls of the building and the leftovers. Didebashvili's report was balanced with Japarashvili's comments. The Gurjaani District Prosecutor's Office refused to make any comments. It should be mentioned that before Didebashvili's report, Giorgi Molodini's report dealing with a similar case of the theft of scrap metal by a juvenile in Tbilisi, in the Gldani District had been aired on Imedi. The mentioned news programme of the TV Company Imedi, from its view, was a reaction to the existing grave problems in the fight against juvenile crime. Without any doubt, this matter was the subject of public attention, thus allowing the journalists to communicate to the society the comprehensive information in this regard.

The Public Defender addressed the Gurjaani District Prosecutor's Office as well as the Department of Internal Affairs of the respective district with its recommendation. The Public Defender requested to stop the preliminary investigation related to the fact of committing the offence defined under Article 160.

The Human Rights Unit of the Office of the Prosecutor General of Georgia, with its letter N c 03.10.2007/29 informed the Public Defender that the preliminary investigation related to the fact of violating the right of inviolability of Japarashvili's residence is underway, in order to comprehensively and objectively investigate all the circumstances. The letter also states that the Public Defender's recommendation will be taken into consideration while passing the final decision on the criminal case.

Tea Alaverdashvili versus Ramaz Keretchashvili

On 3 August 2007, the public Defender interviewed Tea Alaverdashvili, the correspondent of the Public Broadcaster in Gurjaani. The explanation was taken from the journalist of the newspaper Imedi, Tamar Makharashvili, Gela Mtivlishvili, Kakheti Coordinator of the Human Rights Information Centre, the governor of the Gurjaani Municipality, Ramaz Keretchashvili, and the specialists of the Public Relations Office of Gurjaani Municipal Administration, Paata Jatchvliani and Gela Megrelishvili.

The following circumstances were established from the information submitted by them:

From November to December 2006, Alaverdashvili, the correspondent of the Public Broadcaster, was working part time in the Public Relations (PR) department of the Gurjaani Municipality. In the report prepared for the Public Broadcaster, the journalist had an interview with Mtivlishvili, Kakheti coordinator of Human Rights Information Centre. The Head of Administration of Gurjaani Municipality was exasperated by the mentioned fact, and Alaverdashvili had to leave the PR department of the Gurjaani Municipality City Council. Alaverdashvili's husband, Jatchvliani works in the PR department of Gurjaani Municipal Administration.

On 27 August 2007, Mtivlishvili held a press conference on the misuse of budgetary resources by and corruption of the Municipality Head of Administration. The press conference was attended by representatives of the media, as well as the Public Broadcaster's shooting group. According to Mtivlishvili, Alaverdashvili was being called during the press conference and was requested to refrain from covering the press conference. However, Alaverdashvili did not obey, furthermore interviewed an employee of the Culture Department of the Head of Administration's Office, Tinatin Zardiashvili. The latter confirmed the information provided by Mtivlishvili at the press conference, which was that salaries received by the staff did not match the data of the salary pay register. Temur Butsashvili, the specialist of the Culture, Sports and Youth Department, watched the interview in progress. Alaverdashvili addressed the Municipality Head of Administration in order to receive a comment from him on Mtivlishvili's allegations. Ramaz Keretchashvili refused to comment. He called Alaverdashvili's husband, Jatchvliani, to his office and asked him to submit his resignation. This request was caused by Alaverdashvili's journalistic activity, which Jatchvliani could not influence. Butsashvili and Gela Megrelishvili, the specialist of the Municipality Administration's PR office, were also present in Keretchashvili's office during this discussion.

Alaverdashvili regarded the request of the Gurjaani Head of Administration as a pressure tactic on her, and met with the Chair of the Gurjaani Municipality City Council to discuss Keretchashvili's behaviour. After leaving the office of the Chair of the City Council, Alaverdashvili met Butsashvili, who assaulted her because of the report prepared. Exasperated, Alaverdashvili went to the office of the Keretchashvili and requested an explanation for Bitsashvili's behaviour. This request turned into a loud discussion. Jatchvliani, Megrelishvili and a member of the Gurjaani City Council, Murtaz Shalushvili were in Keretchashvili's office by that time. Prior to this discussion, a correspondent of the TV Company Mze in the Kakheti region, Khatuna Guliashvili, as well as journalists Mtivlishvili and Makharashvili, were in Keretchashvili's waiting room. Keretchashvili was vexed by the loud speech of the journalist and he threw his mobile phone. This event is differently described by the witnesses. Alaverdashvili, Mtivlishvili and Makharashvili note that the mobile phone was thrown in the direction of the Public Broadcaster's journalist, who managed to escape by chance. This fact is categorically denied by Megrelishvili and Jatchvliani. They state that Keretchashvili threw the mobile phone not in Alaverdashvili's direction, but in the direction of his armchair. Jatchvliani states that the mobile phone hit the wall next to the armchair.

Jatchvliani affirms that Keretchashvili indeed put pressure on him due to his wife's professional activities. He also indicates that the mobile phone was not thrown in the direction of his wife and explains that his wife could not determine the trajectory as at that moment she was standing with her back to Keretchashvili, and the other journalists entered the room only after the mobile phone was thrown. Mtivlishvili insists that he can name a witness who saw that the telephone was thrown in the direction of the journalist, and that he entered Keretchashvili's office only after he had heard the noise.

Case of Rusudan Tchabukiani and Kakha Janezashvili

On 27 September 2007, TV Company Imedi's evening news programme, Kronika, broadcast the information that equipment had been taken away from their journalist, Rusudan Chabukiani, and operator, Kakha Janezashvili,

by law enforcement bodies. As this action was possible interference with the freedom of expression, in accordance with the Organic Law of Georgia on the Public Defender, Article 12, the public Defender began his study of the mentioned case.

On 28 September 2007, a representative of the Public Defender interviewed Tchabukiani and Janezashvili, as well as witnesses, Nana Lezhava and Tamar Rukhadze, from the political movement, For United Georgia. As a result, the following circumstances were established:

On 27 September 2007, at 19:30 hours, Tchabukiani and Janezashvili were in Tbilisi, at Atoneli Street N27, on the premises of the office of For United Georgia, performing their professional duties. At approximately 20:30 hours, roughly 20 patrol cars appeared near the mentioned building, cutting off the street. Persons in civil clothes came out of the patrol cars and approached the office building, where the Imedi shooting group was standing on the stairs. The law enforcers requested that the journalists be taken away from the premises of the building.

As soon as the patrol cars appeared, the camera of the TV Company Imedi was switched on. The law enforcers requested they stop recording. Then they approached Janezashvili, took away his camera and turned over his hands. Tchabukiani requested they return the camera, which was followed by them taking away her microphone. The law enforcers put the operator and the journalist in front of two different patrol cars. After taking away their equipment, based on Janezashvili's request, the law enforcers stopped their physical assault. However, the journalists were forbidden to communicate with the editorial office via mobile phones. The group of law enforcers who entered the building detained Irakli Okruashvili, the leader of the movement, For United Georgia. About five to ten minutes later they took him out of the building. The witnesses affirm that after Okruashvili was taken out of the building, no personal inspection or other investigative action was taken towards him. Nana Lezhava and Tamar Rukhadze were observing the aforementioned behavior of the law enforcers towards the journalists from the balcony of the building.

On 2 October 2007, the public Defender addressed the Office of the Prosecutor General and the Administration of the Ministry of Internal Affairs with its recommendation. The Public Defender requested the Office of the Prosecutor General to open the preliminary investigation into the mentioned actions of the law enforcers towards the journalists of the TV Company Imedi. The Ministry of Internal Affairs was requested to return the expropriated equipment.

On 18 October 2007, the public Defender received a letter #7/1/5–4060 from the Ministry of Internal Affairs in which the representatives of the ministry explained that the equipment had not been expropriated. Later on, the TV Company Imedi broadcast the information that the Ministry of Internal Affaires returned the equipment, although without video materials.

The Public Defender has not received a written reply from the Office of the Prosecutor General in relation to this fact.

Case of Eliso Berishvili and Temur Tandashvili

On 7 November 2007, Eliso Berishvili, a journalist for the TV Company Imedi, while giving an explanation to the Public Defender, indicated the following:

On 7 November 2007, theshooting group of Dilis Kronika was on the premises of the parliament, where the United Opposition's protest action was underway.

At approximately 7:30 hours, the parliament building was approached by about 15 vehicles from the cleaning service. At the same time, the trucks brought in iron hedges. With the purpose to let the trucks move,

thestreet closed by the patrol police was opened, and around 60 persons dressed in patrol police coats came to the territory in front of the parliament. They approached the hunger-strikers in an organized manner and started to disperse them. The shooting group of the TV Company Imedi was filming these events.

When the journalists filmed the violence a group of patrol police, about five persons came to them. The policemen threw the operator to the ground by using physical force and took the camera away from him. Afterwards, they kicked Berishvili and tried to take away his microphone, however their attempt was unsuccessful.

The expropriated video camera was taken by the patrol police to the movie theatre, Rustaveli. Approximately an hour layer, one of the journalists was contacted by the Head of the Administration of the Ministry of Internal Affairs, Shota Khizanishvili, claiming that he had found the video camera of the TV Company Imedi in his car.

Finally, Khizanishvili returned the video camera which was damaged and absolutely useless.

The operator of the TV Company Imedi, Temur Tandashvili gave the similar explanation.

The Public Defender sent material to the Office of the Prosecutor General for the opening of a preliminary investigation.

Case of Mariam Kadagishvili

In her explanation given to the Public Defender's representative, Mariam Kadagishvili states that on 7 November, at about 8:00 a.m., she arrived at the parliament building with a camera and was making a film upon the request of the international cable television channel, CNN.

Kadagishvili claims that the people were about to leave the meeting when she was surrounded by four policemen. According to her, while dispersing the meeting, the policemen were especially violent towards those persons who had video cameras. Based on the information received from Kadagishvili, the policemen took away her cameras and hit her. After that, she addressed the law enforcers for several times, requesting to return her camera. Later on, the policeman, Dato Gelovani, returned the camera without a cassette. The camera was damaged. She was told: "Contact Khizanishvili for the cassette." Kadagishvili assumed that they would return the cassette after decoding it.

On 25 November 2007, there was a protest action going on at Rikhe. Kadagishvili, who was preparing material for CNN, tried to record some of the high officials, namely the Head of the Administration of the Ministry of Internal Affairs, Khizanishvili, the head of the Penitentiary Department of the Ministry of Justice, Bacho Akhalaia, and the Head of the Special Operative Department of the Ministry of Internal Affairs, Erekle Kodua. Seven policemen took away her video camera by means of physical force. Later on, the camera was returned, however without the recorded material.

On 28 November 2007, the public Defender sent the material related to this case to the Office of the Prosecutor General for the opening of a preliminary investigation.

On 21 January 2008, the Office of the Prosecutor General informed the Public Defender that they had interrogated Kadagishvili as a witness to the fact of the seizure of a camera and physical assault.

Case of Giorgi Kvrivishvili

According to the information released by the TV company Trialeti, on 7 November 2007, while performing his official duties, filming the ongoing events in Tbilisi, on Rustaveli Avenue, the operator, Giorgi Kvlivishvili,

was beaten up and his video camera (Panasonic NV-JF300 (DV – 00129)) was taken away from him. Kvlivishvili undertook one day medical treatment in the Republican Hospital.

In the explanation given to the Public Defender, the journalist of the TV Company Trialeti, Tinatin Beruashvili affirms that on 7 November 2007, she was with Kvlivishvili in front of the parliament building covering the ongoing developments. When the meeting participants moved to the footway, the operator of the TV Company followed them to film the ongoing processes. Beruashvili tried to contact Kvlivishvili, however his mobile phone was turned off. After the meeting, participants were dispersed by using water canons and tear gas by the law enforcers. She was called by the chief of the news programme, who informed her that the operator had been beaten up, his camera had been taken away from him, and he was moved to the hospital. In the footage broadcast by Imedi, she saw how the operator was put in the ambulance. After getting in touch with the studio of the news programme Kronika, she found out Kvrivishvili was taken to the Republican Hospital. Beruashvili visited him in the hospital. When the medical treatment was over Kvlivishvili left the hospital. He informed Beruashvili that while filming the events in front of the parliament building, a policeman in a yellow coat took away his camera and then physically assaulted him.

The next day, Beruashvili contacted the Press Center of the Ministry of Internal Affairs and informed them of the fact of the expropriation of their camera. According to her, thestaff of the Centre gave her the contact numbers of Zura Gvenetadze and Khizanishvili, and told her that she had to address them. Gvenetadze denied the fact of having Trialeti's video camera, while reaching Khizanishvili turned to be impossible.

On 5 December 2007, the public Defender sent the material of the caseto the Office of the Prosecutor General for the opening of a preliminary investigation.

On 8 February 2008, the Office of the Prosecutor General informed the Public Defender that the statement of Kvlivishvili was attached to the criminal case N06078035. The preliminary investigation was opened into the incident of bodily injury of particular citizens during the 7 November 2007 events on Rustaveli Avenue and at Rikhe. Kvlivishvili and Beruashvili were interrogated as witnesses, and a forensic exam, was set in order to define the severity of Kvlivishvili's injuries.

The Explanation of Tea Sitchinava

On 7 November 2007, at 20:45 hours, the correspondent of the TV Company Imedi news programme, Kronika, Tea Sitchinava was in the control room when the journalist Irine Khizanishvili came in crying and told her that Special Forces stormed into the building. By that time, ten persons, including Diana Trapaidze on the ninth month of her pregnancy, were in the control room. The journalists in the control room locked the doors and waited for further developments. First, they heard knocking, and then banging on the door. In half a minute the door of the control room was broken. The room was entered by the armed Special Forces, who were in the military forms and without masks. They told the journalists to put their hands up and lay down on the floor. They soon found out that it was impossible to fulfill their request as the space in the control room was not enough to fit more than 10 persons on the floor. Then they told the journalists to bend their knees with their hands up. Despite their attempt Trapaidze could not fulfill their demand due to her pregnancy. Sitchinava asked them not to touch the pregnant colleague. A member of the Special Forces asked who was pregnant. Trapaidze was standing in front of him and it was obvious to everyone that she was pregnant. At that moment, other representatives of the Special Forces damaged the cable in the control room in front of the journalists and, without any reason, physically assaulted Paata Kakaurize, a staff member of the TV Company Imedi, threw him on the floor and beat him up. The members of the Special Forces requested the journalists to hand over their mobile phones. Sitchinava passed her phone with shivering hands. A member of the Special Forces requested her to stop shivering. Sitchinava replied that she could not do so. A member of the Special Forces became more irritated and this time shouted to stop shivering. Sitchinava hid her hands behind her. Afterwards, the employees were taken out of the control

room in pairs. In the hall, Sitchinava saw her co-workers, who were lying on the floor with their hands on their heads. The situation was similar on the first floor of the building. The journalists were taken from the control room to the news room. Members of the Special Forces did not allow the journalists to use office telephones and were calling them agents of Russia. After that, Sitchinava left the territory of the TV Company.

The Explanation of Lasha Mikadze

The journalist of the news programme, Kronika, Lasha Mikadze stated that on 7 November, he was at the protest action carrying out his official duties the whole day long. He returned to the Imedi TV Company building at 19:00 o'clock. Within 40 minutes, he left the building again and then returned . The building was surrounded by Special Forces. In the yard of the TV Company he saw his co-workers, who were not allowed to leave. After a while it became clear that the journalists were leaving the building from the back exit on Ljubljana street. Mikadze, another journalist, Levan Tabidze, and Chief Editor Mate Kirvalidze went to Ljubljana Street to meet the evacuated colleagues. The journalists gathered together and moved to Imedi's second entrance. Mikadze went first, followed by Diana Trapaidze, her husband, Joni Kalandadze, a TV Imedi editor, journalist Inga Grigolia and Irakli Mosashvili, the producer of the programme, Open Air. Near the junction of Ljubljana Street they were met by members of Special Forces, who used tear gas without any warning. Mikadze turned and ran away, but was hit by a rubber bullet. Rubber bullets were also shot at nine-month pregnant Trapadze, who was running next to him. Mikadze, Trapaidze and Kalandadze reached one block, where a family on the third floor offered them shelter. After 15 minutes, they learned that the family living in the same block on the first floor gave shelter to other Imedi journalists, Inga Grigolia, and Sopo Nikolaishvili, along with her husband, Irakli Mosashvili. Grigolia was feeling bad. An ambulance was called, which took her and Trapaidze to a hospitalin order to avoid possible complications.

The Explanation of Levan Javakhishvili

On 7 November 2007, journalists Levan Javakhishvili and Sopho Mosidze were presenting Imedi's main day news programme, Kronika. During the course of the programme they were informed by a producer that Special Forces stormed into the building. They informed the public about this fact live on air. Later on, Giorgi Targamadze, head of the public-political division, took over the live news programme. Mosidze and Javakhishvili entered the on-air room. Soon the door of the room was forced open and the Natia Karkashadze, another Imedi employee, was dragged into the room from the make-up room. Members of the Special Forces were beating and verbally assaulting her. A member of the Special Forces in the on-air room was verbally assaulting and directing his gun at other persons in the room as well. After some time, 15 persons in the on-air room were moved to the first floor, where Javakhishvili saw his colleagues lying down on the floor with guns aimed at their heads. One of the members of the Special Forces was calling the female employees of the TV company, "Badri's whores". A member of the Special Forces aimed a gun at Javakhishvili and called him "Badri's puppy". After going outside, Javakhishvili was restricted from using his own car. At that time, thespecially equipped forces approached the building, shooting two rubber bullets at Javakhishvili's foot and two other rubberbullets at his back. The Special Forces followed the journalists until the Guduashauri clinic. Javakhishvili did not plan to participate in the action, consequently his pursuit was based on the reprisal, and not on the maintenance of public order.

The Explanation of Irina Khizanishvili

On 7 November 2007, Irina Khizanishvili, theanchor of the evening news programme, Kronika, was sitting in the news room when she heard the shouting. She went up to the on-air room and informed the persons there that Special Forces were in the building. After a while, theanchors of Kronika, Sopho Mosidze and Levan

Javakhishvili entered the room. After three minutes, the Special Forces entered the air room and requested the people there to lie down. There were 15 Imedi employees in the on-air room. The members of the Special Forces threatened the journalists with force if they made use of their mobile phones. After five minutes, the journalists in the on-air room were moved down to the news room. Khizanishvili saw that the staff members of the TV Company were lying down on the floor surrounded by the armed persons. Khizanishvili approached her work computer, took her bag, and left the building with her hands up. Lasha Dvalishvili, thesports journalist of Kronika, suggested his colleagues, Khizanishvili, Tamuna Chikhladze, Ana Iasashvili and Rusudan Chabukiani use his car. However, themembers of the Special Forces did not allow the journalists to take the car.

The Explanation of Tamar Chikhladze

On 7 November 2007, at 20:30 hours, after the montage of the plot, the correspondent of the news programme, Kronika, Tamar Chikhladze, was in the Chief Editor's office and heard the shouting. Chikhladze clearly saw the armed Special Forces people in masks. Chikhladze, along with her colleague, Ana Iasashvili, went to the first, second, and third floors. Iasashvili leaned on the door of the studio when her asthma attack started. The journalists of Droeba, Dachi Grdzelishvili and Ioseb Barnabishvili, took Iasashvili to the working room of Droeba, and placed her near an open window. At this moment, members of the Special Forces stormed into the room and took away everyone's mobile phones. The members of the Special Forces let Iasashvili leave the room after they were convinced that she felt bad. Chikhladze saw her co-workers in the hall; part of them were leaning on the wall, while another part were lying down. Chikhladze and other journalists were accompanied by members of the Special Forces, who were, from time to time, stopping Iasashvili, and despite her requests, not letting her take her medicine. When Iasashvili felt better, she and Chikhladze went to the yard of the TV Company. Chikhladze heard the following words of the Special Forces members: "Badri's Puppies"; "If your Badria behaved well, you would not be in this situation"; "You deserve worse, you slaves of the mustached person". Then the members of the Special Forces decided to use tear gas in order to disperse the gathering participants. Iasashvili and Chikhladze left the premises of the TV Company from the exit on the side of Ljubljana Street.

The Explanation of Levan Chkhaidze

On 7 November 2007, at 20:30 hours, the correspondent of the news programme, Kronika, Levan Chkhaidze, was on the first floor of the TV Company Imedi. When he looked at the entrance, he saw masked persons, who stormed into the building. Chkhaidze was approached by four persons requesting him to lay down, threatening with their weapons. Chkhaidze obeyed their request. The members of the Special Forces requested his mobile phone; however, Chkhaidze did not have it with him. At this moment, Chkhaidze and journalist Naniko Kuprashvili, who was standing with him, were approached by Ioseb Topuridze, the deputy Head of the Department of Constitutional Security. Chkhaidze asked him to let Kuprashvili outside. Topuridze satisfied his request. After some time, Chkhaidze returned to the news room and tried to call his family; however, his attempt was interrupted as a result of interference of the representatives of the Ministry of Internal Affairs. After that, Chkhaidze was taken out of the building. When moving along Ljubljana Street, Chkhaidze saw how the tear gas was used. Law enforcers were running after the participants of the action and journalists, and representatives of the Ministry of Internal Affairs were severely treating the persons they managed to catch. Chkhaidze first ran in the direction of the forest, and then toward the Digomi highway. He found shelter at the petrol station. Afterwards he returned home.

The Explanation of Tamta Peikrishvili

On 7 November 2007, journalist Tamta Peikrishvili was in her office from 17:00 hours. Since that time, there had been a mess at the entrance of TV Imedi as poisoned journalists and operators were brought from the

protest action. After the final noise, Peikrishvili got up and went to the entrance of the TV Company. She saw the armed persons that had stormed into the building. There were approximately a hundred of them. In the working room of the programme, Reaction, they aimed their guns at Peikrishvili and they demanded her mobile phone. The Internal Affairs employees were cutting off the communications of the building, breaking doors, and throwing down computer monitors. Part of the persons that stormed in were in gas masks and held gas guns; another part wore masks and held firearms; and a third part just wore special black uniforms. Within ten minutes, theSpecial Forces people fired tear gas on the third floor. Peikrishvili, who suffered from chronic asthma, asked member of the Special Forces to let her go to the first floor to breathe better; however, they refused her request. Only after 20 minutes was Peikrishvili allowed to go to the first floor. Later, while walking on Ljubljana Street, she again felt the effects of the tear gas. Peiksrishvili underwent four days of medical treatment due to the poisoning.

The Explanation of Levan Manvelidze

The employee of the TV Imedi, Levan Manvelidze, was in the Director's office. When he heard noise, he ran out and saw his colleagues lying down on the floor. One of the members of the Special Forces threatened Director General Bidzina Baratashvili with shooting a bullet in his forehead.

The Explanation of Tinatin Peikrishvili

The journalist of the Sunday TV Journal, Droeba, Tinatin Peikrishvili was in the kitchen when the Special Forces stormed in, took away her mobile phone, and pushed her down to the floor, threatening her with their weapons. She was there for 20-25 minutes.

The Explanation of Levan Giorgadze

Levan Giorgadze was near the car parking area. After approaching Imedi territory, theSpecial Forcers requested him, and ten other persons standing there to lie down on the concrete and put their hands on their head. He was in this position for 40 minutes.

The Explanation of Amiran Kupatadze

On 7 November 2007, at 20:50 o'clock, the chief of the Foreign Department of the TV Company Imedi, Amiran Kupatadze, was sitting at his working table. At that moment, Special Forces stormed into the newsroom. Paata Kupatadze, along with his colleagues, was put down on the floor. After 20 minutes, they were allowed to get up and requested to leave the building. The premises of the were overcrowded with supporters of Imedi, protesting the storming by the Special Forces into the building. Due to this fact, Kupatadze was not able to leave the territory of the TV Company in time. After 15 minutes, he went in the direction of Ljubljana Street where he met more Special Forces. When they learned that these persons were from TV Company Imedi, they started to shoot at them rubber bullets. Two rubber bullets hit Kupatadze when he was trying to lift up a girl who fell down while trying to escape from the Special Forces. The rubber bullets hit his back, and as the pain got harder to bear he sought medical treatment at Tbilisi No. 4 hospital.

The Explanation of Amiran Murvanidze

According to the explanation of Amiran Murvanidze, the operator of the TV Company, on 7 November 2007, at about 20:30 hours, he saw Special Forces storm into the building and Imedi staff members lying down on the

floor. Afterwards, Murvanidze was put down on the floor as well. One of the armed persons kicked Murvanidze's arm with his foot, requesting his mobile phone. In 20 minutes, Murvanidze was moved outside and insulted during the process. Finally, Murvanidze started to move towards Ljubljana Street, where in 15-20 minutes rubber bullets and tear gas were used against the journalists. Murvanidze found shelter in the Iashvili clinic. After half an hour, he returned to the entrance of the TV Company, where the use of tear gas and rubber bullets started again. Murvanidze ran in the direction of the Digomi market, where he came across the same violence.

The Explanation of Irakli Kipiani

On 7 November 2007, from 20:30 until 20:50 hours, Irakli Kipiani was in the room allocated for Imedi operators when he heard noise. When he went out of the room, he saw Imedi employees in the entrance lying down and surrounded by people in military uniforms. The people in the military clothes dragged Kipiani to the foyer, put him down to the floor, and took away his mobile phone. After 20 minutes, Kipiani was moved outside, where he remained for half an hour. Afterwards, he was requested to move to Ljubljana Street, from where he started to move in the direction of the Mayakovski monument. The Special Forcers followed him using rubber bullets and tear gas. Kipiani, along with several others, turned and started to run in the direction of Iashvili clinic. The faster he was running, themore rubber bullets were being used by the Special Forces. Finally, Kipiani entered the Digomi forest, moved to Aghmashenebeli Lane, and returned home.

The Explanation of Tea Keresedilze

After storming into the building, Tea Kereselidze, the editor of the news programme, Kronika, was put down on the floor in the room located between the archive room and newsroom. Kereselidze tried to calm down the crying interns, which caused the irritation of one of the members of the Special Force, who aimed his gun at the editor's forehead requesting her to stay calm.

The Explanation of Nino Kiknadze

Nino Kiknadze was an intern at Imedi. She was in the newsroom when the Special Forces stormed into the building. Kiknadze approached a member of the Special Forces and asked him what was going on. He threatened her with a baton and insulted her. Kiknadze, along with others, was put down on the floor and had guns aimed at them. Kiknadze felt bad as a result of the physiological anxiety imposed. With the help of the members of the Special Forces, she got up. While taking the necessary medicine, one of the members of the Special Forces hit the table nearby with a baton in order to frighten her. The staff members in the hall where moved outside only after Giorgi Targamadze was brought downstairs from the upper floor.

The Explanation of Giorgi Khugashvili

By the time the Special Forces stormed into the building, Giorgi Khugshavili, assistant to the director, along with his brother, Nikoloz Khugashvili, ran from the control room. They approached the place where the Special Forces were. Five Special Forces members intimidated them with their guns, dragged them to the foyer, and put them down on the floor. By the time they were brought to the foyer, one person was already lying down on the floor. Members of the Special Forces requested them to turn off their phones. Khugashvili obeyed and decided to put his mobile in his pocket. A member of the Special Forces approached him, kicked him, and told him in a loud voice to put the telephone down.

As time passed, Special Forces members continued to bring other Imedi employees to the foyer, who were also put down on the floor. The chief of one of the groups was addressing the people with the following words:

"Here is your democracy, Badri's slaves! Did you want this? Did you fight for this? Did you want this kind of democracy, your mothers…". Khurgashvili tried to remember the face of the members of the Special Forces as they were without masks; however, he was not successful, since one of them was asking him to bend his head down. After going outside, Khurgashvili paid attention to the non-coordinated behavior of the Special Forces. One part was requesting the employees to leave the territory of the TV Company from the exit on Ljubljana Street, and the second part from Akhmeteli Street. After taking the journalists to the yard, theSpecial Forces started breaking down the surveillance video cameras installed on the building. Khugashvili and his brother first appeared in Ljubljana Street, where the patrol police tried to follow them, using rubber bullets and tear gas. First, they came to the forest, then to Akmeteli Street, to the entrance of the Film Studio. Here they were again shot at with rubber bullets and they ran in the direction of the Digomi market.

The Explanation of Levan Alpaidze

On 7 November 2007, at 20:00 hours, Levan Alpaidze, Otar Shamatava, Irakli Sharabidze, Giorgi Togonidze, Giorgi Amashukeli, and Revaz Manelidze were on the third floor, in the office of Bidzina Baratashvili, the director General of the TV Imedi. By that time, they were informed that Special Forces had stormed into the building. Alpaidze looked out from the window and saw that the TV Imedi yard was overcrowded by members of the Special Forces dressed in black. He went down to the first floor and noticed Special Forces in the hall, who were intimidating the employees with their weapons. Alpaidze clearly noticed operator Misha Tvaradze lying down on the floor of the hall near the newsroom. The Special Forces were assaulting and kicking him. The Director General of the TV and Radio Company Imedi, Luis Robertson, first tried to clarify the situation. He tried to obtain the explanation for storming into the building; however, he did not manage to communicate with the members of Special Forces who did not know English. Baratashvili explained to the members of the Special Forces that he was the director of the television company and promised to help them in case of necessity. He received the following reply from the Chief of the Special Forces: "I will shoot your forehead, Baratashvili". Afterwards, all the persons in the hall were moved to the newsroom. Politician Gia Maisahshvili was there as well, sitting on a chair surrounded by several members of Special Forces. After some time, approximately 40 Imedi staff members were gathered in the newsroom. Mobile phones were taken from all of them. Their deprivation of liberty lasted about 15 minutes. A member of the Special Forces came to Baratashvili, Robertson, and Alpaidze, informing them that the building was to be sealed up. Before leaving the building, the leaders of the TV Company were asked how they could switch off the signal. After coming to Ljubljana Street, Alpaidze asked the Special Forces to allow him and Robertson to return to the TV Company in order to attend the process of sealing up the building. When they returned to the building, investigators dressed in civilian clothes entered it. After the third floor was sealed up, Alpaidze saw the damaged equipment in the production and control rooms on the second floor. In the central control room, on the first floor, everything was on the floor. The control panel had been trampled, the cables were cut off, the processors as well as monitors in the TV design and music room were down on the floor, and the hard disks were taken out. Non-alcoholic drinks were taken away from the refrigerators in the underground cafeteria. The memory corner of the Kronika deceased journalist, Nino Andguladze, was vandalised and her photo was torn down.

The Explanation of Giorgi Javakhishvili

On 7 November 2007, the director of the TV Imedi air, Giorgi Javakhishvili, was in the central air room. The door of the room opens only in case the sensor is being touched by a special pass. The Special Forces stormed into the building and could not manage to get into this room for 35 to 40 minutes. They were knocking at the door and shouting in vain. After some time, the door was opened and the Special Forces entered the room, along with Bidzina Baratashvili, Giorgi Targamadze, and Gogita Iremashvili. Then the room was entered by a person dressed in civilian clothes, who switched off all the equipment. Then all the staff members were moved out of the central air room and, as discovered later, theroom was completely raided. This fact is proven by photo material. Apparently the raid of the central air room was planned in advance.

The Explanation of David Kikvadze

On 7 November 2007, by 19:00 hours, David Kikvadze, the chief Director of TV Imedi, had sorted the video cassettes for the archive. At about 21:00 hours, he went to the cafeteria. When the Special Forces stormed into the building, he talked with his friend over the phone and informed him about the ongoing events in the building. The Special Forces could not force Kikvadze to lie down on the floor, so he was shoved with his face to the wall and his mobile was taken away from him. In some time, he was taken to the working office, requested to open the door with a key, and the room was entered by the Special Forces. Afterwards, Kikvadze was moved to TV Imedi's yard, where he saw that it was raining and members of the security service of the building were lying down in the mud. Kikvadze noticed the protest action on the opposite side of the building. The participants of the action were requesting the Special Forces to leave the building. At that time, the participants of the action were approached by the Special Forces form the side of Ljubljana Street. They were shouting, "the whores of the Jew", and shooting rubber bullets and tear gas capsules at the participants.

The Explanation of Merab Metreveli

According to Merab Metreveli, a journalist of Kronika, he was in the newsroom when the Special Forces stormed into the building. At that time most of the employees were put down on the floor, while part of them, including Metreveli were forced to sit. According to Metreveli, themost aggressive among those that had stormed in was one person dressed in a yellow coat who was hitting his baton on the table and crying, "Be careful Badri's slaves, what were you thinking about while selling your souls to the Jew?" Metreveli managed to hide his mobile phone. The persons who stormed into the newsroom were cutting the telephone cables so that the employees of the TV Company Imedi would not be able to call their families. In half an hour, everybody was requested to leave the building. Metreveli appeared in the place where the Special Forces were dispersing the participants of the action. A rubber bullet hit him, and an employee of the TV Company Imedi, Ana Mamulashvili, was hit on her head by a baton, causing bleeding.

The Explanation of Ana Mamulashvili

Ana Mamulashvili is an intern in the news programme Kronika. On November 2007, she was in TV Imedi's building. After the Special Forces had stormed in, law enforcers put all the employees on the floor and were addressing them roughly. All the employees were deprived of their mobile phones. Later on, one of the members of the Special Forces allowed Mamulashvili to call her mother from her mobile. In several minutes, the employees of the TV Company Imedi were moved to the yard. The journalists approached the gates located on the side of Akhmeteli Street. Mamulashvili noticed the ambulance car standing near the gates. An ambulance was called after Ana Iasashvili felt bad. The shooting groups of TV Companies Rustavi 2 and Mze were standing at the gates. Mamulashvili saw many of Imedi's supporters at the gates as well. After a while, the employees were moved from the gates to Ljubljana Street, which was not illuminated. Law enforcers approached the journalists with Jeep type cars and shot tear gas. The journalists ran in the direction of Iashvili clinic. While running Mamulashvili felt a hit and strong pain in her head. Her neck became warm and she realized that she was bleeding. She could not continue walking independently. An employee of the TV Company, Mikheil Tvaradze, took her in his hand and took her to Iashvili clinic, where she received five stitches. Afterwards, she was moved to the Republican Hospital via ambulance.

The Explanation of Ivane Kituashvili

On 7 November 2007, at 20:20 hours, a journalist of Imedi's Dila programme, Ivane Kituashvili was in the underground cafeteria of the TV Company. At that time, he heard shouting, ran out of the cafeteria, and saw

a young girl crying that Special Forces stormed into the building. Kituashvili ran to the third floor where 30 persons had gathered by the time he arrived. He went down to the second floor where he met his co-worker who had a stomachache and took the co-worker to the third floor. Soon the Special Forces reached the third floor as well. Following their request, the journalists turned off their mobile phones and put them on the floor. After several minutes, first women and then men were moved from the third to the first floor. The TV Company's yard was full of armed persons. The supporters of TV Company Imedi gathered at the central entrance. The journalists evacuated from the building were first asked to move to the direction of the central entrance, Akhmeteli Street, however, afterwards, the decision was changed and they were asked to move in the direction of Ljubljana Street. In the Ljubljana Street Kituashvili saw Imedi's security service personnel lying down with their hands on their heads. Imedi's employees moved in the direction of Ljubljana Street, where tear gas was used. Kituashvili and producer of Imedi's Dila programme, Inga Dadiani, moved in the direction of the Children's Hospital. On the way, they met with the intern of the news programme Kronika. All three of them came near the Astra Digomi territory and they were able to go home by the car of Kituashvili's friend.

The Explanation of Temur Khubulava

On 7 November 2007, at 20:30 hours, the technical director of the TV Company Imedi, Temur Khubulava, was in the foyer when he heard his colleagues' voices that armed persons stormed into the TV Company. In one minute, the foyer was filled up with armed and masked Special Forces people. Khubulava was next to Bidzina Baratashvili and Luis Robertson when he heard clearly how a member of the Special Forces threatened Baratashvili with shooting him in the head. Khubulava was put down on the floor next to Gia Menabde and Ilia Makharadze, two Imedi employees. A member of the Special Forces kicked Khubulava in his back while he was trying to get up. In 20 minutes, they allowed Khubulava to get up and the mess started in the foyer. Khubulava used this moment and went down in order to turn off the electricity to avoid short circuiting the equipment. On the side of the dubbing equipment, Khubulava met with the Special Forces who were destroying everything there. Members of the Special Forces took him to the upper floor by using force. Later he was taken to Akhmeteli Street, where the protest action was ongoing.

The Explanation of Giorgi Molodini

The journalist of the news programme, Kronika, of the TV Company Imedi, Giorgi Molodini, returned to the TV Company after filming at about 20:30 hours. In the newsroom he heard a noise that law enforcers stormed into the building. Molodini entered the archive immediately, took an empty cassette to film, went to the entrance room and saw law enforcers with and without masks; some of them wore black coats and had turned up hats on their heads; some of them were in ordinary military uniforms. Most of them had Kalashnikov type machine guns and pistols. Afterwards, themembers of the Special Forces took a security service employee to the dining hall and physically and verbally assaulted him. They did not take Molodini's mobile phone given that its battery was low. While moving, themembers of the Special Forces were stepping on the people who were lying on the floor. Later on Molodini, along with others, was moved to Ljubljana Street. After the tear gas was used, Molidini got into a car and went in the direction of the U.S. Embassy, which is also located on Ljubljana Street.

The Explanation of Tamaz Poladashvili

On 7 November 2007, at 20:50 hours, several armed persons entered the equipment room with Bidzina Baratashvili and Giorgi Targamadze. They requested to turn off the equipment. Tamaz Poladahsvili obeyed the request. Within several minutes the equipment room was entered by two young persons in civilian clothes. They turned off the connector. Then the employees left the equipment room and two members of the Special Forces stayed there.

The Explanation of Ioseb Barnabishvili

The journalist of Droeba, Giorgi Barnabishvili, was in the cafeteria when the Special Forces stormed into the building. At that time, he heard the shouting, went to the upper floor and saw tens of armed and masked members of the Special Forces. They were asking where the cameras and the archives were. Barnabishvili ran to the third floor, where he found his colleague, Ana Iasashvili, suffering from an asthma attack. Barnabishvili went down to the newsroom to get medicine from Iesashvili's bag. While entering the newsroom he saw his colleagues lying down on the floor. One of the members of the Special Forces requested him to turn off the studio illumination and cameras. Barnabishvili replied that it was not his business. Barbanashvili could not find Iasashvili's medicine. At that time, the door of the newsroom was opened and journalist, Dachi Grdzelishvili, brought in an unconscious Iasashvili.

Barnabishvili left the newsroom and went to room N345 of Imedi's journalists, as he did not want to leave the room without observation. By that time, he was called and asked about the situation at TV Imedi and promised to provide help in case of necessity. Barnabishvili explained the existing situation. While approaching the room he was roughly requested by the member of the Special Forces to stop talking and hand him the mobile phone. Barnabishvili obeyed. After giving the mobile phone, Barnabishvili was asked to leave the room. Finally, they shoved him to the wall. While leaving the room, Barnabishvili left the documentation and small spare details of his car (license plate POT-614) in his desk. He also left 600 GEL collected for the journalist of Droeba, Dachi Grdzelishvili and operator Iago Gogilashvili, as a gift to congratulate them on the occasion of new born babies. Barnabishvili does not know what happened with the mentioned things. The employees of the TV Company Imedi who were on the third floor were put in a row and requested to go down to the first floor. Barnabishvili, together with other journalists, was taken out of the building to Ljubljana Street. He was not allowed to drive his car, which was parked in TV Company Imedi's parking area. After the law enforcers assaulted Imedi's journalists at Ljubljana Street, Barnabishvili and several of his co-workers ran in the direction of Digomi, as well as restaurants Ushba and Gagra. On 9 November 2007, Barnabishvili was allowed to take his car from the parking area. When he came to the parking area he noticed that the car parked next to his colleague's (Elisabed Vachnadze's car) was robbed.

The Explanation of Maya Kipiani

The musical producer of TV Imedi, Maya Kipiani, was in the production room on the second floor by the time the Special Forces stormed into the building. The Kronika journalists informed her about the ongoing events. Kipiani went to the first floor and saw the employees of the TV Company Imedi lying down on the floor. Kipiani was asked to come down and lay on the floor as well; however, she did not obey and returned to the second floor, where she was deprived of her mobile phone and had her face shoved to the wall. From the second floor, all the employees were first taken to the Imedi yard and then to the central exit, which is located in Ljubljana Street.

As soon as the journalists appeared on Ljubljana Street, theSpecial Forces shot tear gas and rubber bullets, chased the journalists and severely hit those whom they managed to catch with rubber batons. Kipiani saw how one young person who was trying to escape was beaten up by the rubber batons. Before Kipiani was deprived of her mobile phone, she called her family members and they came in a car for her. However, theSpecial Forces did not allow her to approach the car and forced her to move in the direction of Iashvili clinic.

The Explanation of Giorgi Iremashvili

According to the employee of the TV Company Imedi, Giorgi Iremashvili, he was on the third floor when the Special Forces stormed in. He, like other employees, was deprived of his mobile and requested to turn to the

wall. The Special Forces were looking round the rooms. They were kicking closed doors in an attempt to break them. A member of the Special Forces requested Iremashvili to turn off the air conditioning. Iremashvili was first taken to the yard of TV Imedi and then, together with the other journalists, was made to leave the territory of the TV Company. According to Iremashvili, they were shot with rubber bullets and tear gas in the street. Some of them were beaten with rubber batons. The Special Forces were following the journalists of the TV Company Imedi until Iashvili clinic.

The Explanation of Zaal Tsulukidze

On 7 November 2007, at 20:00 hours, theanchor of the programmes, Imedi's Dila and Vinigreti, Zaal Tsulukidze, was walking down the foyer, along with the producer's assistant, Tamar Gongadze. At this moment, the employees of the TV Imedi ran in shouting, "they are coming in, they are coming in". Stulukidze could not find Gongadze in the mess and ran to the third floor, where at the moment Inga Dadiani, the producer of Imedi's Dila, Otar Shamatava, the chief producer of Imedi, and others were present. The masked persons went to the third floor, took away the mobile phones from the persons there, including Tsulukidze's, and made them stand with their face to the wall. In 15 minutes, Tsulukidze, together with several other colleagues, was taken down to the foyer and then to the yard. At this moment, he saw the members of the parliament, Kakha Kukava, Zviad Dzidziguri, and the leader of Badri Patarkatsishvili's charity foundation, Paata Chakhnashvili.

Tsulukidze left the territory of Imedi together with Gongadze. Both went to Ljubljana Street and stood there for 40 minutes in the rain. Afterwards, Tsulukidze went in the direction of Texeli Alley when he heard the sound of an explosion. He continued to run in the direction of Gudushauri clinic. The smoke of the tear gas surrounding Tsulukidze and Gongadze was increasing. At that moment, they saw an ambulance. Tsulukidze tried to put his colleague, who was feeling bad, in the ambulance when a rubber bullet hit the right side of his buttock. Gongadze sat in the ambulance while Tsulukidze continued to walk. Tsulukidze looked behind and saw the Special Forces with batons coming in his direction. The Special Forces shot tear gas and as a result, it became difficult for Tsulukidze to breathe and move. At that moment, a Lexus Type black Jeep appeared and helped Tsulukidze escape the Special Forces.

The Explanation of Kakhaber Imnaishvili

On 7 November 2007, the chief editor of Imedi, Kakhaber Imnaishvili was at a funeral. David Kikvadze informed him about the storming into the TV Company via mobile phone. When he approached the TV Company, the gates were closed and the Special Forces, as well as police in yellow coats, were in the yard. Imnaishvili climbed over the gates, entered the building, and noticed that the policemen were carrying out food in boxes from the cafeteria of the TV Company. At that time, Bidzina Baratashvili, Luis Robertson and Levan Alpaidze were in the building. The investigators were sealing up the building. According to Imnaishvili's explanation, the central equipment room, air room and production rooms located on the second floor were completely destroyed. The doors and the surveillance cameras were broken. One member of the Special Forces was breaking a computer with his foot, and another one next to him was destroying DVCAM cassettes. The fourth pavilion, which is another building that belongs to Imedi, however, was not raided.

The case of the TV Company TV 25

On 8 November 2007, at 15:00 hours, the public Defender's representatives were in Batumi at the office of the local independent TV company TV 25 to discover the reason for their cessation of broadcasting. After arriving to the office, they discovered that the door was closed and representatives of the criminal police were patrolling the area. In order to clarify the situation, the public Defender's representatives obtained explanations from the founders

of the TV Company, Malkhaz Verdzadze and Merab Merkviladze, the head of the information service of the company, Maia Merkviladze, and the journalists working in the TV company Nazibrola Kobuladze and Liza Tedoradze. The following can be revealed from their explanations:

On 7 November 2007, at midnight, Maia Merkviladze left the building of the TV Company The only persons remaining in the building were the night guard and video engineer, Murman Beridze. At 1 a.m., on 8 November, the TV 25's signal switched off. The Head of Ajara Main Department of the Ministry of Internal Affairs, Davit Bedia, and his colleagues entered the building of the TV Company and forced Beridze to turn off the signal. Bedia ordered the policemen to take off the relay transmitter and told the founder of the TV channel, Merab Merkviladze, who had come to the office, that the TV company was ceasing broadcasting due to the announcement of the State of Emergency. According to the head of police, the equipment of the TV Company was out of danger. He showed the relay transmitter to Merab Merkviladze. Later, he learned that the policemen had taken the parts of the relay transmitter with them and had left two policemen to watch over the TV channel building. The founders and staff members of TV 25 were not allowed to enter the building after the broadcast was ceased.

TV 25 is the third TV station, after Imedi and Kavkasia, that had its broadcasting frequency completely shut down. TV 25 was actively covering the obstacles created near Makhinjauri for the columns of vehicles leaving for Tbilisi to participate in the protest actions scheduled on 2 November 2007. TV 25 is the third media company not controlled by the authorities. Unlike Rustavi 2 and Mze, this TV company was not able to broadcast without news programmes. This fact resulted in a financial loss.

On 16 November 2007, when the State of Emergency was abolished, TV 25 was not able to renew its broadcasting. The founders of the TV station were unsuccessfully trying to learn why they were not authorized to broadcast. The information in respect of this fact was communicated to the Delegation of the European Commission that requested a response from the central government. Only after this fact TV 25 able to renew broadcasting.

The case of radio Hereti

On 3 December 2007, the director General of the broadcasting company Hereti, Ramaz Samkharadze, addressed the Public Defender with a complaint. He presented secret video recordings of a conversation between himself and a person affiliated with the Unified National Movement, Isako Tskipurishvili. Samkharadze recorded the conversation on 30 November 2007. The following issues can be revealed from the recordings:

The Chairperson of the Chamber of Control brought together Tskipurishvili and the representatives of the central government. In his conversation with them, Tskipurishvili mentioned that he knew Samkharadze. The representatives of the central government sent Tskipurishvili to act as mediator with Samkharadze. Tskipurishvili explained to the Director General of the radio station that huge efforts would be needed for the victory of Mikheil Saakashvili in Lagodekhi. Therefore, it was necessary to change the editorial policy of radio Hereti. Tskipurishvili requested to stop the critics of the Unified National Movement in the radio Hereti programmes. Tskipurishvili pointed out to one such critical report, which was prepared in relation to the election campaign of Saakashvili. In particular, Hereti had disseminated information that the election headquarters of Saakashvili in Telavi would be headed by the brother of the Prosecutor General, Davit Adeishvili, and former Head of Administration of Telavi, Gocha Mamatsashvili. The head of the district organization of the Labour Party, Nika Vardoshvili, commented about this on the air of radio Hereti. He noted: "Gocha Mamatsashvili, with his gang, is the perfect forger of elections. That is why he was sent by the President of Georgia to lead his headquarters. The results of elections held by Mamatsashvili are obvious. These elections will be conducted under the dictatorship of Adeishvili and Mamatsashvili. It is due to Mamatsashvili that there is a single party in the City Council of Telavi today". The election headquarters of Saakashvili refused to comment on this statement. This refusal was highlighted in the radio commentary.

Tskipurishvili advised Samkharadze to restrain from opposing the high-level officials, and even from airing critical statements made by representatives of the opposition parties. He advises not to mention Adeishvili and Mamatsashvili's names. He also advises Samkharadze to accept the offer of the National Movement to air their pre-election advertisements through radio Hereti. He threatens that otherwise, the license of the radio station will be terminated and the station will be raided by the reprisal group, which Tskipurishvili had pointed to earlier as the group that raided the building of the TV company Imedi. Tskipurishvili stressed that a similar warning was coming from the high-level officials of the central government.

Tskipurishvili's threat suspiciously coincided with the problems Hereti had with the National Communications Commission. On 20 April 2007, the georgian National Communications Commission declared the broadcasting company Hereti winner of a competition on private general radio broadcasting. Based on the Decision of the National Communications Commission the broadcasting company Hereti was imposed an obligation to pay to the State 20 percent of the licensing fee – 1,032.75 GEL. The deadline for paying the license fee was 20 May 2007. According to Article 3 of the decision, the commission had to make a decision on issuing a license to the winner of the competition within seven days after the submission of the document proving the payment of the license fee.

According to the certificate issued by the Bank of Georgia, it can be determined that the Hereti transferred 1,032.75 GEL (20 percent of the license fee) to the unified account of the Treasury on 18 May 2007.

On 4 December 2007, the public Defender's Representatives visited the Georgian National Communications Commission and met with the Head of the Legal Department, Mr. Kakhi Kurashvili. According to him, radio Hereti was broadcasting without a license. Hereti had not presented the documentation proving the payment of the license fee by 3 December 2007, therefore the Commission did not issue the broadcasting license. According to Kurashvili, a fine of 5,000 GEL was envisaged for broadcasting without a license by Article 1441 of the Administrative Offences Code of Georgia.

As Kurashvili stated, the fact of broadcasting without a license was revealed after the broadcasting company Hereti had presented the document proving the payment of 20 percent of the license fee. The monitoring group of the National Communications Commission, which is assigned the task of revealing facts of broadcasting without license, is not obliged to control all broadcasting companies on a permanent basis.

Kurasvili mentioned that since the document proving the payment of 20 percent of the license fee had already been presented, the commission would issue the license to the broadcasting company within seven working days. The above-stated timeframe would be calculated from 3 December when, as Kurashvili affirmed, the document proving the payment of 20 percent of the license fee was submitted to the Commission. Therefore, theNational Communications Commission had to issue a broadcasting license before 12 December. According to Kurashvili, issuance of a license could not discharge Hereti from administrative responsibility envisaged for broadcasting without a license.

The explanation of Kurashvili indicates that the broadcasting company Hereti has been broadcasting in Lagodekhi and Signagi municipalities since 2006. The National Communications Commission should have been certainly aware of the above circumstance, since its monitoring group conducts planned verifications at least once a year. It is interesting why the issue of broadcasting without a license came to the attention of the National Communications Commission a year later. It is unclear why the National Communications Commission did not make a decision on refusing the issuance of a license due to the failure to submit the documentation proving the payment of the license fee on 20 May 2007. At the same time, it should be noted that the Law on Broadcasting links the obligation of issuing a license not on the timely submission of the documentation proving the payment to the National Communications Commission, but to the payment of 20 percent of the license fee within the deadline set by the Commission. Hereti paid 20 percent of the license fee two days prior to the deadline; therefore, a decision on refusal to issue a license is inadmissible.

Representatives of Hereti stress that the monitoring group of the National Communications Commission had visited them on a regular basis to find out whether other broadcasters were impeding the activities of the company within its frequency. The National Communications Commission denies the fact of carrying out such monitoring.

On 11 December 2007, theNational Communications Commission made a decision (#757/18) where it states that on 6 September 2007, themonitoring of the radio frequency spectrum was undertaken in Lagodekhi. The findings of the monitoring revealed that Broadcasting Company Hereti Ltd. was broadcasting without a license on the frequency of 102.8 MHZ. The same company uses the frequency of 402.6 MHZ for their radio relay line without having received the above frequency by the Commission. The administrative offence protocol was drawn in this respect and the Hereti was imposed a fine of 5,000 GEL.

The National Communications Commission decided that the action of the Hereti contained characteristics of the administrative offence defined by Article 144[1] of the Administrative Offences Code of Georgia. In particular, theabove-stated article provides for the responsibility for the activity without a license and usage of the radio frequency spectrum without receiving it.

At the same time on 11 December 2007, theNational Communications Commission adopted decision #758/1 to grant the #B 95 of private broadcasting to Hereti. The same decision authorized broadcasting company Hereti to use the 102.8 MHZ radio frequency, theseven month unlicensed usage of which resulted in the administrative penalty for the company.

Regardless of the statement made by the Public Defender in respect of the aforementioned problems, Tskipurishvili not only was not imposed a criminal responsibility, but he continued unlawfully influencing the journalists of the broadcasting company. On 5 January 2008, a journalist of the broadcasting company, Khatuna Gogashvili, was carrying out her professional tasks at the polling station No. 19 of Lagodekhi No. 15 Electoral District, located in the village of Kabali. According to Gogashvili, Tskipurishvili came to the polling station. He was not a voter and did not have any documents authorizing his presence at the polling station. Tskipurishvili requested Gogashvili to refrain from making audio recordings and threatened her with her life if she did. Tskipurishvili took the dictaphone away from her and physically injured her. An observer from the local observer organization, International Society for Fair Elections and Democracy, and representatives of election contestants witnessed the incident.

On 10 January 2008, the public Defender sent the material about the threats by Tskipurishvili to raid the radio station to the Gurjaani District Prosecutor's Office.

In a letter dated 1 February 2008, the legal Support Department of the Office of the Prosecutor General informed the Public Defender that on 16 January 2008, the lagodekhi District Division of the Ministry of Internal Affairs had started an investigation in respect to the criminal case #030080019 concerning the facts of intimidating the director of the broadcasting company Hereti and infringing the freedom of speech. Respective crimes are envisaged by Articles 151 and 153 of the Criminal Code of Georgia.

On 9 January 2008, the public Defender sent the material concerning the fact of threatening Gogashvili and illegally obstructing her professional activity to the Minister of Justice of Georgia, the head of the Governmental Group on Fair and Free Elections, Ekaterine Tkeshelashvili, and the Prosecutor General Zurab Adeishvili.

The case of Irakli Batiashvili

The case of Irakli Batiashvili was examined comprehensively in the Report of the Public Defender covering the first half of 2007. In the reporting period, indications were made to particular violations committed by the judge, as well as to the request of the Public Defender to the High Council of Justice of Georgia to impose disciplinary action on the judge.

On 17 May 2007, lawyer Ioseb Baratashvili addressed the Public Defender requesting examination of the lawfulness of the detention of the person under his defence, Irakli Batiashvili, during the preliminary investigation and the court hearings of his case. The lawyer believed that Batiashvili had been convicted by the court illegally. There was no evidences in the criminal case proving that he had committed a crime. The telephone conversations on which the judgment of conviction was based had been falsified and therefore, he became a political prisoner.

The documents attached to the complaint reveal that on 22 April 2006, mass media, namely the news programme Kurieri of Rustavi 2 TV and the Droeba of Imedi TV, showed footage where the former Representative of the President in Kodori Valley, Emzar Kvitsiani, made a statement on the establishment of an armed unit, Monadire, and declared disobedience to State authorities. The aforementioned became grounds for opening a preliminary investigation into criminal case #090060756 in respect to Emzar Kvitsiani, by the Division of Fight against Organized Crime at the Special Operative Department of the Ministry of Internal Affairs. On 26 July 2006, investigator Zurab Beitrishvili questioned witness Irakli Batiashvili on his relationship with Kvitsiani, the legal status of the battalion Monadire, and developments in the Kodori Valley.

On 29 July 2006, Batiashvili was charged as an accused in respect of the criminal case #090060756 for having committed the crime envisaged in Articles (25)307, Article 315, paragraph 3, and Article 376 of the Criminal Code of Georgia (228-230 pages of volume N1).

On 30 July 2006, the judge of the Collegium for Criminal Cases of Tbilisi City Court, G. Goginashvili, assigned Batiashvili detention as a restraint measure (page 253 of the volume N1).

On 22 September 2006, the judge of the Collegium for Criminal Cases of Tbilisi City Court, E. Areshidze, extended the term of detention of Batiashvili for one additional month, up to three months, until 29 October 2006 (pages 19-20 of the volume N3).

On 26 October 2006, Collegium for Criminal Cases of Tbilisi City Court Judge D. Metreveli issued an order on extending the term of detention of Batiashvili for one additional month, up to four months, i.e. until 29 November 2006 (pages 53-56 of the volume N3).

On 21 November, Batiashvili was charged for a second time based on Articles 25 and 307, Article 315, paragraph 3, and Article 376 of the Criminal Code of Georgia (pages 109-115 of the volume N3).

The preliminary investigation on The case was finished and the criminal case #090061129, along with the indictment, was sent to the Tbilisi City Court on 24 November 2006 (pages 132-139 of the volume N3). While considering the case, the judge gravely violated the Criminal Procedure Code of Georgia more than once, particularly:

1. According to Article 162, paragraph 8 of the Criminal Procedure Code of Georgia, "the judge examines The case on assigning a measure of restraint within 24 hours after the receipt of The caseby the court without an oral hearing". The court discussed the appropriateness of the usage of the measure of restraint and left it unchanged by the ruling dated 24 November 2006.

   The lawyers of I. Batiashvili, I. Baratashvili and G. Nikoleishvili filed a motion to the court several times alleging the illegal detention of I. Batiashvili. They were justifying their request according to the concluding part of the ruling issued by M. Tetriauli: "The restraint measure – detention – is used appropriately, and there is no basis for changing or quashing it".

   The ruling issued by Judge M. Tetriauli on consideration of the issue of the restraint measure does not fully meet the requirement of Article 156 of the Code of the Criminal Procedure of Georgia, particularly, "when issuing an order on the usage or change of a measure of restraint, the judge considers the motion in accordance with the rule prescribed by Article 140". Thus, in fact, Article 151 of the Criminal Procedure Code of Georgia was violated.

2. The lawyer protecting the interests of I. Batiashvili and I. Baratashvili filed a motion to M. Tetrauli and requested to question Davit Gamkrelidze, Shalva Natelashvili, Konstantine Gamsaxurdia, Gubaz Sanikidze, Giorgi Kobakhidze, Zurab Beitrishvili, G. Gogolashvili, Nora Kvitsiani, Gotcha Pipia, Erekle Kodua, Nikoloz Tabatadze, Zaza Bregadze, Zurab Kotaria, etc. as witnesses. However, E. Kodua, Z. Kotaria, and N. Tabatadze did not come to the court hearings in detriment of the interests of the defence party.

   Judge M. Tetrauli explained to the defence party that although the court had sent the writ to E. Kodua and Z. Kotaria twice, these persons did not appear at the court hearings. As for N. Tabatadze, due to the fact that the defence party had not presented the physical address of N. Tabatadze, the court could not ensure N. Tabatadze's presence at the hearings". (See the minutes of the court hearings, page 61).

   The court had to take measures to determine whether the reasons for which the witnesses did not appear before the court were excusable, and had to act according to Article 173 of the Criminal Procedure Code of Georgia. However, the court failed to do so. Therefore, it neglected the procedural guarantee of defence granted to the defence party by law, and limited the capacity of the defence party to carry out an effective defence.

   At the same time, M. Tetrauli violated Article 42, paragraph 6 of the Constitution when she did not grant the petition raised by the defence party on questioning the Deputy Head of the Division for Protecting Entities under the Ministry of Internal Affairs Special Operations Centre – Z. Bregvadze was a witness.

   Therefore, it could be considered that the court intentionally evaded ensuring that the persons called in as witnesses would appear before the court for testimony.

3. Due to Irakli Batishvili's complicity in the crime as an accomplice, he had to provide assistance to the person (persons) who committed a crime by advising, convincing or acting. Therefore, theadvice given to and the opinions expressed in the presence of other persons (those who were not accomplices of the crime) cannot be considered as psychological assistance in committing a crime. Thus a telephone conversation held between Nora Argvliani and Batiashvili cannot be regarded as assistance to Emzar Kvitsiani through providing advice or convincing him. Argvliani was not charged for this crime; however, the telephone conversations with her became evidence proving the illegality of the actions and guilt of Batiashvili. This is, in fact, was in breach of the norms envisaged in Chapter VII of the Criminal Code of Georgia.

4. The lawyers protecting the interests of the defendant during the court investigation, Ioseb Baratashvili and Gela Nikolaishvili, filed a petition to the court requesting a phonoscope test on three recordings, namely telephone conversations #11206522, #11205642, and #11211522, recorded on CDs submitted by the Operative-Technical Department.

   The judge did not grant the petition on the test, thus violating the basic principles of the Criminal Procedure Code and a number of other norms, namely Articles 468, 356, 10(3), 18, 19, 132, 496, and 503 (2). It is unacceptable for a judge to evade executing his/her obligation to examine the circumstances important to a case and determine the incontrovertibility of evidence.

   Although the judge assesses what can be considered as incontrovertible evidence based on his/her inner belief, that inner belief does not imply his/her full freedom. He/she must base the judgment on the complete, comprehensive and impartial examination/evaluation of the circumstances important for the case. The judge must study comprehensively, and assess all the evidence, to determine the objective truth, in particular, the evidence that is the basis for the judgment on conviction.

5. According to Article 40, paragraph 3 of the Constitution of Georgia, a court judgment shall be based only on incontrovertible evidence. However, theabove-mentioned facts prove that the court, when deciding a case, used evidence, theincontrovertibility of which was under significant doubt. This is a grave ignorance and violation of Article 40, paragraph 3 of the Constitution and a number of imperative norms given in the third part of the Criminal Code of Georgia.

   Regardless of several procedural violations in the criminal case against I. Batiashvili, on 23 May 2007, Judge M. Tetrauli issued a judgment of conviction and found Batiashvili guilty of committing a crime envisaged by Article 25 and Article 315, paragraph 2 of the Criminal Code of Georgia – uprising to alter the constitutional structure of Georgia by violence, to overthrow the government, or to usurp power – and sentenced him to seven years in prison.

   According to Article 40 of the Constitution of Georgia, "a judgment of conviction shall be based only on the evidence beyond a reasonable doubt. An accused shall be given the benefit of doubt in any event". The analysis of Batiashvili's case obviously shows that the court based its judgment on its opinions and the evidence, theincontrovertibility of which is doubtful and was not examined by the court comprehensively.

   Article 6 of the European Convention on the Protection of Human Rights and Freedoms affirms that "in the determination of a person's civil rights and obligations or of any criminal charge against that person, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".

   The analysis of the above-stated case shows that the evidence examined by the judge cannot be considered as sufficient and incontrovertible for establishing truth. At the same time, the principles of competition and equality of arms (when summoning and questioning witnesses.) were neglected. The judgment is unfounded, which gravely violated the law, meaning Irakli Batiashvili's right to a fair trial was violated.

According to Article 2 of the Law of Georgia on the disciplinary responsibility and disciplinary prosecution of judges of the common courts of Georgia, "disciplinary responsibility and measures are imposed over a judge of a common court for having committed a disciplinary violation".

Based on the analyzed circumstance, Judge M. Tetrauli committed a disciplinary violation, since disciplinary violation is defined as "a gross violation of law in the process of discussing a case. Violation of the Constitution of Georgia (an international treaty and agreement of Georgia), and of the imperative norms of the Georgian legislation which caused (or could cause) substantial damage to the legal rights and interests of the party during the hearings, or a third person, or public interest shall be deemed as a gross violation of law" (Article 2, paragraph 2, sub-paragraph "a" of the Law of Georgia on disciplinary responsibility and disciplinary prosecution of judges of the common courts of Georgia).

The Public Defender of Georgia addressed the Secretary of the High Council of Justice of Georgia requesting examination of the lawfulness of Judge Maia Tetrauli's actions and her relative decision-making in line with the law.

The case of Levan Zhorzholiani

The judge of the Collegium for Criminal Cases of Tbilisi City Court M. Gvelesiani considered the criminal case of Spartak Bukia, Gia Sioridze, Levan Zhorzholiani, and others, with the participation of the public prosecutor, Levan Zakaradze.

According to the judgment of 21 May 2007, in autumn 2003, a criminal group decided to benefit from the mechanism of the allocation of relevant State funds to persons on maternity leave by producing falsified and fake documents and fraudulently acquiring large amounts of funds intended for pregnant persons. In order to accomplish this, they were looking for women who were more than six months pregnant via women's clinics and misleadingly hired them to different positions. As a result, the funds equivalent to the amount of the daily salaries set for these positions multiplied by 126 days were allocated from the State budget. These large amounts were fraudulently misappropriated by the members of the criminal group.

Based on the judgement of 21 May 2007, Levan Zhorzholiani was found guilty for committing the crime envisaged in Article 338, paragraph 3, sub-paragraphs "b", "d", and "e" – bribe-taking, a code enforced before 31 May 2006. Zhorzholiani was sentenced to prison for ten years. Zhorzholiani was imposed an additional punishment - withdrawal of the right to hold an office or to carry out an activity for three years based on Article 43 of the Criminal Code of Georgia.

In the above-mentioned case, the court relied on one witness's evidence. Namely:

1) According to T.B. (member of the criminal group), he called G.S. via a cell phone. G.S. told him that it would be better to take the new applications of the pregnant women, which were certified by a notary, to the Foundation. T.B. claimed categorically that L. Zhorzholiani was with G.S. during the above-mentioned conversation. T.B. heard that G.S. was talking about the above-stated applications with Zhorzholiani.

Apart from the above-stated phrase, there is no evidence in the court judgment that could undoubtedly prove the fact that Zhorzholiani was taking bribes. Therefore, when producing the judgment, the court relied on the evidence of only one witness, which was rejected by the defendant S.B. himself. The controversy between the evidences of the witness T.B. and S.B. was not resolved by means of the presentation of other incontrovertible evidence.

In the evidence given to the court, T.B. affirms that he was talking to G.S. via cell phone when he confirmed the presence of L. Zhorzholiani. G.S. had not told him that he was talking to Zhorzholiani,, he also did not tell T.B. that he was in the office. The witness T.B. also indicated that he had called G.S. two to three hours later and he was not in sight of the cell phone. According to T.B., his assumption on the conversation between L. Zhorzholiani and G.S. was derived from the fact that T.B. had heard the voice of Zhorzholiani saying, "yes, yes, that is better". G.S. said nothing about Zhorzholiani, but T.B. decided Zhorzholiani was there based on the fact that he received the money and recognized the voice. T.B. notes that he had not talked to Zhorzholiani by phone, but he had been meeting him systematically for about a year while accomplishing his duties.

Based on the above-stated evidence of T. Burtchuladze, the court considered that the commission of the crime envisaged in Article 338, paragraph 3, sub-paragraphs "b", "d", and "e" by Zhorzholiani was established incontestably and so issued a judgment of conviction.

By rendering a judgment of conviction, Zhorzholiani's right to a fair trial guaranteed by the acting legislation of Georgia was violated, given that:

According to Article 40 of the Constitution of Georgia: "A resolution on processing a person as an accused, a bill of indictment, and a judgment of conviction shall be based only on the evidence beyond a reasonable doubt. An accused shall be given the benefit of doubt in any event".

According to Article 8, paragraph 8 of the Criminal Procedure Code of Georgia, "the judiciary controls the lawfulness and soundness of actions and decisions of an investigator and a prosecutor".

According to Article 18 of the same Code, "an investigator, prosecutor, judge, and the court shall establish undoubtedly whether a crime was committed, who committed it, and define all other circumstances of the object of proof in respect of the criminal case. Examination of the circumstances of a case shall be comprehensive, impartial, and complete. The same diligence should be applied to both incriminating and acquitting evidence for a suspect or accused, as well as circumstances aggravating and attenuating the responsibility".

According to Article 19, part 2 of the Criminal Procedure Code of Georgia, "the evidence is assessed to determine their relevance to The case(relevance), whether the procedural law was observed while collecting them (admissibility), as well as their incontrovertibility and sufficiency for making the conclusion on the commission of a crime. The evidence is assessed in line with the Criminal Law and requirements of the Criminal Procedural Law".

According to Article 132, "each piece of evidence should be evaluated in light of the admissibility of its relevance to the criminal case, its incontrovertibility, and all evidence collected in respect to The caseas a whole should be assessed in light of their sufficiency for finding the person guilty".

The case of Giorgi Getsadze

In October 2006, the public Defender of Georgia was addressed with a complaint by a former staff member of the Geguti colony, Besik Chketiani. He claimed that employees of the administration of the penitentiary institution were systematically sending prohibited items, and any person could send such things (including money), to the convicts in the penitentiary institution.

The staff members of the Public Defender's Office, Giorgi Getsadze and Giorgi Mshvenieradze, were in Kutaisi on 2 November 2006, to verify the above-mentioned facts. Mshvenieradze instructed Getsadze to go

to the Geguti colony to ask the employees of the institution if it was possible to send money to a convict. When the employee asked him to whom he wanted to send money, Getsadze would name different convicts.

After having received refusal from one employee, he would not continue talking to the same person and would ask another employee the same question. In total, he questioned 6 employees. All of them refused to send money. Getsadze called Mshvenieradze and told him that money was not being sent to the convicts in the institution. Getsadze left the territory of the institution afterwards.

On 5 November, at 18.00 hours, the head of the Penitentiary Department, Bacho Akhalaia, held a press conference where he made public the audio recordings of a telephone conversation between Getsadze and Mshvenieradze. The recordings were obtained by operative agencies and according to the law should not be accessible for the Head of the Penitentiary Department; furthermore, he did not have the right to disseminate this information since the investigation had not yet determined the identity of the suspect at that time.

As revealed from the documents, the investigation into the above-stated incident was opened just three days prior on 2 November based on the operative information, which the West Georgia Regional Division of the Constitutional Security Department had submitted to the West Georgia District Prosecutor and West Georgia Investigation Department of the Ministry of Justice. The letter indicated that based on the operative information, undefined persons were planning to send money to the Geguti or Kutaisi penitentiary institutions. The investigation on this matter was started in the Department of Investigation of the Ministry of Justice.

Particular attention needs to be drawn to the following circumstance: The investigation itself affirms the fact that until 12:00 hours on 2 November 2006, Getsadze was not planning to go to Geguti. Therefore, it is obvious that the operative information could not have been received by the West Georgia Regional Division of the Constitutional Security Department Ministry of Internal Affairs of Georgia. This also means that the telephone number owned by Getsadze could not have been listened to. The judge and prosecutor did not question the circumstance that the Constitutional Security Department had received the information not less than three hours before 13:50 hours on 2 November 2006. It is evident, that in reality not the number and phone owned by Getsadze, but the telephone number of Mshvenieradze (877-46-06-60), which is owned by the Public Defender's Office, was being listened to. Therefore, this was an illegal phone tap.

This is also proved by the fact that the investigation was in possession of only three recordings of phone conversations between Getsadze and Mshvenieradze. The investigation does not have any other recordings of Getsadze's telephone conversations. However, Getsadze made several telephone conversations during this period.

Later, Getsadze was called in as a witness to the West Georgia Division of the Investigation Department of the Ministry of Justice. Getsadze gave evidence confirming that he had been in the territory of the Geguti colony and was carrying out a particular assignment there. He was asking the employees of the penitentiary institution whether it was possible to send money to a convict. After having received a refusal he left the territory of the colony as he considered that the aim of the inspection was achieved.

Getsadze was recognized as a suspect on the same day. 14 November 2006, and was accused and charged in respect of committing a crime (provocation of a crime) envisaged in Article 145 of the Criminal Code of Georgia, which states that "inducing another person to commit a crime for the purpose of subjecting him/her to criminal liability" is a crime.

Getsadze was assigned a bail of 5,000 GEL as a restraint measure on 16 November 2006, by Kutaisi City Court Judge Merab Kozmava.

It should be noted that by the order on the measure of restraint, the judge considered the action committed by Gestadze as confirmed and stated that the court had found out that Getsadze had committed the action charged against him; however, the court ordered a measure of restraint and not the punishment. With this action, the court violated the presumption of innocence, which is a gross violation of both Article 40, paragraph 1 of the Constitution of Georgia as well as Article 6, paragraph 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The investigation lasted until March 2007, however no new evidence was found since November, meaning the evidence only comprised the three audio recordings, and the evidence submitted by the accused and of the other witnesses, who are employees of the penitentiary institution.

The indictment, which contains the prosecutor's doubts that Getsadze was trying to give money to the employees of the Geguti colony and the audio-video recordings of this fact aimed at imposing criminal liability on them, is absolutely groundless.

The Tskaltubo District Court started considering The case on merits on 3 May 2007. The defendant and the witnesses of the prosecution and defence parties were questioned.

The evidence given by both prosecution and defence parties coincide and confirm the following:

1. Getsadze did not induce anyone to commit a crime, i.e. the action of Gestadze was not followed by the consent of the penitentiary department employees to commit a crime;
2. Getsadze did not have any money at hand. According to the witnesses of the prosecution, they had not seen any money. In regard to the evidences given by the defence, witnesses and the defendant, testified that Getsadze not only did not have the 50 GEL indicated as an amount to mislead the penitentiary institution employees, but had no money at all; and
3. Getsadze did not conduct secret audio-video recordings (the prosecution witnesses do not know anything about this, the evidence given by the defence witnesses and defendant confirm that Getsadze has not recorded anything).

The judge of Tskaltubo District Court, I. Gvagvala, issued a judgment on 10 December 2007 (the International Day of Human Rights). Getsadze was found guilty based on Article 19-145 of the Criminal Code of Georgia and was sentenced to one year of deprivation of liberty, which was considered as conditional.

In the motivation part of the judgment, the only argument of the court was its deep inner belief that Getsadze had committed an attempt of provocation of a crime. The judgment reads as follows: "The crime (provocation) is considered accomplished from the moment of inducing someone to commit it;" "the action of the defendant was directly aimed at committing a crime; however, the crime was not accomplished". Thus, the judge contradicts himself.

The judgment is absolutely groundless due to the following circumstances:

The crime envisaged in Article 145 of the Criminal Code is a real crime. Therefore, it is deemed committed if the person induces another person to commit a crime. At the same time, the perpetrator should have a particular aim – a criminal act of the person persuaded and there should be a concrete way to achieve this aim. It is not possible for an attempt of a crime (provocation) to exist, because if the person is persuaded to commit a crime (if the above-stated aim exists), this is an accomplished crime, and if there had been no inducement, it would have then been considered preparation of a crime then. Given that the crime envisaged in Article 145 is a minor crime, its preparation does not lead to criminal liability.

Therefore, to establish whether a crime was committed the investigation and the court had to establish undoubtedly the following circumstances:

1. That Getsadze had indeed persuaded a real, physical person to commit a crime;
2. Giorgi Getsadze's aim was imposing a criminal liability on this person; and
3. It should have been established what the concrete tools used by Getsadze to achieve the above-stated aim were.

The answer to these questions is obvious and simple:

1. Did Getsadze persuade a real, physical person to commit a crime? The answer to this question is given in the debate speech of the prosecutor himself, where it is clearly indicated that Getsadze had not induced anyone to commit a crime. Therefore, even if Getsadze had had an intention and capacity to commit a crime, it would only have been the preparation of a crime, which is not a punishable action according to Article 18, paragraph 2 of the Criminal Code.
2. Did Getsadze aim at imposing criminal responsibility on the employees of the penitentiary institution? The investigation had to answer this question based on concrete arguments. Instead of this, the prosecutor only presumes that Getsadze, instead of executing the task of verifying lawfully the facts given in the complaint, wanted to impose a criminal liability on the employees of the penitentiary institution through the provocation of a crime. This is impossible to determine from the indictment speech or the material of the pre-trial investigation or the court hearings about what could have caused such an intention or what evidence the public prosecution is basing such an opinion on. Therefore, it is obvious that the prosecutor leaves this important issue without an answer and imposes a merely unfounded opinion on the court.
3. What was the tool used by Getsadze to achieve the aim? If Getsadze had decided to commit a crime, he should have used an effective tool to achieve the aim, use of which would lead to imposing criminal liability on the penitentiary institution employees. The investigation was developing a suspicion that Getsadze was trying to achieve this aim by means of secret video recordings and disseminating these recordings via broadcasting outlets. The above suspicion remained a suspicion throughout the investigation and was not confirmed by the prosecution through any evidence during the trial investigation. Even the indictment, which should be based on incontrovertible evidence, was not based on such evidences and did not even make reference to any evidence to confirm the above suspicion. The only argument mentioned is the fact that when Getsadze was asked a question on this issue during the preliminary investigation, the latter did not reply. Regardless of the fact that the right to silence is affirmed by the Constitution of Georgia, as well as a number of international and national legislative acts, the investigation considers that the fact that Getsadze used his right to silence can be used as proof that he was conducting secret video recordings of his actions. This opinion presented by the investigation that the right to silence indicates the commission of a crime by a person is complete nonsense. Regrettably, such an opinion was considered by the court as sufficient evidence.

In order to establish the crime envisaged in Article 145 of the Criminal Code, the court investigation has to answer the three questions listed above, which will establish the crime only in The casewhen a positive answer is given to all three questions based on incontrovertible evidence. Under the circumstances of a fair trial, the judge has to observe clearly that none of these questions were answered based on incontrovertible evidence. Furthermore, the prosecutor openly talked only about his private opinions and doubts. Therefore, it can be determined undoubtedly that the court judgment could have been justified only with one sentence: "The casedoes not contain facts, but only doubts that are beyond the scope of the court's deliberation".

Taking into consideration the aforementioned arguments, the public Defender considers that Getsadze was persecuted in connection with his professional activity in order to influence the activities of the employees of the Public Defender's Office and to intimidate them. Gestadze is an example of how all persons trying to oppose the violations of any institution that have direct negative influence on human rights and freedoms will be punished.

The Court of Appeals considered The casewithout an oral hearing and left in force the judgment of the Tskaltubo District Court without any justification.

At present, the judgment is appealed to the Supreme Court of Georgia.

The case of Mamuka Lomsadze

On 4 September 2007, the public Defender addressed the High Council of Justice recommending the initiation of a disciplinary prosecution against the judge of the Collegium for Criminal Cases of Tbilisi City Court, Davit Jugheli.

On 13 August 2007, the public Defender of Georgia was addressed with a complaint by Nana Lomsadze. According to Lomsadze, in the judgment dated 12 July 2006, rendered by the Collegium for Criminal Cases of Tbilisi City Court, with respect to the criminal case against M. Lomsadze and others, for the crime envisaged in Article 333, paragraph 1 and Article 332, paragraph 1 of the Criminal Code of Georgia, M. Lomsadze was found guilty and sentenced to two years and six months of deprivation of liberty. The above judgment was appealed to the Collegium for Criminal Cases of Tbilisi Court of Appeal, however, the criminal case was not sent to the Criminal Cases Collegium of Tbilisi Court of Appeal until 21 August, which was more than one year after the judgment was issued.

According to the letter from the Tbilisi Court of Appeals dated 21 August 2007, the criminal case against M. Lomsadze was not lodged with them.

On 29 August 2007, the Tbilisi City Court informed the Public Defender that the judge of the Collegium for Criminal Cases of Tbilisi City Court, Davit Jugheli, rendered a judgment of conviction with respect to the criminal case against defendants M. Lomsadze and others on 12 July 2006. The appeal of the lawyers of the defendants, M. Lomsadze, D. Natroshvili, P. Khatashvili, and M. Khurtsia, was submitted to the Collegium for Criminal Cases of Tbilisi City Court via post on 15 August 2006 (the appeal was submitted to the Post Office on 11 August 2006).

According to Article 528, paragraph 1 of the Criminal Procedure Code of Georgia, "the case, appeal, and its motion shall be sent from the District (City) Court to the Court of Appeal no later than one month after the judgment was issued". The judge of the Collegium for Criminal Cases of Tbilisi City Court, D. Jugheli, violated this requirement of the Criminal Procedure Code of Georgia.

The case of Zviad Oboladze and Nino Lobzhanidze

On 14 September 2007, the public Defender of Georgia addressed the Supreme Court of Georgia to provide copies of the decisions (judgments, rulings, etc.) in respect of the crime envisaged by Article 130 of the Criminal Code of Georgia – abandoning third person in distress.

In a letter dated 25 September 2007, received from the Supreme Court of Georgia, it is indicated that from 2006 to 2007, the collegium for Criminal Cases of the Supreme Court of Georgia examined one case in regard to this crime and only one ruling was rendered, the copy of which was attached to the letter.

The afore-mentioned ruling on inadmissibility of the cassation appeal was rendered on 23 July 2007, by the Collegium for Criminal Cases of the Supreme Court of Georgia (M. Oshkhareli, Z. Meishvili, and L. Murusidze). The appeal was submitted by Davit Korkotashvili, the lawyer of the defendant, Nino Lobzhanidze, and Gia Joglidze, the lawyer of the defendant, Zviad Oboladze, in regard to the judgment dated 29 December 2006, rendered by the Collegium for Criminal Cases of Tbilisi Court of Appeals.

The Supreme Court of Georgia refused to grant the cassation appeal on the grounds that The case was not important for developing the law and forming unified case law, given that the decision was not different from the existing case law of the Supreme Court of Georgia with respect to similar cases.

The phrase included in the ruling, "the decision is not different from the existing case law of the Supreme Court of Georgia with respect to similar cases" – contradicts the letter received from the Supreme Court of Georgia, since the letter states that only one case in regard to Article 130 of the Criminal Code was considered by the Collegium for Criminal Cases of the Supreme Court of Georgia, the copy of which was sent to the Public Defender.

Paragraph 2, Article 547 of the Criminal Procedure Code of Georgia determines that "the cassation appeal is admitted if The case is important for the development of justice and formation of unified case law". Since there was no criminal case considered by the Supreme Court of Georgia, and there was no case law established on examining and deciding on the crime envisaged in Article 130 of the Criminal Code, the criminal Cases Chamber of the Supreme Court of Georgia based on Article 9, paragraph 3 of the Organic Law on the Supreme Court of Georgia could refer The casethrough an argumented ruling to the Grand Chamber given that the content of The caseconstituted a rare legal problem.

Furthermore, there was serious evidence apart from the commission of a crime by Nino Lobzhanidze and Zviad Oboladze (see the Report of the Public Defender of the first half of 2006).

The case of A. L.

On 21 November 2006, the judge of Samtredia District Court, Louisa Kuparadze, sentenced the juvenile A. L., born on 14 November 1989, to a 30-day administrative detention in regard to Article 45 of the Administrative Offences Code of Georgia – the illegal purchase or possession of drugs in minor quantities without an aim of selling, or use of drugs without medical prescription.

Article 32, paragraph 3 of the Administrative Offences Code of Georgia reads as follows: "Administrative detention shall not be imposed on pregnant women, mothers of children under 12 years of age, persons under 18 years of age, as well as invalids of categories 1 and 2". Therefore, the judge gravely violated the above requirement of the law.

On 29 November 2006, the public Defender of Georgia sent the relevant materials to the Prosecutor General of Georgia for further reaction.

The Public Defender was informed by the Office of the Prosecutor General that the preliminary investigation had been open in the Office of the Prosecutor General on the criminal case (#74068449) about the rendering of an illegal judgment by the judge of Samtredia District Court, Louisa Kuparadze, concerning the crime envisaged in Article 336, paragraph 1 of the Criminal Code of Georgia.

According to the ordinance on termination of the preliminary investigation dated 19 July 2007, the preliminary investigation revealed that the judge of Samtredia District Court, Louisa Kuparadze, had issued an illegal judgement; therefore, she had committed the criminal act envisaged in Article 336, paragraph 1 of the Criminal Code of Georgia – issuing an illegal court decision by a judge.

On 4 July 2007, the Law of Georgia on Amendments to the Criminal Code of Georgia removed Article 336 (issuing an illegal judgment or other court decision) from the Criminal Code, i.e. the above-stated action was decriminalized.

The Public Defender positively assessed the attitude of the lawmaker aimed at strengthening the independence of the judge while making a decision on particular criminal, administrative, or civil cases.

According to Article 28, paragraph one, sub-paragraph "c" of the Criminal Procedure Code of Georgia, when a new law abolishes the criminality of an act, a criminal prosecution shall not be started and the prosecution already started shall be terminated. Therefore, the preliminary investigation into the issuance of an illegal court decision by the judge of Samtredia District Court, Louisa Kuparadze, was terminated.

However, abolishment of the above article does not imply that issuing of an illegal judgment or other court decision should not entail the disciplinary responsibility of a judge.

According to Article 2, paragraph 1 of the Law of Georgia on disciplinary responsibility and disciplinary prosecution of judges of common courts of Georgia, the types of disciplinary violations are: "Gross violation of the law by a judge in the process of executing the judiciary competence; a violation of the Constitution of Georgia, as well as international treaties and agreements of Georgia; or a violation of imperative requirements of Georgian legislation, which caused substantial damage (or could cause damage) to legal rights and interests of the participant of court hearings or a third person or public interests shall be deemed as a gross violation".

The Public Defender believes that the above-stated action of the judge of Samtredia District Court, L. Kuparadze, contains the features of a disciplinary offence. In particular, she committed a gross violation of the requirement of the Administrative Offences Code of Georgia, thus causing a substantial damage to the participant of the trial.

The Public Defender sent a letter to the Secretary of the High Council of Justice in respect to the disciplinary responsibility of Judge L. Kuparadze.

A similar case took place in the first half of 2006 when the judge of the Kutaisi District Court, Ana Gelekva, sentenced juvenile Z. Sh. to 14 days of administrative detention, and the investigation was opened under Article 342 of the Criminal Code (neglect of official duty).

In general, the practice established in respect to Article 336 of the Criminal Code is controversial (see details in the chapter on the Prosecutor's Office).

31 ANNEX #5. ENFORCEMENT OF COURT JUDGMENTS

The case of Rezo Bochorishvili

On 3 April 2007, Rezo Bochorishvili applied to the Public Defender regarding the enforcement of court judgments. According to the supplied case files and the court judgments, it turned out that the Imereti Chief Regional Department of the Ministry of Internal Affairs, where the applicant had been working for years, owed wages to Bochorishvili.

Bochorishvili lodged a suit in the Kutaisi City Court, which on 21 August 2006, delivered the judgment satisfying his claim and assigned the Imereti Chief Regional Department of the Ministry of Internal Affairs to recover his wages in the amount of 1,490 GEL and 11 tetri. The judgment came in force on 26 December 2006, and the writ was submitted to the enforcement department.

According to clauses 5 and 6 of Articles 28 and 921, the imereti enforcement bureau submitted the proposal on the voluntary enforcement of the judgment within a three-month term to the debtor party. The latter failed to enforce the proposal. After the expiration of the indicated term, the bailiff is obliged to take compulsory enforcement measures against the debtor organization. Despite the above, as Bochorishvili explained to the Public Defender, the judgment in his favour had not been enforced by the time he addressed to the Public Defender.

The bailiff, while performing his official duty is entitled to act according to article 17 of the law concerning enforcement proceedings at the stage of compulsory enforcement of the court judgment. According to sub-clauses "a" and "g" of clause 4 of the article, the bailiff is authorized to effect payment "from sums or property of other persons that the debtor owes to; as well as on the basis of the collection order from the debtor's bank accounts".

According to clause 2, Article 82 of the Constitution, "acts of courts are binding on the whole territory of the country for all state bodies and persons". Non-enforcement of court judgments violates the Constitution of Georgia, international legal acts and agreements ratified by Georgia, and more importantly, the creditor's rights and legal interests.

According to clause 15, Article 42 of the Georgian law on the State budget of 2007, budget assignations allocated to the Ministry of Finance covers the liabilities of previous years of budget-funded organizations, among them the sums de-

signed for the enforcement of court judgments, which had to be taken into account along with the above-said in the process of enforcement of the Kutaisi court judgment adopted on 21 August 2006.

Since the non-enforcement of the court judgment, as well as the violation of legal enforcement terms took place, pursuant to clause "c", Article 21 of the organic law of Georgia on the Public Defender, the public Defender's recommendation was sent off to the enforcement department so that they could take compulsory enforcement measures in compliance with clause 4, Article 17 of the Georgian law concerning enforcement proceedings and enforce the above judgment timely.

Imereti enforcement bureau materials were sent to the special group of enforcement of extraordinary cases of the enforcement department, which is authorized to effect the payment from the debtor's bank accounts on the basis of collection orders sent to the bank.

According to the information received on 21 September 2007, from the enforcement department, the bochorishvili was notified to open a bank account to which the amount identified by the court judgment was transferred later.

The case of Nugzar Galuashvili

Nugzar Galuashvili addressed the Public Defender on August 3 2007. From the application and supporting documents, it turned out that the Ministry of Internal Affairs, where the applicant had been working for years owed wages to Galuashvili. Regarding the case, Galuashvili addressed the board of administrative cases of the Tbilisi City Court, which adopted a resolution on 17 January 2007, according to which Galuashvili's suit was met and the defendant party, the Ministry of Internal Affairs, was assigned to recover his wages in the amount of 676 GEL and 94 tetri. Enforcement order #3/4047-06 of the court judgment was issued on 2 March 2007, and was forwarded to the enforcement department.

On 22 March 2007, the debtor party and the Ministry of Finance were sent proposals on the voluntary enforcement of the court judgment within a three-month term in accordance to article 921 of the Georgian law concerning enforcement proceedings. They were also warned that in the event of voluntary non-enforcement, the process of compulsory enforcement would be initiated. The debtor party did not follow the proposal. Later, compulsory proceedings were transferred to the special group of enforcement of extraordinary cases of the enforcement department. Despite the fact that the specific legal terms refer to all enforcement measures, as Galuashvili indicates, court judgment has not been enforced so far.

According to clause 2, Article 82 of the Constitution, "acts of courts are binding on the whole territory of the country for all state bodies and persons".

Non-enforcement of court judgments violates the creditors' rights and legal interests, and the right to apply to court is recognized by the Constitution of Georgia and international agreements implying the enforcement of court judgments and creditor's legal expectation of their enforcement.

The bailiff, while performing his official duties is entitled to act according to Article 17 of the law concerning enforcement proceedings, at the stage of compulsory enforcement of the court judgment. According to subclauses "a" and "c", clause 4 of the article, the bailiff is authorized to effect payment "from sums or property of other persons that the debtor owes to; as well as on the basis of the collection order from the debtor's bank accounts".

According to clause 15, Article 42 of the Georgian law on the State budget of 2007, budget assignations allocated to the Ministry of Finance covers the liabilities of previous years of budget-funded organizations, among them

the sums designed for the enforcement of court judgments which had to be taken into account by the board of administrative cases of the Tbilisi City Court in the process of enforcing the court judgment delivered on 17 January 2007.

Proceeding from the above, pursuant to subclause "b", Article 21 of the organic law of Georgia concerning the Public Defender, the latter addressed the enforcement department of the Ministry of Justice with the recommendation to take compulsory enforcement measures in compliance with articles 17 and 28 of the Georgian law on enforcement proceedings. As well as that, it was recommended to take all legal measures for expeditious and actual enforcement of the judgment.

The enforcement department replied that the recommendation was submitted to the special group of enforcement of extraordinary cases of the enforcement department on 7 September 2007, and on 11 September, theabove group transferred the sum indicated in the enforcement order to the creditor's account.

The case of the Centre for Social Rehabilitation of Disabled Persons LTD

On 18 October 2007, the public Defender was addressed by the employees of the Centre for Social Rehabilitation of Disabled Persons concerning the court judgment on their owed wages.

From the submitted application and supporting documents it turns out that in 1998, 1999, and 2000, the centre was subordinated to the Department of Persons with Disabilities of the Ministry of Labour, Healthcare, and Social Welfare. The applicants had been working for the above-mentioned organization for years and as of today, the Ministry of Labour, Healthcare, and Social Welfare owes wages to their employees from the years 1998 to 2000.

Regarding the issue, the employees of the centre lodged a suit in the Tbilisi Vake-Saburtalo District Court, on whose decision #2/1276-01, dated 4 July 2001, the claims of the plaintiffs were met. According to the judgment, the defendant party, the Ministry of Labour, Healthcare, and Social Welfare, was assigned to pay arrears in the amount of 66,389.24 GEL. The judgment became effective on 6 August 2001, and the enforcement order #2/1276-01 was issued on 2 October 2001 (see appendix), which was submitted to the enforcement department of the Ministry of Justice.

The court judgment and the enforcement order cover only part of the total wage arrears and there is a detailed indication of the sum owing to each employee. Apart from the mentioned court judgment there is another court decision (#2/26-02) regarding the rest of the arrears owed to the employees made by the Saburtalo District Court on 17 January 2002. The arrears of that order that the Ministry of Labour, Healthcare, and Social Welfare owes to creditors totals 170,000 GEL.

Other documents submitted to the Public Defender's Office prove that after the judgments came into legal force in compliance with article 911 of the law on enforcement proceedings, the Ministry of Finance and the debtor party received the proposals on voluntary enforcement within a three-month term from the special group of enforcement of extraordinary cases of the enforcement department, and were warned that in the event of voluntary non-enforcement, the process of compulsory enforcement would be initiated. The debtor party did not follow the voluntary enforcement of the above proposals.

Further, according to the replies from the enforcement department, the compulsory enforcement process commenced. As applicants note, no positive outcome had followed. The employees of the centre repeatedly addressed the Parliament of Georgia, the committee of Human Rights Protection of the Parliament, the Ministry of Justice, and other state bodies to help them with the enforcement of the judgment and reimbursement, but despite intensive correspondence and requests, the enforcement department failed to ensure the enforcement.

Pursuant to clause "c", Article 21 of the organic law of Georgia on the Public Defender, the latter addressed the enforcement department of the Ministry of Justice with the recommendation to take compulsory enforcement measures in compliance with articles 17 and 28 of the Georgian law on enforcement proceedings. In addition, it was recommended to take all legal measures for the expeditious and realistic enforcement of the judgment.

A reply letter from the enforcement department says that enforcement proceedings are under way and that they will send additional information about the results.

The case of Eliko Sulkhanishvili

On 14 August 2007, Eliko Sulkhanishvili applied (#1363-07) to the Public Defender. As she explained, she worked at the Centre of Economic Forecasting Technologies of the Ministry of Economic Development which on 11 May 2007, was liquidated on the President's order N202. By that time, the Ministry of Economic Development owed wages from 1998 to 2000 to 45 employees who sued the centre. The sum of arrears amounted to 12,054.70 GEL.

On 23 February 2006, on the decision of the board of administrative cases of the Tbilisi City Court (case N3/173-06), the Ministry of Economic Development of Georgia was assigned to recover all the above-mentioned arrears.

On 13 March 2007, the proposal (#01/12) of the Tbilisi enforcement bureau of the enforcement department of the Ministry of Justice on voluntary enforcement of the court judgment within the three-month term was not executed by the Ministry of Economic Development and the Ministry of Finance of Georgia. Therefore, pursuant to clause "c", Article 21 of the organic law of Georgia on the Public Defender, the public Defender's recommendation was sent off to the enforcement department so they could take compulsory enforcement measures regarding the above.

On 07 September 2007, thespecial group of enforcement of extraordinary cases sent the collection order so that the sum was taken from the debtor's account. As a result, 12,054.70 GEL was transferred to the deposit account of the special group of enforcement of extraordinary cases of the enforcement department and by now the sum has been transferred to the creditors' individual accounts.

The case of Marina Datuashvili

Marina Mamageishvili-Datuashvili applied to the Public Defender on 10 July 2007. The application said that her husband, Gela Datuashvili was working as a policeman at the Kutaisi Internal Affairs Department. He died while performing his duties on 14 December 1997. The family was to receive compensation from the Internal Affairs Department in the amount of his salary for the next 10 years. When computing the salary, theabove agency made an error and the family was paid 3,139 GEL. (They computed the sum from a salary of 25 GEL 18 tetri, while the salary was 85 GEL 18 tetri). Thus, the unpaid sum amounted to 7,080 GEL, which the family did not receive. Marina Datuashvili applied to the Kutaisi City Court. On the decision of the court dated 16 June 1999, the kutaisi Department of Internal Affairs was assigned to pay out 7,080 GEL to Marina Datuashvili. The Kutaisi District Court, as well as the Supreme Court of Georgia, did not change the decision. Enforcement order #2/1869-99 was issued by the Kutaisi City Court on 16 June 1999.

Since that time Marina Datuashvili has been regularly addressing the relevant bodies to have the judgment enforced; however, the judgment has yet to be enforced. Based on the above-mentioned application we addressed the enforcement department of the Ministry of Justice of Georgia with the recommendation to pay the delinquent sum. In

response, we were informed that the above court judgment had been enforced. The special group of enforcement of extraordinary cases of enforcement department transferred the sum to the deposit account of Marina Mamageishvili-Datuashvili on 17 August 2007. As we later learned from her application, she received the sum.

The case of Bato Chumburidze

Bato Chumburidze addressed the Public Defender concerning non-enforcement of the court judgment on 5 October 2007. From the application and supporting documents it turns out that on resolution #35 of 7 March 2003 of the Tbilisi Municipal Office, Chumburidze was appointed as the member of supervisory board of a legal entity of public law, theSupport Centre for Tbilisi Household Rehabilitation and Development. According to order #120, dated 1 March 2005, made by the President of Georgia, pursuant to Article 2 of the order, after the liquidation of the above-mentioned legal entity the liquidation commission was set up on the order #34, dated 29 March 2005, by the Tbilisi Mayor's Office, which terminated its functioning so that it had yet to prepare the draft order on the dismissal of employees and recovery of their wages. Thus, there was no dismissal order from the Mayor. Due to the above fact, the human Resource Department refused to enter the relevant record into the service employment record. On 21 November 2005, Chumburidze lodged a suit applying to the board of administrative cases of the Tbilisi City Court and requested that the Tbilisi Municipal Office made a record on the dismissal and recovery of wages in the amount of 13,150 GEL, which was the sum of unpaid salaries in 2005, 150 GEL in January, and 1,000 GEL from February, plus 1,000 GEL as allowance, and a two month salary of 2,000 GEL. On 27 January 2007, the board of administrative cases of the Tbilisi City Court made a decision, according to which Chumburidze's suit was partially met and the defendant party, the Tbilisi Municipal Office, was assigned to enter the record on the dismissal of Chumburidze from membership of the supervisory board of the Tbilisi Support Centre for Household Rehabilitation and Development into his employment records. In addition, the Tbilisi Municipality was assigned to recover wages in the amount of 150 GEL monthly, until the date of record in his employment records from January 2005. Enforcement order #3/189-06 on the court judgment was issued on 11 October 2006, which was submitted to the enforcement department with the purpose of compulsory enforcement.

On 15 March 2008, pursuant to article 911 of the Georgian law on enforcement proceedings, the enforcement department sent the Tbilisi Municipal office a proposal on voluntary enforcement of the judgment within a three-month term, and a warning that in the event of voluntary non-enforcement, the process of compulsory enforcement would be initiated. The debtor party did not follow voluntary enforcement. Later, the enforcement proceedings were submitted to the special enforcement group of extraordinary cases for compulsory enforcement. Despite the fact that the specific legal terms refer to all enforcement measures, the court judgment was not enforced for a long time.

Proceeding from the above, in order to protect Chumburidze's rights, pursuant to clause "b", Article 21 of the organic law of Georgia on the Public Defender, a recommendation was sent off to the enforcement department so that compulsory enforcement measures were taken in compliance with the Georgian law concerning enforcement proceedings, and the judgment in favour of Chumburidze was timely enforced.

On 28 December 2007, the enforcement department replied that the above case was under control and that in the near future compulsory enforcement measures would be taken. Despite the above, no enforcement of the court judgment has taken place to this date.

The case of Robert Diakonidze

On 10 September 2007, Robert Diakonidze applied (#1491-07) to the Public Defender concerning the non-enforcement of a court judgment. From the application and supporting documents, it turned out that Diakonidze

was working abroad from 1990 to 1991 from where his earned salary was transferred to Georgia, which he was to receive upon his return. As he explained, theState recognized the sum as internal debt, which has never been paid out. The citizen lodged a suit in the Tbilisi Vake-Saburtalo District Court, and later in higher courts. Finally, theSupreme Court of Georgia adopted a resolution to satisfy Diakonidze's suit and assigned the defendant, the Ministry of Finance of Georgia, to pay out the sum of $28,102.35 equivalent in GEL. Enforcement order #3/206-04 on the court judgment was issued on 14 February 2007, on compulsory enforcement and was submitted to the enforcement department.

On 20 February 2008, pursuant to Article 92 of the law on enforcement proceedings, the Ministry of Finance, the debtor party, received the proposals on voluntary enforcement within a three-month term from the enforcement department and was warned that in the event of voluntary non-enforcement, the process of compulsory enforcement would be initiated. The debtor party did not follow voluntary enforcement of the above proposals. Further, the case was forwarded to the special group of enforcement of extraordinary cases of the enforcement department, but in spite of the fact that the specific legal terms refer to all enforcement measures, as Diakonidze indicates, the court judgment has not been enforced so far.

The Public Defender filed a recommendation, regarding the above case, to the enforcement department of the Ministry of Finance to apply measures of compulsory enforcement in compliance with the Georgian law on enforcement proceedings in order to restore Diakonidze's rights.

On 2 November 2007, we received a reply that said the enforcement department shall take measures of compulsory enforcement in compliance with Georgian law.

Citizens Mikautadze, Jalaghonia, and others

Vepkhia Mikautadze, Marina Papava, Tamar Jalaghonia, Zinaida Rigvava, and Medea Ratiani applied to the Public Defender concerning non-enforcement of a court judgment.

From the application and other supporting documents it turned out that that they are internally displaced persons (IDP) from Abkhazia. In 1993, they were registered in private houses in Kutaisi at different addresses. At present they are not residing at the above addresses as the owners needed their living spaces back. The IDP were not able to pay rent from their meagre income and they addressed the local government, as well as the Ministry of Refugees and Resettlement, repeatedly, but without any positive results. Due to the extremely hard state, they had no other way than to occupy the local government office vacant space, at #20 Aghmashenebeli Street, in Kutaisi, formerly the Military Prosecutor's Office building. However, the local governing body did not take their conditions into consideration and closed up the space. According to Articles 5.2, 5.2c, 5.2g, 5.2k, and 5.3 of the Georgian law concerning internally displaced persons and refugees, the local government and the Ministry of Refugees and Resettlement are obliged to provide IDP with accommodation. Thus, theapplicants lodged a suit in the Kutaisi City Court and requested the defendants (Kutaisi local government and the Ministry of Refugees and Resettlement of Georgia) to provide them with residential space as set by the law. On the decision of 16 October 2006, of the court, thesuit was met and the Kutaisi local government and the Ministry of Refugees and Resettlement of Georgia were assigned to provide the plaintiffs with housing. The enforcement order was issued on 2 December 2006, and submitted to the Imereti enforcement bureau, which is confirmed by letter #04/02 sent by bailiff, E. Topuridze, to the Kutaisi local government and the Ministry of Refugees and Resettlement of Georgia on 14 May 2007.

As the IDP stated, the judgment has not been enforced yet, while the IDP residing in CCs are being issued vouchers in Kutaisi, for which reason the spaces allotted to IDP are being vacated, but the defendants do not transfer to them voluntarily.

Concerning the above, we addressed a recommendation to the enforcement department of the Ministry of Justice of Georgia, and copies were sent to the Kutaisi Mayor's office and the Ministry of Refugees and Resettlement of Georgia. According to the reply from the enforcement department, in order to enforce the court judgment, the defendant party allotted the space of residence, which the creditors refused to accept due to its location and poor amenities. According to the reply of the Ministry of Refugees and Resettlement of Georgia, they agree to accommodate IDP within their competence if the Kutaisi Mayor's office resolves the matter positively. We have not received any reply from the Kutaisi Mayor's office.

The case of Malkhaz Melashvili

On 14 September 2007, Malkhaz Melashvili addressed the Public Defender with an application concerning the non-enforcement of a court judgment. The application and supporting materials show that as a result of a car accident on 31 May 2005, Melashvili was heavily injured by Nazi Sadik.

According to the decision of 17 March 2006, by the Rustavi City Court, Melashvili's suit was met and Nazi Sadik was assigned to pay 12,000 GEL for moral and material compensation. Enforcement order #05/07-01-11261 was issued on 19 February 2007, which was submitted to the Kvemo Kartli enforcement bureau for compulsory enforcement.

On 3 May 2007, the defendant was sent a proposal on voluntary enforcement of the court judgment within five days and a warning that in the event of voluntary non-enforcement, the process of compulsory enforcement would be initiated. The defendant party failed to enforce the proposal. After that, themovable property of the debtor was seized in June 2007; however, it has not been sold.

According to Article 50 of the Georgian law on enforcement proceedings, "the bailiff is authorized to hold an auction two weeks after the seizure of property". The money received after seizure or voluntary payment by the debtor is given to the creditor by the court bailiff, whereas other seized articles are sold publicly at the auction.

In addition, the court bailiff, apart from cases stipulated in the law (Articles 34-35), cannot suspend or terminate the enforcement, return the enforcement papers to the creditor, or postpone the enforcement to a later date, or take out the seized property from the description list. The court bailiff can only act so on the basis of a court ruling. When performing legal duties, the court bailiff, at the stage of compulsory enforcement, acts in compliance with Article 17 of the Georgian law on enforcement procedures. The court bailiff is authorized to identify the debtor's property and effect the payment from the income listed in clause 4 of the above article, and also from other sums and property the debtor had with other persons.

All things considered, the public Defender of Georgia considered that by non-enforcement of the court judgment, Melashvili's rights have been violated and on the basis of sub-clause "b", Article 21 of the organic law of Georgia concerning the Public Defender, we addressed the Kvemo Kartli enforcement bureau with a recommendation.

The Kvemo Kartli enforcement bureau did not follow the recommendation and did not sell the seized articles. On the explanation of the bureau, the parents of the debtor also claim the seized property. In addition, the bureau could not get the property worth the sum assigned by the court; and the immovable property where Nazi Sadik lives is the property of her parents. Thus, in order to identify the property (explanation of court ruling), which has to be enforced, it is necessary that the parties take the matter to the court.

The case of Gia Pataridze, Omar Chinchradze, and Zurab Tordia

On 18 October 2007, Gia Pataridze, Omar Chinchradze, and Zurab Tordia, collectively filed an application (1730-07) to the Public Defender concerning the enforcement of a court judgment.

From the application and the materials attached we learned that on 27 February 2006, the chamber of administrative cases of the appellate court of Tbilisi made a decision that annulled the commonly known orders #3629-o, 3626-o, and 3632-o, dated 1 October 2004, of the head of the tax department of the Ministry of Finance, about the dismissal of Pataridze, Chinchradze, and Tordia. The defendant party, the tax department of the Ministry of Finance was assigned to issue new individual administrative/legal acts in compliance with legislation within one month after the submission of the court decision. The defendant party was also assigned by the court judgment to recover the lost wages due to dismissal, until the issuance of a new individual/legal act from the date of dismissal.

The decision of the appellate court of Georgia took effect, and on 26 June 2006, an enforcement order was issued, which was submitted to the enforcement department of the Ministry of Justice.

The court considered the orders on the dismissal of Pataridze, Chinchradze, and Tordia void. Consequently, the legal results (i.e. their dismissal) of these administrative/legal acts were also void, which in legal terms (but not in factual terms) means that they are still occupying their positions. After the court decisions became effective, in the process of its enforcement, the debtor party, received proposals pursuant to clause 1, Article 17, and Article 28 of the Georgian law on enforcement proceedings requesting voluntary enforcement of the order requirements in the shortest possible time; and the debtor was warned that in the event of voluntary non-enforcement, the process of compulsory enforcement would be initiated.

According to the applicants, no legal results were followed by the bailiff. "A court bailiff is obliged to take all legal measures for the prompt and realistic execution of a court judgment. In addition, the bailiff 's duty is to explain their duties and rights to the parties and help them protect their legal interests".

At the initial stage of enforcement it is necessary to take measures to ensure the issuance of individual administrative/legal acts based on the court judgment. This will determine the time period – the final moment according to which the period of dismissal and the amount of lost wages are to be computed. As the creditor, Pataridze, noted, they addressed the court bailiff and the debtor organization regarding the amount of lost wages but could not reach an agreement on the amount. Due to the above circumstances, in our opinion it is impossible to determine the amount of lost wages yet.

Regarding the process of enforcement of the court judgment and taking abortive measures of compulsory enforcement, I would like to note that specific legal terms refer to all enforcement measures and the process of compulsory enforcement cannot last forever. Non-enforcement of the court judgment, or creating obstacles to it by state authorities representing the state or local governing bodies, is punishable by law.

The court prescribed a one month-term for the administrative proceedings to be fulfilled by the tax department of the Ministry of Finance, pursuant to the General Administrative Code of Georgia. I consider that the above term has been violated, and in my opinion the non-enforcement of the indicated court judgment harshly violates the rights of the creditors.

Proceeding from the above, pursuant to clause "b", Article 21 of the organic law of Georgia on the Public Defender, the public Defender sent a recommendation to the enforcement department of the Ministry of

Finance so that the court bailiff could apply all compulsory measures envisaged by the law concerning enforcement proceedings for the realistic and prompt execution of the judgment. Also, we recommend warning the authorities of the debtor organization about the results that will follow in the event of non-fulfilment of the obligations assigned to them by the court judgment.

On 4 January 2008, the enforcement department informed us that the court bailiff repeatedly sent proposals on the enforcement of the court judgment to the tax department of the Ministry of Finance. The latter informed the enforcement department that The case was under discussion and the tax department was to make a resolution regarding the creditors' reinstatement to their jobs. Further, the court bailiff again addressed the tax department to clarify the situation, to which the debtor party informed that the matter was still under discussion.

Thus, the tax department of the Ministry of Finance, which was straightforwardly assigned to observe a one-month term of administrative proceedings by the court, has deliberately been evading the fulfilment of the court bailiff's lawful requirements for two years, which is a severe violation of the law. As for the court bailiffs, they do not implement compulsory enforcement measures and consequently the amount of lost wages to be paid out of state budget increases monthly, and the rights of Pataridze, Chinchradze, and Tordia are still being violated.

The case of Persons Detained at the Kutaisi Mayor's Office

On 2 July 2007, therepresentatives of the department of constitutional security of the Ministry of Internal Affairs detained 24 persons in the Imereti regional administration building. The case was a theatrical show staged for journalists. The employees of the department of constitutional security brought these people to the Mayor's office from different places. One of them was from Tbilisi. People detained once for the "show" were detained for a second time as well.

According to the data of the detention report, which Public Defender Office representatives got familiar with at the temporary detention isolator of the Kutaisi Internal Affairs office, stated the persons were detained in the western Georgia regional department office of constitutional security. On unofficial information, there was a resolution on the mandatory bringing of the detained persons. There was a record made by operative employees, which said that the persons mentioned above were spotted in the Imereti regional administration building from where they were brought to the west Georgia regional department of constitutional security. From media materials, it is clearly seen that the detained persons had been handcuffed before they were transferred from the regional administration building, and were placed in a special minibus. We can also see in the shots how the detainees were being told about the accusations they were charged with and their rights. From verbal and written explanations given to Public Defender representatives by the detainees, we learned that they reached the place or via different routes. Moreover, one person was detained not in Kutaisi, but he was brought there from another town 2-3 days earlier; and before that, on 2 July, he had been detained for the mentioned theatrical show along with other persons. However, only O. Kikvidze and A. Vachiberidze among the detained persons mentioned to the Public Defender representatives that their actual detention took place on 2 July 2007, at about 08:30 hours, by the employees of the constitutional department of the Ministry of Internal Affairs. Among the detainees were Omar Kikvidze (Kutaisi Deputy Mayor) and Avtandil Vachiberidze (entrepreneur).

According to Kikvidze's explanatory notes, on 2 July, at about 08:30 hours, he left his house in his car. A white car blocked his way in Rustaveli Street. The person who got out of the car explained to him that he was the representative of the department of constitutional security and asked Kikvidze to follow him. From 08:00 until about 13:00 hours, Kikvidze

was in the car, which was moving around the city. During this time, he was deprived of his mobile phone. When he enquired why they were moving in different directions, he was told that they were waiting for their instructions from the authorities. At 13:30 hours, the people in the car presumably got the instructions, after which Kikvidze was brought to the local self-governing body office through the back entrance.

According to Vachiberidze's explanatory notes, on 30 June 2007, theinvestigator of the western Georgia regional department of constitutional security, Oleg Varlamishvili summoned him into the regional department of the constitutional security department on 2 July. Vachiberidze arrived there at about 08:30 hours. First, he met with the investigator, then he was placed in one of the rooms on the first floor where he spent 2-3 hours. In the same room there was another entrepreneur and an employee of constitutional security department. Later the employees of local self-governing body were brought in. According to Vachiberidze, none of them were told they were detained; however, they were not allowed to leave the room. Later, all of them were taken to the local self-governing office building from the back door.

In order to get familiar with documents proving the lawfulness of the detention, the public Defender representatives of the west Georgia regional department were in the #2 Kutaisi prison and the strict regime establishment of the penitentiary department of the Ministry of Justice of Georgia. According to the explanation they got there, the director, Levan Pachulia, was not in the office, and because of his absence, Zurab Morchadze, the employee of the regime department, refused to show the them the documentation confirming the lawful detention of those persons. As well as that, the public Defender representatives were refused a meeting with the detained persons. The representatives filed a report regarding the above occasion. The action described above is qualified as an impediment of legal activities of Public Defender representatives.

When studying the case, copies of detention minutes were requested from the #2 Kutaisi prison and the strict regime establishment of the penitentiary department of the Ministry of Justice of Georgia in compliance with Articles 18, 19 and 27 of the organic law of Georgia concerning the Public Defender. According to the reply from the prison, the detention minutes could not be provided as the copy machine had broken down. It also said that we were to address the investigative service of the constitutional security department.

The copies of the detention minutes were then requested from the investigative service of the constitutional security department. According to the reply, with the purpose of taking further action, criminal case N089060172, under preliminary investigation, was sent to the Regional Prosecutor's Office of West Georgia.

It is noteworthy that the defence lawyers of the accused persons were not able to get copies of the materials concerning the above case. Their motions were met, but the employees of the Prosecutor's Office (the preliminary investigation was carried out by the Regional Prosecutor's Office of West Georgia) created technical obstacles; thus, they could not get copies of the detention minutes, theresolution on bringing the accused persons by force, theresolution on trying them on accusation, and other materials.

The Public Defender sent the materials at his disposal to the Office of the Prosecutor General of Georgia to initiate the investigation into the case of the employees of the constitutional security department. The letter from the Office of the Prosecutor General informed the Public Defender that on 2 July 2007, no violation of law took place during the detention of 24 persons by the employees of the constitutional security department. The above was confirmed by the court ruling prescribing the measure of restraint.

The case of L. Maisuradze

As it became known to the Public Defender, on 6 October 2007, at 10 o'clock in the evening, Levan Maisuradze, along with Gocha and Zviad Kistauri, was returning to his car (Niva) from Oni to the village Kveda, and was stopped by the deputy head of the Oni regional department, Akaki Maisuradze, and two other employees. The

policemen had firearms. They dragged Levan Maisuradze out of the car and beat him up brutally. One of them caught the detained by his feet and banged his head against the ground. Then they ordered father and son, Gocha and Zviad Kistauri, who witnessed the fact to get out of the car and lie on the ground while they were aiming their firearms at them. To scare them they even shot the gun in the air several times.

As the Kistauri family stated, before lying on the ground they could see how cruelly they were beating Levan Maisuradze. They could hear the beating and swearing for about 3-5 minutes. After that, the policemen got into the car and drove in the direction of Oni. Gocha and Zviad Kistauri took Levan Maisuradze, who was unconscious, to Kveda to his brother's house.

According to an examination, the victim had a traumatic brain injury, concussion, bruises on the face, and soft tissue bruises. According to the conclusion, theinjuries are of a less grave degree; however, the victim's health was damaged for a long period. Levan Maisuradze was getting treatment at #1 outpatient's clinic in Tbilisi for a month.

It should be noted that an hour before the incident, Akaki Maisuradze and his two colleagues broke into Levan Maisuradze's brother's house, Jemal Maisuradze, brandishing firearms. The family was having dinner in memory of the 40th day of Levan Maisuradze's father's death, and there were neighbours and relatives in the house. From the explanations of witnesses, the police employees, who were drunk, were threatening to kill Levan Maisuradze. Apart from swearing, they also abused one of the guests physically.

On 7 October 2007, a preliminary investigation was initiated into the criminal case on Levan Maisuradze's bodily injuries by the Oni Internal Affairs department. The elements of the crime provided for by part 1, Article 118 of the criminal code (premeditated trivial injury)call for a maximum sentence of up to three years imprisonment. Three employees of the Oni police department were suspected of the crime. The committed action was given a new qualification according to part 3 of the same article (intentional less grave health injury inflicted by a group), which is punishable by a five-year term of imprisonment.

The Public Defender considers that the prescribed article does not reflect the severity of the actions committed by the policemen, since according to the victim's explanation, he was being beaten by three persons for five minutes, while they hit him in the head and chest with their hands, feet, and butt of their guns. It is clear that the action committed by the policemen contain the elements of the crime prescribed by sub-clause "e", part 2, Article 144[1] (torture), an act, which, by its very nature and intensity, causes severe pain or suffering and is inflicted on a person for the purpose of punishing him for an act he has committed. The crime committed by the group is punishable by a prison term of nine to fifteen years, with deprivation of position or the right to conduct activities for up to five years.

According to the comments of private chapters of the criminal code of Georgia, "under the nature of an action it is implied that the action, even if committed once, causes one of the results as prescribed in article 144[1]. Such actions may not be distinguished by intensity or length, but they are of a nature that can inflict severe physical pain to the victim. Under the intensity of the action the degree of violence and its continuity is implied; for example, beating a person with such force and on such organs that the person suffers from physical pains for a long time, even after the action is stopped. A torturer is any mentally sane person who has reached the age of 14. Torture must necessarily have a purpose, such as punishment of the person for an action s/he has committed, which is in fact the motive for revenge".

We should also note here that the hooliganism that took place in Jemal Maisuradze's house has been ignored by the preliminary investigation into criminal case. Hooliganism grossly violates the public order and is the expression of disrespect to the public. An action committed with the use of violence, the threat of violence, or use of a firearm is punishable by deprivation of liberty from four to seven years. In addition, the unlawful group break-in to a house or other property, against the owner's will, is punishable by a penalty or deprivation of liberty from 2-5 years, and the prohibition of conducting occupational activities up to three years.

The Public Defender considers that qualifying the actions of the investigator, Zviad Shalamberidze, and the supervising prosecutor, Zviad Chkhikvadze, under lighter articles is criminal in the activities of civil servants, which have grossly violated State interests, since the persons who have committed this extremely grave category of crime will not be punished according to the actions committed by them. The investigator and prosecutor violated the requirement as per part 1, Article 14 of the Criminal Procedure Code which states that the "investigator [and] prosecutor...who act according to civil interests are obliged to identify the crime and the person who committed it".

Additionally, the european Court of Human Rights has established the facts of violation of Article 3 of the European Convention on the protection of human rights, and the fundamental freedoms in many of the adopted judgments when incidents of torture have not been properly investigated by law enforcement bodies. As no investigation has been launched under the article on torture, hooliganism, and the inviolability of a private residence, the public Defender recommended the first Deputy Prosecutor General of Georgia and the Head of the Investigative Department, Giorgi Latsabidze, to examine the case.

The case on the Torture of Minors – L.K. and I.G. (Akhalgori case)

In June of 2006, two employees of the police department of the Akhalgori region committed a criminal action against L.K., 16 years of age, and I.G., 11 years of age, from a children's home. The Akhalgori regional police department inspector/investigators, Bondo Tatunashvili and Besik Orkodashvili, took L.K. and I.G. to the police station, without warning their teachers, for the the ft of electric wires from the Akhalgori Post Office building. In order to obtain a confession, police employees exerted physical and psychological pressure over them. They beat them up with their fists and plastic bottles filled with water. Despite the above, the pupils did not confess. Law enforcers released L.K and I.G. some time later.

E. Zurabiani, the employee of the child care department of the Ministry of Education and Science was visiting the children's home and witnessed the incident. It was after the interference and timely reaction of the Ministry of Education and Science that the incident was disclosed, and an investigation was launched at the Mtskheta-Mtianeti District Prosecutor's Office.

Tatunashvili and Orkodashvili were detained for committing the crime. Both of them were charged with the offence as per Article 333 of the Criminal Code of Georgia (excess of official authority); part 3, sub-clauses "a", "b', and "c", Article 1441 (torture); part 2, sub-clauses "a", "b", "c", "e", and "f", Article 369 (falsifying evidence). On the ruling of the Mtskheta district court, theaccused were prescribed two months of deprivation of liberty as a measure of restraint, and later they were released on 5,000 GEL bail. On the ruling of the Mtskheta district court of 20 November 2007, Orkodashvili and Tatunashvili were proven guilty under article 369 of the criminal Code of Georgia (falsification of evidence which is punishable by penalty or correctional work for 1-2 years, or deprivation of liberty up to one year); sub-clauses "a", "b", "c", Article 333 (excess of official authority by use of violence or weapon, abuse of victim's personal dignity, which is punishable by deprivation of liberty for 5-8 years, deprivation of the position or prohibition to conduct professional activities up to three years); and Article 1441, part 2, sub-clauses "a", "b", "c", "e", and "f" (torture, defined as an action committed by an employee or his proxy with the excessive use of official authority, inflicted on two or more persons, by a gang, intentionally, knowing that a person is pregnant or is a minor, detained or otherwise restricted in liberty, helpless or materially or otherwise dependent on the offender, which is punishable by the deprivation of liberty from 12 to 17 years, deprivation of position or the right to conduct professional activities for up to five years).

The above persons were prescribed deprivation of liberty for two years, that was counted as probation for two years, a penalty of 5,000 GEL, and deprivation of the right to hold official positions and conduct professional

activities for three years. The prescribed sentence is not in the least relevant to the action committed. The above case clearly demonstrates the attitude of the Prosecutor's Office towards incidents of torture.

According to statistical data provided by the Office of the Prosecutor General, investigation under Article 144[1] (torture) was initiated into 40 cases in 2007. Four cases of the crime have been closed. An investigation has been launched into two cases under Article 144[2] (threat of torture), and two cases have been closed. An investigation has been launched into 19 cases under article 144[3] (inhumane treatment), among them 11 crimes have been solved.

According to the information provided by the Supreme Court of Georgia on 6 December 2007, only five cases were adjudicated under the article on torture, inhumane, and degrading treatment, in the courts from 2004-2007 (11 months), which received the minimum sentence.

The case of Davit Badzgaradze

Davit Badzgaradze was arrested on 16 December 2005, at 23:00 hours, in Tbilisi, by the Isani-Samgori division of the Ministry of Internal Affairs. Badzgaradze was charged with committing a group crime by the Tbilisi City Court, and was arrested on 19 December 2005.

According to the indictment, Badzgaradze committed robbery with a group, and stole an identity card and other private documents on 16 December 2005. On 16 December 2005, Badzgaradze contacted some unknown persons. They organized a group and had in mind to seize someone's movable object for the purpose of its misappropriation. In the evening, at about 8 o'clock, they went to the garden near Building 401, in the Varketili district. Badzgaradze together with his conspirators fell upon Sopo Zurabishvili and took away her black handbag.

Later, theinvestigation established that on 16 December 2005, Badzgaradze and his friend left Kutaisi for Tbilisi and arrived at 11:00 hours, which was confirmed by eyewitnesses. From the calls traced on his mobile phone, it was verified that some outgoing calls were made from Igoeti tower at 21:00 hours. By that time, Zurabishvili had already been attacked. According to the evidence given by the victim, theattacker was wearing a hat and despite the fact that the attack took place when it was completely dark in the square, she could still manage to discern Badzgaradze's hair colour and haircut. It should also be noted that the victim could speak about specific details about Badzgaradze's clothes and hairstyle only after he had been presented for identification. The Public Defender believes that the victim was either conscientiously mistaken, or purposely gave false testimony. As for testimony given by the policemen who took part in Badzgaradze's arrest, they cannot be taken as evidence as the policemen explained that Badzgaradze was arrested on the basis of the reported crime by the victim. There are other witnesses as well who confirm the attack against Zurabishvili, but not Badzgaradze's participation in the attack.

Prosecutor Nino Tsikhiseli framed the indictment without having taken into account the essential details and circumstances of the case. She had not sought substantial evidence or had taken into account the witnesses' testimony. The prosecutor only used as material evidence the identification and testimonies of members of the Isani-Samgori division of the Ministry of Internal Affairs.

In view of the above, evidence provided in the indictment by the victim and policemen, as well as by witnesses, had not been confirmed and could not have served as grounds for accusation. As a result, on 20 August 2006, the Tbilisi City Court delivered the verdict of not guilty to Badzgaradze. Prosecutor Tsikhiseli was not satisfied by the court judgment and appealed it. On 30 May 2007, the Tbilisi Appellate Court maintained the judgment as valid, and it was appealed to the Supreme Court.

Since the actions of Prosecutor Tsikhiseli contained elements of crime, the public Defender repeatedly addressed the Prosecutor General of Georgia, Zurab Adeishvili, in order to initiate a pre-trial investigation and raise an issue about Tsikhiseli's criminal responsibility.

On 26 October 2007, the public Defender received a letter from the Deputy Prosecutor General, Giorgi Latsabidze, which said: "The court established that while obtaining evidence and procedural substantiation, therequirements set by the Criminal Procedure Code of Georgia were observed. Thus, proving that Badzgaradze was illegally arrested has no grounds". According to Latsabidze's explanation, "the fact of delivering the verdict of innocence on Badzagadze's case cannot be considered by the prosecution, at the stage of a preliminary investigation, as proof of a breach of criminal procedure legislation. Accordingly there are no grounds for raising the issue of Tsikhiseli's criminal responsibility".

Pursuant to part 3, Article 40 of the Constitution of Georgia, "a person can only be proven guilty if the evidence is incontrovertible. Every suspicion or allegation not proven by the procedure established by law must be decided in favour of the defendant". According to part 3, Article 10 of the Criminal Procedure Code, "a resolution on bringing to criminal responsibility an indictment and all other procedure resolutions shall be based on incontrovertible evidence". According to parts 1 and 2, Article 18 of the same code, "the prosecutor, investigator and court are obliged to establish the commission of a crime incontrovertibly, identify who committed it, and investigate all the circumstances around the evidence".

According to Article 18 of the Constitution of Georgia, "the freedom of a person is inviolable". According to part 3,Article 18 of the Criminal Procedure Code of Georgia, "the court, prosecutor and investigator are obliged to immediately release the person who was unlawfully detained, arrested, or otherwise deprived of liberty". Pursuant to sub-clause "e", part 1, Article 18 of the organic law of Georgia concerning the Prosecutor's Office, "the prosecutor shall immediately take measures to release the person who was unlawfully detained, arrested, or otherwise deprived of liberty". Article 395 of the Criminal Procedure Code of Georgia states that "a court, judge or prosecutor has the obligation to preclude criminal prosecution and/or preliminary investigation as soon as the grounds indicated in Article 28 of the code occur".

The issue of Badzgaradze's innocence should have been revealed in the shortest time, and he should have been released much earlier. It seems that the prosecutor had substantial evidence proving Badzgaradze's innocence, however, he spent 8 months in prison as the prosecutor was trying to conceal her own mistake".

The case of Zura Shatirishvili

On 4 July 2007, Zura Shatirishvili addressed the Public Defender. As he explained, his relative Zura Rusadze owed him money and was not paying back the debt. G. Shatirishvili, Z. Shatirishvili's son, was brought to suit and was proven guilty by the court as he unlawfully arrested Rusadze. The applicant explained that Rusadze gave contradictory evidence to the preliminary investigation into the criminal case against G. Shatirishvili, to which law enforcement bodies did not react.

According to the materials of the case, on 18 August 2005, during the interrogation, Rusadze indicated that on 16 August 2005, at about 8:00 hours, G. Shatirishvili was waiting for him at the stairs of his house and asked him to get into the car to discuss the debt. They got into a black BMW. Rusadze sat in the rear seat and G. Shatirishvili sat next to the driver. G. Shatirishvili was asking why Rusadze could not pay back the debt to his family. At that time, the driver, whose identity was unknown, started the car. Z. Rusadze tried to jump out of the car but he could not manage as the doors were automatically locked. Additionally, G. Shatirishvili was restraining him with his hands and beating him in the face with his fists. Afterwards, the unknown person and G. Shatirishvili took Rusadze to G. Shatirishvili's house on Dolidze Street where they forcefully dragged him

out of the car and took him into the flat on the first floor. After they entered the flat, G. Shatirishvili locked the door. The person accompanying G. Shatirishvili took out a black pistol and a black iron bludgeon, which he gave to G. Shatirishvili, and aimed the pistol at Rusadze forcing him to sit in the armchair. G. Shatirishvili was beating him with the bludgeon and the other one was kicking him.

On 1 October 2005, Rusadze was interrogated again and said that on 16 August 2005, at about 21:00 hours, he met G. Shatirishvili near his house who asked him to go with him to his house. Rusadze agreed. They went into the yard and got into a black BMW. G. Shatirishvili told the driver the address. They had no conversation in the car and there was no violence against him. They got out of the car at G. Shatirishvili's house, and the driver drove on. G. Shatirishvili unlocked the door and they entered the flat were they sat down and started to talk about the debt. G. Shatirishvili told him in an angry tone that if he did not bring the money he owed before 18 August 2005, he would kill him and his family members. After this, G. Shatirishvili took out a black iron bludgeon and started beating him. In the evidence given at the preliminary investigation on 1 October 2005, Rusadze denied the fact that the BMW driver abused him. He also denied that he had been taken to the flat by force by G. Shatirishvili and the other person, that he was unlawfully detained in the car, and that a pistol was used to threaten him. The reason he changed the testimony, as he says, was that he was heavily injured after the beating and did not remember what he wrote in the interrogation record.

Rusadze was interrogated again on 13 October and 3 November 2005, under the status of a victim, at which time he confirmed the testimony given on 18 August 2005 and denied the facts he gave in the testimony on 1 October 2005. The reason he named was that G. Shatirishvili's family members asked him to change the testimony so that when G. Shatirishvili was tried he would be punished for a lighter crime. When he was interrogated in the court he confirmed the above testimony.

Rusadze's action contained elements of a crime provided for under Article 371[1] of the Criminal Code. The investigator and prosecutor were obliged to start a preliminary investigation into the contradictory testimony that he gave. On 03 August 2007, the public Defender sent relevant materials of the case to the Didube-Chughureti district prosecutor for further response. The Prosecutor's Office did not follow on the recommendation of the Public Defender. The Public Defender was informed by the Office of the Prosecutor General that Rusadze admitted giving false evidence on 1 October on his own will and initiative. Further, Rusadze again confirmed the above in a testimony given on 18 August, 13 October and 3 November 2005 at the Tbilisi Collegium of Criminal Cases, as well as in the Appellate court and trials.

On 21 September 2007, the Public Defender of Georgia addressed the General Inspectorate of the Office of the Prosecutor General to raise the issue of disciplinary action regarding the prosecutor who did not start a preliminary investigation into the contradictory testimony by Rusadze; thus, violating Articles 261 and 263 of the Criminal Procedure Code of Georgia, a crime provided for by Article 3711 of the Criminal Code of Georgia.

On 6 October 2007, the Public Defender was notified that during the preliminary investigation into the above criminal case there were no grounds provided in the prosecutor's action for applying disciplinary responsibility. The above case clearly demonstrates the biased approach of the Prosecutor's Office. In the event of changing the testimony, the Prosecutor's Office, as a rule, starts an investigation, whereas when Rusadze changed his testimony in favour of the Prosecutor's Office, a preliminary investigation was never initiated.

Infringement of Article 18 of the organic law concerning the Public Defender

1) On 17 September 2007, the head of the investigation and monitoring department of the Public Defender Office addressed Batumi district prosecutor, Avtandil Kiladze, about the copy of dropped criminal case #17304801.

A letter received from the Batumi District Prosecutor's Office on 15 October 2007, stated that the issue of transferring a copy of the criminal case #17304801 is regulated in a centralized way and the Public Defender should address Office of the Prosecutor General of Georgia. The Public Defender considers that by the above action Kiladze breached sub-clause "b", Article 18, and clause 3, Article 23 of the law concerning the Public Defender and Articles 3 and 16 of General Administrative Code. The above action raises the responsibility provided for by Article 173[4] of the Code of Administrative Violations. The Public Defender enclosed a copy of the letter in the report, and sent it to the Batumi City Court for further response.

On 7 November 2007, the Batumi City Court delivered a resolution, according to which, the case on the administrative violation against Kiladze was dropped for the non-existence of a breach of the law as per Article 1734 of the Code of Administrative Violations. According to Kiladze's explanation, he has not committed any administrative violation, since from 11 September until 29 September 2007, he was on his paid leave and the authority of the Batumi district prosecutor was delegated to his deputy, S. Gogilashvili.

S. Gogilashvili, who was interrogated as a witness, explained that he refused to send the materials on The case#17304801 to the investigation and monitoring department of the Public Defender's Office for the reason that the letter sent from the office did not enclose the special warrant of the Public Defender, thesubmission of which is imperatively stated in clause 1, Article 27 of the law concerning the Public Defender.

The above resolution was appealed in the appellate court of Kutaisi, as a result of which, theresolution of the Kutaisi City Court remained unchanged by the resolution dated 10 December 2007. The Public Defender finds the resolution of the Kutaisi City Court and the appellate court lacking grounds. The opinion of the Public Defender that the court adopted an incorrect resolution is confirmed by one more fact. Particularly, the court has discussed many times the reasoning of the above argument, and has adopted a resolution that states that the letter sent to that particular organization on the basis of Articles 18 and 19 of the organic law concerning the Public Defender is not necessary. In fact, non-enclosure of a special warrant does not provide any grounds for not supplying information on the dismissal of proceedings on administrative violations; neither does it justify not assigning administrative responsibility.

On 26 September 2007, Rustavi City Court issued a resolution about the director of the Rustavi common, strict and prison regime establishment of the penitentiary department of the Ministry of Justice, Lasha Bregvadze.

In the process of the administrative proceedings on Bregvadze, his representative, Z. Kordzaia, requested to dismiss The case on the basis that the acting deputy Public Defender, Grigol Giorgadze, did not have the special warrant in compliance with clause 1, Article 27 of the law concerning the public defender. Having discussed the above argument, the court resolved that "the explanation of the representative of the director of the Rustavi common, strict and prison regime establishment, Zviad Kordzaia, that the acting deputy Public Defender Grigol Giorgadze did not have the special warrant in compliance with clause 1, Article 27 of the law concerning the Public Defender may not serve as grounds for the dismissal of The caseproceedings".

If we judge from the contents of the decision adopted by the Batumi City Court and Kutaisi Appellate court, we arrive at the conclusion that any official who receives a letter from the Public Defender Office, within the authorization provided for by Articles 18 or 19 of the law concerning the Public Defender, should be attached with the order of appointment of the sender on the particular position to avoid suspicion that the letter is signed by a person not authorized to do so.

2) Applications of lawyers Irma Chkadua and Malkhaz Jangirashvili were considered at the Public Defender Office. According to them, criminal case #74068145 (Vazagashvili) was under proceedings at the Tbilisi Prosecutor's Office, on which the resolution of dismissal of a preliminary investigation was made on 20 April 2007. The Public Defender addressed the Tbilisi Prosecutor on 11 July 2007, with a request to supply

him with the copy of case #74068145. The letter dated 16 August 2007, from the Office of the Prosecutor General says that the representatives of the Public Defender Office can get familiar with the criminal case and make whatever copies necessary at the Office of the Prosecutor General of Georgia.

According to part 1, Article 19 of the General Administrative Code, "an administrative body requesting legal assistance is obliged to reimburse the expenses incurred for legal assistance if such expenses exceed 50 GEL". Thus, if the expenses for making copies of the case#74068145 exceed the amount set by Article 19 of the General Administrative Code, the public Defender is willing to pay the necessary sum for copying the materials.

Proceeding from the above, pursuant to clause "b", Article 18 of the Georgian law concerning the Public Defender, the latter addressed the head of the human rights department of the Office of the Prosecutor General, Archil Giorgadze, to provide him with copies of the criminal case #74068145.

From the letter received from the Office of the Prosecutor General on 4 October 2007, it turns out that the Prosecutor General recognizes the right provided for by clause "b", Article 18 of the Georgian law concerning the Public Defender to request and obtain all necessary papers from state bodies for the purpose of their examination; however, despite this, he refuses to send case materials and indicates that the Public Defender Office representatives can make copies of the casematerials on the premises.

The above action seems rather biased. Such attitudes and relationships between state bodies are not serious enough.

33 ANNEX #7. MINISTRY OF INTERNAL AFFAIRS AND HUMAN RIGHTS

The case of Alexandre Bakhutov

Convict Aleksi Bakhutov addressed the Public Defender on 19 October 2007. According to him, the telavi District Court sentenced him to six years of imprisonment on 24 August 2007, for the intentional murder of Lasha Chopikashvili who happens to be alive and lives in his house in the village of Jughaani. As a result, of brutal torture and degrading treatment, Bakhutov and his step son, I. Tsitsishvili, confessed to the crime that Bakhutov had not committed for which he had been serving a sentence in the # 5 jail.

On the explanation of a "live/dead" man, Chopikashvili, on 15 June of 2007, was at Natan Zatiashvili's cattle farm where he had an argument with Bakhutov. When Chopikashvili returned home, Bakhutov called him and asked for a cigarette. Chopikashvili gave him the cigarette near the bank of the river Stori and turned around to go home. At this moment, he lost consciousness. When he came to his senses, he was all wet and lying on the riverbank. Afterwards, he returned home. At dawn, at about 04:00 hours, Chopikashvili went to work to the Natsindari territory where he worked for Iznauri as a shepherd. On 20 September, Chopikashvili arrived in Telavi where he met his acquaintance, Arabuli, who told him that everybody in the village thought he was dead and even already buried. A couple of days after his return, three policemen from the Telavi district division visited him and made him get into the car. He was taken to the Telavi Office of the Prosecutor General. Law enforcers took interest in the argument that took place between Chopikashvili and Bakhutov. The next day, policemen came to Chopikashvili again and took him to the Telavi hospital were he was given a blood test and showed him to a doctor to examine his health state. From the doctor, Chopikashvili learned that his neck bone was injured.

On the explanation of Aleksi (Gocha) Bakhutov, on 27 June 2007, he was arrested on the farm of Natan Zatiashvili in the village of Pshaveli by the employees of the Telavi criminal police unit who threatened him with their guns so that he told them where he buried Chopikashvili's body. Napareuli police employee Gocha, nicknamed Tava, threatened to kill him. Bakhutov's stepson, Irakli Tsitsishvili was also taken to the Napareuli police division and was also threatened. They demanded that he name the place where Chopikashvili was buried. At about 11:00 o'clock at night, Bakhutov's stepson contacted him and asked to meet him at the farm. On the site there were several policemen who handcuffed him and

started beating him. Indira Zoria, Bakhutov's wife, was there too. The policemen shot in her direction several times. After that, Bakhutov and his stepson were taken to the Napareuli police division where they continued to abuse him physically. After the unbearable torture, Tsitsishvili admitted that his stepfather had killed Chopikashvili and that he himself helped bury the body. After beating and torturing Bakhutov, he also confessed to the murder. Gocha (Tava) from the Napareuli police division and Nugzar Zatiashvili made Bakhutov, through brutal treatment, say as if his acquaintances Aslan Gurashvili, Aleksi Tsotsiashvili, and Vepkho Khechoshvili took part in hiding Chopikashvili's dead body. The next morning, after "admitting" to committing the crime, he was taken to the scene where Bakhutov showed them the place of the murder. Telavi police employees videotaped this event. Chopikashvili's dead body could not be found, so law enforcers continued beating Bakhutov and Tsitsishvili to make them name the exact place of the burial. Bakhutov could not stand the physical pressure any more and was showing the policemen different places. At this time, one of the policemen kicked him in the stomach, put a gun to his face, and threatened to kill him. Zatiashvili was beating him with a stick to his neck. Finally the law enforcers "concluded" that the dead body must have been thrown into the Stori River, which, according to Bakhutov, is not very deep and it is impossible to hide anything there.

In the beginning of October 2007, Bakhutov learned from the investigator and the lawyer that the dead man, Chopikashvili, was in fact alive and had been living in a pasture in the mountains all this time. Investigator Z. Tsiklauri also told him that Chopikashvili gave his testimony against him saying that Bakhtutov hit him with a stick, fell into the river, and when he came to consciousness he left the village. As the convict says, theinvestigator promised him that the murder, which he had not committed, would be given a new qualification according to another article of the Criminal Code.

According to Bakhutov's stepson, Tsitsishvili, on 13 June 2007, he was on Zatiashvili's cattle farm having dinner with his stepfather and Chopikashvili. These two people had an argument and Bakhutov hit Chopikashvili with his hand. Tsitsishvili interfered and stopped the fight. After that, they continued drinking wine in the field. Later, Chopikashvili returned to the farm and Bakhutov stayed in the field as he was very drunk. Tsitsishvili claims that on the next day, at about 14:00 hours, he saw Chopikashvili and suggested going to the river to have a swim, but the latter refused and he had not seen Chopikashvili again until September. On 18 June, Napareuli police employee, "Tava", came to Tsitsishvili with two other policemen and told him and Bakhutov to follow them to the police station for interrogation. As soon as they arrived at the police station, Tsitsishvili was taken to the office of the chief of police where law-enforcers asked him what the argument was about between Bakhutov and Chopikashvili. The most active police employee Gocha Noghashvili, who, along with other policemen, was brutally beating Tsitsishvili for hours, forcing him to admit the killing of Chopikashvili by his stepfather. They also made him give them information about anybody in the village who behaved against the law, and in return, they promised to release him and his stepfather. Two hours later they were released.

On 27 June of 2007, Noghashvili and two policemen came to Tsitsishvili again at Zatiashvili's farm. The law enforcers took Bakhutov in their car and an hour later brought him back, kicking him out of the car. They told Tsitsishvili that Bakhutov's nephew was hiding Chopikashvili in the village of Kasiskhevi and demanded that Tsitsishvili go with them. Tsitsishvili tried to explain to policemen that it was not true, but they started beating him in the face and took him to the police division. Tsitsishvili was beaten there with rubber bludgeons in the presence of the head of the department. After such torture and inhumane treatment they took him to Kasiskhevi where they saw his stepfather's nephew, Zaur Bakhutov, who denied Chopikashvili being there. After that, they returned to the Napareuli police department where Aleksi Bukhutov had already been brought, and Noghoshvili was beating him brutally and forcing him to tell them about the place where he had buried Chopikashvili's dead body. As Tsitsishvili said, Noghashvili continued to beat him with a bludgeon. His stepfather asked them to stop beating him and that he would take the blame upon himself and would say whatever they wanted him to. On 27 June 2007, when Tsitsishvili was interrogated as a witness, he said, "we took Chopikashvili's dead body and buried it about 700-800 metres away from the reservoirs and I can show you the place".

That day both of the detainees stayed in the police division and the next day they were taken to the village of Pshaveli, near the Natsiskvilari territory to identify the place of the burial of Chopikashvili. Since they could

not discover the dead body, the policemen continued beating them. Then they were taken to the regional department of police in Telavi. In the building of the department they met Aslan Gurashvili and Vepkho Khachoshvili from the village of Jughaani, who were brought there in connection with Chopikashvili's murder. In the evening of 28 June, Tsitsishvili was released but they kept Aleksi Bakhutov, Aslan Gurashvili, Vepkho Khachoshvili, and Aleksi Tsotsiashvili in the department. On the day when Tsitsishvili's stepfather was sentenced to a two-month preliminary detention, Noghashvili called him and warned him not to mention the beatings he suffered. Noghashvili also told him that he was under police surveillance. As Tsitsishvili's claims, Noghashvili came to him with other unknown policemen in September, and made him go with them to work on a farm of a certain Duru in the village of Ruispiri, where he was to work without any remuneration. Tsitsishvili was compelled to work there for several days, but soon escaped and went back to his old workplace. Consequently, Tsitsishvili became the victim of forced labour, which is a crime under Article 143[1] (trafficking) of the Criminal Code. In the beginning of October, Tsitsishvili was taken to the Telavi district Office of the Prosecutor General where there was Chopikashvili. They were asking him questions about where he had been and what happened on 15 June. Chopikashvili was assuring the law enforcers that he went to the pasture on his own will and that nobody made him go. The next day, Chopikashvili and Tsitsishvili were summoned to the Office of the Prosecutor General again. Chopikashvili unexpectedly said that Aleksi Bakhutov hit him on the head with a stick and fell down. On Tsitsishvili's assertion, after that he met Noghashvili who hit him on the head with a mobile phone and warned him strictly not to say a word against the police or he would kill him. Tsitsishvili notes that he had some feeling of heaviness in his right eye after he was beaten and tortured. He cannot afford to go to the doctor and the policemen prohibited him to leave the village.

Bakhutov's wife, Indira Izoria, confirms the explanations of the husband and son, and claims that she gave a similar testimony to the investigator who made her sign a blank piece of paper.

As Tsotsiashvili explains, on 27 June 2007, he gave testimony in the Ministry of Internal Affairs department in Telavi concerning Chopikashvili's "murder". He explained to the investigator that from 11 June to 18 June he was in Kvareli with his father's friend Avto Datulashvili. Consequently, he has nothing to do with the "murder". Despite this, the law enforcers who were there explained to him that his testimony did not mean anything as Bakhutov and Tsitsishvili had mentioned that he was with them when they were hiding the dead body. After this investigative action, Tsotsishvili was arrested and taken to the Kvareli temporary detention isolator where he met the accused, Bakhutov, who was suffering from physical injuries. In the conversation with him, Bakhutov admitted giving false evidence about Tsotsiashvili, Gauarashvili, and Khachoshvili, as a result of torture and on the demand of the policemen.

From what Gauarashvili and Khachoshvili say, it also becomes clear that on 27 June 2007, they were brought to the police department and accused them of hiding Chopikashvili's dead body. They also showed him Bakhutov's videotape where he gives different testimonies about Chopikashvili's murder and hiding the dead body. That same evening Gauarashvili met Bakhutov on the first floor of the department. Bakhutov was heavily beaten and displayed obvious injuries. Zoria was also there and from her, Tsotsiashvili, Gauarashvili, and Khachoshvili, learned the reason why Bakhutov and Tsitsishvili gave false information about them. Gauarashvili and Khachoshvili were sentenced to a two-month imprisonment term and were transferred to the #5 jail. According to Khachoshvili, the lawyer, Leila Garsevanishvili, who visited him in prison, asked him to confess to the guilt of which he was accused by the Office of the Prosecutor General; otherwise, the court would sentence him for a crime he had never committed.

The Public Defender considered Bakhutov's application. Public Defender representatives met him personally and talked to an indicted person as well as to the victim of the crime, Chopikashvili. This clearly proves that Bakhutov is serving a sentence for a crime which he really has not committed.

According to the circumstances around the case, on 15 June 2007, Bakhutov, Tsitsishvili, and Chopikashvili were at Zatiashvili's farm where there was some argument between Bakhutov and Chopikashvili, which soon

ended and they parted. It is also worth noting that on 21 November 2007, the telavi District Court heard The case of Gauarashvili, Tsotsiashvili, and Khachoshvili, who were accused of helping Bakhutov hide the dead body. At this time, the court, as well as the Office of the Prosecutor General, received the information that the "dead" Chopikashvili had appeared in the village. Despite this, Gauarashvili, Tsotsiashvili, and Khachoshvili were requested to admit at the trial to hiding the live person's "dead", and they promised freedom in return.

On 22 November 2007, the prosecutor of the Kakheti regional Office of the Prosecutor General offered Gauarashvili, Tsotsiashvili, and Khachoshvili a plea bargain negotiation. The same day the prosecutor addressed the Telavi District Court with the request to decide motions, which the court satisfied. However, according to the minutes of the plea bargain negotiation filed by the prosecutor, the commission of the crime by the indicted persons provided for in the criminal code is not established. Thus, it is unclear to which crime they admitted. According to Article 679/ 21 of the Criminal Procedure Code of Georgia, "the motion on making a judgment without trying The caseby the court must contain the formulation of guilt (the description of the incriminating action), and the place, time, and manner of commission, the weapon used, as well as the indication of the result caused by the action".

Also, according to part 2, clause "a", Article 679/ 31 of the Criminal Procedure Code, "before the approval of a plea bargain negotiation, the court is obliged to be assured that the defendant fully realizes the nature of the crime s/he is accused of". In the course of the trial, the prosecutor stated that he had been asking Gauarashvili, Tsotsiashvili, and Khachoshvili for two months to admit their guilt and enter into a plea bargaining negotiation. The following fact deserves attention, the public Defender's appearance caused certain confusion among the trial participants; however, the judge led the session, observed formalities, and asked general questions, which ended up in convicting the innocent persons. On 22 November 2007, on the decision of the Telavi District Court, a plea bargain was drawn up, on which basis the defendants were released from the court hall. According to the judgment, Gauarashvili was found guilty under part 1, Article 260; part 1, Article 236, and Article 375 of the Criminal Code; Tsotsiashvili was found guilty under part 2, Article 177 and Article 375; and Khachoshvili was found guilty under Article 375.

In a conversation with Public Defender representatives, the defendants explained that even though they did not commit any crime, they still hope for a fair trial, and that is why they have to admit to a crime they did not commit.

Further, from their explanations and other factual circumstances, it turns out that Bakhutov and his stepson were subjected to torture, degrading treatment, and the threat of torture by the employees of the Napareuli police division and Kakheti regional department in order that they admit to Chopikashvili's murder, or any other information connected with the above crime. As Chopikashvili, who was declared dead by verdict and court judgment, is alive and in good health, we can undeniably say that the evidence given by Bakhutov and his stepson to the preliminary investigation, as well as naming Gauarashvili, Tsotsiashvili, and Khachoshvili as co-participants in hiding Chopikashvili's "dead" body, was the result of torture exerted by police employees, which created the high likelihood that this was the only chance for survival for Bakhutov and his stepson.

Bakhutov's bodily injuries are confirmed by the record of the register for suspects of crimes placed in the Kvareli region temporary isolator. Public Defender representatives saw where it was indicated that Bakhutov was brought to the isolation building on 27 June 2007, at 23:30 hours. He displayed the following injuries – a bruise under the left eye and a scratch on the nose and left shoulder. On 29 June 2007, when he was transferred to prison #5, he had a dark haemorrhage in the areas of his left eye, left shoulder, and hip. According to Bakhutov, he developed the above injuries while in the police division.

The Public Defender addressed the Prosecutor General with the recommendation of starting an investigation under Articles 144^1, 144^2, and 143^1.

On 19 December 2007, the Chamber of Criminal Cases of the Supreme Court of Georgia, on the basis of the Prosecutor General's presentation, annulled the Telavi court judgment due to newly discovered circumstances.

On 23 January 2008, Bakhutov and the Kakheti regional prosecutor entered into a plea bargain agreement. On 24 January, prosecutor Javakhishvili moved a motion to the Telavi District Court requesting the approval of a plea bargain negotiation that was approved on the same day. In the verdict, the judge resolved that on 15 June 2007, during the argument, Bakhutov hit Chopikashvili on the head with a stick. Chopikashvili then fell to the ground and lost consciousness. Bakhutov thought Chopikashvili was dead, and with the help of his stepson, took the body to a place 200 metres away from the reservoir. The next day, with the help of Gauarashvili, Tsotsiashvili, and Khachoshvili living in the village of Jughaani, they moved the body to the Natsiskvilari territory where they threw the body into the Stori River. Despite the trauma, Chopikashvili came to his senses in the river and survived.

Bakhutov was found guilty under Articles 19, 108 and 55 of the Criminal Code of Georgia and was given a five-year prison sentence. According to Article 50 of the same code, he was sentenced to one year of imprisonment, and the remaining four years was substituted by a probation term of five years.

The case of Malkhaz Jolokhava

On 9 November of 2007, Public Defender representatives asked Malkhaz Jolokhava to provide explanatory notes. According to those notes, Jolokhava was going from Freedom Square to Kolmeurneobis Square on foot at about 05:30 hours, on 7 November 2007, when two men dressed in criminal police uniforms forced him to get into a brown BMW. Jolokhava was verbally and physically abused. In particular, one of the men sprayed some kind of substance into his face from a deodorant type of bottle, which caused his eyes to burn and stream tears. According to his statement, they were intensively pricking the middle finger of his right hand with a needle-like object, and at the same time were warning him not to take part in the protest march. Due to strong pains, Jolokhava lost consciousness and does not remember how he arrived at # 6 building in Laghidze Street, lying on the ground, where locals gave him first-aid. Later, at about 12 o'clock noon, Jolokhava returned to the rally in front of the Parliament building. At that time, the dispersal of the rally started and police employees again beat him up with rubber bludgeons. Here he noticed the two policemen who had unlawfully arrested him that morning. As Jolokhava says, he can identify the above-mentioned persons as he has seen them many times. During the dispersal, Jolokhava felt unwell, lost consciousness again, and was transferred to Republican hospital.

Public Defender representatives were at the Neurosurgical Centre of the Medical University where they got familiar with Jolokhava's medical records (#467), from which they learned that he was admitted 7 November 2007 and diagnosed with a carniocerebral injury and concussion,. In addition, he displayed haemorrhages under the nail of the middle finger of his right hand.

From Jolokhava's explanatory notes it is seen that he might have been subjected to criminal actions provided for under Article 143 (unlawful deprivation of liberty) and Article 1441 (torture) of the Criminal Code of Georgia. The Public Defender addressed the first deputy prosecutor general with the recommendation to start a preliminary investigation into criminal actions exerted against Jolokhava.

The case of Mamuka Mdinaradze

The beating of Mamuka Mdinaradze is being examined at the Public Defender Office. On 8 November 2007, a Public Defender representative asked Mdinaradze to produce explanatory notes, from which it becomes clear that on 7 November 2007, at about 14:30 hours, Mdinaradze left his house and went to Alexandrov garden to see what was going on at the rally.

When the police started the dispersal, Mdinaradze ran away to escape the situation, but one of the policemen appeared next to him, tripped him, and he fell down. Then the policemen began beating him as he was lying on

the ground, and were even asking each other to take turns hitting him. The policemen stopped beating him when church servants, who were passing by, asked them to stop. As Mdinaradze was feeling unwell, he went to the Ivane Javakhishvili Tbilisi State University hospital (formerly Mikhailov hospital) to ask for medical aid. As a result of the beating, Mdinaradze developed a lung injury that required an operation. He also displayed contusions on his limbs, back, and head. His state of health was serious.

According to Mdinaradze's explanatory notes, he was subjected to criminal actions provided for under Article 1441 (torture) and Article 333 (excessive use of official authority) of the Criminal Code of Georgia. The Public Defender addressed the first deputy prosecutor general with the recommendation to start a preliminary investigation into the criminal actions exerted against Mdinaradze.

The case of Nino Soselia

The Public Defender Office is currently studying the beating of Nino Soselia. On 8 November 2007, Public Defender representatives asked Soselia to produce explanatory notes.

Her notes indicate that on 7 November 2007, at about 12:30 in the afternoon, she was at the rally in front of the Parliament building. Police started to disperse the meeting with the use of water cannons and tear gas. Soselia was standing in front of the first secondary school at the moment when two masked persons hit her on the head with their bludgeons, slapped her in the face, and with all their force smashed her against the wall of the school building. Despite the sharp pain, Soselia did not lose consciousness. After the above incident, she went home. Later, her right eye was bleeding and she developed strong pains in the areas of her head and shoulder. On 8 November, she went to the Ivane Javakhishvili Tbilisi State University hospital (formerly Mikhailov hospital) to ask for medical aid. During the doctor's examination, it turned out that Soselia had sustained a broken temple bone.

From Soselia's explanations we learn that she was subjected to criminal actions provided for under Articles 142 (violation of equal rights of people), 144[1] (torture), 161 (infringement on the freedom of assembly and manifestation) and 333 (excessive use of official authority) of the Criminal Code of Georgia. The Public Defender addressed the first deputy prosecutor general with the recommendation to start a preliminary investigation into the criminal actions exerted against Soselia.

The case of Eduard Kakabadze

On 11 July 2006, Eduard Kakabadze's defence lawyer, Nana Andghuladze, addressed the Public Defender. As he explained, the employees of the Ajara Constitutional Security Department, Giga Archaia and Jambul Zakariadze, arrested Kakabadze on 26 December 2007, at about 17:10 hours, who transferred him later to the building of Ajara Constitutional Security. At the time, theabove building was guarded by the first subdivision of security department No. 6 of the special operations centre of the Ministry of Internal Affairs. As the applicant indicated, they violated the 48-hour term of detention of the person under his defence counsel, which was confirmed by the existing records in the register of the above security service.

Official letters were sent to the Ministry of Internal Affairs administration from the Public Defender Office concerning the above matter. In the letters, the public Defender requested information on whether the agency concerned kept records on people's admission and discharge in the register, and if so, whether Kakabadze's presence was recorded. The Public Defender did not receive a reply.

Regarding the above information, on 5 March 2007, the public Defender sent a letter to the head of the administration of the Ministry of Internal Affairs, Shota Khizanishvili, which also received no response. Another

letter was sent on 25 March as a reminder. In the letter of 25 June 2007, sent to Khizanishvili, therequirements of Articles 18 and 23 of the organic law concerning the Public Defender were explained in detail. Also, the letter requested replies to the previously sent letters by the office, but no reply has followed to this date.

The case of Kholandaria Mziana

On 8 May 2007, Mziana Kholandaria addressed the Public Defender. In the Zugdidi District Court judgment of 14 August 2006, Gia Khvichia was found guilty under sub-clause "c", part 2, Article 180 of the Criminal Code of Georgia and was sentenced to two years of deprivation of liberty. In March 2002, in Zugdidi, Khvichia made a verbal agreement with Kholandaria that he would temporarily use her Volkswagen minibus and would pay her 70 GEL monthly from the earnings he would get from passengers. Khvichia got the vehicle as was agreed and started to work in Tbilisi with the intent of misappropriating Kholandaria's property. After Khvichia's arrest, theissue of returning the car became the subject of litigation. The Public Defender requested information from the Office of the Prosecutor General regarding the above.

A letter followed from the Office of the Prosecutor General dated 1 October 2007, which said that a preliminary investigation was initiated in the Zugdidi District Court on 29 August 2007, into the misappropriation of Kholanadaria's minibus, under part 1, Article 360 of the Criminal Code of Georgia. However, as the crime was committed in Tbilisi, according to territorial subordination, the criminal case was sent to the Vake-Saburtalo Department of Internal Affairs.

On 10 October 2007, the public Defender addressed the head of the Zugdidi chief department of the Ministry of Internal Affairs, Koba Narsia, regarding the above case, and requested information on whether case #44070872 had been sent to the Vake–Saburtalo Department. The Public Defender has yet to receive a response. The Public Defender considers that by the action described above, Narsia violated the provisions of sub-clause "b", Article 18 and clause 3, Article 23 of the organic law of Georgia concerning the Public Defender, thus creating an obstacle in providing assistance to the Public Defender within the scope of the law.

The case of Dimitri Svanidze

On 23 March 2006, a preliminary investigation into criminal case #74006003 started at the investigative department of the Ministry of Internal Affairs for the crime provided for under part 1, Article 214 of the Criminal Code, regarding entering false data in customs declarations on the Georgian border.

In 2006, a joint application was drawn up by the patrol police of the ministry, according to which, Noshrevan Namoradze's Range Rover, state license number DIT 001, was registered to Dimitri Svanidze. On 1 October 2007, Svanidze applied to the Public Defender and noted that he bought the vehicle (manufactured in 2002, state number DIT 001, identification number SALLMANA42A104062, registration number AE0081793) from Namoradze.

On 9 January 2007, he was on Abashidze Street in a cafe. Employees of the special operative department went in and asked for the car keys. After that, Svanidze's Range Rover was taken to the ministry module building parking lot. The investigator drew up a protocol that states that Svanidze's car had been imported to Georgia illegally

On 9 January 2007, theinvestigator of the special operative department for combating organized crime discussed the criminal case of the illegal car import and made a resolution on its seizure due to urgent necessity. The protocol on the seizure was drawn up on the same day, which indicates that the vehicle was seized from Svanidze in front of #72 Vazha Pshavela, Tbilisi.

On 10 January 2007, the judge of the Collegium of Criminal Cases of the Tbilisi City Court, N. Khujadze, considered the motion made by prosecutor L. Sekhniashvili on recognising the legitimacy of the seizure. The judge satisfied the motion and considered that the seizure was conducted due to an urgent necessity with observance of provisions under procedure law.

On 2 October 2007, Svanidze submitted an additional application to the Public Defender. In his claim, investigator Guledani showed him a letter from Interpol that confirmed that his car was on the wanted list. Despite the request, Svanidze was not given a copy of the above document. Along with the letter mentioned above, theapplicant also presented a copy of a letter from the head of the Interpol central national bureau, Lasha Giorgadze, to the head of the special operative department for combating organized crime concerning eight vehicles on the wanted list being sought by Spain. On 22 August 2002, theapplicant was given a reference issued by the head of public information bureau of the ministry indicating that the vehicle was registered on the list of hijacked cars.

From materials submitted to the Public Defender Office, it turns out that the applicant is indeed a conscientious buyer of the mentioned car and is its owner, which is clear from the fact that it is registered by police patrol under state license number DIT 001. This fact proves that in the process of its purchase no claims existed on the part of law enforcers. In addition, on 14 September 2007, according to the reference issued by the head of information and analysis department of the ministry, K. Brokishvili, theabove-mentioned vehicle is registered to Svanidze.

The head of the Public Defender's investigation and monitoring department, Grigol Giorgadze, sent a letter on 9 October to the head of the Interpol central national bureau, Lasha Giorgadze, with a request to provide copies of letters dated 22 January #21/4/1-400 and 29 January #21/4/1-496. The letters concern messages received from Madrid Interpol concerning eight vehicles on their wanted list. On 15 October, Giorgadze sent a letter to the Public Defender, which stated that pursuant to clause "a", Article 21 of the Ministry of Internal Affairs provision approved by Presidential order #614, dated 27 December 2004, themanagement of relationships between agencies existing in the sphere of human rights is the function of the administration of the ministry, and notified the Public Defender to address the administration to obtain the requested information. If Giorgadze had provided the requested materials, it would have been possible to prove whether the vehicle was being sought by Spain. Since the lawful request of the Public Defender was not satisfied by the Interpol central bureau, reasonable doubt arises that the vehicle registered to the applicant's name was not on the list of wanted vehicles and was not being sought by Spain.

Svanidze knows nothing about the results of investigation to this date. He learned from unofficial sources that his vehicle was transferred to the ministry. After that, he addressed the Ministry of Finance with an official letter and requested information. On 13 August 2007, he was given protocol #16 on the right of administration and disposal of some types of property items issued by a preparatory commission drafted in compliance with Presidential decree #209, and the abstract of the record of order #719, dated 27 June 2007, of the Ministry of Finance, which prove that the Range Rover was transferred to the Ministry of Internal Affairs of Georgia. On 28 September 2007, he filed a claim in the Collegium of Administrative Cases of the Tbilisi City Court and requested to void the above administrative act. On the data at the Public Defender's disposal, after Svanidze addressed the Public Defender, he was being persecuted by law enforcers. In particular, patrol police employees routinely stopped him, searched him, and tested him for the use of drugs.

34 ANNEX #8. PENITENTIARY SYSTEM

The case of Levan Managadze and Gocha Gvinianidze

On 3 August 2007, the public Defender addressed the Office of the Prosecutor General of Georgia with a recommendation to start a preliminary investigation into the beating of a convict by the employees of the Kutaisi #2 prison and strict regime establishment of the penitentiary department of the Ministry of Justice. Public Defender representatives visited the Kutaisi prison on 30 July 2007 and asked convicts L. Managadze and G. Gvinianidze to produce letters of explanation.

In his letter of explanation, Managadze noted that on 4 July 2007, he was subjected to physical pressure by the employees of the prison – Lasha Mandaria, Zurab Morchadze and Kote Cheishvili. According to the convict, they beat him on the head and back with open hands. The employees named above were asking him to admit to taking part in a robbery that took place on 29 May 2006, under the threat of stabbing him. As Cheishvili told them, his uncle had been killed in the attack and that is why he demanded that Managadze admit to his participation in the attack.

After the beating, Managadze was left alone in the room (probably to give him time to make a decision), at which time he inflicted self-injury. The doctor of the establishment rendered first-aid to him. He was taken to the cell the next morning. He told lawyer Ramaz Khuntsaria about the above events. Additionally, he said that Mandaria had threatened him on the way to the trial.

A few days later, Managadze was interrogated by an investigator. He did not tell the investigator anything about the physical pressure he was subjected to and explained that he inflicted self-injuries and had no claims against anybody. After Managadze told the lawyer about the above, theinvestigator and an expert visited him again, and the expert examined Managadze's body and filed a document that Mananagdze signed. Managadze agreed to give evidence to the investigator about his beating in the presence of a lawyer.

On 30 July 2007, Public Defender representatives also asked the convict Gvinianidze to produce a letter of explanation. According to him, he was transferred on 15 May 2007, from the Geguti #8 common and strict regime establishment to the Kutaisi #2 prison and strict regime establishment to serve his sentence. Gvinianidze said that he had been moved because he had information about the corrupt relationships between the director of

the Geguti prison and convicts. Gvinianidze said that due to the deterioration of his health he asked for a doctor's appointment and did not obey the demand of the employee of the prison regime unit, Mandaria, to go back to his cell. Dissatisfied with Gvinianidze, Mandaria and I. Ibanishvili (the latter currently works in the Geguti prison) subjected him to physical and verbal offences. They beat him with their fists in the face and stomach area, and were swearing at him. The beating lasted for about 20 minutes, despite the convict begging them to stop beating him as he had just been through an operation. After that, Mandaria and Ibanishvili put a strait jacket on him. M. Chogovadze and M. Samarguliani, operative duty personnel of the Kutaisi prison, were present for the beating. According to Gvinianidze, he was thrown on the floor of the duty room in the strait jacket for three days. During this time he was not given any meals; Samarguliani only gave him water. He also was not allowed to see a doctor. The next day, a nurse visited him and gave him some sedative drugs. The next day, employees of the establishment, Mandaria and D. Narsia, came to him. Narsia said he was lying there as if he was dead and lit some candles. At this time, another employee, Zhorzholiani, came up to Narsia and asked for a day off. In return, Narsia told him to pour some water on Gvinianidze. Zhorzholiani fulfilled the order and both were laughing. Gvinianidze points out that the investigator came to him and informed him about the preliminary investigation that had started into his disobedience. When he met the investigator, he was not wearing a strait jacket. He did not sign the testimony. The next day, he was visited by a prosecutor and an expert. The prosecutor asked: "Is this the madman?" The expert examined his body and drew up a document but he did not give it to Gvinianidze to get familiar with what was written on it. At this time, Gvinianidze had a strait jacket on. According to Gvinianidze, despite the fact that he had told the investigator and the prosecutor about the beating, they did not react to the incident.

In his letter of explanation, the convict also noted that he addressed the Public Defender three times about the beating, but he does not know whether the applications ever reached their destination. The Public Defender's Office has not received any applications from Gvinianidze. The convicts in the Kutaisi prison point to criminal actions conducted by the employees of the establishment that are provided for by Article 1441 (torture) of the Criminal Code of Georgia.

The Public Defender was informed by the Office of the Prosecutor General of Georgia that on 20 July 2007, an investigation into a criminal case concerning Managadze's less grave injury under part 1, Article 118 of the Criminal Code was started in the west Georgia division of the investigative service of the penitentiary department of Georgia. In the same letter, regarding the Gvinianidze's beating, the public Defender was informed that on 15 May 2007, a preliminary investigation was initiated into Gvinianidze's resistance against the employees of the preliminary arrest and penitentiary establishment. This investigation was conducted by the west Georgia division of the investigative service of the penitentiary department. As a result of his resistance, Gvinianidze sustained injuries, and in the process of investigation, he used his right to silence. The criminal case against G. Gvinianidze was sent to the Kutaisi City Court on 17 July 2007. No investigation has started into the beating of Gvinianidze.

Furthermore, on the information from the Office of the Prosecutor General, due to the non-existence of the actions provided for by criminal law, the preliminary investigation into Managadze's beating (criminal case #073070547) was dismissed. The above example clearly demonstrates the attitude of investigative bodies towards torture. They approach the investigation of such cases rather superficially and do not initiate any investigation at all, or if they do, it is only on paper.

The case of Zurab Vibliani

The Public Defender is studying The case of the beating of the convict Zurab Vibliani in the medical unit of #6 prison of the Ministry of Justice penitentiary department.

On 22 November the representative of the Public Defender visited Vibliani and filed a report, in which it is indicated that on 21 November 2007, the convict felt unwell, lost consciousness, and was transferred to the medi-

cal unit for convicts and prisoners of the penitentiary department. When he came to, he was in the intensive care unit of the medical establishment where he was given two injections and was requested to sign a paper that said that he officially refused to stay in the intensive care unit. Vibliani refused to sign the paper. According to Vibliani, he was then transferred to the "Vakhta' (the guard room) and was physically abused, despite the fact that he needed medical aid, and was transferred to Rustavi #6 prison. Upon admittance he was examined by a doctor who made notes regarding his bodily injuries that could be observed.

By visual examination, he displayed haemorrhages in the areas of the spine, chest, and right hip, he also had an excoriation on the right eye and a head injury. According to him, he developed the above injuries on 21 November 2007 at the medical unit for convicts and prisoners as a result of the abuse inflicted on him by the employees of the establishment. The representative of the Public Defender asked Beka Charkviani, who witnessed the criminal actions inflicted against Vibliani, to produce a letter of explanation.

The Public Defender sent copies of the reports regarding the criminal actions against Vibliani and Beka Charkviani's letter of explanation to the first deputy and the head of human rights department of the Office of the Prosecutor General of Georgia for further reaction.

On 18 December 2007, we were informed that on 23 November 2007, based on the notification from #6 prison, an investigation into Vibliani's health injury (criminal case #073070855) was opened in the investigative service of the penitentiary department of the Ministry of Justice, under part 1, Article 118 (intentional less grave health injury) of the Criminal Code. In addition, the public Defender was informed that an investigation into Charkviani's health injury was going on in the investigative service of the penitentiary department of the ministry. The Public Defender's letter of explanation was attached to the above case file and relevant investigative actions were going to take place.

The Public Defender considers that Vibliani's beating was incorrectly qualified and the investigation should have been started under Article 144[1]. Vibliani was also tortured in 2006 (see Public defender's report of the first half of 2006). That these facts of torture are not being investigated has become a common trend and such actions are being encouraged.

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ANNEX #9. PROTECTION OF THE RIGHTS OF INTERNALLY DISPLACED PERSONS (IDP)

The case of Ivane Kochkiani

On 3 September 2007, an IDP from Abkhazia, Ivane Kochkiani. applied (#1447-07) to the Public Defender. According to him, while living in Kareli, the local governing body provided him with temporary accommodation in an abandoned, half-destroyed building in town, at the address #66 Bakhtrioni Street. From 1993 until June 2005 the applicant and his family (a wife and a three-year-old child) were living at the above address. From the application, we learned that the house belonged to an Ossetian family, the Merghievs. The Kochkiani family considered that they were to return the house to the owners who arrived in Georgia after several years. The President of Georgia, in a speech on 10 July 2005 at an international conference in Batumi concerning the peaceful resolution of the conflict with South Ossetia, ended his speech with the story of Kochkiani with the following words: "By the way I have learnt a story by chance and I issued a special order to help him and his family". The text of the speech was published by his press service and can be found on his official web site (http://www.president. gov.ge/?l =G&m=0&sm=3&st=140&id = 452). Kochkiani also confirms the above in his application.

The applicant points out that he has been sheltered by his relatives for all this time. As he says, he has repeatedly addressed the government of Georgia and the Ministry of Refugees and Resettlement; however, his conditions have not improved and his family still has no shelter.

According to sub-clause "r", Article 2 of resolution #562 of the President of Georgia concerning the President's administration, in order to support the implementation of constitutional authorities of the President of Georgia, the administration ensures general control over the fulfilment of tasks and legal acts of the President of Georgia". Pursuant to sub-clauses "a" and "k" of Articles 3 and 4 of the same resolution, the head of the administration "manages the coordination of the activities of structural units and oversees the coordination of control of the enforcement of Presidential acts and assignments".

According to the indicated norms, and Articles 18 and 23 of the organic law of Georgia concerning the Public Defender, on 3 October of 2007, the public Defender addressed (#3139/05-3/1447-07) the head of the President's administration, Ekaterine Sharashidze, and requested official information

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on the special decree, which the President mentioned in his speech of 10 July 2005. Particularly, a copy of the decree and information on its fulfilment.

From the reply (#9/1872), dated 26 October 2007, of the deputy head of president's administration, O. Dzidzikashvili, we were informed that the text of the decree was not kept in the President's administration.

According to information supplied by Kochkiani, meanwhile he looked for a vacant space in Tbilisi, at #83 Kakheti Gzatketsili. He sent a letter regarding the above to the deputy chairman of the Parliament of Georgia, M. Machavariani, who addressed the Ministry of Refugees and Resettlement.

In the reply letter (#01/01-17/1319), of 6 March 2006, I. Giorgadze stated that "according to current legislation, for the temporary registration of an IDP at the place of residence it is necessary to produce a letter of consent of the legal owner of the building. In this case, theabove is within the competence of the Ministry of Economic Development of Georgia and we sent a letter of request regarding the above to the deputy minister, Kakha Damenia (#01/01-17/1309.06.03.06). In the event of his consent we will immediately create all conditions for the registration of IDP at the indicated address".

According to Damenia's reply letter (#15/2121/3-6; 31.07.06), "the Ministry of Economic Development of Georgia does not object to accommodating IDP in the above indicated building, provided they are not registered at another place and have no other accommodation".

Despite all the above, registration of Kochkiani and his family at #83 Kakheti Gzatketsili, Tbilisi, has not taken place to this date. In a letter (01/01-17/6732) dated 6 October 2006 to the head of the department of correspondence and analysis of the President of Georgia from the deputy minister of the Ministry of Refugees and Resettlement, Giorgadze says that "taking into consideration the existing resources, it is possible to look for temporary accommodation in the Dusheti, Baghdati and Khoni regions". In another letter (#01/01-17/6830) to Kvantrishvili, the head of the President's correspondence and analysis department, Giorgadze says that "taking into consideration the existing resources, as per this date, we can provide Kochkiani with temporary residence in the Akhmeta, Lagodekhi, Khoni or Tsalka regions".

According to sub-clauses "g" and "k", clause 2, Article 5 of the Georgian law concerning IDP, the Ministry of Refugees and Resettlement, together with executive powers and local self-governing bodies, provide IDP with temporary places of residence. According to Article 7 of the same law, "the Ministry coordinates the activities of other ministries and relevant agencies in the field of implementation of IDP rights".

According to sub-clause "h", clause 1 of the resolution of the Georgian government #157, dated 12 September 2005, the Ministry of Refugees and Resettlement was assigned "to make a list of the buildings in CC resettlement together with the owner or any authorized person; to make a list of IDP accommodated in CCs with the purpose of organized resettlement; and a description of the space distribution with the consent of the owner of the building or an authorized person".

Taking into consideration the above norms and the relevant letters from the Ministry of Economic Development, as well as subclause "b", Article 21 of the organic law of Georgia concerning the Public Defender, on 5 December 2007, the public Defender filed a recommendation (#3658/05-3/1447-07) to the Minister of Refugees and Resettlement, Koba Subeliani, to consider the issue of resettlement and registration of Kochkiani and his family at #83 Kakheti Gzatketsili, Tbilisi. No reply has followed so far.

The case of Marina Paghava

The Public Defender is considering Marina Paghava's application (#0722-07). She is an IDP from Abkhazia.

According to the applicant's information, from 1993 until 1996, she and her family members were living in their friend's flat. In 1996, they had to leave the flat. At the same time, they learnt from neighbours that in a nearby block of flats, at the address IV m/r, block#25, app. #4, Nuitsubidze Plato, Tbilisi, was an abandoned living space. As they were under harsh social conditions, they entered the flat and created normal living conditions. At the same time, they were registered at the above address by the Ministry of Refugees and Resettlement. The above is confirmed by the reference (#02/01-22/4254) dated 21 August 1997, issued by the Deputy Minister of Refugees and Resettlement, T. Lomaia. According to the document, IDP Tupuria Tamaz, Paghava Marina, Tupuria Davit, and Tupuria Ekaterine are registered at IV m/r, block#25, app. #4, Nuitsubidze Plato, Tbilisi.

That the right of ownership of the above space was not registered is confirmed by documents of a later date. According to the letter (#h-51) of the chairman of the Tbilisi land management department, K. Shengelia, the flat at IV m/r, block#25, app. #4, Nuitsubidze Plato, is not entered in the public register. According to the letter (#u-178), dated 6 December 2004, of the acting chairman of the Tbilisi registry service of the national public register, N. Bakhtadze, "pursuant to the records made in the Tbilisi registry service of the national public registration office and the archive materials of the technical bureau, the flat at IV m/r, block#25, app. #4, Nuitsubidze Plato is not registered as of 25 November 2004". The letter from the same agency dated 10 February 2005 (83/i/202-05), confirms that "the private ownership of the flat at IV m/r, block#25, app. #4, Nuitsubidze Plato is not registered".

Despite the reference issued by the Ministry of Refugees and Resettlement back in 1997, the data at the next registration of IDP was automatically transferred to new IDP cards of the applicants and their family members. As a result, theIDP cards issued in 2004 claimed their temporary residence was registered at #3 Gamsakhurdia Street, Tbilisi, and not the address where Paghava and her family have been living for the last ten years with the Ministry's relevant permit.

The owner's lawful interest is to have the temporary place of residence registered at IV m/r, block#25, app. #4, Nuitsubidze Plato, Tbilisi, to ensure its rightful ownership. The special graph on an IDP card serves the above aim – to give every IDP the right to a particular living space. Additionally, this would enable Paghava and her family members to enjoy all social benefits provided by the law (including electricity and other utility services).

In sub-clause "f", Article 11 of the Georgian law concerning IDP and refugees, the temporary residence, or the place of registration of an IDP, is explained as "the place of residence selected by a person during the period of being an IDP, or the place where the person is temporarily accommodated". By order #124, dated 1 November 2007, of the Minister of Refugees and Resettlement, concerning IDP certificates, granting IDP status, therules of registration, and the provision and approval of forms and questionnaires for IDP cards, therule of registering IDP, granting them status, and certificates were approved. According to clause 24, Article 4 of the rule, "during registration, an IDP has the right to inform the ministry and require making changes in the identification data in writing, according to the stated rule. Additionally, the Ministry is authorized to require IDP to produce relevant documents necessary for filling in the incomplete data".

Pursuant to clause 22 of the same article, "it is inadmissible to change the temporary residence in the IDP database of one collective centre by another collective centre except for:

a) Circumstances provided for under sub-clauses "b" and "c", clause 4, Article 5 of the Georgian law concerning IDP and refugees;
b) Moving the place of residence of a minor, without the parent's or other legal representative's consent;
c) Marriage or divorce (in case of divorce, theIDP previous place of residence should be indicated);
d) In case of incapable or disabled person, without the consent of his/ her legal representative; and
e) When spouses live in different collective centres".

In Paghava's case, theissue is not the re-registration due to moving from one collective centre to another, but it is the issue of correcting a mistakenly entered address of a private sector in her IDP certificate.

Pursuant to sub-clause "d", Article 2 of the General Administrative Code of Georgia, an IDP certificate is an individual/legal act, as it is issued by an administrative body on the basis of administrative legislation, and confirms the person's rights and duties. An IDP certificate is the document that creates legal results for each IDP, and at the same time, it confirms their IDP status. An IDP certificate has an independent meaning from IDP status and is issued anew with every registration.

According to part 1, Article 59 of the General Administrative Code of Georgia, "an administrative body is obliged to correct technical or computation errors in individual/legal acts issued by the body". Pursuant to part 2 of the same article, "making essential changes in an administrative/legal act means the issuance of a new administrative/legal act".

In accordance to sub-clause "I", Article 2 of the provision on IDP certificates approved by order #124, dated 1 November 2007, by the Minister of Refugees and Resettlement of Georgia, one of the datum in the certificate is the temporary place of residence of an IDP. The above record creates important legal results for an IDP – it makes the ownership of the particular living space rightful and creates a legal basis for residing at the indicated place. In such cases, an IDP is protected against eviction and during court proceedings. An IDP certificate is important for electoral law as well, and consequently certain legal results are tied with it. In this way, theState guarantees its positive obligations imposed to it by its internal legislation and creates a sufficient legal basis for IDP living in a particular space, and it also enables them to produce proof to relevant state bodies in cases of disputes.

Pursuant to sub-clause "h", Article 27 of the General Administrative Code of Georgia, personal data is "public information enabling the identification of a person". Thus, information on the place of an IDP temporary residence is the constituent part of his/her personal data. According to sub-clause "h", Article 43 of the same code, public organizations are obliged "to address the person while gathering information, about whom the information is being collected; and can also address other sources in the event of all other possibilities of obtaining information from original sources are exhausted, except for provisions set in Article 28 of the code, and only when the law directly prescribes the right of collecting, processing, and storing personal data on certain categories".

By the certificate presented by Paghava that confirmed changing the name, patronymic name and family name (issued on 19 June 1997 by the Sukhumi registry office), it is verified that Davit Tupuria (patronymic name Tamaz) changed his family name to "Tsereteli".

In accordance with sub-clause "b", Article 21 of the organic law of Georgia concerning the Public Defender, on 6 December 2007, the public Defender addressed the Minister of Refugees and Resettlement, Koba Subeliani, with a recommendation letter (#3672/05-3/0722-07) requesting the indication in the IDP certificates of Paghava, Tamaz Tupuria, and Davit Tsereteli the temporary place of residence as IV m/r, block#25, app. #4, Nuitsubidze Plato, Tbilisi, in the current registration. A reply has yet to be received.

The case of Dismissal of Abkhazia Media Centre Employees

Abkhazia Media Centre employees applied (#1891-07) to the Public Defender on 30 November 2007. As they explained, on 11 May 2006, the department of information policy and State broadcasting company of the Abkhazian Autonomous Republic was reorganized according to order #19 of the Government of the Autonomous Republic of Abkhazia. On that basis, the legal entity of public law, Abkhaz Media Centre. was established.

1. According to order #10 of the Government of the Autonomous Republic of Abkhazia concerning the liquidation of the Abkhaz Media Centre was determined, and the starting date of the relevant procedures

was defined as 1 June 2007. Relevant changes to the above resolution were made on 26 April 2007, based on order #25, according to which the starting date of liquidation procedures was changed to 1 May 2007. According to clause 1, Article 1 of resolution #26, dated 12 June 2007, the completion date of the liquidation procedures of the Abkhaz Media Centre was set for 15 June 2007.

2. On 13 June 2007, thirteen employees of the agency were dismissed on the order of the director the centre, K. Bendeliani.
3. Resolutions #10, #25, and #26 were appealed in Sukhumi district and city courts. On the decision of 7 September 2007, thesuit was met and resolutions #10, #25, and #26 were made void. The voided administrative/legal acts stopped being invalid from the date of their annulment, 7 September 2007. On the same decision, the court reinstated the activities of the Abkhaz Media Centre, and pointed to immediate enforcement of the decision.

Thirteen employees of the Abkhaz Media Centre applied to Sukhumi district and city courts, asking to invalidate Bendeliani's orders, reinstate their jobs, and reimburse their lost salaries due to being compulsory restrained from their jobs. The suit was partially met. The claimants were refused the invalidation of the orders on their dismissal issued by the director of the centre, and the above orders remained invalid. The claimants were reinstated into their jobs and the defendant party, theAbkhaz Media Centre was prescribed to reimburse lost wages from the date of their dismissal until the enforcement of court judgment. The court also pointed to immediate enforcement of the above decision.

According to the applicants, despite the instruction on immediate enforcement of the judgment, the order adopted on 27 September 2007 was enforced partially, particularly, theactivities of the Abkhaz Media Centre were not resumed (the TV and radio broadcast) and lost salaries were not paid out. The Abkhaz Media Centre reinstated the claimants into their jobs only from 1 November 2007, and those who were reinstated by the order of the director, R. Kiria, on 2 November 2007, were dismissed within 26 days for no reason. The above issue has not been discussed in the court so far.

On one occasion, the creditors submitted applications to the Tbilisi enforcement bureau on 12 September and 1 October, 2007.

Pursuant to clause 2, article 82 of the Constitution of Georgia,. "acts of courts are binding on the whole territory of the country for all state bodies and persons".

According to article 10 of the Civil Procedure Code of Georgia, "court judgments that enter legal force (rulings, resolutions), as well as orders and decrees raised by the court for the implementation of its authority, are binding on the whole territory of the country for all state or private bodies, organizations, officials, and citizens and they shall be complied".

In accordance with clause 1, Article 17 of the Georgian law concerning enforcement proceedings, "court requirements concerning the performance of official duties are binding for all physical and legal persons, despite their subordination and organizational/legal form".

According to clause 5 of the same article, "a court bailiff is obliged to take all legal measures for the prompt and realistic enforcement of a judgment, to explain the rights and duties to the parties, and to help them protect their rights and legal interests".

According to Article 6 of provision #834 issued by the Minister of Justice of Georgia, one of the objectives of the department is the coordination and control of enforcement process.

Pursuant to Article 92 of the Georgian law concerning enforcement proceedings, "compulsory enforcement against legal persons of public law may start after four weeks from the moment when the creditor notified

the debtor about the intention of bringing an enforcement case against the debtor or its representative". The Abkhaz Media Centre is a legal entity of public law, but due to the fact that the court judgment was submitted for its immediate enforcement, neither a four-week term nor any other procedure provided in the article can be applied.

According to part 1, Article 268 of the Civil Procedure Code of Georgia, the court is entitled to submit judgment for partial or full enforcement at the parties' request. According to clause 2, Article 21 of the Georgian law concerning enforcement proceedings, in the event of immediate enforcement the enforcement order is issued upon the delivery of the judgment and not after it comes into legal force".

Pursuant to clause 2, Article 28 of the same law, "if a court judgment is subject to immediate enforcement, the debtor party is sent a proposal on its immediate and voluntary enforcement". According to precedent law practiced by the European Court of Human Rights, enforcement of court judgments are protected by Article 6 of the European Convention and consequently is the constituent part of the right to a fair trial.

In The case of Apostol v. Georgia, the european Court explained that the first part of Article 6 provides the possibility for every person to bring a suit regarding civil rights and duties. The right to a court is not merely a the oretical right to secure recognition of an entitlement by means of a final decision, but it also includes the legitimate expectation that the court judgment will be executed. Effective protection of parties and restoration of legality presupposes an obligation on the administrative authorities' part to comply with a binding judgment (Apostol v. Georgia, paragraph 54).

The enforcement of a proceeding is the integral part of the trial. The court considers that the person's right to court, along with access to first instance and appellate courts, for the determination of "civil rights and obligations" equally protects the right of access to enforcement proceedings that is the right to have enforcement proceedings initiated (Apostol v. Georgia, paragraph 56).

The court recalls that fulfilment of the obligation to secure effective rights under clause 1, Article 6 of the convention does not mean merely the absence of interference, but may require taking various forms of positive actions on the part of the State (Apostol v. Georgia, paragraph 64).

In The case of Burdov v. Russia, the court of Strasbourg reiterates that Article 6, paragraph 1 secures for everyone the right to have any claim relating to his/her civil rights and obligations brought before a court. In this way, it embodies the "right to a court", of which the right of access, theright to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a contracting state's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6, paragraph 1 should describe in detail the procedural guarantees afforded to litigants – proceedings that are fair, public, and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law, which the contracting states undertook to respect when they ratified the convention. Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6 (Burdov v. Russia, paragraph 34).

Pursuant to sub-clause "b", Article 21 of the organic law of Georgia concerning the Public Defender, on 14 December 2007, the public Defender addressed the head of the enforcement department of the Ministry of Justice, Zviad Zviadadze, and the director of the Abkhazia Media Centre, Raul Kiria, with the recommendation (#3799/05-3/1891-07) to execute the decisions of 7 and 27 September of the Sukhumi district and city courts.

On 16 January 2008, we received a reply (#1/2) from Kiria, which said that "the decision of the Sukhumi district city courts was appealed in the Tbilisi Chamber of Appeals of civil cases by the centre on 8 November 2007 where the above claim is being tried. As for the reimbursement of lost wages to the claimants, it is impossible to enforce that since the court decision does not indicate the exact amount of the sum. It is not clear from which period the sum is to be computed. In addition, the centre does not conduct any other economic activities. Its activities are entirely financed by the budget of the Abkhazian Autonomous Republic on the basis of the resolution of the Supreme Council of Abkhazia. Due to non-existence of funds, it is impossible to enforce the judgment".

On 25 January 2008, we received a letter from Zviadadze (#04/03-75 jnk), which informed us that the court bailiff, K. Peikrishvili, was given written instructions to apply all possible enforcement measures, as provided in the Georgian law concerning enforcement proceedings, in order to enforce the recovery of arrears and to inform the creditor party about the results immediately.

Additionally, theSukhumi district and city courts adopted a ruling on 25 December 2007, on the interpretation of the court judgment. Clause 3 of the resolution on court judgment #2/667-07, dated 27 September 2007, was given the following interpretation: Recovery of lost wages for the 13 employees dismissed from the Abkhazia Media Centre from the day of dismissal (1 June 2007) until the enforcement of the court judgment (1 November 2007), means the reimbursement of the sum by the time of dismissal of the claimants indicating the salary according to the current payroll in compliance with Georgian legislation currently in force. The case is under proceeding.

The case of Levan M mamasakhlisi

Levan Mamasakhlisi, a refugee from Abkhazia, applied to (#0721-07) the Public Defender on 14 May 2007. On 7 August 2001, law enforcement bodies of Abkhazia detained, tried, and charged Mamasakhlisi with terrorism. He was sentenced to 14 years of deprivation of liberty and was serving his term in the Dranda prison. Mamasakhlisi was released on 14 February 2007.

From 12-14 February 2007, the delegation of the European Council, under the leadership of the Commissioner of Human Rights of the European Council, Thomas Hammarberg, was visiting Sukhumi. The delegation was composed of the director of the commissioner's political consultancy and commonwealth department director, Mark Shoye, and the commissioner's advisors – Alexander Hesse and Roman Chlapok. The aim of the delegation was to study the situation of human rights in the conflict zone.

The delegation had a meeting with the Minister of Internal Affairs of the self-declared republic of Abkhazia, Otar Khetsia, and the head of the city department of Internal Affairs, Roman Gablaia. The delegation also visited organizations of the penitentiary system, among them temporary detention isolators and the Dranda prison, city schools, and medical establishments. Finally, delegation members met with the de facto president. During the meeting with President Baghapsh, Mamasakhlisi's release was decided. On 15 February 2007, Hammarberg personally brought Mamasakhlisi to Tbilisi.

The Abkhazian party was to bring Mamasakhlisi as agreed, on 14 February at 15:00 hours, to the Enguri Bridge where they were to hand him over to Hammarberg. The members of the delegation had been waiting for five hours for them to bring Mamasakhlisi. The representatives from the Abkhazian side were saying: "They will be here in 20 minutes"; "They will turn up in 10 minutes"; "They are on the way": and finally, when it turned out that Mamasakhlisi was still at prison at 15:00 house, Hammarberg refused to cross the Enguri Bridge and returned to Gali, in the office of the UN, where he stated that delegation members would not leave

the Abkhazian territory until they brought Mamasakhlisi. Finally, theAbkhazian side had no other option but to release Mamasakhlisi, who was delivered to the Enguri Bridge at 19:30 hours and handed over to the delegation.

At present, theapplication of Mamasakhlisi v. Georgia and Russia is being considered by the European Court of Human Rights.

During the period of unlawful arrest, Mamasakhlisi was in Abkhazia, in the Dranda prison, under the heaviest of conditions without any medical assistance. As a result of an explosion, he lost his right hand and was left with only a thumb on his left hand. He also has lung injuries and suffers from eczema. His state of health was grave and he was in need of medication. As a result of the Public Defender's motion, since September 2005 he has regularly been receiving medication through the Red Cross international committee supplied by Aversi Farma LTD.

As for the necessary medical treatment for Mamasakhlisi, the public Defender addressed the mission of UN observers and the representative of the international committee of the Red Cross many times so that, with their support, physicians could visit the illegally detained person, make an impartial conclusion on his health, and help with the medication and treatment. As a result, therepresentatives of the UN mission visited Mamasakhlisi in prison.

According to Mamasakhlisi, as a result of a mine explosion in 2001, he injured his right hand. He is now in need of a prosthesis, which as the applicant says, was to be bought with the sum allocated by the Ministry of Labour, Healthcare, and Social Welfare of Georgia; however, thesum has never been allocated. Mamasakhlisi must be fitted for the prosthesis in Germany. The only obstacle for his trip to Germany was the sum for purchasing the prosthesis, which had not been allocated. That is why he could not be admitted to Germany.

On 22 May 2007, the public Defender addressed (#1545/01-2/0721-07) the Minister of Labour, Healthcare, and Social Welfare, L. Chipashvili, with a request to settle this problem in the shortest time.

According to the reply (#01-11/01/5782) dated 13 July 2007, of Giorgobiani, Mamasakhlisi needed to get treatment in Germany at the Otto Bok Company with a total cost of 8,862.2 Euros. Consequently, his application was sent to the Agency of Health and Social Programs, indicating the needed sum to be reimbursed within the referral program.

On 4 September 2007, we received a reply (#01/061/1162) from the head of the Agency of Health and Social Programs, Vakhtang Surguladze, which said that the stated sum was transferred to Otto Bok's bank account in Germany on 24 July 2007.

In November 2007, Mamasakhlisi contacted the Public Defender Office. According to him, the german side refused to reimburse travel and accommodation expenses. Also, the Ministry of Labour, Healthcare, and Social Welfare told him that if he did not leave for Germany by 10 December 2007, the Ministry would withdraw the sum transferred to Otto Bok. It also became evident that the Ministry of Labour, Healthcare, and Social Welfare only transferred the sum for the prosthesis, but not for the treatment. The representatives of Otto Bok explained that the total sum including travel and accommodation was 19,907.25 Euros.

With the efforts of the Public Defender, one of the Georgian companies agreed to pay Mamsakhlisi's travel expenses. Now, he has the ticket booking for Frankfurt, where he is supposed to go on 11 December and return on 29 December. The representatives of the German Embassy say they are willing to issue a visa immediately, as it will be required. According to Mamasakhlisi, the only thing to be arranged is the expenses of his treatment and accommodation in Germany, which, on the information provided by Otto Bok, amounts to 11,045.05

Euros. However, since he does not have the above sum, Mamasakhlisi's travel and treatment in Germany may become questionable.

According to clause "b", Article 5 of the Georgian law concerning IDP and refugees, theright of IDP to temporary residence is ensured by the Ministry of Refugees and Resettlement, along with the relevant executive and local self-governing bodies, which "pay out allowances and render other assistance within the competence and provisions of the Georgian legislation". Clause "h", Article 11 of the same law provides the legal basis for the mechanism of single allowances. The above allowance is "the sum determined by the Georgian legislation, which is paid out to a destitute IDP on the basis of the application". According to our information, Mamasakhlisi has already addressed the Ministry of Refugees and Resettlement regarding the provisions in the above application.

According to Article 51 of the law concerning the 2007 State budget of Georgia, "other expenses" for the support of refugees and IDP, that are not connected with expenses of IDP settled in collective centres, were allotted to the Ministry of Refugees and Resettlement in the amount of 741.6 GEL. According to the same article, theaid fund for IDP was determined to be 100,000 GEL.

On 6 December 2007, the public Defender sent the relevant materials to the Minister of Refugees and Resettlement, Koba Subeliani, for further consideration and proposed (#3671/05-3/0721-07) to consider the above issue in the shortest possible time. No reply has followed so far.

According to sub-clauses "g" and "h", Article 5 of the law of Abkhazia concerning the structure, authority, and activities of the Autonomous Republic of Abkhazia, the government "ensures social protection of the population, and the implementation of socio-economic, educational, and cultural programs". Pursuant to clause "h" of the same article, theAbkhazian government "participates in the implementation of observing order and the protection of human rights". According to sub-clauses "b" and "a", clause 1, Article 2 of the provision of the Ministry of Healthcare and Social Protection of Abkhazia, thesphere of management of the ministry includes "activities aiming at the provision of healthcare to IDP (also to those living in the Abkhazian territory as far as possible)".

Taking the above norms into consideration, the public Defender addressed the Minister of Labour, Healthcare, and Social Protection of Abkhazia, Dali Khorava, with a request to consider the above issue. On 16 January 2008, we received a reply (#35) from the above agency that said our letter was forwarded to the Ministry of Labour, Healthcare, and Social Welfare of Georgia.

On the information provided by the applicant, the Ministry of Labour, Healthcare, and Social Welfare of Georgia has already withdrawn the sum from the account of Otto Bok, since Mamasakhlisi could not depart to Germany due to the lack of financial support. The case is under proceeding.

The case of IDP Living in the Seismic Observatory Building

The Public Defender is considering the collective application (#0627-07) of IDP from Abkhazia. The applicants state that they settled in the seismic observatory building at #77 Nutsubidze Street, Tbilisi, on 29 May 1998, and occupied the third floor. Today they still live at the above address. The observatory administration brought The caseto court. The Tbilisi Vake District Court made a decision on 28 September 1998, on the eviction of IDP from the building, but only after providing them with another living space. The provision for a living space for the defendants was assigned to the Ministry of Refugees and Resettlement by the same decision that was appealed, and finally the Supreme Court of Georgia considered it valid. The deputy chairman of the Supreme Court, G. Devdariani, notified one of the claimants, Boris Papaskua, in a letter (#35-1209) dated 12 May 1999, that "we

consider the decision of the Tbilisi Supreme Court made on 28 September 1998, which prescribes your, and other IDP, eviction from the building indicated above, after having been provided with another living space, until then the suit of the national seismic protection service is not satisfied". Despite repeated appeals of the IDP, the Ministry of Refugees and Resettlement has not provided them with any living space.

On the request of seismic observatory management, and in the presence of their representatives, the Ministry of Refugees and Resettlement drew up a list of IDP living in the building in January and March 2007, and recorded 65 IDP living there. IDP residing at #77 Nutsubidze Street are registered in different districts of the capital. Consequently, theIDP cannot enjoy the state benefits for utility services, among them electricity, which makes their hard social conditions even harder. Despite the IDP repeated addresses to the Ministry of Refugees and Resettlement, their problems remain unsettled.

According to sub-clause "h", clause 1 of resolution #157, dated 12 September 2005, of the Government of Georgia "concerning regulatory measures of registration and social issues, state pecuniary aid, humanitarian, and other assistance provided to refugees and IDP", the Ministry of Refugees and Resettlement was instructed to "conduct the registration of people in collective centres, along with the owner of the property, or an authorized representative; implement monitoring of the purposeful use of collective centres; ensure drawing up the lists of accommodated IDP and the distribution of space; and the resettlement of refugees with the consent of the property owner or an authorized representative".

It is noteworthy that the above resolution mentions the consent of the owner or the authorized representative. The latter implies a person or a body who has a legal authority to make decisions. In the judicial system of Georgia, this can be the court or private arbitrage, or any other legally authorized body.

In this situation, when it is impossible to evict IDP until they are provided with another space for living, and when the Ministry of Refugees and Resettlement has not provided them with space for nine years, I consider it unjustifiable to refuse the claimants to register at the building of the seismic observatory, as they have been granted the right to live there by the court.

According to clause 2, Article 82 of the Georgian Constitution, "acts of courts are binding on the whole territory of the country for all state bodies and persons". According to the Civil Procedure Code, Article 10, "court judgments that enter legal force (rulings, resolutions), as well as orders and decrees, raised by the court for the implementation of its authority are binding on the whole territory of the country for all state or private bodies, organizations, officials, and citizens and shall be complied".

Additionally, in sub-clause "f", Article 11 of the Georgian law concerning IDP and refugees, the temporary residence or the place of registration of IDP is explained as "the place of residence selected by a person during the period of being an IDP, or the place where the person is temporarily accommodated".

The letter of the chairman of the Parliamentary temporary commission for the issues of territorial integrity also states that "applicants have lived in the building of the seismic observatory since 1998". Thus, despite the fact that they are not registered at that address, it is their temporary residence and that temporary residence is their actual place of living, according to which the person should be registered. As well as that, having no registration cannot become the grounds for the restriction of citizens' rights and freedoms". Shota Malashkhia, the chairman of Parliamentary temporary commission for the issues of territorial integrity addressed a letter (#1835-07) to Giorgi Kheviashvili, the Minister of Refugees and Resettlement, on 23 March of 2007 regarding the IDP who live at #77 Nutsubidze Street in the building of seismic observatory.

For the purpose of the proper implementation of Georgian Government resolution #157, the public Defender addressed the deputy minister of Refugees and Resettlement, Koba Subeliani, with a recommendation (#215/

05-3/0627-07) on the basis of sub-clause "b", Article 21 of the organic law of Georgia concerning the Public Defender to register IDP at the address, #77 Nutsubidze Street, in the building of seismic observatory, before they are provided with another living space, so that they can fully enjoy state benefits envisaged by Georgian legislation. We have not received a response so far. The case is under proceeding.

The case of IDP living in Zemo Ponichala

The Public Defender is studying a collective application (#0979-06/1) of IDP living in an unfinished block of flats at #11 in the Zemo Ponichala settlement. The application says that 74 IDP families took up their residence at the above address since they had no other space to live. The applicants point out that they conducted certain repair works themselves, however, it became necessary to get a temporary registration at the above address in order to create elementary living conditions, such as electric wiring .

On 18 October 2006, according to resolution #190 of the Georgian Government, the Ministry of Refugees and Resettlement was commissioned to "conduct the population registration in collective centres with the aim of organized resettlement, along with the owner of the property or an authorized representative; ensure drawing up the lists of accommodated IDP; and the distribution of space and resettlement of refugees with the consent of the property owner or an authorized representative". In the event of dealing with the building under state ownership, theauthorized person is the Ministry of Economic Development. According to sub-clause "l", clause 2, Article 2 of the provision of the ministry, one of the main objectives of the ministry is "to own, dispose, and manage the property on behalf of the State". Consequently, it is the Ministry of Economic Development that is authorized to approve the resolution on which basis the Ministry of Refugees and Resettlement will implement the resettlement of IDP.

The case of IDP living in an unfinished block of flats at #11 in Zemo Ponichala settlement features in a letter (#6671) of Vice–Mayor, Mamuka Akhvlediani, in which we read that in the Tbilisi registry information service, the block of flats located at #11, 4 m/r Zemo Ponichala is not registered with the right to own. The Tbilisi Mayor's office does not object to the Ministry of Economic Development implementing its management according to the current legislation.

Apart from the above, the deputy Minister of Refugees and Resettlement Irakli Giorgadze, directly requests in his letter (#01/01-17/5323), dated 31 July 2007, from the Ministry of Economic Development to issue a written consent to ensure the applicants' registration at the above address. Meanwhile, on 17 September 2007, theapplicants were notified by the letter (#15/844/5-7) of the Deputy Minister of Economic Development, Kakha Damenia that "the issue of registration of IDP citizens from Abkhazia is the competence of the Ministry of Refugees and Resettlement".

As of this date, 74 families remain unprotected by law, as their virtual place of residence does not coincide with the registration. Consequently, theapplicants face serious problems in terms of getting different social aids. Taking the above circumstances and norms into consideration, on 22 January 2008, the public Defender sent a proposal (#198/05-3/0979-06/1) to the Minister of Economic Development of Georgia, Giorgi Arveladze, and the Minister of Refugees and Resettlement, Koba Subeliani, to consider the registration issue of IDP residing at #11, 4 m/r Zemo Ponichala, in one of the unfinished blocks of flats, in a coordinated way. A reply has yet to be received. The case is under proceedings.

The case of Sukhumi University Students

On 13 August 2007, theIV and V course students of Humanitarian and Social Science Department of the Sukhumi affiliation of I. Javakhishvili Tbilisi State University (off-campus education program) addressed the Public De-

fender with a collective application. The students pointed out that Alexander Shangua, acting Rector of Sukhumi University, requested from them to pay additional sums. As they explained, on the basis of a verbal statement made by the acting rector, more than a thousand students of the off-campus education program paid the sum without signing any written agreement with Sukhumi University. On the students' information, Shangua threatened them that if they did not pay these sums, they would not be able to accumulate credits and would not be transferred to on-campus education. As the applicants say, Shangua told them that he sells credits to students, and it is up to them whether they buy them. They expressed their doubt that the University administration was attracting sums without any official documentation and legal acts, and that he was involved in some uncertain financial operations.

The students also explained to Public Defender representatives that they did not know the amount of the sum to be paid for the summer semester beforehand. In the beginning, they talked about a small sum, but finally it turned out that they had to pay three times more than they expected. Applicants also presented receipts confirming payment (payment order #106, #7777) for I and II semesters, as well as for the summer semester (payment order #1). They also presented individual contracts (#19-02; 09-133) that were signed at the moment of their enrolment, which regulate the relationship between the students and the university. According to the agreement, theannual fee for the whole period of 2002 was determined to be 360 GEL. Despite the fact that there is no provision on other sums in the agreement, a V course student, Vitali Pertakhia, paid 265.50 GEL for the summer semester. About 1,000 students are in the similar situation.

In order to study the situation in more detail, Public Defender representatives visited Sukhumi University and met with Shangua. In the conversation he could not point to any single document that would indicate the fee for the summer semester, but he mentioned the "formulae" for how to compute the fee: "m" divided by 48, where "m" stands for the sum paid for one academic year, (48 is the average number of credits accumulated during the year), and that total multiplied by the accumulated credits during the year gives the amount of the sum for the summer semester for each student. It is noteworthy that the above rule of computing does not occur in any of the administrative/legal acts. According to Shangua, the"formulae" was approved at the session; however, he could not produce any of the minutes of the board meeting or any administrative/legal acts. Shangua categorically refused to give any written explanatory notes, which were required by law; he also refused to sign the report drawn up by us.

Public Defender representatives met with the Dean of Humanitarian and Social-Political Sciences Department of Sukhumi University, Davit Chitaia. He confirmed that the credit charge was determined verbally at the session. The dean's office has not received any written order. As he said, quality provision service computed the accumulated credits the second time at the end of the semester, but this time, thenumber of accumulated credits turned out to be fewer, which caused students' protest.

They requested drawing up contracts with the administration on which they would pay the fee. Chitaia considers that they delivered all subjects envisaged by credits to V year students, and that they were to attend summer semester lectures at the expense of the University. The summer semester was introduced by the order #04/01-85 of the affiliation director on 15 June 2007; however, theabove document does not mention the tuition fee. No other administrative/legal act or individual contract with students exists to eliminate the above drawback. In fact, students were made to pay quite large sums even though no relevant documentation existed.

Proceeding from the above, the public Defender considered that the actions of Shangua contain elements of bureaucratic crime. Pursuant to sub-clause "c", Article 21 of the organic law of Georgia concerning the Public Defender, on 3 September 2007 the Public Defender sent off the relevant materials to the deputy prosecutor general, Giorgi Latsabidze, for further response.

A letter dated 26 October 2007 (#c25102007/48) from the head of the department of investigation procedure, management, and criminal persecution of illegal income legalization of the Ministry of Finance, Environment

and Natural Resources, M. Gvaramia, informed us that the materials on Shangua were sent to the investigative department of revenues of the Ministry of Finance in order to initiate a preliminary investigation into the case.

The letter (#16-03-2227) of 19 November 2007 from the head of the investigative department of revenues of the Ministry of Finance, Shota Gengashvili, informed us that a preliminary investigation at the investigative department of revenues of the Ministry of Finance was started on 5 November 2007 under Article 220 of the Criminal Code providing for the following elements of crime: Excessive use of official duties by the acting rector of Sukhumi University, Al. Shangua. Currently the investigation is under way. In the event of obtaining relevant evidence of the crime, the wrongdoers will be brought to criminal responsibility. We received the same information in the letter (#c 20.11.2007/92) of the human rights protection department head of the Office of the Prosecutor General, Archil Giorgadze. The case is under proceeding.

The case of Jumber Meporia

The Public Defender is getting familiar with the application (#1619-07) of Jumber Meporia. He is an IDP from Abkhazia and has an IDP certificate. According to Meporia, he is currently living with his family in the village of Saberio, in the Gali region. Three members out of five in the family are pensioners and the other two are unemployed. Several years ago, theapplicant's son, Goderdzi Meporia received heavy head injuries and different kinds of fractures on both legs as a result of a car accident. At present, Goderdzi Meporia is bed-ridden and requires urgent operations; however, his family has no financial resources to afford his treatment. In addition, Meporia states that their house was destroyed by a landslide and they now have to live in one room under extremely heavy conditions.

In order to get registered in the database of families under the poverty line, theapplicant addressed the Ministry of Labour, Healthcare, and Social Welfare of Georgia, but could not get the registration. In addition, the employee of the establishment verbally explained to him that social programs did not refer to citizens in the Gali region.

Pursuant to articles 18 and 23 of the Georgian law concerning the Public Defender, on 15 November 2007 the Public Defender addressed a letter (#3477/05-3/1619-07) to the Deputy Minister of Labour, Healthcare, and Social Welfare of Georgia, Davit Lomidze, and queried the following information: Whether citizens living in the Gali region were included in state social programs; how many socially unprotected families were registered in the database in total as of that date; and whether these people had any difficulties in the process of registration or in receiving social allowances.

On 17 December 2007, we received a reply letter (#01-11/07/10946) from Lomidze stating that according to resolution #51 of 17 March 2005 of the Georgian Government concerning poverty reduction and improvement the measures of social protection, formation of the database is a single legal process that includes the submission of applications, processing, evaluating the family's socio-economic state, and granting the rating points. Thus, the decision on registration in the database, or family's participation in different social assistance programs is taken only upon the completion of these procedures. Since Jumber Meporia's family lives in the Gali region, thesocial agent is not able to enter the territory under Abkhazian control in order to evaluate the family's conditions. Due to this reason, Jumber Meporia's registration into the database of socially unprotected families is not possible.

The Public Defender applied to the Ministry of Labour, Healthcare, and Social Welfare of Abkhazia regarding Jumber Meporia's case. According to sub-clause "h", clause "g", Article 5 of the law of Abkhazia concerning the structure, authority, and the activities of the government of the Autonomous Republic of Abkhazia, the government "ensures the implementation of social-economic, educational and cultural programs". Pursuant to sub-clause "j" of the same article, theAbkhazian Government "takes part in establishing legal order and the implementation of human rights protection measures".

According to sub-clauses "a" and "b", clause 1, Article 2 of the provision of the Ministry of Labour, Healthcare, and Social Welfare of Abkhazia, thesphere of management of the ministry includes "the activities aiming at the provision of healthcare to IDP (also to those living on the Abkhazian territory as far as possible)". Pursuant to sub-clauses "c.c" and "c.d", clause 1 of the same article, themain objective of the ministry is "to identify, register, and provide assistance to single, destitute pensioners, disabled, persons below 18, large families, persons with impaired vision, and orphans. Participation in the organization of providing assistance to IDP pensioners, persons under 18, disabled persons, mothers with many children, single mothers, and other socially unprotected categories within its competence. As well as participation in the provision and integration of social-psychological adaptation and social-working rehabilitation programs of disabled IDP, and development of grant winning programs".

According to Articles 18 and 23 of the organic law of Georgia concerning the Public Defender, on 22 October 2007, the public Defender addressed a letter (#3263/05-3/1619-07) to the Minister of Labour, Healthcare, and Social Welfare of Abkhazia, Dalila Khorava, and queried information about the types of programs covered by Abkhazian legislation, the description of these social programs, and copies of the relevant legal enactments. The Public Defender also requested that they studied the application of an IDP from Abkhazia, Jemal Meporia.

On 3 December 2007 we received a reply letter (#1550) and were informed that individual social programs are not covered by Abkhazian legislation. The case is under proceeding.

The case of Nana Amashukeli

Nana Amashukeli applied (#439/b) to the Public Defender. She is an IDP from Samachablo, Tskhinvali. In 1994, she married Davit Aznaurashvili, who took part in the fight for territorial integrity of Georgia. Since she married such a person, her parents were cast out of Tskhinvali in 1994 and since then all of them have been living together in her husband's house in Batumi.

Further, theapplication says that in 1996 Amashukeli and her parents were granted the status of IDP. Since the family was renting a flat, they indicated Davit Aznaurashvili's father's address in their IDP certificates. In 1998, theapplicants' parents left Georgia and moved to Russia to work.

In 1999, the Ministry of Labour, Healthcare, and Social Protection of Ajara told Amashukeli that since she was married to a person from Batumi, she was deprived of her status of IDP and state allowances. The applicant points out that she accepted what she was told as she did not have any knowledge of the law. Later, in 2003, she found out that the above reason could not be the grounds for deprivation of her status. Amashukeli addressed the Ministry of Labour, Healthcare, and Social Protection of Ajara where they explained to her that as she did not have the registration, she was not entitled to get allowances. They could not provide any other details, and she was told that she had to clarify further issues by herself in Tbilisi at the Ministry of Refugees and Resettlement.

According to Amashukeli, she repeatedly addressed the Ministry of Labour, Healthcare, and Social Protection of Ajara, but could not get any answers from them. Finally, on 25 September 2006, she was officially informed by a letter (#01-17/7191) from the Deputy Minister of Labour, Healthcare, and Social Protection of Ajara that stated she was not on the computer lists of IDP due to not having undergone registration. The copies of IDP registration lists of 1997-1999 were enclosed in the same letter. It should be noted that her parent's names are included in each list.

On 16 January 2007, according to a letter (#01-17/42) from the Deputy Minister of Labour, Healthcare, and Social Protection of Ajara, A. Shvelidze, Amashukeli was informed that her application was forwarded to the head of the IDP department, Lasha Bregvadze, of the Ministry of Refugees and Resettlement for further

consideration. On 14 March 2007, a letter (#01/01-17/1857) from the Deputy Minister of Refugees and Resettlement, Irakli Giorgadze, informed her that in order to grant her the status of IDP she had to address the Ajara and Samegrelo–Zemo Svaneti department of the Ministry of Refugees and Resettlement of Georgia and personally submit her ID card and all relevant documentation in Zugdidi. Additionally, it was also possible for her to directly address the Ministry of Refugees and Resettlement of Georgia. The issue was to be considered by a specially established recommendation committee.

On 31 May 2007, a letter (#06/01-17/3973) from Bregvadze, informed Amashukeli about the procedure of acquiring IDP status. According to her, on 5 June 2007, she and her two children addressed the Ajara and Samegrelo–Zemo Svaneti department of the Ministry of Refugees and Resettlement of Georgia in Zugdidi; however, she was recommended to go to Tbilisi. On 22 June 2007, Amashukeli appeared in the Ministry of Refugees and Resettlement for an interview. The applicant was required to produce the document verifying that she really lived in Tskhinvali. On 24 June 2007, Amashukeli and her family members arrived in Tskhinvali. The applicant was issued her birth certificate there. This time she was asked for a marriage certificate, which the applicant presented at the ministry. On 27 July 2007, Amashukeli received a letter (#06/01-17/5216) from Bregvadze, which informed her that her child had to personally arrive to pick up the plastic card and allowance. The applicant addressed the Ministry of Refugees and Resettlement again. As she points out, Bregvadze tore up her birth certificate and told her that the document was to be in the Georgian language. He also requested that the applicant produced the declaration of immovable property.

Since that time Amashukeli has addressed several other agencies; however, nothing has improved and the problem remains unsettled.

It is worth noting that the officials concerned at the Ministry of Refugees and Resettlement speak about granting and not restoring Amashukeli's status of IDP. Taking into consideration the circumstances that the applicant was granted the status of IDP from 1996 until 1999, the Ministry of Refugees and Resettlement was to discuss the restoration of the suspended status and not granting it anew. Restoration and granting of the status of IDP are different concepts in legal terms and require absolutely different procedures.

According to sub-clause "a", clause 1, Article 6 of the Georgian law concerning IDP and refugees, not undergoing the registration in the terms determined by the ministry can serve as a basis for suspension of IDP status. According to clause 2 of the same article, "the person's IDP status will be restored if the basis of its suspension is eliminated". In Amashukeli's case, since the suspension of her status was caused due to non-registration reasons within the determined terms, she must be given the opportunity to undergo the above registration that will automatically restore her status.

Based on the organic law of Georgia concerning the Public Defender on 4 January 2008, the public Defender addressed a letter (#04/05-3) to the Deputy Minister of Refugees and Resettlement of Georgia and sent off all the relevant materials supporting The casein order that they react further. No reply has followed from the agency to this date. The case is under proceeding.

The case of Simon Gvarmiani

On 6 December 2007, Simon Gvarmiani applied (#1940-07) to the Public Defender. He is an IDP who at present lives in the village of Sarkineti in the Dmanisi region. The applicant states that in October 2007 he lost his IDP certificate and those of his three children. He applied to the Dmanisi Regional Police Department about the above.

According to article 8 of the Georgian law concerning IDP and refugees, "the ministry, along with executive bodies and local self-governing bodies concerned, manages issues concerning IDP resettlement, registration, or the solution of other problems within their competence".

By order #124, dated 1 November 2007, of the Minister of Refugees and Resettlement concerning IDP certification, status granting and registration, approval of the IDP form, certificate provisions, and the form of application, the provision of an IDP certificate was approved. According to clause 6 of article 3 of the provision, "issuance of a duplicate IDP certificate can take place in the event of damage or loss of the certificate".

On 6 December 2007, the public Defender addressed a letter (#3670/05-3/1940-07) to the Deputy Minister of Refugees and Resettlement of Georgia, Aleksandre Gakharia, and sent off all the relevant materials at his disposal for further response. The above agency has not replied to this date. The case is under proceeding.

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ANNEX # 10.
FREEDOM OF INFORMATION

The case of A. Toliashvili

On 18 October 2007, Akaki Toliashvili appealed to the Public Defender, having submitted a statement (# 1677-07) regarding the failure to get information from the Ministry of Education and Science as to when a list of personnel of Tskhinvali University, under his supervision, had been approved. In accordance with Article 2, sub-paragraph 1 of the General Administrative Code of Georgia, an "official document" is considered public (including drawings, models, plans, schemes, photographs, electronic information, as well as video and audio footage), if it is kept in a public institution. In addition, information received, elaborated, created, or sent by a public institution or personnel member involved in professional activities is also considered public.

In its essence, theinformation requested by Toliashvili was public. The freedom of public information is recognised by the Constitution of Georgia and the General Administrative Code. Under Article 41 of the Georgian Constitution, every citizen of Georgia has the legal right to get familiar with the official documents existing in State Institutions, if it does not contain State, professional, or commercial secrets. Under the first part of Article 37 of the General Administrative Code, everybody has a right to request public information regardless of its physical shape or storing condition; choosing the form for obtaining public information, if it is kept in different forms; and also to get familiar with the information from the original document. Under the threat of damaging the original document, the public institution is obliged to provide the possibility of its observation under supervision or provide a copy created in a relevant way. Meanwhile, under part 1, Article 40 of the same code, the public organization is liable to issue public information immediately, or no later than a 10-day period, if the answer to the request to public information requires:.

a) Tracking and processing of the public information in a structural sub-division of the organisation, located elsewhere or in another public organisation;
b) Tracking and processing of separate documents of a major volume that are not interconnected; and
c) Arrangement of consultations with the structural sub-division located elsewhere or with another public organization.

If a 10-day term is required for the provision of information, the public organization is liable to notify the interested party immediately.

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As for the liabilities of the public organization to provide copies, the given issue is to be regulated by Article 38 of the mentioned code, under which, a public organization is obliged to provide availability of copies. It is inadmissible to set any type of price for the provision of any type of public information, except for a certain amount of payment for making copies. Thus, requirements and terms for issuing public information, set by the law, were violated, which in itself violates the rights of Toliashvili.

Proceeding from the above said, the public Defender addressed the Minister of Education and Sciences with the recommendation, on the basis of "b" and "d" paragraphs of Article 32 of the Organic Law of Georgia, to issue the public information required by A. Toliashvili, under the Articles 38 and 40 of General Administrative Code, recommended at the same time to consider the liabilities of the persons, who failed to provide the timely provision of public information to the interested person, under the Articles 78 and 79 of the Georgian Law on "Public Services".

The recommendation was satisfied and Toliashvili was issued the required public information; however, theissue of the liabilities of the persons who failed to issue the public information required within a certain timeframe had not been considered.

The case of Marina Solomonishvili

On 11 October 2007, Marina Solomonishvili addressed (# 1646-07) the Public Defender regarding a problem that arose in connection with the reception of public information. Solomonishvili turned to the Fund for Rehabilitation and Reconstruction of Old Tbilisi of the City Municipality, in connection with the price of 1 GEL per m2 of the section purchased by the fund from the residents at #12 Lermontov Street.

Under Article 1509 of the Civil Code of Georgia, juridical persons established by the state on the basis of the law are juridical persons of the public law, along with the state organizations and state funds, which have not been established in accordance with the organizational/legal form set by the Civil Code or the Law on Entrepreneurial Activities.

Under sub-paragraph "a", Article 2 of the General Administrative Code, all the state, local self-governing and administrative bodies or organizations, as well as any physical or legal person, acting as a public legal authority on the basis of legislation is an administrative body. Paragraph "a", Article 27 of the same code states that it is determined that a state or self-governing body or an organization, also a person who executes authority on the part of a public organization, on the basis of legislation, a legal person of the public law, and a legal person of private law financed by the state budget, represents a public organization

Sub- paragraph "m", Article 2 of the General Administrative Law also determines that an "official document" is kept in the public organization, as well as information received, processed, created or sent by a public organization or employee, in connection with the professional activities.

Proceeding from the above, thenature of the information required by Solomonishvili was public, and as requirements and terms envisaged by the law in connection with the issue of public information have not been observed, therights of Solomonishvili have also been violated.

The Public Defender, under "b" and "d" sub-paragraphs, Article 21 of the Organic Law of Georgia on the Public Defender, addressed the Municipal Rehabilitation and Reconstruction Fund of Old Tbilisi with the recommendation to issue the required public information to Solomonishvili immediately, as provided by Articles 38 and 40 of the General Administrative Code; and at the same time, consider the liability of the persons that failed to provide the applicant with the required public information in a timely manner, as covered by

Articles 78 and 79 of the Georgian law on Public Services. The answer to the recommendation has not yet been received.

The case of Giorgi Molodini

On October 1 2007, Giorgi Molodini addressed the Public Defender. In accordance with the documents presented in his case on September 2007, he appealed to the Georgian Ministry of Labour, Health, and Social Affairs, with the request for the names of people that in the years 2004-2007 were entitled to the use of referral or any other state programme, which is public information.

On September 10, Molodini was notified in written form that in accordance with Article 27 of the General Administrative Code of Georgia, and Articles 21 and 28 of the Georgian Law on the rights of patients, theinformation requested was confidential, and the ministry was unable to provide it without the preliminary written agreement of the patients.

Proceeding from the above, Molodini, was refused the requested information and was offered no explanation regarding the rules of contesting the refusal to be provided the public information. Thus, Article 41 of the General Administrative Code has been violated under which:

1. The applicant shall be notified of the refusal to provided with the public information requested at once; and
2. In The case of refusal, the public organization is obliged to inform the applicant of his/her rights and rules of contesting within a 3-day term. It is also required to point out the structural sub-division or public organization with which the consultations have been conducted while the decision on the refusal to issue the given information was made".

In the view of the above said, the public Defender shall not agree to the reasons presented in the letter of 10 September 2007 (#01-11/01/7428) regarding the refusal to issue the required public information to Molodini, due to the following circumstances:

According to Article 27, sub- paragraph "h" of the General Administrative Code of Georgia, personal data is defined as public information, which allows the identification of the person;. While under Article 271, theissue of considering personal data as a personal secret, except in the cases covered by law, is decided by the person whom the given data concerns". Under Article 44 of the of the same code, "the public organization is liable not to disclose the personal information regarded as a personal secret, without the consent of the person under question, or cases covered by law, or on the grounds of a court decision, except for personal data concerning State officials, and persons presented as candidates for a State post".

The definition of a high official is given in the law of Georgia on conflict of interests in public services and corruption, thesecond article of which points to the fact that under the law the term "high official" implies the following officials:

a) The President of Georgia;
b) Members of the Georgian Parliament;
c) Members of the higher representative bodies of Abkhazia and Ajara Autonomous Republics (25.05.2007 4818);
d) Heads and deputies of the higher bodies of executive power of the Autonomous Republics of Abkhazia and Ajara;
e) Georgian ministers and their deputies;

f) Head of the State Chancellery and the deputy;
g) Head of the State Department of Georgia, Head of the State Inspection of Georgia and the deputies;
h) Heads of the structural sub-divisions of the Georgian Ministry or the persons of the same level;
i) Head of the structural sub-division of the State Chancellery of Georgia or the person of the same level;
j) Head of Georgia's State sub-departments and organizations;
k) Heads and deputies of the departments, bureaus, main administrations and administrations of Georgian Interior and Defence Ministries and the persons of the same level;
l) Heads of income services, bodies of revenue agencies, and tax and customs bodies of the Ministry of Finances of Georgia;
m) Head of the Central Conscription Commission, military commissars of regional and city conscription commissions (Tbilisi, Batumi, Rustavi, Sokhumi, Poti, Kutaisi, Tskhinvali), as well as the military commissars of the city districts;
n) Chairman of the Control Chamber of Georgia, the deputy, member of presidium, department, heads of regional and city bureaus, heads of the Control Chamber of the Autonomous Republics of Abkhazia and Ajara;
o) President of the National Bank of Georgia and the board members;
p) Member of the meeting body of the President of Georgia;
q) Member of the National Commission of Georgia's Energy Regulation;
r) Removed (30.03.2007 4603)
s) Removed (5.06.2007 4861)
t) Head of the Central Election Commission of Georgia, the deputy and commission secretary;
u) State Authority – Governor and the deputies; (11.07.2007)
v) Heads of regional and city (Tbilisi, Batumi, Rustavi, Sokhumi, Poti, Kutaisi and Tskhinvali) local representative bodies;
w) Heads of the local executive bodies of the region and the city (Tbilisi, Batumi, Rustavi, Sokhumi, Poti, Kutaisi and Tskhinvali), as well as the heads of the executive bodies of city districts and their first deputies.
x) Judges;
y) Prosecutor General of Georgia and the deputies, heads of the department of the Office of the Prosecutor General of Georgia, heads of services and the persons of the same level, district and regional prosecutors of the Autonomous Republic of Ajara and Tbilisi;
z) Other persons elected, appointed, or approved, in accordance with the laws provided by the Constitution of Georgia.

According to the standards described above, it could be clearly seen that the information that has to be kept strictly confidential by the public organizations regarding private persons and other public servicemen shall be absolutely open and transparent in regards with the high officials who are strictly defined by the norms mentioned above. Their personal data is available for anybody interested. There also is a reference regarding the above-mentioned fact in one of the decisions of the European Court procedures (Lingens vs Austria, application # 9815/82, serial #103), which reads that politicians and high officials, which perform public functions, present themselves to the particular interest of the society on their own free will. Thus, particular interest of the society towards them is absolutely understandable.

Apart from the rules set by the national legislation, it is noteworthy to consider the definitions of the European Court regarding different cases (namely the cases of Ekin Association, Informationsverein Lentia and others, and Autronic AG) of freedom of information and the restrictions of its dissemination. The European Court pointed out that the restriction of information freedom shall be considered a violation of Article 10 of the European Convention. Restriction is admissible, but it has to be legally relevant and precisely defined by the law, it may be possible only in cases when it is considered necessary within a democratic society.

As we have mentioned above, in accordance with the Administrative Code, personal data represents the type of information that allows the identification of the person, the person's name, place of residence, telephone number, etc.; while Article 44 of the same code sets the publicity issue of the data of high officials.

Proceeding from the above, the public Defender believes that Molodini shall not be refused the names of the high officials defined by the law, who made use of the different state medical programmes. The applicant had not requested the information of their health condition, thus referring to the law on patients rights under Georgian law, and issuing refusal on the basis of the given law has no legal grounds. As for the other officials, the data shall remain confidential. Therefore, theinformation requested by Molodini is public in nature when it concerns high officials.

Under Articles 37 and 40 of the General Administrative Law, "everybody is entitled to the public information regardless of its physical shape and storing conditions; they can choose the form of receiving such information if it exists in different types; and they can also get familiar with the information immediately or no later than a 10-day term if the provision of public information requires:

d) Tracking and processing of the public information in a structural sub-division of the organisation located elsewhere, or in another public organisation;
e) Tracking and processing of separate documents of a major volume that are not interconnected; and
c) Arrangement of consultations with the structural sub-division located elsewhere, or with another public organization.

If a 10-day term is required for the provision of information, the public organization is responsible for notifying the interested party immediately. As for the responsibilities of the public organization to provide copies, the given issue is to be regulated by Article 38 of the mentioned code, under which the public organization is obliged to provide availability of the copies. It is inadmissible to set any type of price for the provision of any type of public information, except for a certain amount of payment for making copies".

Proceeding from the above, therequirements set by the law concerning the provision of public information was violated, and the personal data of the high officials is considered confidential without any legal grounds, which in itself is a violation of citizens' rights guaranteed by the Constitution and other laws. Thus, in accordance with sub-paragraph "b", Article 21 of the organic law on the Public Defender, the public Defender addressed the Ministry of Labour, Health, and Social Affairs with a recommendation to issue the required information to Molodini. The recommendation was not met, and the ministry pointed out that the application regarding the employment of state health care programmes is submitted directly by the citizens, where the occupied positions are not specified. Accordingly, theidentification and granting it to the high official is impossible.

The case of Gela Mtvlivishvili

According to the statement of the Public Defender, who was addressed by Gela Mtvlivshvili. From the documents presented in The caseit became known that the Editor-in-Chief of Imedi newspaper, Gela Mtvlivishvili, appeared to the council of the Gurjaani Municipality and requested a copy of the letter of Gurjaani residents, in which they accused him of certain issues, to be given to him as public information.

On August 20, Mtvlivishvili was informed through a letter that under paragraph 2, Article 37 of the Administrative Code of Georgia, the gurjaani Municipality Council considered the provision of the copy of the letter to be inexpedient. From the same letter it became known that the contents of the accusations and criticism contained in the letter had been related to him during a conversation.

From the explanatory note of the Gurjaani Municipality Council Chairman, dated 24 August 2007, it becomes clear that the letter includes confidential data of the applicant himself, persons occupying positions and other persons, which, if divulged, would be damaging. The letter also contains the signatures of the persons having made the statement, which would allow their identification. The explanatory note also points to the fact that the authors of the statement, apart from other issues, point to possible criminal activities by the high officials.

Proceeding from the above, Mtvlivishvili was denied access to a copy of the statement without being given a plausible explanation, or being informed about the rules of contesting the refusal, as a result of which, Article 41 of the General Administrative Code was violated:

1. The applicant shall immediately be informed of the refusal of a public organization to grant access to public information; and
2. In The case of granting access to public information, a public institution is obliged to notify the applicant in written form of his rights and rules of contest within three days from reaching the decision. He shall also be pointed to the structural sub-division or public organization that had been consulted when the decision on the refusal to grant access was made.

As there does not exist preliminary written consent of the persons on the issue of divulging confidential information, I believe that, with the aim of protecting personal data of the persons, that that given part of the letter shall remain confidential, while the information on Mtvlivishvili and the citizens' opinion of high officials shall be issued to Mtvlivishvili due to the following reasons:

In accordance with Article 27 , paragraph "h" of the General Administrative Code, personal data is defined as public information, which allows the identification of the person; while according to paragraph 271, theissue of "determining the confidentiality of personal data is resolved, apart from the cases covered by the law, by a person of which the given information concerns." According to Article 44, the public organization is obliged not to make public the information identified as confidential without the consent of the given person, or in cases envisaged by the law, without the approval of a court decision, except for the personal data of high officials (and the candidates to State posts)".

Freedom to public information is recognized by the Constitution of Georgia and General Administrative Code. Under Article 41 of the Constitution of Georgia, "every citizen of Georgia has a legal right to access official documents kept in state institutions, if they do not contain state, professional, or commercial secrets". In accordance with "m" sub-paragraph, Article 2 of the General Administrative Code, "any official document (including a drawing, model, plan, scheme, photograph, electronic information, video and audio recording) is regarded as public information, which includes information protected by the public institution, as well as information received, processed, created, or sent by the public organization, or received by the serviceman in connection with the professional activities". On the basis of Article 39 of the same code, the person shall not be denied access to the public information that allows the identification of the given person, and in accordance with the same code, shall not be available for other persons. The person has a right to get familiar with the personal data filed in a public institution regarding him, and be granted free access to copies of the information.

Proceeding from the above, theinformation requested by Mtvlivishvili is considered to be public information in the part where it concerns him personally and the citizens' views on high officials.

In connection with The casethere does exist a European Court decision (Oberschlick vs Austria). In accordance with Article 29 of the decision, politicians and high officials carrying out public functions place themselves under the particular interest of the society on their free will, and therefore shall be more tolerant to the criticism expressed against them, even if the statements are offensive, annoying, or shocking.

In the given case, the european Court stated a violation of Article 10 of the European Convention on basic human rights and freedoms when the Austrian courts issued a sanction against a journalist for using the term "idiot" reference to Chancellor York Heider.

Under Articles 37 and 40 of the General Administrative Code of Georgia, "everybody is entitled to obtaining public information regardless of its physical shape or storage conditions; everybody is given the right to chose the form in which the information is received, if it is available in different forms; and everybody can get familiar with the information immediately or no later than within ten days, if the answer to the request requires:

a) Tracking and processing of the public information in a structural sub-division of the organisation located elsewhere or in another public organisation;
b) Tracking and processing of separate documents of a major volume that are not interconnected; and
c) Arrangement of consultations with the structural sub-division located elsewhere or with another public organization.

If a ten-day term is required for the provision of information, the public organization is responsible to notify the interested party immediately. As for the responsibilities of the public organization to provide copies, the given issue is to be regulated by Article 38 of the mentioned code, under which, "the public organization is obliged to provide availability of copies. It is also inadmissible to set any type of price for the provision of any type of public information, except for a certain amount of payment for making copies".

Proceeding from the above, therequirements set for the issue of public information by law have been violated, and in the view of the Public Defender, in accordance with the sub-paragraph "b", Article 21 of the organic law on the Public Defender, the public Defender addressed the Gurjaani Municipality Council with the recommendation to provide Mtvlivishvili with the requested copy of the letter.

The recommendation was carried out and the journalist got access to the required information.

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ANNEX #11. VIOLATION OF THE RIGHT TO PROPERTY

On October 24 2007, Davit Chiaberashvili submitted a statement to the Public Defender. From the documentation presented, it became known that the applicant is the founder and director of Sulphur Baths Ltd.. The property located at #2 Abano Street (a plot of 233m2 and a building) was in the ownership of the Chiaberashvili until December 14, 2006.

The applicant explains that, he was ordered to cede the property for free to the State. As he had no desire to give away his property, the representatives of the Office of the Prosecutor General threatened him and his family members. They threatened they would accuse him on various grounds and send him to prison. The negotiations were conducted at the Ministry of Sport Culture and Protection of Historical Monuments. After that, the applicants and family members, accompanied by representatives of the Office of the Prosecutor General, went directly to Notary Nino Ginturi, and on November 20, 2006, under pressure and against their will, signed the agreement.

Presently, Chiaberashvili intends to take The caseto court with the claim to consider the agreement null and void.

In accordance with Article 185 of the Civil Code, "proceeding from the interests of the buyer, theseller is considered owner if he is registered as such in a public register, with the exception of cases when the buyer was aware of the fact that the seller was not an owner".

Proceeding from the above, the legal interest of D. Chiaberashvili lies in making a statement to the possible buyer regarding the fact that the agreement had been signed under pressure, and that he intends to contest the agreement that was reached illegally.

On 25 October 2007, an auction was held in the Ministry of Economic Development, at which the property presented against the will of the applicant was sold to a private person, Zaza Kurdghelashvili. A press conference was held in the headquarters of the Public Defender where information regarding this event was made public, proceeding from the interests of the owner, with the aim of excluding the decency of the future buyer.

During the auction, theapplicant took advantage of the possibility and made a public statement, in the Ministry of Economic Development, that the auction was conducted on a property that came to the possession of the State as a result of an illegal act. Despite the above, theauction was held, as a result of which, the person having

won at the auction, under the terms of sub-paragraph "g", Article 2 of the Georgian law on the right to registration of movable items, was given the right to require the registration of the property in a public register, although the applicant preserved the right to demand return of the property through filing a claim in court and lead no arguments with the Ministry of Economic Development, only on the basis of the norms of groundless accumulation of wealth (Articles 976-991 of the Civil Code of Georgia) in connection with the compensation of material losses.

It should be pointed out that consideration of the factor of the buyer's honesty is in the competence of the court, and shall be reflected in the decision after the examination of the case.

The applicant names the members of the Tbilisi Office of the Prosecutor General (Giorgi Khvedelidze and Valeri Lacuzbaia), who, according to his statement, exercised psychological pressure upon him with the aim to obtain the agreement of the gift.

On the basis of Chiaberashvili's statement, the public Defender believes that the signs of offence could be traced in the behaviour of the representatives of the Tbilisi Office of the Prosecutor General, which are covered by Articles 151 and 332 of the Criminal Code of Georgia.

In accordance with Article 21 of the organic law on the Public Defender, the public Defender sent the materials in his possession to the Prosecutor General of Georgia for reaction, and addressed them to initiate a preliminary investigation regarding the fact.

On October 25, 2007, Giorgi Khizanishvili submitted an appeal to the Public Defender. From the presented documentation, it became known that the applicant is the founder and director of Gogita Ltd. Until November 20, 2006, he owned a property at #2 Abano Street (plot of 708 m2 and a building, Chreli Abano).

The applicant, as founder and enterprise director, was required to cede the property as a gift to the State. As he had no desire to give away the property, threats were carried out on Khizanishvili and his family by representatives of the Office of the Prosecutor General. He was threatened that he would be accused of any crime and sent to prison. On November 20, 2006, theapplicant and his family, accompanied by representatives from the Office of the Prosecutor General, went to the Notary, N, Ginturi, where they forcibly were made to sign the beneficiary agreement against their will.

Similar to Chiaberashvili, Khizanishvili disputes the beneficiary agreement . In accordance with Articles 85-89 of the Civil Code of Georgia, he intends to file a claim in court to invalidate the agreement.

On 25 October 2007, an auction was held at the Ministry of Economic Development of Georgia where the property presented at the auction against the will of the applicant was sold to one of the enterprises.

The applicant gives the names of the representatives of the Office of the Prosecutor General (Giorgi Khvedelidze and Valeri Lacuzbaia), who exerted psychological pressure on him with the aim of reaching the gift agreement. Relying upon the explanatory note of Khizanishvili, the public Defender presumes that traces of criminal offence are evident in the actions carried out by the representatives of Office of the Prosecutor General, which is covered by Articles 151 and 332 of the Criminal Code of Georgia. Accordingly, he sent The casematerials to the Prosecutor General.

The statement of the applicant was not proved by any other clear evidence; however, it was necessary for the Prosecutor General to start a preliminary investigation. The Public Defender still has not received an answer from the Office of the Prosecutor General.

The statement of Jemal Tsiklauri has been examined by the office of the Public Defender.

The following circumstances have become clear:

Tsiklauri came into ownership of the Gori market through a tender in 2006, and founded his individual enterprise, Liakhvi.

The enterprise conducted entrepreneurial activities in Gori, at #5 Guramishvili Street. The Gori market and a plot of land with a building were in his ownership.

On 12 January 2004, the representatives of law enforcement bodies conducted an inspection of the market facility. Mikheil Kareli, former Governor of Shida Kartli, was with them. During a sale of products, thesalesman cheated the buyer, Aluda Jokhadzde, making him overpay 2 GEL and 75 tetris. Kareli immediately publicly accused Tsiklauri of being corrupt, without issuing any kind of explanation, and demanded a criminal case started against him. The mentioned incident was widely reported by the media.

Later, Gori tax inspection carried out an unplanned document revision, after which an act was drafted that said that a fine was imposed upon Liakhvi, totalling 287,000 GEL.

On 23 February 2004, a criminal case was started on behalf of the consumer, Aluda Jokhadze. Jokhadze, in his statement, pointed out that as the salesman cheated him, there was a great possibility that Tsiklauri was hiding taxes from the State.

Tsiklauri was accused of the crime in accordance with sub-paragraph "b", Article 218 of the Criminal Code of Georgia (tax evasion of a high amount).

The accused was sentenced to preliminary imprisonment. During the investigation, the expertise of the Ministry of Justice and the Centre of Special Studies determined that the debt of the individual enterprise, Liakhvi, was not 287,000 GEL, but 37,000 GEL. The applicant points out that under the condition of the preliminary imprisonment, before the end of the financial investigation, he had already been made to pay 58,886 GEL.

Kareli was appointed Shida Kartli Governor at the time, and he had visited the accused in the working room of the head of the penitentiary institution several times. The applicant says that during those meetings and telephone conversations, Kareli used to threaten him constantly with death and the imprisonment of his family members in case he did not comply to Kareli's demands. The demand implied ceding of the commercial facility in the ownership of Tsiklauri to the State as a gift.

According to the explanations given by the applicant, undergoing similar psychological pressure, he was compelled to make a deal on ceding his property to the State as a gift. So, on 24 June 2004, Tsiklauri ceded to the Gori Regional Gamgeoba, with a gift agreement, the commercial facility under his ownership, which were evaluated to be worth 228,726 GEL. The deal was confirmed by the notary at the place of Tsiklauri's imprisonment.

The preliminary investigation proved Tsiklauri's guilt, and the investigation possessed proof of the crime in the form of confession made by the accused.

On 13 September 2004, the Office of the Prosecutor General and the accused agreed upon a plea bargain. The grounds for the plea bargain point out that Tsiklauri has paid 58,886 GEL and ceded, without charge, his property worth 228,726 GEL.

It could be said for sure that the plea bargain of 13 September 2004, is not only a violation of legal norms, but also an example of the mixture of legal trends. It is inadmissible for a civil legal bargain (agreement) to become grounds for a plea bargain. Although, Article 50 of the Civil Code of Georgia states that "a plea bargain is a demonstration of one-sided, double-sided, or multi-sided will, directed at the creation, change, or termination of a legal relationship, it still refers to civil legal relationships, which represent the relationships bearing the nature of private property, family, and personal relationships, based upon equality of persons".

At the same time, theapplicant was deprived of the right to civil legal protection, since he failed to pay state tax, for which reason the court refused to accept the claim for examination.

It should be noted that, the citizen's explanation, to a high degree of possibility, proves that pressure was used. Otherwise, the logical connection between the facts is broken. How else could Tsiklauri, under arrest, who was filled with such respect for the local bodies of self-government, cede his entire property to them and then make attempts to regain it through court procedures?

A journalistic investigation conducted by Monitori studio proved the criminal act perpetrated by the organized group. The authenticity of the 23 June 2004 agreement was proven by the notary, Malkhaz Makharashvili, by pointing personally to the agreement between the prosecutor and the accused. Particularly Tsiklauri gave up his property as a payment for freedom, and several influential persons stood behind the given agreement, Mikheil Kareli, Prosecutor Terashvili, and current Deputy Sosiashvili, among them.

As determined by the Public Defender, therequirements of the Georgian law on activities performed by a notary were breached by Makharashvili; as well as the crucial norms of decree #321 of 29 August 2001, issued by the Minister of Justice of the time (approval of instructions for the performance of notary activities, Articles 4, 5, 7, and 11); and the principles of independence, autonomy, professional objectivity, and drafting of documentation in accordance with the requirements covered by the legislation.

Considering the mentioned breaches that resulted gravely for the applicant, thesigns of the criminal activities are clearly identified, which imply violation of the first part of Article 333 of the Criminal Code of Georgia by the notary and Article 332 by the prosecutor and his deputy.

In accordance with sub-paragraph "g", Article 21 of the organic law of Georgia, the public Defender sent The casedocuments to the Prosecutor General for a reaction.

Apart from ceding the property at no cost, the office of the Public Defender has examined cases in which the owners had been made to sell their property against their will. In Sighnaghi, for example, Manana Makharashvili and Tamar Terashvili were compelled to sell their immovable property through threats.

On August 14, 2007, the director of Sony Centre Ltd.., Ioseb Kikodze, and his representative, Ioseb Baratashvili, appealed to the Public Defender, statement # 1365-07. After the explanations given in the office of the Public Defender and a study of the presented materials, the following circumstances have been identified:

Sony Centre Ltd.. and Lazeri 2 Tbilisi Ltd.., which are registered in Tbilisi, represent the strategic partners of the SONY corporation in Georgia. The activities of the mentioned enterprises lie in the advertisement and sale of SONY products in Georgia. Fifty percent of the share of Lazeri 2 Tbilisi is owned by the American company, JZZE ENTERPRISES.

On 1 January 2006, a leasing agreement was signed between Mzia Kakabadze, Sony Centre Ltd.., and Lazeri 2 Tbilisi Ltd.., according to which Kakabadze leased 48.09 square metres of non-living space, owned by her, to Sony Centre, and 200 square metres to Lazeri 2 Tbilisi. The agreement was enacted from the date of signature to1 January 2015.

The leasing price was determined as a monthly payment totalling 4,500 GEL (Sony Centre was to pay 500 GEL, and Lazeri 2 Tbilisi was to pay 4,000 GEL).

On 22 November 2006, Kakabadze notified the applicant that she had the intention of giving away the space she had leased, and stated that, in agreement with the acting legislation, therelationship between Sony Centre and Lazeri 2 Tbilisi was to continue with the new lessee, the Ministry of Economic Development of Georgia. Kakabadze was approached on 30 December 2006 by the Ministry of Economic Development with an analogous statement.

On 23 November 2006, Kakabadze agreed with the law, under the agreement of benefaction, and passed the ownership of the space to the Ministry of Economic Development. After that, Sony Centre and Lazeti 2 Tbilisi, continued their leasing relationship with the new owner, in accordance with the acting legislation, observing the terms of the 1 January 2006 agreement. So, on 1 January 2007, the tenants paid the rent fee to the deposit account opened by the lessee, upon which they notified the ministry in written form.

On 12 February 2007, the deputy Minister of Economic Development, K. Damenia, sent the tenant letter # 21/300/67 pointing out the account number to which they could transfer the rent. At the same time, it was pointed out that Sony Centre and Lazeti 2 Tbilisi were obliged to free the occupied space by 1 July 2007.

After receiving the letter, the tenants paid the lease rent regularly to the given account, and presently the lease is paid up to 1 September 2007.

The tenants paid the minimal fees for the rented space up to August 2007. Apart from that, it should be also mentioned that the tenants have taken credit from the bank, totalling $ 1,300,000 and 350,000 GEL for the reconstruction of the space, in order to increase turnover, and paid monthly interest for the credit.

On June 2007, the enterprises received a letter from the Deputy Minister of Economic Reconstruction, which read that the payment of monthly rent to the ministry by the tenants did not necessarily imply an agreement with the ministry to extend the leasing agreement.

The same letter also reminds the tenants of the term expiring by 1 July, 2007, although the letter does not present any grounds for the termination of the agreement.

On 3 July 2007, theapplicant addressed the Deputy Minister of Economic Development. The letter points to the responsibilities of the ministry and to the fact that the agreement is valid up to 1 January of 2015.

In response, on July 13, 2007, the leasers received an additional warning regarding the fact that they were to free the occupied space in the shortest term. After that, the Ministry of Economic Development addressed the local body of the Interior Ministry with a request to put under restraint interference with their property located on #30 Rustaveli Avenue, or any other similar act, citing that it was used by Sony Centre.

On 31 July 2007, Sony Centre received a written warning from the Old Tbilisi Interior Ministry Department regarding the fact that the leaser had to terminate infringement upon the immovable property, or any other similar act, within five work days, and free the rented space from personal items.

In accordance with the applicant, Lazeri 2 Tbilisi has not been sent a similar notification.

On 2 August 2007, the leasers presented a letter to the head of the Tbilisi Main Department of the Interior Ministry with all the necessary documents confirming its legal rights to the immovable property.

Despite the presentation of the documents, 200 representatives of the Interior Ministry blocked the premises of Sony Centre and Lazeri 2 Tbilisi on 7 August 2007. The doors were forced open and the inventory of the leasers was sent to an unknown destination. The above-motioned fact was described by mass media accurately.

Presently, the process of eviction is over, and the leasers suffered major losses (the volume of material losses shall be evaluated in accordance with a thorough inventory check).

Under Article 651 of the General Administrative Law of Georgia:

1. In private legal relationships the administrative body acts as a subject of the Civil Code; and
2. While drafting civil legal agreements by an administrative body, relevant norms of the civil code are applied.

The second part of Article 8 of the Civil Code of Georgia specifies the status of an administrative body in private legal relationships, in accordance to which, "private legal relationships between the State bodies, subjects to public law, legal persons, and other persons, are also regulated by the civil code, if these relationships, proceeding from the State of personal interests, shall not be regulated by public law".

After settlement of the gift, the Ministry of Economic Development becomes part of a civil (private) legal relationship. Under the first part of Article 317 of Georgia's Civil Code, an agreement between the participants is required for the generation of responsibilities, apart from the cases when the responsibility originates on the grounds of damage, ungrounded acquiring of wealth, or other grounds covered by the law."

The given case is marked by the legal basis of the origination of responsibilities, covered by Article 317, particularly:

Under the second part of Article 581 of the Civil Code of Georgia, "rent agreement rules are applied to the leasing agreement, if not provided otherwise by Articles 581-606". However, Article 572 determines that "if the lessee cedes the rented object to a third person, for the leaser, under the rent agreement, theacquisition takes the place of the lessee and the responsibilities and obligations pass onto him."

In accordance with the mentioned articles of the Civil Code of Georgia, theresponsibility of the ministry is imperatively defined. Regardless of its will, theagreement relationship, originated on 1 January 2006, with Sony Centre Tbilisi Ltd.. and Lazeri 2 Tbilisi Ltd.., within the frames of the relationship, the Ministry represents a legal person, heir conventional to Kakabadze, and so the original agreement stands.

The fact that the leasers observed all the terms of the assumed agreement has been proven and requires major consideration. In accordance with the third part of Article 8 of the Civil Code of Georgia, "the parties of a legal relationship are obliged to carry their responsibilities honestly". In accordance with the second part of Article 361, "the assumed responsibilities shall be carried out honestly and accurately at the precise time and place". Violation of the requirement shall be regarded as a breach of responsibilities.

Part 1 of Article 405 of the Civil Code of Georgia defines that if one party to the agreement fails to meet the responsibilities of the mutual agreement, the other party to the agreement has a right to breach its responsibilities specified in the agreement, after the expiration of terms.

The unilateral breach of an agreement relationship (withdrawal from the agreement) is considered legal only in cases when the other party violates their assumed responsibilities.

Proceeding from the above, the Ministry of Economic Development was not entitled to withdraw unilaterally from the 1 January 2006 agreement, and accordingly, refused to meet the assumed responsibilities.

On its own, the withdrawal of the ministry from the agreement, without any grounds, represents a breach of agreement, which, under Articles 581, 572, 394, and 408, gives legal grounds to Sony Centre Tbilisi Ltd.. and Lazeri 2 Tbilisi Ltd...

The consideration expressed by the Ministry of Economic Development in a 22 June 2007 letter, regarding the fact that Kakabadze was obliged to cede a legally and materially flawless object to the ministry, and that for the breech of responsibilities, the lessees were obligated to free the occupied space. If Kakabadze had not met the responsibilities before the ministry took possession, the Ministry would have had the right to appeal to the court, in accordance with the rules covered by the law, but it had no legal grounds for expressing their discontent as the party of the benefaction agreement was Kakabadze and not Sony Centre Tbilisi Ltd.. or Lazeri 2 Tbilisi Ltd..

The Ministry of Economic Development, with its arbitrary decision to withdraw from the agreement and non-observance of its responsibilities, had violated the applicants' rights, damaged their legal interests, and violated the crucial principle of the Georgian Civil Code – the principle of honesty. The observance of the mentioned principle is the responsibility of the parties to legal, private relationships. The civil stability turnover is based upon this honesty and when an administrative body is a participant in such an agreement it assumes particular intensity.

As for the termination of the agreement, the public Defender believes that the eviction had been carried out with a total violation of the legislation, which resulted in the infringement of the rights and legal interests of Sony Centre Tbilisi and Lazeri 2 Tbilisi.

In accordance with the first part of Article 170 of the Civil Code of Georgia, "the owner has a legal right, namely within the frames of the agreement restriction, to own freely and make use of his property (object), resist the use of the property by other persons, and manage it however they want, if the rights of third persons or neighbours are not violated, or if the activity does not serve abusive purposes".

Regulation of the law, pointing at the legal and agreement restrictions, is in full relevance with the Constitution of Georgia and accepted standards of international law.

The right to ownership is absolute and unrestricted, which is reflected in the Civil Code of Georgia and decree #747 of the Interior Minister of 24 May 2007. Under the "a" sub-paragraph, Article 8 of the given decree, "presentation of the document ensuring the legal right to the ownership or use of the immovable property is a basis for suppressing infringement, or any other interference, with the owned property, before the end of the act of termination".

Sub-paragraph "b", Article 2 of the same decree determines that the document confirming the legal ownership and/or the right to use is a written note from the Public Register, or the document proving the right to composition usufruct, servitude, hypothe c (only with the right to reside in a flat), lease, rent or borrow, theagreement of letting or rent unregistered in the public register, the enforced court decision (arbitration) or relationships, originated from the use of residential place, covered by the law of Georgia, or a document issued to refugees or internally displaced persons, or the document issued by the Ministry of Refugees and Settlement on temporary residences for the refugees and displaced persons (only for the facilities of compact settlement for the refugees or internally displaced persons) or any other document on legal ownership and/or confirming the right to use".

There is no doubt regarding the fact that in a letter dated 2 August 2007, theapplicant presented the documents proving the right of use to the head of the Old Tbilisi Interior Ministry Main Department. Despite that fact, execution of the (groundless) demand of the Ministry of Economic Development has been realised with the violation of legislative normative act.

In addition, during the termination of interference, themain department of the Old Tbilisi Interior Ministry had to act in accordance with the General Administrative Code, as under part 2, Article 3 of the General Administrative Code of Georgia. It represents an administrative body, and while conducting its legal activities it is restricted by the given code (part 2, Article 3 of Georgia's Administrative Code does not cover this particular case), as in this particular case the body does not conduct a criminal prosecution of the person for committing the criminal act, or any other operative investigation activity. Relevantly, the body was responsible to observe certain standards in order to study the circumstances of The caseand evidences, which has been violated gravely.

Proceeding from the above, the evidence of the commission of crime, covered by Article 333 of the Criminal Code of Georgia, can be clearly observed in the activities performed by the representatives of the Old Tbilisi Interior Ministry Department – "stretch of authority on the part of the official or a person of a similar level, which resulted in major violation of the rights of a physical or judicial person, society, or legal interests of the State".

Proceeding from the above-mentioned facts, in agreement with sub-paragraph "b", Article 21 of the organic law of Georgia on the Public Defender, the public Defender addressed the Ministry of Economic Development with the recommendation to restore the initial condition in accordance with Articles 394, 408, and 409 of the Georgian Civil Code, providing Sony Centre Tbilisi Ltd.. and Lazeri 2 Tbilisi Ltd.. with compensation for the damage inflicted through the illegal activities of the Ministry of Economic Development, and in case the reestablishment of the initial condition was impossible, or required inadequate resources, to provide the relevant monetary compensation via the agreement with the contrahent.

Considering the fact that the leasers have been inflicted considerable material damage, and the examination of The casein the court may bring about an irreparable result, the public Defender addressed the Minister of Economic Development with the request to make a decision regarding the given issue within the shortest period of time.

The circumstances around the case of Café Rustaveli Ltd.. bear a similarity with the previous case, including the act of withdrawal from the agreement of the Ministry of Economic Development and illegal eviction. The Public Defender addressed the ministry with a similar recommendation regarding this case.

In accordance with the Public Defender's decision regarding the illegal eviction of the leasers, there is evidence of a crime covered by Article 333 of the Criminal Code of Georgia on the part of the representatives of the Old Tbilisi Department of the Interior Ministry. In accordance with sub-paragraph "b", Article 21 of the organic law of Georgia on the Public Defender, he sent the materials in his possession to the Prosecutor General and acted as an intermediary, requesting the preliminary investigation into the given case. Despite repeated requests, no reply has been received from the Prosecutor General of Georgia

As for the reply from the Ministry of Economic Development, the deputy Minister demanded the denial of the argumentation from the Public Defender, as the applicant may have used it in the court as a means for putting pressure on the judge.

In response, the public Defender made a repeated address to the Minister of Economic Development with a similar recommendation, which has not been considered, as in accordance with the argumentation of the minister, the final decision upon the issue shall be made by the court.
The nature of the Public Defender's recommendation is not an act that should be observed in a compulsory way. Accordingly, it is not possible to hold someone responsible in case its observance is ignored. The Ministry of Economic Development of course has a right to contest the decisions and use all the procedural rights of a party. In a similar case, theresolution of a dispute is possible only by a legal decision taken by the court; however, the consideration of the above case is connected with a certain amount of time that shall increase

the damages for the applicant. Consequently, a timely and relevant compensation of similar cases is required for the public interest, which was particularly indicated in the recommendation.

EVICTION

Multiple statements were submitted to the office of the Public Defender related to illegal eviction. Here the reference is made to the incorrect understanding of decree # 747 of the Minister of Interior Affairs, as well as grave violations of the established procedural rules.

The Public Defender had been recommended not to react upon the violations (in case of non-existence of which the decision, regarding the result, would have been identical), which had not inflicted considerable damage; however, a certain tendency has become clear – in one case (especially after the address of the administrative bodies), law enforcement bodies act immediately and often illegally, and in other cases, the eviction takes a considerable amount of time, or is not carried out at all, when it is related to the interests of private person(s).

On 3 November 2006, Nadia Kordeli submitted a statement. After the explanations given in the Public Defender's office, and presenting the documents, the following circumstances have become known: The applicant is the owner of a flat located on Sukhitashvili Street in Gori and the apartment is legally owned by her, which is confirmed by the public register.

The brother in law of Kordeli, the former husband of late Zhuzhuna Kordeli, resides in the flat illegally, and was forcibly driven out by Kordeli and her daughter, Elene, who presently reside in unspeakably grave conditions in a narcological centre.

On April 2, 2007, Kordeli appealed to the Gori Regional Department of the Interior Ministry and demanded measures to be taken regarding the eviction of Tariel Khinchikashvili, in accordance with the acting legislation.

In reply, the department notified Koreli that the given issue represented a disputable case under the competence of a court and the applicant was free to take The caseto court.

The Public Defender explained to the Head of Gori Regional Department of IM, that on 8 December 2006, a third part was appended to Article 172 of the Civil Code of Georgia that states "if an act of encroachment upon the private object is committed, or any other interference, the owner has a right to demand the termination of the activity from the offender. If an act of interference continues, the owner has a right to demand the termination of the activity without a court decision from the relevant law enforcement body by presenting the document proving the ownership determined by the law, except in cases when the offender presents a written document pointing to the legal ownership and/or document proving the right to use of the property in question". The same regulation was added to Article 9 (sub-paragraph "f" of the first paragraph) of the Georgian law on the police".

Under Presidential decree #317 of 21 May 2007, it has been determined that, in accordance with sub-paragraph "f", Article 9 of the Georgian law on police, Interior Minister I. Merabishvili issued a normative act regarding the rule for suppressing the encroachment upon private objects, or any other interference, in order to ensure the performance of responsibilities of the police and protection of rights of ownership.

On 24 May 2007, under decree # 747, theappended rule regarding the procedures and terms regarding the restriction of infringement upon privately owned immovable objects, or any other interference, had been determined. Under paragraph 2, Article 1 of the given decree, an investigation into the criminal case or court

dispute does not interfere with the restriction measures conducted by the law enforcement body. In accordance with Article 2 of the decree, the document proving the ownership is an excerpt from the public register, while in cases covered by paragraph 3, Article 3 of the same regulation, is an excerpt from the public register and the cadastral map (or a cadastral plan).

The documentation proves that the applicant presented the extract from the public register to the Gori Regional Department of the Interior Ministry, which precisely indicated her request, the location of her property, and the name of the possible offender. Under paragraph 3, Article 4 the authorized official was obliged to take measures for the gratification of the request, with the observance of the rules set by the same decree, which had not been performed. Moreover, theapplicant was denied her request, under an entirely different motive, which contradicts the acting legislation and violates the legal rights of Kordeli.

In accordance with sub-paragraph "a", Article 2 of the Georgian law on police, the task of the police is the protection of human rights and freedoms from illegal encroachment.

In accordance with the first part of Article 170 of the Civil Code, "the owner is entitled to free ownership and use of the property (object) under the law, particularly, the private agreement restriction, and to restrict the use of the given property by other persons, and make use of it, if it does not violate the rights of the neighbours or a third person, or if the activity does not involve a stretch of the rights".

In accordance with the first sentence of Article 21 of the Georgian Constitution, "the right to property is recognized and provided". The mechanisms for the provision of the right to property are determined by the above-mentioned normative acts and by the law enforcement bodies and following their demands is in direct relationship with the property owner's legal interests.

Proceeding from the above, in accordance with sub-paragraph "b", Article 21 of the organic law of Georgia on the Public Defender, the public Defender appealed to the Gori Regional Department with the recommendation to ensure the fulfilment of the responsibilities covered by the legislative, normative acts, and fulfilment of the legal demands of the applicant with the aim to restore the violated rights.

The recommendation was not taken into consideration.

The case of Macharashvili

Manana Macharashvili appealed to the Public Defender with a statement. A plot on Davit Aghmashenebeli Street #5, in Sighnaghi, with a trading facility (a shop) located on it had been in possession of the applicant and her husband, Tamaz Gorelashvili.

In accordance with the explanatory note submitted by Macharashvili, on 10 January 2007, she encountered the Sighnaghi Gamgebeli (mayor), Gia Inanishvili, who explained to her that due to the restoration works in the city, the public necessity arose for her plot to be given to State ownership. He also offered her to sign an official purchase document, which the owner refused.

After the given conversation, several days later, Inanishvili made one more attempt to negotiate with the applicant, telling her that there existed an investor, who was ready to pay her $300 per square metre. He advised her to accept the terms, otherwise, the financial police may display a certain interest in her commercial activities and her shop would be destroyed for its incompatibility with the architectural style of the city.

The fact that the financial police approached the applicant and conducted the check on August 21 has been confirmed.

The applicant points out that the police issued advice with hints of threats regarding the sale of the facility. The essence of the threat lay in the suggestion that in case of her refusal to accept the deal, an prison term loomed over the applicant and her husband.

The agreement of purchase was drafted on September 5. The trading facility was sold for $21,000. The applicant has not approached the court with the request to consider the deal void.

It should be mentioned that the given facility has been seized and it had been reflected in the extract from the public register, from the view of civil law, a seizure of immovable property may only mean the restriction imposed on the owner with the aim to interfere with the sale of the property by the court. In accordance with Article 25 of the law of Georgia on the registration of immovable property, the existence of the seizure of a property is a reason for the refusal to register the right to ownership, although the national agency of the public register still managed to carry out a registration.

The case of Tarashvili

A shop owned by Tamar Tarashvili was located on #7 Davit Aghmashenebeli Street on Sighnaghi. According to the applicant's statement, in the summer of previous year, Inanishvili approached her with an ultimatum to sell her shop, otherwise the financial police would get interested with her activities and the shop would be demolished as well, as its appearance contradicted the city architecture. The applicant's suggestion to redecorate the shop on her own was declined by the mayor, after which the applicant presumed that the mayor's desire was to get hold of the facilities.

Days later her shop was examined by the financial police. The applicant explains that they had not provided any kind of documentation, proving their authority, and offered her to buy the shop. They told her that otherwise, they would impose a substantial fine. The applicant chose to agree and sell the facility.

The selling agreement was drafted immediately and the representatives of financial police, Interior Ministry, and Office of the Prosecutor General participated in the process actively.

EVALUATION

The casedoes not contain any evidence proving the authenticity of the applicant's explanation. Although it should be mentioned, with a high level of certainty, that the agreement of sale they signed was not the expression of their will, it was as a result of threats. The applicants were explained that ceding the property was of public necessity. Under the circumstances, we believe that the confiscation had to be conducted with the observance of the rules covered by the law on the rules of property confiscation for public needs, and not through threats.

The case of Badur Milashvili

On 4 February 2008, Badur Milashvili appealed to the Public Defender with a statement regarding an agreement he was made to sign under pressure. He declared that he was forced to cede his property to the State, although he had no intention of doing so.

It should be mentioned that the Public Defender's office possessed information regarding the given case back in January 2007. By that time, several incidents of ceding of the private property for free to the State by private persons had been registered in the Sighnaghi Municipality; the cases of Badri Milashvili and Gela Bezhashvili were among them. In order to study the given cases, the public Defender's representatives visited the Sighnaghi

Municipality, but it became possible to talk to Gela Bezhashvili only, in accordance with the information provided by the local NGO's, as it was impossible to contact Badur Milashvili, since he was threatened and was afraid to speak about his incident.

Proceeding from the explanation of the applicant, and in accordance with the documents presented in the case, Milashvili, until 14 December 2006, was the owner of a residential building on #1 Iv. Lolashvili Street in Sighnaghi (total space 535 sq. m.). This is confirmed by an extract from the public register. On 14 December 2006, a benefaction agreement was signed between the State (Sighnaghi Department of State Property Registration and Privatization) and Milashvili, under the terms of which, Milashvili ceded the residential house to the State.

It should be mentioned that at the same time, the benefaction agreement was signed simultaneously with several other persons, Gela Bezhashvili among them, whose case was reflected in several Parliamentary statements (he gave his privately owned territory located at #1 Erekle II Street in Sighnaghi, total space 720 square metres, free to the State).

In a statement by Milashvili, on 4 February 2008, he said that on 13 December 2006, at night, strangers took him from the village of Bodbiskhevi to the city of Tsnori and threatened that he and his family would be in trouble if he did not give his privately owned house to the State. Milashvili explains that he was frightened and the next day, December 14, he signed the agreement.

Taking into account these circumstances, and proceeding from Articles 54, 85, 86, and 87 of the Civil Code of Georgia, I believe that the benefaction agreement between Milashvili and the State, signed on 14 December 2006, represents an invalid deal due to the following circumstances:

It has been proven that Milashvili was really the owner of the residential house, which is confirmed by the extract from the public register and a notary act of 14 December 2006. In accordance with part 1, Article 312 of the Civil Code of Georgia, "there is presumption of authenticity and completion regarding the register data (i.e.: the register data is considered accurate), until they are not proved to be erroneous". The fact that no document has been presented proving the falseness of the data is confirmed by the notary Giorgi Lomashvili in a notary act presented as mentioned above. Thus, according to the data of 14 December 2006, the house on #1 Lolashvili Street in Sighnaghi really was owned by Badur Milashvili.

In accordance with Article 50 of Georgia's Civil Code, "an agreement is a one-sided, two-sided, or multi-sided expression of free will, directed at the origination, change, or termination of legal relationships". While giving the definition of an agreement, in the context of the given article, the legislation relies upon the the ory of expressing the will, and points out that an agreement is an expression of freewill. It is highly probable that the inner will and the expressed will do not coincide, and the given fact does not create grounds for considering the agreement null and void. The interrelationship of inner and expressed will becomes the subject of interest when conflict exists. In this particular case, in essence, the will expressed by Milashvuili contradicts his inner will, as he explains that he was made to express his will forcibly.

In accordance with Article 54 of the same code, "the agreement, violating the rules and restrictions provided by the law, contradicts public order or a moral standard and as such is invalid." In the given case, theagreement between Milashvili and the State is invalid due to the violation of legally provided rules and restrictions and there is no trace of the expression of freewill. Thus, in accordance with the given article, and in accordance with the law, as special grounds characteristic of certain agreements, all the agreements that have common grounds should be considered null and void. In Milashvili's case, we can detect all the special grounds characteristic of the agreement signed under pressure. In accordance with Article 85 of Georgia's Civil Code, "exerting pressure over the person (violence, threats) with the aim to settle an agreement, grants the person having signed the agreement a right to demand the agreement's invalidity, even in cases when the pressure comes from a third person".

Thus, during the act of exerting pressure, there is an act of pure interference with the expression of freewill with the aim of signing of an agreement. In a case under examination, an act of interference was carried out against Gela Bezhashvili in order to make him express his will, which pursued an aim of ceding his property to the State, through the agreement of benefaction. We shall mention once again that such a will did not derive from the proprietor; instead, he was abducted, threatened, and forced to express the will to give away his property. The civil code also states the forms and essence of forcible ways of interference. Pressure may be expressed as violence or threat.

The first one takes place when the person is forced to sign an agreement, or is persuaded via inflicting physical damage or hypnotic interference. Under threat, the person is forced to express an imposed will under the fear of future violence, which was the case of Milashvili, as he had been threatened with violent prospects awaiting his family. The above is regulated by Article 87 of the mentioned code, under which, "pressure is a ground for the request to consider the agreement invalid, even when it is directed against a spouse, other family members, or close relatives of one of the parties of the agreement."

While evaluating the grounds for determination of the invalidity and legality of an agreement, thenature of pressure is also important. Under Article 86 of the civil code:

1. Invalidity of the agreement may be caused by pressure that can affect a person and make him understand that he as a person, or the property, is facing a grave danger; and
2. During the estimation of the types of pressure, theage of the person, sex, and life experience are taken into account".

Thus, theis real and the fact of who the pressure comes from and who it is directed at shall be taken into account. Under the given circumstances, Milashvili, who has been put under pressure, is a citizen who has a wife and children, and the other party of the agreement is a state, with its large and powerful mechanisms. It has all the departments of law enforcement bodies under its subjection, and the support of the development of private enterprise depends on it. In other words, there is a really powerful contrahent on one side, authorised to carry out any activity that shall affect the other side or, in a most negative way, bring the threat into reality.

Thus, Milashvili explains that he had every reason to believe that the persons who took him away on the night of December 13 to Tsnori were really capable of realising the threat. The time, place and the circumstances of exerting the pressure shall also be taken into consideration. Milashvili was taken away at night as the factor of fear is considerably stronger at that particular time. After imagining the scene, there is no doubt that Milashvili perceived the threat adequately and signed the benefaction agreement against his will, and on the same night.

Proceeding from the above, I think that a certain amount of requirements covered by the law are violated, and the most important legal document of the country – the Constitution – has been violated, since it states that the right to ownership is one of the guaranteed and strictly observed rights. In this given case, the freedom of the expression of will is also ignored, which confirms the violation of rights of Bezhashvili.

I believe that the agreement signed on 13 December 2006, between Milashvili and the State should be considered null and void. The property of Milashvili, seized with the use of pressure, should be returned to him, and the damage inflicted upon him by the confiscation should be compensated fully, or in case of the agreement remaining valid, Milashvili should be offered compensation adequate to the price of the property.

Tabukashvili Street

The residents of #50-52 Tabukashvili Street appealed to the Public Defender in March 2006, in connection with the demolition of their building and violation of their right to ownership. It should be noted that by the

time the Municipality of Tbilisi considered the recommendation of the Public Defender and terminated the illegal activities of the supervision services, which were conducted with disregard to the law, the demolition had begun. However, in the spring of 2006 a block of apartments erected on Tabukashvili Street was saved.

From the materials presented in the case, it is proven that the mentioned project was agreed upon with the chief architect on June 3, 1998, with decree # 292; and on December 31, 1998, permission #297 for the construction was issued by the Archmshen inspection. Later, the project underwent changes, which were approved by decree # 133 of the chief architect on 8 May 2001. The construction permit, after the introduction of corrections, was not presented in the case, although the conclusion, issued by the Zavriev Institute of Construction Mechanics and Seismic Resilience, points to the fact that the construction term was extended for an indefinite time by the Archmshen inspection on 15 February 2002. Thus on 3 April 2003, no permit had been issued upon the order of the chief architect after the approval of the corrected project.

From the note of the specialists from the National Bureau of the Ministry of Justice Court Expertise, it becomes clear that in accordance with position 25 of "Snip 2.03.01-84", construction norms and regulations and concrete, not lower than b25 class, had to be used in the construction of the given building, which is relevant to concrete brand 300; while according to the data of the conclusion drafted by the radio physics construction laboratory, Binuli, concrete used in reinforced concrete pillars of different floors is of a lower brand, which may pose danger to the building, especially under the influence of seismic power. It was pointed out in the conclusion that a low brand of concrete fails to ensure the provision of the construction norms and regulations that affects the strength of the construction, namely the requirement envisaged by position 25 of "Snip 2.03.01-84" is violated.

The casealso contains protocol #115 of the Georgian Scientific Institute of Energetics and Energetic Constructions (estimation of concrete strength in the construction with insoluble method). According to the given protocol, it was established during the examination of the residential building located at # 50-52 Tabukashvili Street that the brand accepted in accordance with project 14-300 was relevant to concrete brand 13 225 with the solidity 12-28.9 mgh (295kg/c, 2).

On 22 July 2007, the city Supervision Services issued regulation #00000092, regarding violation of construction laws, on the basis of which, the decision of immediate demolition of the residential house at #50-52 was reached.

It is also pointed out in the given decree that after the examination of the facility, various violations had been found (see decree, p. 2), at the same time the flat owners neglected the terms of the instructions, which they were given on 25 June 2007.

It was due to the given violation that the decision was made on the demolition of the building, which had to be performed without delay. Paragraph 4, Article 5 of the Georgian law on state supervision of architectural/ construction activities was named a cause, under which, "in case the corrections were not performed in a restricted period of time, and if the failure to introduce changes may result in inflicting massive damage to the State or public interests, thestate supervision body of architectural/construction activities may make a decision regarding the failure to observe the instruction terms by itself or third persons and/or their performance at their expense. The decision may be contested in accordance with Georgian legislation. The contest of the decision does not stop the execution of the decision."

The flat owners turned to the court and requested immediate termination of the activities conducted by the City Supervision Services, which has not been granted by the decision of the Collegiums of Administrative Affairs of 20 July 2007. The court totally accepted the facts presented in the conclusion of the City Supervision Services and considered them as proof. The court pointed out that the immediate execution of the decision was justified for the protection of the building residents and the persons residing in the neighbouring buildings.

Later, the flat owners took the case to the court in order to require the invalidity of the conclusion of the City Supervision Services, although presently they declare readiness to strike a deal with the Tbilisi Municipality and receive compensation for the flats in the buildings that have not been built yet.

As we have already stated, the decree was issued on 20 July 2007. It was given to the owners on the same day and the demolition works began the same day as well. The flat owners were not given reasonable time for the search of a new home. Being left without shelter, they were incapable of protecting their own rights. They were insulted, thrown out of their homes, with their furniture badly damaged. They have been inflicted enormous material and moral damage. The decision that was reached in such a short time, and executed just as quickly , evokes suspicion. The court had not discussed the terms considered by paragraph 4, Article 6 of the law on state supervision on architectural/construction activities, and I strongly believe that the demolished building was carrying less threat than the century-old buildings that are located on Tabukashvili Street, or elsewhere in the old parts of the city, which are crumbling down, presenting a real threat to the residents. The block of flats demolished on Tabukashvili Street served entirely different reasons and the event had no legal grounds.

The fact that the party shall not be able to carry a principled dispute in court, and shall be unable to strike a deal with the Tbilisi Municipality is also dispiriting. I think this breeds fear before the state, poor trust in the court, and a belief that it will take quite a long time to find justice in the European Court. That was the reason for the acceptance of the first, more or less sensible offer from the State.

The case of Linx Ltd..

On November 13 2007, the director of Linx Ltd., Giorgi Jaoshvili. appealed to the Public Defender. After the study of The casein the office of the Public Defender, the following circumstances became known:

Linx Ltd. is founded in Georgia and owned by Badri Patarkatsishvili. Throughout the existence of the company, and from its very inception, its aim was to rehabilitated Mtatsminda Park via labour contracts. On 2 March 2005, an agreement was signed between Tbilisi authorities and Linx Ltd. on the rehabilitation investment and long-term labour contract. The agreement was drafted in written form and confirmed by a notary. According to the labour contract, Tbilisi authorities assumed responsibilities on passing Mtatsminda Park, located in Tbilisi, to Linx Ltd. for a 49-year term. Particularly:

1) Plots with a total space of 212,901 square metres, where the rental contract was determined at 130,000 GEL;
2) Main resources withdrawn from the statutory capital of Mtatsminda Park Ltd. would have an annual rental price of 16,000 GEL; and
3) The Mtatsminda funicular and cable road, including all the stations withdrawn from the Tbilbagirtrans statutory capital, would have an annual rental price of 74,000 GEL.

The observance of responsibilities assumed by Tbilisi authorities in accordance with the contract, regarding the factual passing of contract property to Linx Ltd., was hindered, which is proven by the correspondence of Tbilisi authorities and is registered by the agreements.

In accordance with the given documentation for passing the property, it has become necessary to arrange certain issues of technical and legal character. The facilities of the cable road, stations, base columns, railroads, and the rest, had not been registered in the public register as property of the local administration. Accordingly, it became impossible to register agreement rights of Linx Ltd. to a contract property in the public register.

For the arrangement of similar issues, an amendment was introduced into the 2 March 2005 agreement between Tbilisi authorities and Linx Ltd., on 11 April 2007 (under the notary rules). In accordance with the

new agreement, Linx Ltd. was given, under the labour contract, therail road of the Mtatsminda funicular, the lower station of the Mtatsminda funicular, the upper station of the cable road, and the lower carrying column of the lower cable of the Mtatsminda cable road.

From the immovable property of Tbilbagirtransi Ltd. statutory capital, only the upper station of the Tbilisi Funicular, the Tbilisi cable road lower station, and carrying pillar of upper cable remained to be transferred to Linx Ltd. by Tbilisi authorities.

As explained by Jaoshvili, later it became known that the lower station of the Mtatsminda cable road and carrying column of upper cable had not been registered by 11 April 2007 as the local property of Tbilisi, and so the facilities failed to be transferred to Linx Ltd. Later, theregistration had been carried out and a necessity arose to introduce relevant changes in the 2 March 2005 agreement. As a result, theagreement changes were prepared, which were approved by decree #19 27 763 from 7 September 2007, adopted by Tbilisi authorities on the introduction of changes and amendments in the agreement of 2 March 2005, on the rehabilitation of Tbilisi Mtatsminda park, on the investment and long term labour contract, and on granting the authorization to sign the agreement project".

The applicant explains that it was sufficient to confirm the changes by the notary for the preliminary activities being carried out, but Tbilisi authorities took time to sign the agreement.

On 17 October 2007, Linx Ltd. received a letter #07-2/1248 from the Head of Tbilisi Municipality Administration, which reads that according to Article 2 of the agreement of 2 March 2005 between Tbilisi authorities and Linx Ltd., a schedule of rental payment was drafted. The volume of rental price was determined by the competition program, which for the first year totalled 130,000 GEL. While the volume of the rental price for the forthcoming years would be in accordance with the minimal rental price determined by the legislation of that time. Proceeding from the above, Tbilisi authorities demanded from Linx Ltd. the rental price during the month in an amount determined by the period the agreement had been signed. As a result, Tbilisi authorities asked Linx Ltd. to pay the rental price during the month, rent to the amount set on the day of signing the agreement, as opposed to that of the current period, which was in accordance with decision #17 of 22 January 2007, taken by the Tbilisi Council (on normative price of the industrial, non-agrarian land, on the territory of Tbilisi, in the state ownership, setting rental price and relevant zoning).

The contractor had been additionally reminded that the project of the amendments for the 2 March 2005 agreement, that was to be registered by the notary, was approved by the City Government decision on 11 October 2007.

The applicant received a letter #15-1/1714, from N. Bakhtadze, dated 17 October 2007, by which Linx Ltd. was notified that under decision #19 27 653, taken by the Local Government of Tbilisi, theapproved amendment project was considered inadequate by the political department, and in accordance with the conclusion, Tbilisi Local Government on 11 October 2007, nullified decision #21.05/679, dated 7 September 2007, and the new project for the amendments of the rental payment system was approved and the contractor was asked for it to be signed by the authorized person.

According to (draft) resolution #21.05.597, dated 11 October 2007, Linx Ltd. was given the lower station of the Mtatsminda cable car route and a holding pillar of the upper cable on a lease agreement. Article 2.8 was added to the agreement, according to which, starting from 2 March 2005, with the agreement coming into effect, payment for leasing a public property would be fixed for the ensuing 15 years, in accordance with the law effective at the time the mentioned changes were made. This means that in case of any changes, Linx Ltd., while disbursing the payments, should have done so in accordance with resolution #1-7 of 22 January 2007 of the Tbilisi City Council (Sakrebulo), according to which, Mtatsminda Park belongs to Zone 35, and an annual leasing payment for one square metre of land would be equivalent to 6.48 GEL.

If the mentioned changes were made to the agreement of 2 March 2005, annual rent for the leased land would amount to 1.379.598 GEL, while according to the mentioned agreement, theannual payment is 220,000 GEL. As it was mentioned, the draft amendments (which were adopted on 7 September 2007 in the form of resolution #19.27.653), had a peculiarity of having a reverse nature (i.e.: the new lease payment amount was defined not from the time of the approval of the amendments, but from the date the agreement which was made in 2005).

According to the draft changes of the Tbilisi Municipality, Articles 4.3 and 4.4 should be added to the lease agreement, which in case of non-payment calls for a fine in the amount of 0.1 percent of the unpaid payment for each day of the delay to be borne by the lessee; while in the case of not meeting the investment obligations, 0.1 percent of the remaining investments are to be paid by the lessee for each day of the delay from the start of the violations.

The applicant revoked the offer (which became available to him as an administrative act), and filed a lawsuit to the Tbilisi City Court Administrative Cases Board, requesting the annulment of resolution #21.05.679 of 11 October 2007, with the following legal basis:

1) The applicant considers the agreement made on 2 March 2005 as an administrative agreement, which, according to Article 2, paragraph "g" of the General Administrative Code of Georgia, is a civil agreement made by an administrative body with a physical or judicial person, or other administrative body, to exercise its public authority.

   Proceeding from Article 65, part I 1 of the General Administrative Code of Georgia, the difference between an ordinary civil agreement and an administrative agreement made with the participation of an administrative body, is that, in the case of an administrative agreement, theauthority to regulate concrete legal relations should be granted by law to an administrative body through an administrative/legal act.

   In this given case, theauthority to issue administrative/legal acts was given by law to the Tbilisi Local Government, as stipulated in the Georgian law on Georgian capital, Article 231, paragraph "d", "the local government of Tbilisi City has the potency to own, employ, and utilise local property, according to the established rules and purposes.

   The legal purpose of the agreement made on 2 March 2005 was defined not only by the administrative acts adopted by the local self-governing authorities, but also by Presidential decree #1033 of 19 August, 2003, on the rehabilitation of Mtatsminda Park. According to it, Tbilisi City Hall was tasked to adopt a series of administrative acts and take measures to carry out works for the Mtatsminda Park cultural rehabilitation, with the aim of setting up a leisure centre for the citizens. Consequently, theapplicant rightfully evaluated the legal content of the agreement made on 2 March 2005.

2) One of the bases for the suit is Article 651 of the General Administrative Code of Georgia, which states that "in private legal relationships, theadministrative body acts as an entity of civil law and respective rules of the Georgian Civil Code are applied when establishing a civil legal act by an administrative body". The lawsuit states that the State does not have primacy or enjoys any privileges in the mutual obligations established between Linx Ltd. and the authorities of Tbilisi.

   The judgement is supported by Article 8, part 2 of the Georgian Civil Code. According to the rules, "the private legal relations of legal persons of state bodies and public law with other persons are also governed under civil legislation, unless these relations, proceeding from State or public interests, are governed by public law". Private legal relations (including agreements) are based on the principle of equality of persons enforced by the Georgian Civil Code.

3) The applicant states that the issuance of an administrative/legal act, such as resolution #21.05.597 of 11 October 2007 by the Tbilisi local government was connected with the preparation and finalisation of an administrative agreement, on which administrative proceedings had to be performed.

   Article 2, part 1, paragraph "j" of the General Administrative Code of Georgia defines administrative proceedings as "activities performed by an administrative agency to prepare, issue, or enforce an administrative decree, or resolve an administrative complaint, as well as to prepare, make, or annul an administrative agreement". As clarified by the applicant, Tbilisi Local Government Resolution #21.05.679 of 11 October 2007 has limited the rights and legitimate interests of Linx Ltd.. In compliance with Article 13 of the General Administrative Code of Georgia, "an administrative agency may review and solve a matter, only if the interested party, whose right or legal interest is being restricted by the administrative decree, has been enabled to present his opinion, except as provided by law". The person specified in paragraph 1 of this Article shall be notified of administrative proceedings and his participation in the case shall be ensured. The Tbilisi local government has violated the mentioned requirement of the law.

4) It is debatable that the Tbilisi local government violated requirements of the law when adopting an act. The resolution does not indicate an entity, which can be addressed for appeal, its address, or the deadlines for appeal. Furthermore, theact does not include a written justification and circumstances of vital importance to the matter have not been investigated, which is against the General Administrative Code of Georgia, Articles 53, part 1; 52, part 2; and 5.

Based on the mentioned factual circumstances and legal evaluation, theapplicant requested to annul the debatable resolution. The basis for the request was indicated to be Article 601 of the General Administrative Code of Georgia, according to which:

1. An administrative decree shall be nullified if it contravenes law, or if the statutory procedures of its preparation or promulgation were substantially violated; and
2. The substantial violation of the procedures in the preparation and promulgation of an administrative decree means the issuance of an administrative decree by the council meeting, convened with the violation of the rules established by Articles 32 and 34 of the code, or the violation of law, lack of which would result in a different decision.

On 7 November 2007, a special briefing was held at City Hall by Vice-Mayor Mamuka Akhvlediani, and by the Head of the City Council, Zaza Begashvili, who stated to the media that Linx Ltd., owned by Arkadi (Badri) Patarkatsishvili, has been grossly violating contractual obligations and was not paying the lease payments. Therefore, the Tbilisi local government unilaterally terminated the agreement and ended its legal relations with Linx Ltd. The legal grounds for such an announcement have not been specified, but there is a high possibility that it was the Tbilisi Local Government Resolution #21.05.679 of 11 October 2007.

According to the clarification provided by Jaoshvili, on 7 November 2007, before the announcement was made, around 50-60 armed and masked persons broke into the premises. They besieged the entrance of the park and made the personnel leave the territory by force.

The applicant also clarifies that despite requests, none of the armed persons presented any administrative act or any other document. This fact proves the illegal nature of such actions. At the same time, the lessees were deprived to freely access the public property.

Public Defender representatives visited the park to see the public property. They have authentically proven that the site is guarded by the security police (see the Annex). And at the same time, thesecurity police representatives did not allow Linx Ltd. representatives into the territory of the park.

There has been no response from the Security Police Department to the letter issued by the Deputy Public Defender requesting them to provide the legal basis for the actions carried out by the security police representatives. The Tbilisi Vice-Mayor also has not replied to the letter of the Deputy Public Defender #3508/04-5/1781-07 that requested the documentation that proves the violation of contractual obligations by Linx Ltd., and a request of Tbilisi City Hall to the authorized law enforcement agencies to suppress the violation.

It should be noted, that even if it was proven that Linx Ltd. breached the contract, these actions would have been completely ungrounded and, considering the damage incurred, illegal.

In case the Tbilisi local government was authorized to discharge contractual obligations, it should have addressed Linx Ltd. with a letter requesting to vacate the leased property. If the request would not have been fulfilled, it would be authorized to address the court (with the request of eviction), or (in compliance with Article 172, part 3 of the Georgian Civil Code) to the relevant department of the Georgian Ministry of Internal Affairs, to carry out measures for suspending the violations.

If addressing the Ministry of Internal Affairs, an authorized law enforcement agency would have been charged with the obligation (in accordance with the order of the Georgian Minister of Internal Affairs #747 of 24 May 2007) to comply with the list of procedural requirements related to considering the grounds of the application, and studying the documentation proving legal ownership of the property by the lessee, and only following this, could they carry out further actions.

If the Tbilisi local government addressed the court, it was only based on a legally effective decision, and it would have been possible to carry out further actions, in compliance with the rules defined by the Georgian law on executive proceedings.

The above actions never took place. Furthermore, neither the applicant nor we are aware of the origin of the special task force, which broke into the public premises, and there is no evidence proving the breach of contractual obligations by Linx Ltd.

Related to the case, it is impossible for the Tbilisi local government to deny the existence of a range of factual circumstances. It is impossible to put into question the authenticity of the evidence and circumstances, which form the basis for the applicant's lawsuit, and validates the expediency of addressing it to the Public Defender. Particularly:

1. According to the agreement made on 2 March 2005, Article 2.1, the total leasing fee for the non-agricultural plot of land with a total area of 212,901 square metres, would have amounted to 130,000 GEL, and not 220,000 GEL.
2. According to Article 2.5, the lessee had to pay leasing payments according to the following schedule: 1) the first year – 20% of the total leasing fee; 2) the second year – 30% of the total leasing fee; 3) the third year – 175% of the total leasing fee.
3. According to the agreement made on 2 March 2005, the terms of paying the leasing fee by Linx Ltd. was defined as the end of every sixth reporting month.
4. The Tbilisi local government has violated its obligations as defined by Article 3.1, paragraph "a" of the agreement made on 2 March 2005, and as a result of their own fault, they registered the lessee's right to the 212,910 square metre2 plot at the National Civil Registry Agency with a delay. Consequently, the demand of the Tbilisi local government to pay the fees on the land, which was not yet transferred to the lessee, would have been groundless, and naturally, at the beginning of the contractual relationship, obligations of Linx Ltd. were limited to paying only the fee proportionally applicable to the already transferred land. However, by the amendment made on 11 April 2007 (by mutual consent of the parties), Article 6.1 of the agreement was formulated in the following way: "the terms of payment of leasing fees would be counted

and measured from the moment of registering the lessee's rights at the National Civil Registry Agency". This article was given a reverse power and was in force since 2 March 2005.

5. In the end, the earliest date of registering Linx Ltd.'s rights on the plot of 212,901 square metres at the National Civil Registry Agency was 2 June 2006, so obligations to pay the leasing fees by the lessee have been in force since this date.
6. After winning the tender, Linx Ltd. paid 44,000 GEL in the form of an advance (see the Annex), which amounts to the leasing fee for the first year (20% of the total leasing fee).
7. The term for paying the second instalment (leasing fees for the second year in the amount of 39,000 GEL, or 30% of the total leasing fee) would have been 2 June 2008. However, since according to Article 2.6 of the agreement, the fee was payable at the end of every sixth month, half of the 39,000 GEL payment should have been made by Linx Ltd. by the end of 2 December 2007.

All the above stated allows for the following assessment:

The Tbilisi local government made the decision of terminating the contract based on vague considerations.

Considering Linx Ltd. was fully complying with the contractual obligations, Articles 352 and 405 of the Georgian Civil Code did not authorize the Tbilisi local government to unilaterally terminate the contract. The content of the mentioned rules indicate that terminating the contract is legal only in The casewhen the other party fails to meet the contractual obligations. Therefore, the Tbilisi local government should have proved that Linx Ltd. breached the contact. For this, it was necessary to make changes in the agreement.

According to the agreement made on 2 March 2005, Article 9.3, "amendments and changes to the agreement can be made upon the written consent of both parties". According to Article 9.4 of the same agreement, "the changes or amendments made unilaterally are void from the moment they are made".

For the draft of the Tbilisi local government to become a part of the agreement it would have been necessary to receive written consent from Linx Ltd.. The authors of the draft should have been aware in advance that the contractor would not agree to the changes. Therefore, the Tbilisi government found a way out, and (by using unilateral will) tried to make changes to the agreement by adopting an obligatory administrative act, which means that if Linx Ltd. did not address the court (e.g. exceeded the deadline of appeal as defined by the law) it would have become obligatory to comply with the resolution.

It would not be an overestimation to say that the debatable resolution is an example of mixing up legal fields and ambiguity. It is impossible to make amendments to the agreement requiring mutual consent in the form of an administrative act, and then to turn this act into the main argument for demanding due fulfilment of contractual obligations and later, terminating the contract.

The applicant rightfully notes that in accordance with Article 2, part "j" of the General Administrative Code of Georgia, changes to the administrative agreement require administrative processing. This, in turn, implies ensuring the participation of the other party, investigation of the circumstances of the case, and a range of restrictions during the decision-making process. Though, from the applicant's side, it was not at all necessary to state it, or to prove the groundlessness of the resolution, since it is obvious that it is impossible to make amendments resulting from administrative proceedings in the form of an administrative legal act. Therefore, theresolution is complete legal nonsense, both in its formal and material nature.

Part 3, Article 10 of the Georgian Civil Code directly defines that in private legal relationships "individual usage is prohibited by means of administrative rules, unless these rules are applied on the basis of a particular law". The Tbilisi local government, meanwhile, had no specific authority granted by any of the laws to issue an act (resolution) of such content.

Resolution #21.05.679 issued by the Tbilisi local government on 11 October 2007, clearly falls under the annulment, as it is both against the law (Article 53, part 1; Article 52, part 2; and Article 5 of the General Administrative Code of Georgia), as well as the key principles of contracting and the civil code (the principles of autonomy of will and decency).

Requirements for issuing and publicizing acts as defined by the law (Articles 32 and 34 of the General Administrative Code of Georgia) were not only violated, but also completely ignored.

I believe the contractual rights and legal interests of Linx Ltd. have been violated. Resolution #21.05.679 issued by the Tbilisi local government on 11 October 2007, should be voided due to its illegal nature.

Paragraph "c", Article 3.2 of the agreement reads, "in case of violating obligations by the proprietor, or violating lessee's rights, which results in material damage, or reduction of income, the proprietor is authorised to deduct the full amount of damage from the payments on the leased property".

Proceeding from the above, pursuant to Article 21, part "b" of the Georgian law on the Public Defender, the public Defender addressed Tbilisi City Hall with the recommendation to void resolution #21.05.679 of 11 October 2007, in accordance with Article 601 of the General Administrative Code of Georgia. At the same time, pursuant to Articles 394, 408, and 409 of the Georgian Civil Code, to restore the initial conditions (conditions which would have existed if the circumstance obligating reimbursement did not arise). In addition, through the agreement with the contractor, to ensure the payment of proper (monetary) compensation to Linx Ltd. and to reimburse factual damage and income not generated as result of the illegal termination of the contract, intrusion of special task forces into the premises, and the illegal presence of security police.

The reply to the recommendation so far has not been received.

38 ANNEX #12. SOCIAL PROTECTION

Tina Antadze lives in the village of Geladzeebi, in the Khulo Region. On 10 October 2000, her house and other household amenities were destroyed by a natural disaster. Since it was impossible to restore the building in its former place, it was moved to a different location with the help of neighbours and associates, but even that place did not turn out to be a safe place for living, as her family again turned out to be in a landslide-prone zone. The same has been confirmed by the visual engineering/geological examination of the household plot and the living premises, by the Engineering Geological Service of Ajara Autonomous Republic State Department of Mine, Geology and Mineral Resources. According to the expert conclusion, the plot is not fit to use for agricultural purposes, and in case of development of hazardous geological processes, the house will be under threat of destruction. Therefore, the territory has been taken under constant surveillance by the Geological Engineering Department. Due to the existing threat, eight members of Antadze's family have been living there with relatives and acquaintances.

In connection with the matter, theapplicant has, on numerous occasions, addressed relevant institutions and asked them to allocate a living space or a plot of land in the territory of the Ajara Autonomous Republic, particularly in Batumi, or else she requested an appropriate compensation. Instead of providing assistance, theapplicant's family (spouse, Mikheil Tashantin Antadze) was removed from the list of first category victims of natural disasters, and moved to the third category, because of which she is being refused to receive monetary compensation, though the document issued by the Khulo Region Dioknisi Community Council on 9 March 2006 (No. 203) confirms that the applicant's family falls under the first category of victims. The family is being offered to be relocated to various regions of Georgia, to which Antadze's family does not agree, since nearly all the members of the family are either in bad health or are socially vulnerable, which is confirmed by the presented documentation. They were injured when the house collapsed as a result of the natural disaster. At the same time, they are under extremely difficult socio-economic conditions and can survive only with the help of relatives and acquaintances. If moved to another location and resettled to another region, they will be in an entirely new environment and their relatives will not be able to provide help; therefore, they are requesting assistance in the form of a locally situated living space or compensation.

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We were informed from the Ministry of Refugees and Accommodation of Georgia, that the 2007 budget covered a certain amount for purchasing houses for the families and victims of natural disasters, which were procured in the Kakheti and Kvemo Kartli regions. The resettlement of Antadze's family would be considered in terms of the mentioned regions.

Virtually the same information was provided by the Khulo Regional Council. Antadze's application had been studied on numerous occasions by the Ministry of Labour, Health, and Social Affairs of the Ajara Autonomous Republic, and the relevant departments of the municipality. The study has revealed that the family lives in a two-storey house made of wood, which currently is not under threat, and the family uses 1.25 acres of agricultural land. At the same time, Antadze's family receives a monthly pension of 385 GEL and a social allowance of 78 GEL.

As to the request of the applicant to change the living place due to possible natural calamity, her family was offered to resettle in Eastern Georgia, to which she did not agree and requested monetary compensation, which the Khulo Regional Council is not in a position to provide. It is also noted, that it is impossible to resettle the family on the territory of the Ajara Autonomous Republic. On the above, theapplicant has been informed on numerous occasions by the council.

Otar Geladze

The Public Defender received a similar application on numerous occasions from Otar Geladze living in the village of Ghurta, in the Khulo Region.

From the application and attached documentation, we learned that Geladze's large family lived in the village of Ghurta. As a result of an avalanche on 11 February 1971, eight members of the family died. Geladze and his parents survived, though the parents got disabled as a result of injuries received. Together with the Geladze family, theavalanche buried 40 other families, of which 24 people perished. According to the applicant's account, at that point all the families were taken care of, except their family. They were resettled to Chakvi and provided with houses, while his family did not receive any attention, and so were sheltered by their relatives. Letter #328 issued by the Khulo Regional Council Executive Committee on 24 December 1986, states that the applicant's family has not received any assistance, monetary compensation, or resettlement to Chakvi. They did not utilize a long-term credit for building the houses for the families and victims of natural disasters, based on resolution #349 of 25 May 1971 issued by the Council of Ministers of the Ajara Autonomous Republic. Therefore, since Geladze's father is bed-ridden, he has three children and no house to live in, and the family is under extreme deprivation. Geladze regularly applies to relevant institutions for assistance, though thus far without any success. Currently, he has been offered resettlement to Tsalka. He would have agreed to resettlement with his neighbours in Chakvi, but today he cannot move to Tsalka since his father cannot move, and besides, all the eight family members who died as a result of landslide are also buried in Ajara. He requests for his family to be allocated a living space or funds to build a house in his village.

Based on Geladze's application, we addressed the Khulo Municipality Council. They informed us that the issue had been on numerous occasions studied by the Ministry of Labour, Health, and Social Affairs of the Ajara Autonomous Republic, and the relevant departments of the municipality. The study has revealed that Geladze's family does not fall under the first category for resettlement, though the family was offered to resettle in Eastern Georgia, to which the applicant categorically disagrees. He repeatedly addresses us with the request of either monetary compensation or resettlement on the territory of Ajara.

Elena Baratashvili

On 7 August 2007, Elene Baratashvili from Chiatura appealed to the Public Defender regarding the monetary compensation allocated for earthquake stricken families of Chiatura in 1991.

The case was studied at the Public Defender's Office in 2001-2002 and it was revealed that 90,000 GEL was allocated from the State budget for the earthquake victims in 1998 and was spent by Chiatura authorities for other purposes. As stated by the applicant, in 2006-2007 a considerable amount of funds were again allocated from the central budget for the needs of the earthquake victims residing in the Chiatura region, though she still did not receive any assistance.

Based on Baratashvili's application, we addressed the Georgian Ministry of Finance and the Ministry of Refugees and Accommodation. In their replies it is explained that 71 families that suffered from the earthquake received financial assistance in the Chiatura region in accordance with resolutions #261 and #264 of the Georgian government issued in 2005. In 2005, administration of financial assistance was provided by the Ministry of Refugees and Accommodation as covered by the Government orders and according to the lists and attached documentation provided by the President's representatives in the regions.

According to resolution #264, Baratashvili was included in the lists, but she could not meet the criteria to receive the assistance as defined in the resolution, since she did not live in the railway carriage. At the same time, theapplicant was informed that Mr. Mamuka Gogatashvili, head of the Chiatura Administration, expressed his readiness to meet her and provide alternate assistance.

Tamar Svanidze

On 22 November 2007, Tamar Svanidze appealed to the Public Defender. As stated by the applicant, as a result of an earthquake in the Oni region in 1991, her house was demolished. She has addressed the relevant institutions on numerous occasions, but has not received either monetary compensation or other assistance. She received a letter from the local self-governance structures that assistance has to be provided to 30 families. A commission set up for providing assistance decided that at this stage, therecipients will be the families living in railway carriage, sheds, or in other people's houses.

To investigate the matter, we addressed the Oni Region Governor, and a copy was sent to the Ministry of Refugees and Accommodation, requesting information on the mentioned case.

We have not received any reply from the council, while the Ministry of Refugees and Accommodation informed us that the houses for the families that suffered from natural disasters were purchased in the Kakheti and Kvemo Kartli regions. According to the information provided locally, Svanidze's family falls under the first category of earthquake victims. The ministry is ready to consider the resettlement of the mentioned family in the regions where procurement was conducted.

As to the financial assistance, there have been no funds envisaged in the 2007 budget of the ministry for these purposes.

Odishari-Tamliani and Others

An application has been filed to the Public Defender by the residents of #22 Kerchi Street in Tbilisi, who suffered as a result of an earthquake. According to the application, due to the earthquake in Tbilisi, they were moved to the mentioned address in December 2007 (with temporary ownership status). The applicants are not satisfied with the living conditions; particularly, they cannot open their windows to air the rooms. They do not have the minimum conditions of personal hygiene. At the same time, they often have power cuts, especially in times of extreme cold weather.

Therefore, theauthors of the applications are requesting either the provision of adequate living conditions, or allocation of compensation to purchase flats in their own districts.

We addressed Nikoloz Khachirashvili, the gdani-Nadzaladevi District Gamgebeli (mayor) on the basis of the application.

As stated in the letter of 28 December 2007, we were informed that in the mentioned block of flats, earthquake-stricken families from various districts have been resettled there. On each floor there are two sanitary locations, a laundry room, and a kitchen. A new electricity cable has already been installed and there would be no power cuts in the future.

The same letter states that it is technically impossible to fulfil the request of the applicants regarding the provision of individual facilities (toilet, kitchen, etc.), while the issue of financial assistance is beyond the council's authority.

Kakhaber Jabauri

On 5 June 2007, Kakhaber Jabauri appealed to the Public Defender regarding the issue of his living space. According to the applicant, he has been living in Tbilisi since 1987 with his brother, Zaza Jabauri. On 28 November 1987, his brother was called to the army, but since 28 March 1988, was relieved from the military due to a diagnosis of being a psychopath. To cover his brother's treatment costs, they sold the flat and Kakhaber Jabauri, with a small child, sick mother, and his wife, lived in a rented flat for many years. Among the family members, nobody is employed and they survive on being donors (health). Unable to cover the rent, they temporarily moved to a relative's flat, who is now demanding them to move out. He could not be included in the social assistance program and so his family is in extreme deprivation. The applicant had, on numerous occasions, addressed the relevant institutions and indicated that in Tbilisi, Mukhiani 4a micro-region, building 10, there are several flats on which there is no registration of private ownership. The applicant requested assistance in obtaining a living space there.

Based on K. Jabauri's application, the public Defender sent a recommendation to the Tbilisi Mayor.

In the reply (#06/8721) received on 5 October 2007, the legal grounds for refusing the allocation of a flat have been presented. Though it is noted, that based on K. Jabauri's application of 18 April 2006, they studied the applicant's living conditions and he was included in the list of families having problems with their living place. Despite the above mentioned, K. Jabauri continues applying to the Public Defender with the request of providing a living space.

Giorgi Lomaia

An application has been filed to the Public Defender by Giorgi Lomaia regarding remuneration of debt. The application states that he is an IDP from Abkhazia. He worked in the Ministry of Internal Affairs for 23 years. Based on his personal application he left his work on 1 November 2005. He had to receive a salary in the amount of 110 GEL and a compensation equal to four months salary for leaving the post. He was requesting assistance in receiving the mentioned amount.

On the given issue he was given a written reply that regarding similar cases, the public Defender's office had on numerous occasions approached the Ministry of Internal Affairs of Georgia, which replies with the same answer, that the 2007 State budget does not envisage funds to cover outstanding salaries accrued in previous years, which is why the ministry is unable to satisfy the request of the citizens.

Tsisana Khetsuriani

On 10 July 2007, Tsisana Khetsuriani repeatedly appealed to the Public Defender regarding the reimbursement of an outstanding salary of her late husband Vakhtang Tsomaia (1460.79 GEL), since, based on the Public Defender's recommendation, she was only partially reimbursed.

Based on the application from Khetsuriani, we approached the United Electricity Distribution Joint Stock Company General Director, Mr. Lasha Chighladze. In the reply #662/22-7 of 8 August 2007, we were informed that due to difficult financial conditions created in the United Electricity Distribution Joint Stock Company they were unable to fully cover the outstanding salary of Vakhtang Tsomaia to his spouse Khetsuriani. It was also noted that all the debts will be cleared as soon as the financial situation of the company improves.

Teimuraz Metskhovrishvili

On 26 November 2007, an application was submitted to the Public Defender by the former staff of the Chiatura Tax Inspection. According to the application, they had been working in the mentioned institution for years. They were dismissed from their posts as a result of the 2004 reform, without receiving outstanding salaries for the years 1998-2000. They addressed the Ministry of Finance of Georgia regarding this issue and received a reply (02-09-05/1230) on 14 June 2005, that as stipulated by the Georgian law on the State budget of 2005, chapter 4, Article 39, paragraph 7, funds were allocated to cover the outstanding payments of the previous years. The funds allocated would be directed to cover the debts according to the order established by the ministry. Despite this, the outstanding salaries have not yet been covered.

We have addressed a recommendation to the Ministry of Finance based on the received application and are awaiting a response.

Zaur Vibliani

On 26 November 2007, Zaur Vibliani from Bolnisi appealed to the Public Defender. The application stated that from 1997 to 2004 he worked as the deputy head of land management department of the Bolnisi region. On 1 September 2004, due to the liquidation of the State Department of Land Management, he was dismissed without having received the outstanding salaries for the years 1998-2000 and 2003, amounting to 1,300 GEL. He addressed the Ministry of Finance of Georgia and received a reply (04-02-02-181/6084) on 24 February 2005, stating that "outstanding debts would be allocated from the State budget for 2005 upon the verification of the information provided by the Ministry of Justice of Georgia". It has been almost three years and the applicant has received neither reply nor outstanding salary.

Based on the application by Vibliani, we have addressed the Georgian Ministry of Finance and are awaiting its response.

Svetlana Voskanyan

On 26 July 2007, Svetlana Voskanyan addressed the Public Defender's Office. She stated that she is a patient with cancer and group II invalid, and requires chemotherapy. She has been granted the status of being below the poverty line (date of submitting application is 08/01/2007). In order to be eligible for the Medical Assistance

Programme for people below the poverty line, endorsed by the order of the Minister of Labour, Health, and Social Affairs N40/N of 7 November 2007, she should have filed her application by 1 January 2007. It was this delay due to which free medical services would be available for her from 2008. Since Voskanyan is in extreme economic hardship and cannot cover the necessary treatment costs, she is a cancer patient with a progressive and life-threatening disease. The Public Defender of Georgia has addressed Mr. Levan Peradze, Director of Social Aid and Employment Agency, with a recommendation (letter #2506/04-1/1260-07). The Public Defender was referring to the extremely difficult socio-economic and health conditions of the citizen, and the fact that Voskanyan's son is disabled and has been a group I invalid since childhood. Considering these facts, it was requested on an exceptional basis to allow the citizen to use medical insurance covered by the programme for people below the poverty line.

From the reply (letter #01/10-3717) received from the Social Aid Agency on 30 August 2007, it was clarified that according to resolution 166, Article 2, part 2 of the Georgian government made on 31 July 2007, "in 2007, insurance vouchers would be issued only for families residing in Tbilisi and Imereti registered in the database of socially vulnerable families administered by the Social Aid Agency by 1 July 2007, and whose rating equals, or is below, 70,000". Therefore, based on the mentioned resolution, an insurance voucher would be issued for Voskanyan.

Tinatin Arkhoshashvili-Tetunashvili

On 5 September 2007, Tinatin Arkhoshashvili-Tetunashvili appealed to the Public Defender's Office. According to the applicant, she is a disabled person – group I blind. She has been receiving pension since 2001 in the amount of 40 GEL and a family allowance of 22 GEL. She still receives her pension, but for unknown reasons she stopped receiving the family allowance since November 2006. The applicant addressed the Social Aid Agency to clarify the reason for the suspension of the allowance. The reply stated that according to resolution 145 of the Georgian government made on 28 July 2006, when registering Tetunashvili's family into the database, they were assigned 68,970 rating points, and since the allowance is eligible for 57,001 points, theallowance was suspended to the family.

It should be noted, that according to resolution 145, Article 7 of the Georgian government made on 28 July 2006, "the limited number of points for receiving a subsistence allowance is 57,001". Attention should be also drawn to the fact that Tetunashvili was receiving a family allowance, not a subsistence allowance, and that in the reply received from the Social Aid Agency, the threshold of 57,001 points refers to the subsistence allowance, while family allowance points are not defined. Therefore, social, or family allowance for Tetunashvili's family was paid, and should continue to be paid as they are a socially vulnerable family registered in the database of socially vulnerable families, which falls under the category defined by the resolution.

The Public Defender of Georgia, pursuant to Article 21, paragraphs "b" and "d" of the organic law of Georgia on the Public Defender, addressed Mr. Andria Urushadze, head of the Social Aid Agency, with a recommendation on 21 September 2007 (letter #3054/04/1470-07), according to which he requested to investigate the issue of suspending family allowance to Tatunashvili's family and restore the mentioned social allowance, which was suspended by violating the requirements of the resolution. It was also suggested to discuss the issue of reimbursing the damage caused to Tatunashvili as a result of the illegal suspension of the allowance, and consider disciplinary accountability of the persons who acted by infringing the law. According to the letter #02/09-8106 received from the Social Aid Agency in 2007, it was promised that they would reply in the shortest period of time after reviewing The casematerials, and discuss the basis for suspending the family allowance, as well as the decisions that would be taken by the agency in this regard. However, thereply is still pending.

Nana Lomtadze

Nana Lomtadze addressed the Public Defender's Office on 14 June 2007 with the application #0977-07. Following the study of the application and the attached documentation, the following aspects of The casewere revealed:

Nana Lomtadze worked as Director of Kutaisi Secondary Russian School #13 from 1991 to 14 April 2004. She was initially dismissed from her post by the resolution N351/k of the Georgian Minister of Education and Science made on 14 April 2004. According to the order, the decision was attributed to the systematic violation of the requirements of the Administrative Code of Georgia, confirmed by the Kutaisi Court of Appeals Board of Administrative Cases judgements, made on 30 April 2003, and 28 January 2008; the ruling of the Chamber of Administrative and Other Cases of the Supreme Court of Georgia made on 16 October 2003; as well as based on the decision of the Kutaisi District Court made on 21 October 2003. The Imereti Regional Unit Kutaisi Main Division Department for Combating Economic Crimes and Corruption of the Ministry of Internal Affairs initiated a criminal case N 8804815 against Lomtadze on the fact of preparing and issuing a forged school certificate and its annex (Article 34, part I , paragraphs "c" and "k" of the Labour Code of Georgia).

Despite the serious grounds stated in the resolution, thementioned resolution was revoked, and by the decision of the Tbilisi District Court of 17 December 2004, Lomtadze was restored to her post. It should be noted, that the Tbilisi District Court Chamber of Administrative and Tax Cases made its decision radically different from the judgment of 7 July 2004 made by the Didube-Chughureti District Court. The latter considered that the evidence present in The casedid not prove that Lomtadze was systematically underperforming her obligations, and that it was groundless to dismiss her based on Article 34, part I , paragraphs "c" and "k" of the Labour Code of Georgia.

Furthermore, theappeals chamber stated that withholding public information by Lomtadze could not have been qualified as a systematic violation of obligations, since the study of the case materials showed that the director withheld public information only once, which meant that such an action did not have a systematic character. The decisions regarding withholding public information on the same case, which were referred to in the debated resolution as grounds for the director's dismissal, were taken by the courts of various levels. At the same time, it is interesting to note that by the court ruling, only the part of withholding public information was deemed illegal, and the director of the school was ordered to release it.

The Appeals Court, in the same judgment, found it groundless to base the decision on Lomtadze's dismissal on the fact that there was a criminal case initiated against her, since according to the evidence of the case, (a letter dated 25 April 2004 by the Investigator of Imereti Regional Unit Kutaisi Main Division Department for Combating Economic Crimes and Corruption of the Ministry of Internal Affairs) it was clarified that criminal case N8804815 was initiated based on Article 362, paragraph 1 of the Criminal Code of Georgia (preparation and use of a forged school certificate) and not against a specific person.

Regarding the fact that resolution N351/k of the Georgian Minister of Education based its decision for Lomtadze's dismissal on Article 34, part I , paragraph "k" of the Labour Code of Georgia, the chamber of Appeals explained that the evidence of The casedid not confirm an immoral violation committed by Lomtadze. Therefore, according to the court, delay in releasing public information, or its withholding, cannot be considered an immoral wrongdoing.

Proceeding from the above, the Tbilisi District Court satisfied Lomtadze's appeal on the invalidation of resolution N351/k of the Georgian Minister of Education of 14 April 2004, and reinstated the applicant to her post. Hence, the judgment of the Didube-Chughureti District Court of 7 July 2004 was invalidated.

Later, theruling of the Supreme Court of Georgia of 27 April 2005 reinforced the decision of the mentioned Tbilisi District Court of 17 December 2004, and the applicant was reinstated to her post.

The applicant draws attention to the fact that to enforce the judgment of the Tbilisi District Court of 17 December 2004, the Minister of Education and Science of Georgia issued a resolution to reinstate Lomtadze to her post only on 9 June 2005. Lomtadze assumes that the ministry merely executed the court decision formally, since on 19 June 2005 she received both the 9 June 2005 resolution N170/k of the Minister of Education and Science of Georgia on restoring her in the capacity of director, and the 10 June 2005 resolution ¹171/k on her dismissal from the post. The latter stated that the grounds for the decision was Article 59, Point 2 of the Georgian law on secondary education, according to which, "the enactment of this law is the basis for dismissing heads (directors) of all legal persons of public law, which are implementing at least one step of the general education programme, and which is formalised by the resolution of the Minister of Education and Science of Georgia".

As in the previous case, Lomtadze appealed through the court against the 10 June 2005 resolution N171/k believing that the Minister of Education and Science of Georgia formally restored her on her duties simply to avoid being blamed for not fulfilling the court order; and subsequently illegally dismissed her so that she did not work as a director even for a day.

Similar to the previous resolution, the10 June 2005 resolution N171/k, of the Minister of Education and Science of Georgia was invalidated by the decision of the Tbilisi City Court Administrative Cases Board made on 21 February 2006. Meanwhile, theruling of 11 July 2006 by the Tbilisi Appeals Court Chamber of Administrative Cases left the decision of the first instance court of 21 February unchanged, which the Ministry of Education had appealed.

It should be noted here that the courts of both levels made similar decisions and concluded that an administrative body, in this case the Ministry of Education and Science of Georgia, when issuing debatable acts, was obliged to investigate all the circumstances of the matter, and as a result of administrative proceedings make the decision on issuing an administrative act or refraining from it, since there was an immediate and legitimate interest of the other party.

There is indubitable evidence that despite numerous reminders by the Tbilisi Enforcement Department of the Ministry of Justice of Georgia, the Ministry of Education and Science of Georgia did not execute the decision in a timely manner.

Later, according to the 26 March 2007 resolution ¹ 98/k of the Minister of Education and Science of Georgia, Lomtadze was restored to her capacity.

The applicant was informed about the decision on 16 April 2007, when the Kutaisi Resource Centre representative introduced her to School #13 as Director-in-Charge. The applicant highlights the fact that the Minister of Education and Science of Georgia with resolution ¹ 98/k restored her not as the director of School #13, but as the Director–in-Charge, in accordance with the law on general education.

On 24 April 2007, Lomtadze learned that she was dismissed from her post by 16 April 2007 resolution N299/k of the Minister of Education and Science of Georgia. The resolution was based on Article 20, Part 2, paragraph "a" of the Georgian law on structure, proxy, and activity rule of the government of Georgia; Article 59, part 2 of the Georgian law on general education; Article 37, part 1, paragraph "d"; and Article 38, paragraphs 1 and 3 of the Georgian Labour Code. It is important to note here that the resolution on dismissing Lomtadze was issued on the same day when the Kutaisi Resource Centre representative introduced her to School #13. It is also interesting that Kutaisi School #13 had two directors for a certain period of time – by the 26 March 2007

resolution ¹ 98/k, Lomtadze was restored to her capacity, while Nato Sandukhadze was the existing director working there before Lomtadze returned to school. According to the applicant, such a state of affairs continued until Lomtadze was finally introduced as director on 16 April 2007.

The analysis of the above facts gives grounds for the Public Defender of Georgia to reckon that the Ministry of Education and Science of Georgia merely complied formally with the obligation imposed by the Georgian Constitution, according to which, "court decisions are mandatory for all state bodies and persons while on the territory of the country", in both instances when reinstating Lomtadze to her post. To prove the above, it is enough to draw attention to the following matter: Lomtadze did not work at her post even for a day when she was first restored to her capacities. Furthermore, she was simultaneously handed resolutions on her dismissal and restoration of the post. However, when restored for the second time to her post, Lomtadze could work as Director-in-Charge at School #13, from 16 April 2007 to 24 April 2007. Not to repeat the precedent of the first restoration and simultaneous dismissal, the Ministry of Education and Science of Georgia formally, and only for a week, restored Lomtadze as Director-in-Charge. And it should be pointed out here that on 16 April 2007, when the Kutaisi Resource Centre representative introduced her to School #13 as Director-in-Charge, thesame day she was officially dismissed from the post in accordance with resolution ¹ 299/k of the Minister of Education and Science of Georgia.

The study of the documentation filed by the applicant revealed that there has been a case of making unsubstantiated decisions and ignoring the requirements of the law on the part of the Ministry of Education and Science of Georgia, as well as the misinterpretation of the rules established by the law, which has been confirmed by various court judgments.

It was precisely on these grounds that on 6 November 2007, the public Defender, pursuant to Article 21, paragraph "b" of the organic law of Georgia on the Public Defender, addressed Mr. Alexandre Lomaia, the Minister of Education and Science of Georgia, with a recommendation (letter #3415/04-3/0977-07) to invalidate the 16 April 2007 resolution N299/k as defined by Article 601, part 1 of the General Administrative Code of Georgia, since during the preparation and publication of the individual administrative act there have been violations of the requirements defined by the Georgian legislation. Hence, Lomtadze should have been restored to the post of Director of Kutaisi Public School # 13.

In response (letter #16-09-2/19269) to the Public Defender's recommendation, the Minister of Education and Science of Georgia expressed readiness to act in accordance with the final court judgment, since it was being considered by the Tbilisi Court of Appeals.

The case of Tbilisi State University Meskheti Branch Employees

On 19 July 2007, the public Defender was addressed by the professors and teachers of Iv. Javakhishvili Tbilisi State University Meskheti Branch. According to the applicants, in May 2007, the director of the branch terminated their contracts without justification.

The study of The caserevealed, that the dismissal of the staff of Iv. Javakhishvili Tbilisi State University Meskheti Branch – G. Kutaladze, P. Aspandize, S. Melikidze, N. Akhaltsi, and N. Khitarishvili – was unlawful due to the following circumstances:

Legally, theMeskheti Branch is a representation of a legal person of the public law – Iv. Javakhishvili Tbilisi State University. Consequently, the branch administration executed its authorities based on the regulations of Iv. Javakhishvili Tbilisi State University.

By 16 October 2007 resolution N01/247 of Iv. Javakhishvili Tbilisi State University Rector-in-Charge, Giorgi Khubua, until the completion of the reorganisation process at the university, certain authorities were delegated

to the directors of the following branches of the University: Sokhumi, Meskheti, Sighnaghi, Zugdidi, Ozurgeti, Poti, Kvemo Kartli, and Javakheti.

According to the decision, to allow efficient and effective execution of their obligations, until the reorganisation process was concluded at the State University, directors of the branches were given authority to sign only on the following:

1. Financial and bookkeeping documentation processed at the branch;
2. Acts related to academic, teacher's and support staff, including their contracts; and
3. Administrative acts and agreements related to students.

They had to note that according to the 17 July 2006 resolution 01-01/143 issued by the rector-in-charge on the delegation of authorities on State procurement by Iv. Javakhishvili Tbilisi State University Branches, they were granted the authority to carry out procurement on behalf of Iv. Javakhishvili Tbilisi State University, through a single-source arrangement, having obtained a prior agreement from the University.

With the same decision, the directors of Iv. Javakhishvili Tbilisi State University Branches were required to strictly comply with the rules defined by the resolution.

It is evident that the 16 October 2007 resolution N01/247 issued by the Iv. Javakhishvili Tbilisi State University Rector-in-Charge, Giorgi Khubua, did not give the authority to Meskheti Branch Director Shalva Zazashvili to issue decisions 1/80 and 1/105 of 23 May and 22 June 2007, respectively, according to which he introduced changes in the temporary staff schedule, reorganised administrative services, and the structural administrative unit. Later, based on the same decision, Zazashvili terminated the contractual agreements with the following staff: G. Kutaladze, P. Aspandize, S. Melikidze, N. Akhaltsi, and N. Khitarishvili.

It is interesting to note that changes in the temporary staff schedule, reorganisation of administrative services, and structural administrative unit, were based on decision N167-02 dated 21 February 2007 by the Iv. Javakhishvili Tbilisi State University Administration. When we requested the mentioned document from the Meskheti Branch administration, we received a reply on 13 August, signed by Director Zazashvili, stating that "decision N167-02, together with the other documentation, have been removed by the financial police, which is conducting a revision of the financial activities of the branch". Later, in reply to our enquiry, the Ministry of Finance informed us that "decision N167-02, dated 21 February 2007, has not been removed from Iv. Javakhishvili Tbilisi State University Meskheti Branch". It turned out that the document could not be located at Tbilisi State University. In addition, in the reply N566/01-02-22-04 received on 29 August 2007 from the university administration we read that "decision N167-02, dated 21 February 2007, is not registered at the University Chancellery".

It was obvious that Meskheti Branch Management exceeded its authority by implemented reorganisation, which was not under its authority, based the reorganisation on the document, which did not exist, and which resulted in administrative decisions, specifically the termination of the contractual agreement with Pavle Aspanidze, Specialist of Education Process and Student Registration, which was justified by the reorganisation implemented on 23 May 2007. The same served as the basis for terminating the contractual agreement with Nana Khitarishvili – Education Management and Student Registration Service Dispatcher. In addition to the reorganisation, the basis for terminating the contract with Guram Kutaladze – Deputy Director in Education and Scientific Area – was also a violation of several articles of the contractual agreement, including missing work without justification, ignoring the established rules for conducting lectures and seminars, and not returning literature timely to the library, etc.

In such a case, the branch management should have imposed on the staff respective penalties for disciplinary misconduct.

According to The casematerials presented, there have been no administrative measures taken by the branch management, which makes the justification for terminating contracts even less convincing, and the taken decision on the dismissals even more excessive. Furthermore, according to Article 13, part 1 of the General Administrative Code, "an administrative agency may review and solve a matter only if the interested party whose right or legal interest is restricted by the administrative decree has been enabled to present his opinion, except as provided by law".

According to Article 60, part 1, paragraph "b" of the General Administrative Code, "an administrative decree shall be nullified if it was issued by an incompetent institution or official".

Since Iv. Javakhishvili Tbilisi State University Meskheti Branch Director Zazashvili exceeded his authority by implementing reorganization, pursuant to the organic law of Georgia on the Public Defender, I addressed University Rector-in–Charge Khubua to invalidate decisions 1/80 and 1/105 of 23 May and 22 June 2007, respectively, with all their effects, and restore the initial legal status to the following staff: G. Kutaladze, P. Aspandize, S. Melikidze, N. Akhaltsi, and N. Khitarishvili.

In response to the recommendation, Khubua replied that the Meskheti Branch had been transformed into a legal person of the public law and the restoration of the staff in their capacity should be carried out in terms of the existing reality. We completely disagree with such a position, since the fact, which we referred to in our recommendation, took place when the branch was still under the administration of the Iv. Javakhishvili Tbilisi State University.

39 ANNEX #13. THE RIGHTS OF A CHILD

The case of Kh. J.

The Public Defender was addressed by Kh. J. The study of The caserevealed that Kh. J. is a single mother, who has a seven-year-old daughter and an elderly father, who suffers from a mental disease and diabetes. The family is extremely deprived. She is also unemployed and does not have a living place with her family practically living in the street. The mother cannot cover the child's education expenses.

The Public Defender addressed the Gldani-Nadzaladevi District Gamgeoba with the request to study the case and provide assistance to Kh. J., though there has been no assistance provided so far.

The case of Kakhaber J.

The Public Defender was addressed by Kakhaber J. His living conditions are extremely deprived. He lives in a one-room flat, where apart from him, lives Kakhaber J.'s mother and his brother, who suffers from a mental disease, as well as his family. Kakhaber J. and his spouse are both unemployed.

Due to the lack of income, their 10-year-old son, T. J., is deprived of the minimal conditions for studying. The parents cannot purchase textbooks and clothes. Due to the lack of finances the child often misses classes and is academically backward, which has a negative effect on the child's emotional and psychological state.

The Public Defender addressed the Ministry of Education and Science of Georgia so that assistance could be provided to the child. Currently, thestudy of The caseand initial assessment of the situation has been delegated to a social worker from the Programme for Prevention of Children's Abandonment and Deinstitutionalisation. So far, the results of the assessment are unknown.

The case of Shorena Zh.

The Public Defender was addressed by Shorena Zh. The applicant stated that she has one small grandchild. The child is deprived of parental care – mother had passed away, while the father's whereabouts are unknown. Shorena Zh. is the child's guardian, and due to financial constraints, she cannot cover the costs of the surgery that the child requires. There is a Programme of Inpatient Assistance ongoing at the Ministry of Labour, Health, and Social Affairs, which includes a component on childcare. The programme states that the beneficiaries are children deprived of a parent's care and for people conflict zones

under the age of 15. The casehas been transferred to the Zugdidi Region Education Resource Centre under the Ministry of Education and Science of Georgia.

The case of Nana L.

The Public Defender was addressed by Nana L. She has a 10-year-old child suffering from the most acute form of cerebral paralysis. The applicant stated that the programme for providing assistance with medications has been completely suspended in the country, while such assistance is of life-saving importance for her child and others suffering from the similar condition. Considering that Nana L. is not included in the Poverty Reduction Programme but is financially deprived, she cannot purchase the necessary medication. In this specific case, the public Defender addressed the private pharmaceutical company PSP Richter, which managed to provide assistance to the child.

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ANNEX #14. FREEDOM OF RELIGION

Article 142 of the Criminal Code of Georgia, concerning the violation of human equality on the basis of religion.

On 4 July 2007, by the letter #g02072007/115 from the Office of the Prosecutor General we were informed that on 28 June 2007, an investigation was launched at Tbilisi Isani-Samgori District Department I on criminal case #304073312, involving the incident of violating human equality with regards to Jehovah's Witnesses - Nana Babilomashvili and Eter Guliashvili (as covered by Article 142, Part 1 of the Criminal Code of Georgia).

The case of Nana Babilomashvili

On 15 June 2007, Nana Babilomashvili, a member of the religious organisation of Jehovah's Witnesses appealed to the Public Defender. According to her statement, on 14 June 2007 she and an associate, Eter Guliashvili, were preaching their faith at Varketili Massivi, 3 Zemo Plato Building, 51a, Entrance 3. The owner of flat No 48, a man of approximately 35 years of age, after a conversation with the ladies, and having learned about their religious faith, physically and verbally abused them and prohibited them to continue their religious service.

On 22 June 2007, by the letter #1967/05-2/0983-07, Babilomashvili's application was forwarded from the Public Defender's Office to the Isani-Samgori District Department of the Ministry of Internal Affairs. The letter indicated that we found it expedient to investigate the fact in accordance with

The case of Kakhaber Mikadze

On 6 July 2007, Kakhaber Mikadze, a member of the religious organisation of Jehovah's Witnesses appealed to Public Defender. According to his statement on 2 July 2007, he was in the village of Ketilari in the Abasha Region to conduct religious activities. At around 13:00 hours, in his own vehicle, he drove to the outskirts of Abasha. When approaching the centre he noticed a car driving from the opposite direction with plate No. KVZ 921, driven by Khvicha Jakhia. The passengers of the mentioned car would not allow him to continue his journey. Raindi Chaganava came out of the car and was interested to know who Mikadze was. When he learned that the latter was a member of the religious organisation of Jehovah's Witnesses, he physically and verbally abused him and damaged his car.

On 18 June 2007, a letter #1848/05-2/0930-07 was sent from the

Public Defender's Office to the Office of the Prosecutor General of Georgia and Abasha District Department of the Ministry of Internal Affairs. The letter stated the circumstances of the matter described in Mikadze's application, indicating that The caseshould have been studied on the grounds of defining the damage to health incurred, and Articles 187 (damaging other's property) and 142 (violating human equality) of the Criminal Code of Georgia.

On 16 July 2007, by the letter (#g13072007/134) from the Office of the Prosecutor General, we were informed that on 1 July 2007, at the Abasha District Department of the Ministry of Internal Affairs, an investigation was launched based on Mikadze's application on criminal case #048070056, on the signs of offences defined by Article 142, part 1 and Article 187, part 1 of the Criminal Code of Georgia.

The case of Kakhaber Gelashvili and Giorgi Khurua

On 4 November 2007, Kakaber Gelashvili and Giorgi Khurua, members of the religious organisation of Jehovah's Witnesses, appealed to the Public Defender. According to their statement on 3 November 2005, Paata Bluashvili and his supporters forced the applicants out of the rented place, due to which they were illegally deprived the possibility of performing religious rites. Proceeding from the above, they were requesting relevant assistance.

On 7 December 2005, Gelashvili's and Khurua's application, along with relevant materials, were forwarded from the Public Defender's Office to the Office of the Prosecutor General of Georgia for follow-up.

On 23 October 2006, we again addressed the Office of the Prosecutor General in writing, requesting information on the follow-up activities implemented.

On 17 November 2007 we were informed that on 17 November 2005, theRustavi City Department Investigation Division of the Ministry of Internal Affairs launched a preliminary investigation on the facts described in the application (on the criminal case #012050771, regarding the offence defined by Article 155 of the Criminal Code of Georgia - illegal interference into performing worship or other religious rites).

On 4 December 2005, by the judgment of the Rustavi City Court, theaccused, Bluashvili, was sentenced to imprisonment, and was moved to prison No. 5. Based on the appeal of the defence by the judgment of the Tbilisi Appeals Court judge of 12 December 2005, Bluashvili's imprisonment was changed with the handover under police supervision. On 30 December 2005, criminal case proceedings with the indictment took place at the Rustavi City Court. On the basis that Bluashvili did not appear at the court on 9 April 2006, Rustavi City Court Judge Z. Esebua issued a judgment on changing the restrictive measure applied. Currently, Bluashvili is sentenced to imprisonment and is being sought after.

The case of Giorgi Saralidze

On 18 December 2007, Giorgi Saralidze filed an application (#2026-07) to the Public Defender of Georgia. According to the applicant, he purchased a plot of land with Yuri Machitidze, Goderdzi Tsertsvadze, and Avto Vadachkoria, located in Zestaponi, at 63 Agmashenebeli Street. On the mentioned territory, Saralidze and his brothers in faith are building a place for conducting religious rites of Jehovah's Witnesses. According to the information provided by the applicant, on 12 December, at around 01:00 hours, unknown persons threw a bottle filled with fuel towards the construction site. The mentioned object landed inside a room and caused a fire, which was extinguished by guards who were at the building. According to Saralidze, an investigation has been launched on the mentioned case.

On 21 December 2007, the public Defender sent the materials of The caseto Mr. Malkhaz Machitidze, head of the Zestaponi Regional Department of the Ministry of Internal Affairs, and pursuant to Articles 18 and

21 of the organic law on the Public Defender, he requested detailed information regarding the investigation proceedings.

The reply has not been received yet. The case is being processed.

The case of Kakhaber Gelashvili

On 18 December 2007, Kakhaber Gelashvili filed an application (#0505-06/1) to the Public Defender of Georgia. He is a priest of the Jehovah's Witness community. According to the applicant, on 9 December 2007, he was holding a meeting at Royal Hall of Jehovah's Witnesses at 119 Melikishvili Street in Rustavi. At around 18:00-19:00 hours, unknown people threw stones toward the building. According to the information provided by him, theincidents of throwing stones towards the building are frequent, which damaged the façade of Royal Hall.

As clarified by the applicant, an investigation on the matter has been launched and is being led by Rustavi Department of Ministry of Internal Affairs Investigator Roland Ejibashvili.

On 21 December 2007, the public Defender sent the materials of The caseto Mr. Gela Gigineishvili, head of the Rustavi Department of the Ministry of Internal Affairs, and pursuant to Articles 18 and 21 of the organic law on the Public Defender, he requested detailed information regarding the investigation proceedings.

The reply has not been received yet. The case is being processed.

The case of Alexandre Barnabishvili

On 13 July 2007, Alexandre Barnabishvili, a member of the religious organisation of Jehovah's Witnesses filed an application (#1199-07) to the Public Defender of Georgia. He stated that along with his brother in faith, Giorgi Kapanadze, he purchased the real estate of 26a Chubinashvili Street. The mentioned building is used for religious gatherings.

According to the applicant, theabove-mentioned building has, on numerous occasions, been targeted by minor residents of the neighbourhood. Aggressive actions derived from religious intolerance are expressed in the form of graffiti on the wall, such as "down with Jehovah", breaking the bell, or throwing stones.

On 16 August 2007, a letter (#2648/05-2/1199-07) from the Public Defender's Office was sent to the Tbilisi Didube-Chughureti Department of the Ministry of Internal Affairs. Together with the letter, we have forwarded Barnabishvili's application and requested to conduct relevant work with the minors with the help of the district police inspector.

On 13 September 2007, the public Defender's Office received a reply from the head of Old Tbilisi Division II Department of the Ministry of Internal Affairs, which states that relevant preventive measures have been implemented with regards to the minors living near 26a Chubinashvili Street. On 15 October, a copy of the letter from the head of Old Tbilisi Division II Department of the Ministry of Internal Affairs was forwarded to Barnabishvili, notifying him that we have closed the proceedings on the given case.

The case of Anna Jikurishvili

On 14 July 2007, Anna Jikurishvili, a member of the religious organisation of Jehovah's Witnesses appealed to the Public Defender of Georgia. She stated that on 13 July 2007, after the completion of a religious gathering

at 24 Moreti Street, at around 20:30 hours, she was attacked by seven unknown persons. They threw stones at her. She was hit on the head and was physically injured. An ambulance crew moved her to a healthcare facility, while the patrol police arrived after an hour's delay.

On 27 June 2007, a letter #2004/05-2.0979-07 was sent from the Public Defender's Office to the Gldani-Nadzaladevi Regional Office of the Prosecutor General, where we described the circumstances of the matter provided in Jikurashvili's application, and requested further follow-up on the mentioned case.

On 18 July 2007, by the letter #g6072007/108 from the General Office of the Prosecutor General of Georgia we were informed that on 13 July 2007 at the Tbilisi Gldani-Nadzaladevi District I Police Department an investigation was launched on the criminal case #01073167, regarding the physical injuries incurred by Jikurahsvili, as defined by Article 118, part 1 of the Criminal Code of Georgia. On 12 June, the offence was re-qualified and the investigation continued on the signs of the crime defined by Article 142 of the Criminal Code of Georgia.

The case of Otar Mikava

On 6 June 2007, the public Defender's Office was addressed by Lawyer Manuchar Tsimintia on behalf of Otar Mikava. According to his statement, on 27 March 2007, in the daytime, at the bridge connecting Gldani Micro-Regions 7 and 8, Mikava was attacked by 15 persons on the grounds of religious intolerance. The injured party was physically and verbally abused. Patrol police crew failed to detain the attackers on the site. As clarified by Tsimentia, Mikava found out the names and addresses of two of the possible attackers. The information was provided to G. Kolotauri, Inspector-Investigator of the Gldani-Natdzaladevi Police Division II Department of the Ministry of Internal Affairs, who was conducting a preliminary investigation on the issue. Both attackers identified by the injured party were freed on the same day.

On 13 June 2007, a letter 1805/05-2/0931-07 and Tsementia's application was forwarded from the Public Defender's Office to the Office of the Prosecutor General of Georgia for further follow up.

On 6 July 2007, by the letter g05-072007/118 from the Office of the Prosecutor General of Georgia, we were informed that on 27 March 2007 at the Tbilisi Gldani-Nadzaladevi District II Police Department, an investigation was launched on the criminal case #01071657, regarding the fact of hooliganism with regards to Mikava, as defined by Article 239, part 1 of the Criminal Code of Georgia. On 26 June 2007 L. Gogiashvili was rendered as a suspect, and his actions were qualified under Article 142, part 1 of the Criminal Code of Georgia.

The case of Zaza Berishvili

On 31 May 2007, Zaza Berishvili and Shakro Dzadzamia, members of the religious organisation of Jehovah's Witnesses, appealed (#0868-07) to the Public Defender. According to their statement, on 25 May 2007, at 10:00 hours, they were in Zugdidi, at the beginning of Tsereteli Street, where they preached their faith. They met a middle-aged unknown man, who having learned that they were Jehovah's Witnesses, physically abused them.

On 5 June 2007, a letter #0868-07 and an application was forwarded from the Public Defender's Office to the Office of the Prosecutor General of Georgia for further follow-up.

On 18 July 2007, by the letter (#g/6072007/109) from the Office of the Prosecutor General of Georgia we were informed that on 27 May 2007 at the Zugdidi District Police Department, an investigation was launched

on criminal case #44070505, as defined by Article 118, part 1 of the Criminal Code of Georgia. On 16 July, the offence was re-qualified and the investigation continued on the signs of the crime defined by Article 156 of the Criminal Code of Georgia.

Obstructing the Reconstruction of a Mosque for the Muslim Population of Mokhe Village

On 10 October 2007, 22 residents of Mokhe village of the Adigeni Region filed a collective application #1653-07 to the Public Defender. According to their statement, they are Muslims. In the village, there is a building constructed by the persons who were forcefully re-settled from the Georgian Soviet Republic in the 1940s, which served as a Mosque. As explained by the applicants, under Soviet rule, after the forced re-settlement of the local population, the former Mosque building was used first as a warehouse, and later as a library and a village club. Currently, the building is dilapidated and does not have a roof, and it is not recommended to approach the building due to safety reasons.

According to the applicants' statement, theMuslim population of the village planned to build a fence around the building. Presumably, thementioned works were not approved by the local administration. At the same time, the planned works have caused resistance from the side of the Christian population of the village. The village residents request the rehabilitation of the former Mosque to avoid its final destruction. For this, they find it necessary to repair the building and put a fence around it. The population is ready to cover the costs of the works.

It should be taken into consideration that the mentioned building is the property of Adigeni Municipality. Consequently, conducting any work there falls under the authority of the Adigeni Municipal Council. In compliance with Article 10, paragraph 3 of the Georgian organic law on the property of local self-governing entities, "self-governing entities exercise property rights on the property under their authority, according to the interests of the population, and in accordance with the rules defined by the Georgian legislation". According to Article 3, paragraph 5 of the same law, "a person living or registered on the territory of the self-governing entity enjoys the right to request from the self-governing entity bodies and officials to defend the rights of the self-governing entity, as a legitimate proprietor, according to the rules defined by the Georgian legislation".

Proceeding from the above, we can conclude that the request of the Muslim population of Mokha village is completely fair and legitimate, and therefore, the local self-governing entity should carry out adequate measures in this respect.

Arbitrarily Damaging a Mosque at Plate Village

Bezhan Bolkvadze, Muqta of the religious organisation of Islamic Religious Council of Muqtas, appealed to the Public Defender. He stated that the priest of Zarzma Village Church dismantled the room and the top two rows of engraved stones from the Mosque built by the persons who were forcefully re-settled from the Soviet Republic of Georgia in the 1940s. The priest, Nikoloz Getsadze, took the stones for the construction from a church in Zarzma.

On 1 September 2007, the public Defender's representatives visited the village of Plate of the Adigeni Municipality and interviewed the village residents. A majority of the village population is Orthodox Christian, while part of the population constitutes Muslims re-settled from Ajara. They explained that in the centre of the village is a building without a room and the stones from the façade are crumbling. The building was constructed by the persons who were forcefully re-settled from the Soviet Republic of Georgia in the 1940s. There are Muslim symbols on the wall from the entrance side, while on the rear wall there are Arabic inscriptions, later cemented.

After the forceful re-settlement of the Plate village population from the Soviet Republic of Georgia, the building was used first as a village club, then as a warehouse. Lately, due to dilapidation, the building was used as a cattle dwelling. According to the local residents, thestones from the building were falling due to natural conditions and the age of the construction. They also noted that the current state o the building poses a threat for the life and health of the villagers. For this reason, they are requesting dismantling of the building and restoration of the Orthodox Church from the construction materials extracted, since they believe that the Mosque had been built from the ruins of a Christian Church.

According to the account of the Muslim population of the village, by the initiative of the Zarzma village Priest Getsadze, the parish of Zarzma Church dismantled the room, ceiling, and several stones with the engravings, from the Mosque in the village of Plate. They claim that the construction materials were transported to the village of Zarzma to construct a church and a residential building. The Muslims feel offended by such actions.

On 1 September 2007, the public Defender's representative visited the Monastery of Zarzma Village, on the territory of which the engraved stones are placed. With regards to this matter, the public Defender's representative spoke with the devout of the Church, Valeri Kutateladze. According to Kutateladze, thestones placed in the courtyard were accepted as an offering from the Christian population of Plate village. He also said that the stones came down from the former building of the Plate village warehouse. He thought that the priest of the Church was presumably going to use the stones of the Mosque as construction material for building two small churches in the Zarzma Monastery Complex and a façade of the residential building. With the rest of the materials, they are presumably going to restore an Orthodox Christian church in the village of Plate. Kutateladze assumed that the above activities would be carried out after the priest receives the relevant permission from the Ministry of Culture, Monument Protection, and Sport.

The Public Defender's representative also spoke with the member of the Zarzma Church parish, a resident of Plate village, Mate Rekhviashvili. The latter explained that the stones placed in the Zarzma Monastery yard were carried from the former village club (warehouse) building by himself and three other residents of Plate village, approximately three weeks prior to the Public Defender's representative's visit. He claimed that the stones had fallen down from natural causes and that there had been no dismantling of the building façade. The Gamgebeli (mayor) stated that the building of the former warehouse was the property the Adigeni Municipality.

In compliance with Article 16, part 2, paragraph "a" of the Georgian organic law on the property of local self-governing entities, a self-governing entity has the exclusive authority of managing and utilizing the property under the ownership of the self-governing entity. According to Article 181, part 2, paragraph "b", it is under the authority of the executive body of the local self governance to transfer the ownership rights of the property of the self-governing entity or otherwise manage it. According to Article 46, part 3 of the same law, "local self-governing bodies are obliged to defend the legitimate ownership rights of the self-governing entity when managing and utilizing it".

Considering that the decision on transferring construction materials from the building of the former warehouse of Plate village to Zarzma Monastery was not taken by the Gamgeoba of the Adigeni Municipality, the protocol compiled by the Public Defender's representative states that the property of the Adigeni self-governing entity has been clearly expropriated for illegal activities, as defined by Article 178 (robbery) by the Criminal Code of Georgia.

Teaching Religion at Gardabani Kindergarten #3

On 6 August 2007, Ali Babaev, the chairman of Georgia My Country Union appealed to the Public Defender of Georgia. The application states that the actions of Gardabani Municipal Resource Centre Head M. Ugulava

and his/her supporters caused the dissatisfaction of the Georgian as well as Azeri population of the region. The application referred to the teaching of religion at Gardabani Municipal Kindergarten #3, which is against the majority of the kindergarten attendee's freedom of religion.

On 9 November 2007, a written request #3426/05-2/1313-07 was sent to the administration of Gardabani Municipal Kindergarten #3, to clarify whether religious classes were conducted at Kindergarten #3.

On 22 November 2007, the gardabani Municipality Pre-School Education Institution responded with the letter # 76, which stated that religion was not taught at any of the kindergartens of the pre-school education institutions, including Kindergarten #3.

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