Introduction

Selective justice; distrust to the judicial authorities; mass and cynic infringement of the right of ownership; improper investigation of the facts of torture, inhuman and degrading treatment, and often – covering up of the torturers; use of power for the purpose of personal revenge; non-punishment of the high officials, who committed particularly gross violation of law and human rights; serious infringement of the freedoms of expression, meeting and manifestation; violation of the presumption of innocence; demonstrative special operations, aiming at generation of frightening effect – this is the incomplete list of problems existing in the sphere of violation of human rights, existence of which were most remarkable during the 1st half of the year 2007.

In the country such attitude has been formed towards human rights that the state departments actually don't respond even to absolutely obvious violations. "**There is no time for human rights. We are building a state" –** this is the slogan of the government. For some reason it's considered that fast and effective building of the state is easier if we neglect democratic processes and refuse to protect human rights.

Serious problems persist in penitentiary system during the reporting period. Penitentiary establishments are still overloaded and the problem of treatment of prisoner patients isn't solved yet. The Public Defender's Office examined many cases, which clearly show that the patient's death was caused by incorrect and inadequate treatment. Experts' conclusions clearly point out the issue of responsibility of doctors, but Prosecutor General's Office avoids investigation of these cases and punishment of guilty persons. It refers to the cases where it's clearly seen that inhuman treatment towards ill prisoners, degrading treatment and torture, encroachment on their health and life occur…

No policy is formed in the country in regard to children's rights. During the reporting period our Office examined number of facts of violence against children; the case is the physical abuse of children, psychological pressure and sexual violence. Shortcomings, existing on legislative and executive level revealed, which interfere with provision of proper assistance to children.

This is not the full list of problems, there still are a lot of other urgent issues in the sphere of protection of human rights, which could be solved step-by-step, if the main problem is solved and the State turns to liberalism and humanism.

Right of Fair Court

Introduction

The Constitution of 25 August, 1995, declares the full independence and non-interference into court system. Namely, according to clause 3 of article 82, "The judiciary is independent and is performed only by courts", which means that any kind of pressure is punishable by law and nobody has the right to make a judge accountable in a particular case.

The judiciary is performed only by courts in Georgia. Carrying out independent principles in practice by judges and having strong and effective judiciary system is vital for freedom and democracy.

Although it is true that today Georgian legislation protects the independence of the court system, there still can be found a big part of the public, non-governmental organizations, groups of society or individual citizens who overtly express their distrust against courts and protest the poor quality of court independence.

The violation of principles of the independence of court system poses threat to the supremacy of law, protection of human rights, economic development of the country, civil integration process, security of citizens and aggravates the social background.

Diminishing court independence directly contradicts the values at which Georgia is orientated.

Taking the above into account, legislative and executive bodies must create real guarantees for the implementation of mentioned principles.

Legislation of Judicial Power and Amendments Made to it

* * *

1) The amendment was introduced to article 12, clause 4 of the organic law of Georgia "On Common Courts" on July 11, 2007 with the following wording: "photo, video filming and audio records, TV-radio broadcasting are inadmissible in the court building and during the discussion of civil cases, except when the above is implemented by the court or court official. The court is authorized to spread photo, film, and video materials unless it contradicts the law. Rule of stenography and audio recording is determined by the court (judge). This right may be restricted by the motivated decision of the court (judge)".

The Public Defender negatively evaluates the above change and considers that current legislation provides sufficient guarantees to protect the independence of judiciary power and ensure effective and impartial implementation of justice without this amendment.

The parties, mass media and the public represent the so called "passive consumers", who entirely become dependent on the court discretion to spread photo, film, audio and video

materials that are instrumental methods of obtaining information and consequently it is possible to view the amendments in the context of access to information about court procedures and expression of freedom.

Prohibition of video filming of court sessions makes it impossible to prove the facts of entering incorrect facts in records. If the party proves that the evidence given by the witness is incorrectly reflected in the minutes of court hearing, then in this case, presenting video material is the best way to prove the truth. In the event of justifiable suspicion on the existence of the deliberate forge of the records, naturally we should expect that the video material reflecting the forged document will become available for the interested party. Consequently, in the event of existence of photo and video recordings of the court session, the party's right to fair and impartial court is protected which is at the same time the subject of public interest.

It is clear that the aim of presented amendments is to protect court against noisy debates and loud statements, which often takes place in our reality, especially during the hearings of sensational cases when some people attending the hearings want their actions to be filmed. It is believed that such cases reduce the trust of the society towards judicial power; however, the judge is entitled sufficient authority by law to eliminate such incidents.

Current criminal and civil procedural codes envisage sanctions against non-observance of order in the courtroom, showing disrespect to the court, non-fulfillment of the judge's order. Transgressors are either fined or are sentenced to up to 30 days of imprisonment. The current legislation sufficiently ensures the normal functioning of courts and avoidance of any kind of provocative assaults. Moreover, in order to avoid similar incidents, the parliament adopted amendments to the Criminal and Civil Procedure Codes which made the responsibility for disrespect to court and violations of order in courtrooms stricter. Namely, the term of administrative arrest increased from 30 to 60 days. The court has strengthened mechanisms for responding to actions directed at creating disorders at court sessions and discrediting judiciary system.

Based on the above, the question arises – how much is the prohibition of video filming of the court trial proportional with the set goal?

If public interest towards some specific case is explicitly expressed, the society has the right to obtain comprehensive information about the development of the court proceeding. In those cases where there is a different interest (for example, the details of intimate life of a person, court litigation connected to state or other kind of confidential information, the cases of the minors, etc) are not open to public by procedural legislation anyway. The concept of fair and impartial court is based on the conviction of the participant of the process that the open discussion of his/her case in the presence of public and media will guarantee that the judge will not take any arbitrary actions. This guarantee is realistic under the circumstances when the cameras of independent media record each action of a judge and the parties and serve the function of preventing from unlawful actions. Right of fair court is guaranteed to a lesser extent when the camera is the instrument in judge's hands that makes it impossible to record the illegal actions of the judge. Given the presented norms, it is interesting to know if

Girogi Chemia would have spread the video material showing how the judge ignored the fact when the person at the hearing of Sandro Girgvliani murder case gave the mobile phone to one of the accused persons. There is no legitimate interest that can ban the right of media to film such cases.

In Georgia the trust towards the criminal court is very low and there is a threat that in the event of enforcement of this norm the trust diminishes even more. For a citizen the court will become similar to a closed system in which the person will have no faith that his/her rights are protected. Consequently, the citizens will restrain themselves from using court mechanisms for the protection of their rights. Deeply rooted stereotype existing in the society today that judicial power is not independent and that it is a subservient executor of the will of Political authorities or Prosecutor's Office will become even stronger. Georgian Judiciary system is facing a big challenge - it has to gain the public trust.

Banning photo, film, video and audio recordings will not protect the court against the campaign of broad public. The representatives of political and other social groups can express critical, offensive or other opinions about the judge's performance through media, Parliamentary debates or from other public platforms. European Court of Human Rights on the case of Sunday Times v United Kingdom, also Prager and Oberschlik v Austria stated: "The society and a politician can closely watch the process of implementation of heavy responsibility imposed by the judge, as judges cannot conduct their activities in isolation. As for the criticism, protection of judiciary interests does not entitle the state to restrict public discussion about the cases under trial. Judges are not delicate flowers so they will not fade from hot and severe criticism'.

2) Concerning Judiciary power, it is interesting to mention the following: Parliament of Georgia shared the Public Defender's proposal about the abolition of article 336 of the Criminal Code of Georgia and the article was abolished on the basis of amendment made on 4 July, 2007.

Article 336 of the Criminal Code of Georgia (passing illegal indictments or other court rulings) created a certain instrument of pressure over courts exercised by the Prosecutor's Office. Namely, the existence of article 336 in the Criminal Code of Georgia equipped the Prosecutor's Office with the power to take criminal proceedings against the judge, in which case the Prosecutor's Office came across as the 4th instance, which infringed the principle guaranteed by article 84 of the Constitution of Georgia, according to which nobody has the right to make a judge accountable in a particular case and all acts which restrict the independence of a judge are void.

Besides, article 336 of the Criminal Code of Georgia empowered the Prosecutor's Office to interfere into the enforcement of judiciary, as by intimidating to bring them to criminal responsibility, they could exercise their influence over judges, which indeed poses a threat to the principles of independence and supremacy.

* * *

The principle of distribution of power strictly regulates the liabilities of all three branches of the government to keep power balance and not to admit overlap or excessive use of power. Despite the fact that the Legislative body of Georgia adopted the resolution to eliminate article 184 from the Criminal Code with the aim of decriminalization, the Supreme Court gave a contradictory interpretation to the above resolution and it actually partially combined the function of a legislative body with its own. By this action the Supreme Court favored the development of incorrect practices of courts and Prosecutor's Office which resulted in illegal imprisonment of dozens and dozens and bringing the judiciary system into disrepute. The criminality or decriminalization of a particular action is decided by the Parliament of Georgia exclusively through legislative changes requiring their enforcement by judiciary bodies without any further clarification.

By part 5 of article 1 of the Georgian law on "The amendments and additions to the Criminal Code of Georgia" of May 23, 2007, article 184 (unlawful obtaining of a car or other mechanical vehicle without the purpose of misappropriation) was deleted from the Criminal Code of Georgia.

In accordance with the explanatory note which says: "According to the current wording of the draft law, the article 184 is being deleted, as unlawful obtaining of a car or other mechanical vehicle without the purpose of misappropriation is specified under aggravating circumstances in the articles on theft, robbery and burglary; unlawful obtaining of a vehicle does not bear social danger to such extent that the mentioned action could be punishable by criminal law; even so, it is especially unclear why should only unlawful obtaining of a vehicle without the intention of misappropriation be considered the crime while unlawful obtaining of other items should not. According to the draft law the mentioned action is being decriminalized.

From the above explanation it is clear that the aim of the legislation is decriminalization of actions, which has well been implemented.

On June 28, 2007, the Great Chamber of the Supreme Court chaired by K. Kublashvili and composed of M. Gogishvili, Z. Meishvili, M.Chinchaladze, M. Oshkhareli (the speaker), L. Murusidze, I. Tkheshelashvili, M. Vachadze, M. Tsiskadze discussed the cassational appeal of Z. Gvritashvili, the prosecutor of Khashuri district Prosecutor's Office on the verdict of March 22, 2007, passed down by the Chamber of Criminal Cases of the Tbilisi Appellate Court, without hearing the case. The prosecutor demanded the vacation of the sentence passed on March 22, 2007, by the Chamber of Criminal Cases of the Tbilisi Appellate Court concerning the part of the punishment of P. Khvedelidze and also demanded to return the case for discussion to differently constituted bench motivating the demand that Khvedelidze's indictment in the part of punishment is illegal, and is justified in his favor.

According to the verdict of June 28, 2007, in the motivation part of the Great Chamber of the Supreme Court of Georgia "On the amendment made on May 23, 2007, to the Criminal Code of Georgia, which is still effective from 16 June of the same year, the abolition of article 184,

i.e. non-existence of special elements in the provision does not mean that the action is not of criminal nature, it does not bear social danger any more and that it has been de-criminalized.

Current Criminal Code actually qualifies punishable actions according to the ways of misappropriation as specified in corresponding articles 177, 178, 179.

Similar to articles 177, 178, 179, crimes stipulated in article 184 are qualified as crimes against property. The subject of misappropriation is such property relations that are connected with particular ownership or possession of property. After the appropriation of the article by the culprit, the latter can make use or dispose of another person's property as his/her own. In this case one of the essential constituent elements of the subjective side of the crime is lucrative motivation – that a person can take advantage of another person's property – a car or other mechanical vehicle.

Stealing a vehicle according to article 184 of the Criminal Code was qualified as theft if the culprit at the moment of possessing another person's car, had the right to use it as his own and intended to have it in temporary use. The legislator, proceeding from the intention of the culprit, qualified his action by the article of the criminal code with special provision unlike the case when the person intended to have the car not in temporary use.

By having deleted article 184 from the Criminal Code, the law maker thus refused to punish the car thief according to a special article, proceeding from his intention. It means that this crime falls under the corresponding articles on unlawful obtaining of a car or other vehicles for temporary or any other use.

The fact that article 184 does not specify the aim of unlawful obtaining, it does not imply that when culprit commits the crime under this article, there is no intention of its temporary possession in which case the culprit will use another person's property, a car – temporarily, since unlawful obtaining means that the culprit can possess and dispose of another person's property as his own.

When the person obtains a car unlawfully s/he, in the same unlawful way obtains the possibility of its illegal use, in which case s/he can dispose of it on his/her own accord. According to the provision of the law, if the culprit used the car temporarily, in this case the criminal code had a different composition of the elements of crime than when using the car for a longer time or any other form of the use of the vehicle.

By having deleted article 184 from the Criminal Code, the law maker thus refused to punish the culprit according to a special article for illegal obtaining of the vehicle for temporary use and from the moment the criminal obtains the vehicle illegally in which case s/he can use it as his own, no matter whether s/he is intending to have it in temporary use or for some other purpose – it shall be qualified by the corresponding article as the act of misappropriation of property".

By the verdict passed on 28 June, 2007, the Great Chamber of the Supreme Court of Georgia, the criminal act committed by P.Khvedelidze – in the episode of illegal obtaining of a car for temporary use, which is the crime stipulated under clause "b", part 2 of article 184 of the Criminal Code, considered that it corresponds to clause "b", part 3, article 178 of the current Criminal Code, however, it had not been qualified anew, as the punishment according to part 3, article 178, is more severe than the one in the part 2 of article 184.

On July 20, 2007 the Chamber of Criminal Cases of the Supreme Court of Georgia composed of: M. Oshkhareli (chairperson), Z. Meishvili, L. Murusidze, discussed the complaint lodged by convict M.Kopaliani without verbal hearing. The latter requested to reconsider the indictment due to newly revealed circumstances. The indictment was passed on May 24, 2006 by Appellate Court of Chamber of Criminal Cases of Kutaisi.

By the indictment of Kutaisi City Court of March 07, 2006, M. Kopaliani was found guilty according to clauses "a" and "b" of part 2 of article 184 and part 1 of article 187. His final sentence was the deprivation of freedom for 04 (four) years in length. By the verdict of the Chamber of Criminal Cases of Kutaisi Appellate Court, dated 24 May, 2006, the above verdict remained unchanged. On October 25, 2006, M. Kopaliani lodged a complaint to the Supreme Court of Georgia demanding the reconciliation of his indictment with the current criminal code and to commute the sentence on the basis of changes as per 28 April, 2006, made to the Criminal Code of Georgia. (Chapter 25 of the law of April 28, 2006 on changes and additions to the criminal code, stipulates that the damage shall be considered significant if the article (articles) is worth more than 150 GEL)

According to the motivation part of the indictment of the Chamber of Criminal Cases of the Supreme Court of Georgia of July 20, 2007:

"On the amendment made on 23 May 2007, to the Criminal Code of Georgia, which is still effective from 16 June of the same year, the deletion of article 184, i.e. non-existence of a special elements in the provision does not mean that the action is not of criminal nature and that it does not bear social danger any more.

It should be taken into account that the court practice already exists in the form of resolution dated 28 June, 2007, by the Great Chamber of Supreme Court of Georgia, according to which, the punishability of an action under article 184 of the criminal code is provided by the relevant articles of crimes directed against ownership.

In the given case, the crime committed by M. Kopaliani – illegal obtaining of an article for temporary use, the crime is qualified according to sub- clauses "a" and "b" of part 2 of article 184, which provides for imprisonment from 3 to 6 years, corresponds to clauses "a" "b", part 3, article 177 of the Criminal Code (theft, i.e. obvious obtaining of a movable article with the purpose of misappropriation, committed repeatedly, on the basis of preliminary agreement by the group) which provides for imprisonment for the period from four to seven years.

According to part 1 of article 3 of the Criminal Code the criminal law that aggravates the sentence has no retroactive power.

Thus the actions qualified by sub- clauses "a" and "b" of part 2 of article 184 of criminal Code cannot be qualified by clauses "a" "b", part 3, article 177 of the Criminal Code"

Based on the above, the Chamber of Criminal Cases of the Supreme Court of Georgia satisfied M. Kopaliani's appeal partly. The accusation raised on the basis of part 1 of article

187 of the Criminal Code of Georgia (damage or destruction of the article) was deleted from the resolution dated May 24, 2006, but other parts were left unchanged, including the part of punishment.
The Chamber of Criminal Cases of Appellate Court of Tbilisi composed of Judge R. Chanturia, state prosecutor T. Nozadze, considered the criminal case of Al. Kervalishvili on the basis of the appeal of the defence lawyer on July 13, 2007.
On the resolution of the Board of Criminal Cases of the City Court of Tbilisi dated May 08, 2007, Al. Kervalishvili was found guilty on the basis of sub-clause "a", part 2 of article 184 of the Criminal Code of Georgia. He was sentenced to 05(five) years of imprisonment.

During the lawsuit, Al. Kervalishvili's lawyer, D. Shakiashvili justified the appeal by the fact that due to abolition of article 184 from the Criminal Code of Georgia, the action was de-criminalized. As the criminal code does not consider that the punishable action determined by the court, according to article 3 of the Criminal Code of Georgia, which abolishes the criminal action, has retroactive force, and according to sub-clause 'c' of part 1 of article 28 of the Criminal Procedure Code, Kervalishvili must be found not guilty.

The state prosecutor T. Nozadze requested to leave the resolution of the board of criminal cases of Tbilisi city court passed on May 08, 2007, unchanged.
According to motivation part of the resolution of July 19, 2007 of the Chamber of Criminal cases of Tbilisi Appellate Court "**The chamber cannot share the appellant's opinion that by deleting article 184 from the criminal code the criminal action has been de-criminalized and notes that by changes made on 23 May 2007 to criminal code, which entered into force from June 16, the deletion of article 184, i.e. non-existence of special composition of provisions provided by the article does not mean that the action is not of criminal nature, that it is does not bear social danger and that it has been de-criminalized. According to current criminal code, the punishability of an action in accordance with 184 of the criminal code is provided by the relevant articles (in particular 177, 178, and 179) on crimes directed against ownership.**

Articles 177, 178 and 179, as well as article 184 specify crimes directed against ownership. The immediate subject of their misappropriation is such property relations that are connected with particular ownership or possession of property. After illegal possession of the article by the culprit, the latter can make use or dispose of another person's property as his/her own. In this case one of the essential constituent elements of the subjective side of the crime is the lucrative motivation – that the person can take advantage of another person's property – a car or other mechanical vehicle.

Stealing a vehicle according to article 184 of the Criminal Code was qualified as theft if the culprit at the moment of possessing another person's car, had the right to use it as his own and intended to use it temporarily. The legislator, proceeding from the intention of the culprit, qualified his action under the article of the criminal code with special composition of provisions unlike the case when the person intended to have the car not in temporary use.

By having deleted article 184 from the Criminal Code, the law maker thus refused to punish the culprit according to a special article, proceeding from his intention. This means that this

crime falls under the corresponding articles on unlawful obtaining of a car or other vehicles for temporary or any other use.

In the given case, the crime committed by Al. Kervalishvili – illegal obtaining for temporary use, by group agreement, the crime is qualified according to sub- clauses "a" of part 2 of article 184, which provides for imprisonment from 3 to 6 years corresponds to clauses "a" of part 3, article 177 of the Criminal Code (theft, i.e. obvious obtaining of a movable article with the purpose of misappropriation, committed repeatedly, on the basis of preliminary agreement by the group) which provides for imprisonment for the period from five to eight years.
According to part 1 of article 3 of the Criminal Code the criminal law that aggravates the sentence has no retroactive force".

Based on the above, the Chamber of Criminal cases of Appellate Court of Tbilisi left the resolution in the qualification part unchanged as per the resolution of May 08, 2007 of the Board of Criminal Cases of Tbilisi City Court, but sentenced to 3 (three) years of imprisonment. Appellate Court left the person in imprisonment based on practically abolished/ non-existent article and passed the sentence for the action which actually was not qualified as crime.

The above examples clearly show that the Great Chamber of the Supreme Court of Georgia ignored the will of the law maker about de-criminalization of the action mentioned above, which poses the threat to the implementation of the principle of distribution of state power by state bodies.

Another criminal case regarding minors N.Apriamashvili and Al. Vavilov were submitted to the Board of Criminal Cases of the City Court of Tbilisi on March 14, 2007 about the crime stipulated by sub-clauses "a" and "b" of part 2 of article 184 of the Criminal Code of Georgia. According to the information from Prosecutor General's Office of Georgia, by the resolution dated July 23, 2007 passed down by the judge of Tbilisi City Court, the crime specified in article 184 was not punishable by criminal sentence after its abolition. The case of minors N.Apriamashvili and Al. Vavilov was returned to the preliminary investigation. On August 08, 2007, the above minors were sentenced under clause "a" part 2 of article 177 and clauses "a", "b" and "d" of part 3 and the same day the criminal case was transferred to the Board of Criminal Cases of Tbilisi City Court. It must be noted that the defendants were sentenced to preliminary imprisonment.

Criminal case of Z. Zviadauri, N. Natroshvili and I. Khitarishvili was submitted to Akhaltsikhe district court On February 23, 2007. They were charged with crime provided in sub-clause "c" of p.2 of article 184.

On the information provided by Akhaltsikhe District Prosecutor's Office, on the resolution of Akhaltsikhe District Court dated June 13, 2007, the criminal case of Z. Zviadauri, N. Natroshvili and I. Khitarishvili was remanded to the preliminary investigation. On June 15, 2007, Z. Zviadauri, N. Natroshvili and I. Khitarishviliw were brought to criminal responsibility based on clause "a" part 2 of article 178 and clauses "a", and "d" of part 3.

According to the Akhaltsikhe District Prosecutor's letter, the basis of change of the sentence and passing a new sentence was the amendment to article 184 in the chapter on crime against property".

It must be noted that we cannot see such judgment in the resolution of the Supreme Court and especially in the explanatory note of the draft law about deleting article 184. Thus, the prosecutor exceeded his authority and combined the functions of a law maker with the court with a single aim – not to release the above mentioned persons from criminal responsibility.

Proceeding from the above, in the activities of judiciary bodies of Georgia (court, prosecutor's office) the practice of implementation of de-criminalized actions into the composition of other articles of the criminal code has been introduced which causes illegal criminal persecution, conviction and prosecution of those people, whose actions are not considered a crime by the legislation. It is also notable that the persons convicted on the basis of the de-criminalized article serve their sentence in prison and consequently, they are in illegal imprisonment.

Re-qualification of one decriminalized action into a heavier crime can have two motives. First, if the investigators and prosecutors qualified the crime directed against property (theft, robbery, burglary) incorrectly by article 184 of the Criminal Code of Georgia, as the punishment measure for the above crime was relatively light. If it is true and if judiciary officials incorrectly qualified the actions in favor of suspect, convict, and prosecuted person, then we should suppose that this happened consciously and in this case the signs of crime can be observed in the actions of the employees of judiciary bodies, which makes the prosecutor's office liable to respond adequately and take punitive measures towards these people.

However, it is more probable that we are dealing with an absolutely different phenomenon. Namely, the release or acquittal of once detained and convicted, pre-trial or sentenced, contradicts the severe criminal policy which is carried out by the state and the doubtless proof to which is the increase of the number of prisoners in 4 years by 350%. It is this policy to which dozens of people fell victims, who are still serving their sentence for the de-criminalized action or are still under trial.

Actually, they are illegal prisoners and the hostages of severe criminal policy. The will, which is against internal and international legislation, not to release anyone from the responsibility who was convicted or sentenced for already de-criminalized action, contradicts the concept of legislative state, which does not imply the abuse of the supremacy of law and violation of human rights at the expense of the implementation of the policy.

We consider that in the activities of judiciary bodies of Georgia (court, prosecutor's office) the introduced practice is illegal, as it contradicts the Constitution of Georgia, article 7 of the European Convention (the practice of its use), article 15 of the UN pact on civil and political rights, part 1 of article 3 of the Criminal Code of Georgia and other legal acts.

The Public Defender of Georgia addressed the Prosecutor General of Georgia with the recommendation in accordance with part three of article 593 of the procedural criminal code, to lodge the complaint to the Chamber of Criminal Cases of the Supreme Court, due to newly revealed circumstances, to reconsider the resolutions or other court decisions applied to those persons who have been trialed and are serving their sentence for the crime provided under article 184 of the Criminal Code of Georgia.

In response to the above, the Public Defender of Georgia was informed by the deputy general prosecutor of Georgia in the letter #c21.08.2007/77, that **"In accordance with the resolution # 1042ao dated June 28, 2007, passed down by the Great Chamber of the Supreme Court of Georgia, deletion of article 184 from the criminal code does not imply the annulment of criminality or punishability of the crime provided in this article. Thus there are no newly revealed circumstances, which can serve the basis for reconsideration of the resolution or other court decision in accordance with part three of article 593 of the Criminal Procedure Code".**

According to article 177 of Criminal Code of Georgia, theft is considered a crime, i.e. misappropriation of another person's property with the purpose of its possession. Article 177 of Criminal Code of Georgia describes subjective side in its disposition as one of the elements of crime, namely, the purpose of misappropriation, which excludes committing theft without the purpose mentioned above, even if other elements in the composition of crime have been committed.
According to article 184 of the Criminal Code of Georgia, misappropriation of a car or other vehicle for the purpose of temporary use was considered a crime.
Article 184 of the Criminal Code of Georgia differed in the intention of crime from all other elements of crime against property (theft, robbery, burglary), the essential element of which is the intention of crime – misappropriation of property, while the purpose of crime provided in article 184 was– misappropriation of a car or other vehicles and their temporary use. Accordingly, it is natural that such crime differed distinctly from other crimes against property (theft, robbery, burglary).

Special attention should be paid to the following issue: if the criminal's purpose was to misappropriate the article (car or mechanical vehicle), then this action would be qualified as an aggravated circumstance of theft, robbery or burglary.
From the above judgment it becomes clear that the elements of crime under article 184 are not provided in other articles of the Criminal Code of Georgia.
According to clause 5, article 42 of the Constitution of Georgia: "No individual has to answer for an action if it was not considered as the violation of law at the moment it was performed. A law that does not lessen the responsibility or remit a punishment has no retroactive force".
According to the second sentence of this norm, it is straightforward that the law can be retroactive only when it lessens or remits responsibility. Consequently, the abolition of article 184 of the Criminal Code must be necessarily retroacted as the above mentioned norm remits the responsibility for the committed action as provided by the disposition.
The same is reiterated in article 15 of the pact on "Civil and Political rights":

1. No individual can be found guilty for committing crime as a result of such action or error, which at the moment of committal was not considered a crime by state or

international legislation in force. Neither can it be given a heavier punishment than the one which had to be applied at the moment of committing the crime; **if after committing the crime a lighter sentence is awarded, the law applies to this criminal"**

This norm of the Constitution and the Pact is reflected in Georgian legislation as well. Clause 3 of article 47 of the Georgian law "On Normative Acts" states: "If after committing the crime the criminal responsibility is remitted or lessened by law, the new norm is enacted established by a new law".

Clause 1 of article 3 Criminal Code of Georgia directly states the above:

"Criminal law which remits the criminal action or lessens the sentence has a retroactive force".

The procedure of practical implementation of the above norms is written up in the procedural criminal code, particularly, according to sub-clause "b" of part 3 of article 593 of the same code: "The legal circumstances are considered newly revealed which provide for reconsideration of illegal or unjustifiable court decisions". Such circumstances are the following:

b) Adoption of a new law after the sentence or any other court decision in force, remits or lessens the criminal responsibility";

The Supreme Court of Georgia indicated in the resolution that: **"the deletion of article 184, i.e. non-existence of a special composition does not mean that the action is not of criminal nature and it does not bear social danger".** The resolution of the Supreme Court says that: "**the punishability of an action is provided by the relevant articles of article 184 according to the means of committing crime against property",** however, the resolution does not say anything that unlike the crimes against property, the purpose of criminal action provided in article 184 was totally different, as is emphasized by legislator.

Although the resolution of the Supreme Court does not directly state the following, but it uses the analogy of the law and considers the action depending on the means of obtaining property, such as theft, robbery or burglary provided in article 184, a crime. I.e. similar criminal actions that are not formulated in a separate article as a crime in the Criminal Code are stated as crime on the basis of analogy.

In this regard, it is important to consider the law of practice of Human Rights Court of Europe. The court made several important statements about the case "Kokkinakis v. Greece". Namely, article 7 is not limited to only restriction of applying the novelty introduced in the criminal code against the suspect, defendant or the convict. It is also based on the principle, according to which, only the law can determine the crime and consider the punishment (nullum crimen, nulla poena sine lege). Besides, the principle implying the application of the explanation of the criminal law (for example, by analogy) to the detriment of an individual is inadmissible. What is crucially important is that law must always clearly define the crime. This condition is considered observed when an individual can clearly understand from the text of the norm or the explanatory note of the court for which action s/he is charged with responsibility.

Individuals made responsible and sentenced on the basis of article 184 of the Criminal Code of Georgia for committing crime are serving their sentence despite the fact that by the law of May 23, 2007 "On the amendments and additions to the Criminal Code of Georgia" article 184 was de-criminalized. What is more, the trials are still going on.

* * *

From September Georgian courts will start using guidelines while discussions of criminal cases. This means that the punishment will be determined on the basis of consideration of specific crime and specific circumstances.

The commission working on regular basis has been established, which provides the studies and generalization of determining guideline proposals for judges. According to the statement of the Court Chairman "The commission has generalized judiciary practices and developed guideline proposals that will be used by every judge in their everyday practice when making decisions on each specific case. The guidelines determine what kind of punishment the judge has to apply towards the defendant under the existence or non-existence of specific circumstances in a detailed way when passing the sentence. These guidelines together with recommendations developed by judges themselves cover about 80% of all cases discussed annually in courts".

By the statement of Commission members, the above means that guidelines and recommendations are actually obligatory for prosecutors and lawyers who should have a preliminary knowledge of what kind of punishment must be applied to the defendant under specific circumstances for the given case.

The Public Defender considers that applying the guideline principles in court practice on the one hand will accelerate and make judiciary more effective, as well as it will restrict the arbitrary acts of judges, but on the other hand they might create other problems in practice. Recommendations need improvement and their formal use can be detrimental to judiciary interests, especially if the judge considers them imperative.

Competence, independence and impartial approach are the principles that have been determined by "The European Charter on the Statute of Judges" for the countries and it is vital to ensure their implementation for effective functioning of judiciary system.

In the sphere of human rights protection, we should make all efforts, taking into consideration fair and independent court, to enable Georgian legislation to create real guarantees for the independence of court system; however, judges' actions must remain within the legislative space and must not undertake any arbitrary actions.

* * *

Inadequate Control of the Court over Preliminary Investigation

Procedural law has determined the sphere of issues under court control concerning resolutions and actions taken by judge and prosecutor at the preliminary stage of investigation. As well as that, it determines the procedures and range of the implementation of control.

According to analysis of the studied criminal cases made by Public Defender of Georgia, there frequently are cases in practice when the court does not carry out adequate control over preliminary investigation and does not respond to procedural violations regarding the defendant or the convicted person. Often, when considering the petition connected with

procedural criminal compulsory measure, the judge does not consider the issue of guiltiness of the individual, but only clarifies the observance of the Code requirements in the process of obtaining evidence and procedural decision. If the judge arrives at the conclusion that in the process of obtaining evidence and procedural decision the law or procedural term was violated, in this case the judge must justify the basis of such conclusion and pass a substitute resolution (indictment).

There are frequent cases in practice when investigative activities are carried out with the violation of the requirements of procedure law. For example, when sealing articles as a result of investigative activities (the examination of the scene of crime, search, seizure of articles) under urgent necessity without the judge's order, often only the signature of the official carrying out the investigative action is found, while according to the requirements of part 8 of article 323 and part 3 of article 335 of the Criminal Code of Georgia, **"…apart from sealing wax, the wrapped article should contain the date and signatures of the officials who took part in the investigative actions"; also, "on the wrapped article, apart from the sealing wax there must be the date and signatures of the officials who took part in the investigative actions".**
The study of court practices shows that as a rule, the judge considers the investigative actions carried out with the above mentioned violations legal and does not pass a special ruling (decree) on bringing the person to disciplinary responsibility.

One of the main causes of the above problem is the imprecise wording of article 50 of the Criminal Code of Georgia. According to part 1 of article 50, **"The court passes the ruling (decree) based on the existence of relevant basis, which will direct the attention of the state body or an official to the fact of the violation of the law … that require taking adequate measures".** While according to part 2 of the same article, **"The court may pass the special ruling (decree) if the violation of citizens' rights or any other violation of laws during the preliminary investigation or inferior court trial are revealed".**

Consequently, if by part 1 of the norm, in the event of law violation the court passes special court ruling unconditionally, so that the state organ or an authority take adequate measures for the purpose of studying the reason of crime and its accompanying circumstances, by part 2 of the norm, the judge has the right to pass a special ruling on the violation of citizens' rights or law during the investigation of the court case at his/ her discretion. Thus, according to part 2 of article 50, even if the fact of violation of citizens' rights by the first instance court or investigation is revealed, the judge has no obligation of passing special ruling. Hence, proceeding from the above norm, the judge may make different decisions on each individual case. Namely, in one instance the judge may pass a special ruling, and in another s/he can restrain from making the above decision.

It is natural that Judiciary power and judges are independent in their activities, but the above must not be understood as if the judge has unlimited authority. Judge's activities are limited by the Constitution and law. Apart from inner beliefs, s/he must make evaluations based on the law. It means that when the issue concerns responding to the fact of violation of citizens rights, the judge must be restricted by the imperativeness of the specific norm. Consequently, if the fact of violation by the person conducting investigation or the first

instance court is obvious, the judge must react by passing a special ruling. While part 2 of article 50 of the Criminal Code of Georgia currently in force, provides the possibility for the judge to avoid passing special ruling.

From the practices of judges it can be seen that judges tend to not use this right, which makes us draw an unfortunate conclusion that they are not the guarantors of human rights protection but just the opposite, they legitimize the violation of rights.

When discussing the given issue we come across one more problem. According to sub-clauses "a" and e"of clause 2 of article 2 on" Disciplinary responsibility and disciplinary jurisprudence of judges of common courts of Georgia", the types of disciplinary deviations are: "**severe violation of law during the court discussion and the non-fulfillment or improper fulfillment of the duties of a judge".**
Accordingly, it is impossible to bring the judge to disciplinary responsibility, who will neglect the fact of violation during preliminary investigation or the discussion of the case in the first instance court and does not pass a special ruling, as article 50.2 is not of a compulsory nature. Besides, as practice shows, neither does the prosecutor's office study the facts of violation of citizens' rights or other laws during preliminary investigation or the discussion of the case in the first instance court and appeals to the circumstances that the court has already discussed the issue of lawfulness of the investigative activities and has not found any violations. As a result, the facts of violation of citizens' rights or any other law are not being responded.
Proceeding from the above, the Public Defender thinks it reasonable to reconcile parts 1 and 2 of article 50 of the Criminal Procedural Code of Georgia and make them **compulsory** for the judge to make special ruling on every fact of violation of the requirement during the preliminary investigation or inferior court discussion, even if it is not essential. As for article 50.2, it has **to be worded** in the following way: "The court is liable to pass a special ruling about the facts of violation of citizens' rights or any other violations of the law which took place during the preliminary investigation or the discussion of a case in the court".
Improper control on the part of the court is clearly seen from the example of the case of I. Sichinava and L. Kukhianidze:

The case of I. Sichinava and L. Kukhianidze:

On April 5, 2007, E. Dzidziguri, the investigator of Poti Criminal Police Department together with inspectors of Poti city Department G. Kurdiani and I. Kantaria searched I. Sichinava's place of residence and removed an automatic pistol and a necklace with brownish-yellow stones; however, in the search record there was no indication of signature of the persons participating in the search on the sealing wax of the removed articles.

The head of Poti Criminal Police Department, inspector R. Kvantaliani together with a witness D. Lashkhia and inspector-investigator L. Ungadze carried out the search concerning the above case in the dwelling of L. Kukhianidze and removed a string of pearls, silver chain, church bracelet, mobile phone and a sawed-off gun. The signatures of the persons participating in the search were not contained on the sealing-wax of the removed articles.

During the search of I. Sichinava and L. Kukhianidze's houses the requirements of Criminal Procedural Code were not observed. Namely, there was the violation of the provision of part 8 of Article 323, according to which "…the wrapped article must contain signatures of the people participating in the investigative actions and the date, apart from the sealing-wax".
The Public Defender sent the materials to Samegrelo-Zemo-Svaneti district prosecutor's office to bring the investigators to disciplinary responsibility. The Public Defender was informed that Poti city court considers the investigative actions legal and consequently nobody will be punished.

The case of V. Kaldani

V. Kaldani was detained in Bolnisi for robbery and the illegal purchase –carrying of the weapon. In the records of detention of the suspect there was an inconsistency in terms of the time of detention. The same was obvious from other materials of the case, i.e. the defendant was actually detained earlier than it was recorded in the protocol of detention. Thus detention took place with the violation of part 7 of article 145 of the Criminal Procedural Code of Georgia.

Bolnisi district court judge, as well as Tbilisi Appellate Court ignored the violation mentioned above during the discussion of the case about awarding the sentence of imprisonment.

The Case of Temur Mikia

On 15 July 2001, the head of Department of Poti Internal Affairs, T. Sajaya motioned Poti City Court legitimizing the investigative action performed without judge's ordinance under urgent necessity. The motion was submitted to a judge Alexandre Goguadze for further consideration. The seizure took place in Shukri Dikhaminjia's house on the criminal case #4501104 under proceeding at the Department of Internal Affairs initiated against Temur Mikia.
The judge A. Goguadze adopted the resolution on legitimizing the investigative action – seizure, which points out: "I, Poti City Court judge, A. Goguadze, have considered the motion of Poti IA Department chief, police colonel T. Sajaya on the acknowledgement of the investigative action –seizure, carried out under urgent necessity, legitimate".
On the same day, Judge Alexandre Goguadze considered the motion of Poti IA Department head, police colonel T. Sajaya on legitimizing the investigative action – seizure. The investigative action mentioned above took place at#62, Ertoba Str., Poti, in Joni Gelenava's place of residence on the grounds of a criminal case initiated against Temur Mikia. The Judge adopted the resolution on legitimizing of the investigative action.
In resolutions on legitimizing of the investigative action under urgent necessity there is no indication of the prosecutor's participation in the consideration of the motion. Under part 2 of article 209 of the Criminal Procedural Code being in force at the given time, the participation of the prosecutor in the consideration of such motions was obligatory (see details in the report of the first half of 2006).

* * *

As a result of investigation into the case the Public Defender revealed the fact of unlawful arrest.

The Case of K. Kirkitadze

The convict K. Kirkitadze from # 7 penal establishment of Ksani addressed the Public Defender on 3 March, 2007. From the documents attached to the application it was found out that on January 31, 2001, a preliminary investigation into the case of K. Kirkitadze opened at the Division of Fight Against Corruption and Economic Crime (criminal case #1001047), the crime fell under part 2 of article 213 of the4 Criminal Code of Georgia **(Intentional omission of a substantive fact or event in the emission prospect that has caused a substantial damage)** (old edition)
Later, Kirkitadze was charged with a new accusation (forgery) under clause "c" of part 2 of article 180 of the Criminal Code **(taking possession of other's object for the purpose of illegal appropriation or receiving a property right through deception that has caused a substantial damage)** and clause "a" and "b" of part 2 of article 23/362 **(co-participation/ preparation and using of a forged identification card or any other official document, seal, stamp or blank repeatedly that through negligence has caused a substantial damage)** and the criminal case was submitted to Gldani-Nadzaladevi district court. On July 26 of 2008, Kirkitadze was awarded police supervision as a measure of restraint. On 17 october 2003, judge G. Kajaia on the grounds of Kirkitadze's repeated non –appearance at the trial substituted the penalty of police supervision with arrest and was on the wanted list. On 11 September 2003, K. Kirkitadze was detained and the trial proceeded in the same district court. On 24 November 2004, the case was returned to the preliminary investigation by judge's decision and on 29 December 2004, the case was again transferred to the court.

17On October 2005, the term of sentence determined by law – 12 months expired, but he was not released and K. Kirkitadze remained in illegal imprisonment. In conformity with clause 8 of article 680 [4] of the Criminal Procedure Code of Georgia, "when conducting the criminal case in district (city) courts, the term of imprisonment of a defendant, prior to prescribing a sentence or any other aggregate of sentences, after the case is submitted to the court, must not exceed 12 months. In special case, on submission of the appeal of the court conducting the case, this term can be extended to 6 months by the chairman of the Supreme Court of Georgia. Further extension of the term of the imprisonment of the defendant is inadmissible. "K. Kirkitadze's term of sentence of 12 months was not extended by the rule determined by the Criminal Procedure Code; accordingly he was to be immediately released on October 17, 2005. K. Kirkitadze was released only on November 3, 2005.

As per part 1 of Criminal Procedure Code of Georgia, the administration of the accommodation of detained and imprisoned persons is obliged to " …inform the body conducting the trial 7 calendar days prior to the expiry of the term of imprisonment about the above, or if the indicated term has not been extended, release the convict from the detention isolator". It is true that based on the contents of the mentioned norm, if the term of sentence is expired, the administration of the accommodation of detained and imprisoned persons is liable to release the convict (it is meant the term of preliminary imprisonment), but in accordance to part 4 of article 7 of the Criminal Procedure Code of Georgia **"if there**

are drawbacks in the legislation it is admitted to apply the analogy of the procedural law of Criminal Code, unless it abuses human rights". Consequently, the administration of prison #5 of Tbilisi was obliged to release K. Kirkitadze from prison on 17 October 2005.
Based on the above, we can say that regarding the case of K. Kirkitadze the requirements provided by internal legislation as well as international legal norms were infringed. Namely: **part 2 of article 18 of the Constitution of Georgia** ("Arrest or other kinds of restrictions of personal freedoms are prohibited without the decision of the court"); **part 2 of article 12 of the Criminal Procedure Code of Georgia** ("It is inadmissible to restrict freedom without legal ground and rule"), **part 2 of article 159** ("Court, prosecutor and investigator are liable to immediately released any person imprisoned against the law). On top of that, **article 5 of the European Convention of Human Rights and Fundamental Freedoms** has also been violated ("Guaranteed right of freedom and security"); **part 1 of article 9 of the International Covenant of Civil and Political Rights** ("Each individual has the right to freedom and personal immunity. Nobody can be detained or arrested on someone's own will. Freedom may not be restrained for anyone without the grounds provided for in the law or procedure") and **article 3 of the Universal Declaration of Human Rights** -"Every person has the right to life, liberty and personal security".

The Public Defender forwarded the materials connected with the above mentioned case to the Prosecutor General's Office for response. According to the information received, **in the department of investigation of Prosecutor General's Office the investigation into criminal case #74078205 commenced, with the signs of crime provided in part 1 of article 342 of the Criminal Code of Georgia. On May 19 2007, the judge of Tbilisi City Court G. Purtseladze was brought to responsibility as accused. The case is under investigation.**

In connection with criminal case #74078205 under investigation at Prosecutor General's Office of Georgia, D. Enukidze, the employee of special record unit of prison #5 under the penitentiary department of Tbilisi was brought to responsibility for the commitment of crime on the grounds of part 1 of article 342 of the Criminal Code of Georgia **(negligent performance of duties).** The case is under investigation.

* * *

On the basis of the address of a defense lawyer Soso Baratashvili, the Public Defender studied the trial materials of Irakli Batiashvili and considers that I. Batiashvili's rights have been violated (see appendix for more details), namely:

The Case of Irakli Batiashvili

On May 17, 2007, inmate of #7 prison of penal institution of Tbilisi and his defence lawyer Soso Baratashvili filed an application addressed to the Public Defender.
The defense lawyer considered that Batiashvili was convicted unlawfully as there is no evidence in the criminal case files proving his guilt. Besides, telephone conversations, on which basis Batiashvili was convicted have been forged.

After having studied the case, the Public Defender considers that Irakli Batiashvili's rights were violated during the hearings of his case, which had an essential impact on making the decision by court. As well as that, Criminal Procedure Code requirements were also infringed regarding the extension of the prison term as a measure of restraint. As for the sentence that has been passed down, it is not duly justified and grounded on credible evidence.

1. A criminal case was brought against Batiashvili on 29 July 2006 on the basis of weak evidence of an intercepted telephone conversation which he had with Kvitsiani in the period between 23 and 25 July. Irakli Batiashvili was charged under part 3 of articles 25, 307,315 and article 376 of the Criminal Code of Georgia. From the materials of the case it is obvious that on 29 July 2006, the investigation did not have any audio recordings of telephone conversations, neither did they have the decoded version at their disposal. This material was attached to the criminal case file as physical evidence on 2 August, 2006. Thus it turns out that the accusation against Batiashvili was not based on any reliable evidence, which is a harsh violation of clause 3 of article 40 of the Constitution of Georgia: "A person can only be proven guilty if the evidence is incontrovertible".
2. The criminal case was taken to court on November 24 2006. Pursuant to part 8, article 162 of the Criminal Procedure Code of Georgia - "The judge tries on charge without hearing within 24 hours from the submission of a case to court".
The judge was liable to try the case pursuant to article 140 of the Criminal Procedure Code– "Rules of proceedings of application of criminal procedure of compulsory measures" – and was to extend the term of prison before passing the ruling, but for not longer than 6 months. The court (judge Maya Tetrauli), instead of complying with the legal requirement, discussed the appropriateness of the measure of restraint and left unchanged the ruling about the arrest as of a measure of restraint passed on 24 November 2006.

2. The counsel for the defendant filed a motion on the interrogation of witnesses which the court initially partly satisfied, although later, without any legal grounds and logics refused to interrogate the head of special operative department of the Ministry of Internal Affairs, Erekle Kodua and the head of operative-technical department of the Ministry of Internal Affairs, Zurab Kotaria.
   With this the judge violated the requirement of clause 6 of article 42 the Constitution of Georgia which reads: "Anybody charged with a criminal offence has the right to obtain the attendance and examination of witnesses on his behalf under the same conditions as those brought by the prosecution".
   The defence counsel motioned to have Zaza Bregvadze, the deputy head of the center for the defense of objects of special operations interrogated as a witness. The latter was interrogated during the preliminary investigation and the defence counsel considered that the witness gave the evidence in favor of the defendant, which eliminated I. Batiashvili's guilt. Despite this fact, the court refused to interrogate the witness which disabled the defence counsel to use the evidence given to the preliminary investigation that could have served a strong case for the defence.

   The above facts enable us to draw a logical conclusion that the court purposely averted the possibility of appearance of witnesses before the court and their interrogation.

4. Pursuant to the Criminal Code of Georgia, unlike the previous Soviet Criminal Code, the main character in complicity is the perpetrator of the action and the actions of accomplices depend on the perpetrator. The current Criminal Code does not consider the perpetrator as an accomplice. Consequently, accomplice cannot exist without a perpetrator.

In this given case Emzar Kvitsiani was charged with criminal offence, as a person who directly committed the crime (perpetrator), although no judgment of guilt has been delivered. Consequently, according to part 1 of the article 40 of the Constitution of Georgia (presumption of innocence), Emzar Kvitsiani has been found not guilty so far. Finding I. Batiashvili guilty for committing the crime the perpetrator of which crime has not been found guilty is the harsh violation of accessory concept. I.e. Irakli Batiashvili was found guilty by the court for the crime, the committal of which has not been proved by the court.

5. It must also be noted that according to the materials contained in the criminal case file the investigation has not credibly verified the fact, in which armed attack concretely M. Kuskiashvili and V. Mujirishvili, who were recognized as victims, were wounded. Thus it is not reasonable to present these persons in the case as an aggrieved party.

It must also be noted that on the day of delivering the verdict, in a few hours after passing the resolution, the briefing was convened at the Prosecutor General's Office of Georgia, where the public was informed about the arguments, produced by the prosecution against Batiashvili. Prosecutor Irakli Kobidze once again confirmed that Irakli Batiashvili was convicted for the concrete action, which consisted in providing intellectual support to Emzar Kvitsiani in provoking riot. He also added that the defence counsel could not produce any solid evidence proving the innocence of the accused. Clause 2 of article 40 of the Constitution of Georgia reads: "No individual is obliged to prove his innocence. The liability to prove the guilt is assigned to the prosecutor". Consequently, Irakli Batiashvili did not have to prove his innocence but rather the prosecutor was to produce to the court solid evidence proving the facts of the crime committed by I. Batiashvili.

6. Pursuant to 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 right established by law must be decided in favor of the defendant". The analysis of Batiashvili's case clearly shows that the court based its judgment on personal opinions and doubtful evidence that have not been investigated into sufficiently. The evidence was based on intercepted telephone conversations between Emzar Kvitsiani and Irakli Batiashvili on one hand and on the other, between Kvitsiani and Nora Arghvliani. Audio recordings of these telephone conversations and the decoded texts presented before the court differed in context. Even the investigator could not give the reason for such inconsistencies. Despite this, the judge did not find their authenticity suspicious and disregarding the request on the part of the defence counsel, relied on them without commissioning any expertise. Article 6 of European Convention of Human Rights and Fundamental Freedoms declares : "In the determination of his civil rights and obligations or of any criminal charge against him,

everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".

The right of fair court implicates the comprehensive study of the case by an independent and impartial body and the adoption of legal and fair resolution. The analysis of the above case obviously indicates that the evidence investigated by judge cannot provide sufficient and reliable grounds for determining the truth; neither can we accept the disregard of the possibility of presenting both parties under equal terms (summoning witnesses, interrogation, etc.)

Based on the materials studied, the Public Defender states that the resolution of the Board of Criminal Cases of the Tbilisi City Court regarding the case of Irakli Batiashvili is not justified; it is not based on reliable evidence, which is a severe violation of the law. Thus Batiashvili's right of fair trial has been violated.

As the law (Georgian Constitution, Criminal Code) has been harshly and repeatedly violated by the trial proceedings and the sentence passed by the judge, the Public Defender addressed the Supreme Council of the Ministry of Justice with the recommendation to commence the disciplinary proceedings against judge Maya Tetrauli (see more details in appendix #2).

* * *

In accordance with current legislation of Georgia, prosecutor, convict or acquitted person must be given the copy of the court ruling upon his/her request within the term determined by law. There was a case under the reporting period, when this imperative request of the law was neglected by a judge.

The Case of Manana Gagoshidze

Manana Gagoshidze, the citizen of Georgia, applied to the Public defender on March 5, 2007. She stated that on November 15, 2006, the judge Davit Jugheli passed the sentence before the board of criminal cases of the city court of Tbilisi which proved Vakhtang Tskhvariashvili guilty. The verdict was based on part 2 of article 117 (deliberate infliction of harm to health resulted in death), parts 2 and 3 of article 236 (statutory wording effective until 31 may 2006) and part 4 of article 59 of the Criminal Code of Georgia that accumulatively determined the measure of restraint - deprivation of freedom for five years in length.

On the explanation of the applicant, despite multiple addresses to the judge of the Board of Criminal Cases of the city court of Tbilisi, Davit Jugheli, the copy of the ruling was never been handed to V. Tskhvariashvili. Pursuant to article 514 of the Criminal Code of Georgia, "the copy of the ruling must be delivered to the state prosecutor and the defendant or acquitted person not later than 5 calendar days, and in the event of dealing with a complicated case, i.e. multi –volume case files or involving many individuals, not later than 14 calendar days. Other parties of the proceeding shall be given the copy of ruling upon their request within the same timeframe". Based on the above, the defence counsel did not

have the possibility to lodge the appeal in the court in accordance with article 529 of the Criminal Procedure Code.

On March 14, 2007, PDO addressed the request to the judge of the board of criminal cases of the city court of Tbilisi, Davit Jugheli, on informing him whether V. Tskhvariashvili's defence counsel received the copy of ruling.
On 4 April, 2007, D. Jugheli informed us that "Due to the big volume of the case file and some technical reasons, they could not manage to print the ruling timely, and for this reason the ruling had not been delivered to the defence counsel within the term provided for in article 514 of the Criminal Code of Georgia".

On May 11 2007, the Public Defender sent the recommendation to the Supreme Council of the Ministry of Justice regarding the examination of legality of actions performed by the judge of the Board of Criminal Cases of the city court of Tbilisi, Davit Jugheli.

S T A T I S T I C S

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We positively evaluate the tendency regarding the decrease in motions on imprisonments as of the measure of restraint in common courts as compared to previous year. Earlier, prosecutor' office addressed the court with motion on any category of crime on awarding imprisonment sentence as a measure of restraint, the big part of which was satisfied by court. Since 2006, the situation has improved.

In the first 6 months of **2007**, 10443 motions have been filed on all three types of measures of restraint (imprisonment, bail and one's own custody). Out of the above figure, 5084 referred to motions on imprisonment, i.e. 48, 5% and about 92% - 4689 motions were satisfied.

From July 1 to December 31 of 2006, the courts received 9418 motions on all three types of measures of restraint (imprisonment, bail and one's own custody), i.e. 62, 5 % of all motions, among them 5202, approximately 88% were met.

Besides there is one fact worth mentioning: even though the prosecutor's office requires assigning non-imprisonment measures of restraint more frequently in percentage terms, it does not have a serious influence on the absolute number of prisoners as the number of detained has increased on the whole.

Public Defender finds it reasonable that the courts restricts the number of imprisonment sentences to the maximum possible extent regarding the category of relevantly light crimes, which at the same time will solve the problem of overcrowding of penal institutions.

It is interesting that, different from 2006, the number of motions filed on bails that were satisfied has increased, but the motions made on one's own custody have dropped. Namely: in the first 6 months in 2007, the number of motions filed by investigative bodies on bails made up 5321, out of which 5153 were met. As for one's own custody 38 motions were made all of which were satisfied. In the second half of 2006, out of 3445 motions on bails, 3362 were met and all 80 motions on one's own custody were satisfied.

The above figures refer to only the motions made by Prosecutor's Office. Unfortunately we could not obtain any statistics from the Supreme Court about motions of the defence counsel.

Statistics on Measures of Restraint

	Prosecutor's office motioned in court	**Granted**
1 January- 30 June 2006	**bail- 2212** **own custody- 221** **imprisonment- 5868**	**bail - 2121** **own custody - 216** **imprisonment- 5156**
1 July- 31 December 2006	**bail - 3445** **own custody - 80** **imprisonment - 5893**	**bail - 3362** **own custody - 80** **imprisonment- 5202**

1 January 30 June 2007	**bail- 5321 own custody - 38 imprisonment- 5084**	**bail- 5153 own custody - 38 imprisonment - 4689**

The number of Judgments of acquittal has reduced in comparison with previous years:
From January 1 to July 1, 2007, in the first instance common courts, 7 judgments of acquittal had been passed, 4 in the in appellate court and in one appeal to cassation the proceedings were terminated due to non-existence of the signs of crime.
In the first instance common courts 64 judgments of acquittal were passed down on 64 cases and 79 people. And in the first half of 2006, there were judgments of acquittal referring to 12 cases 17 people; Appellate Court passed down acquittal judgments in 7 cases and 8 persons in 2005, while in the first half of 2006 the acquittal referred to 5 cases and 5 persons. In 2005 the court of cassation passed the acquittal judgment on 11 cases and 11 persons while from January 1 to July 1, 2007, the court made acquittal judgment on 4 cases and 5 persons.

In the second half of 2006, the first instance court had Judgment of acquittal on 20 cases, Appellate Court - on 8 cases and court of cassation – on 2 cases.

Statistics of Acquittal Judgments

	First instance courts	**Appellant court**	**Court of cassation**
2005	**on 64 cases and79 individuals**	**on 7 cases and 8 individuals**	**on 11 cases and 11individuals**
1January - 30 June 2006	**on 12 cases and17 individuals**	**on 5 cases and 5 individuals**	**4 cases and 5 individuals**
1 July- 31 December 2006	**on 20 cases**	**on 8 cases**	**2 cases**
1 January- 30 June 2007	**on 7 individuals**	**on 4 individuals**	**case terminated due to non-existence of signs of crime on 1 individual**

As for the information on special rulings passed down by common courts, according to current forms of statistical accountability, not a single special ruling has been passed.
A very important issue is the conditional early release from punishment. In the first 6 months of 2006, 196 cases on the above issue were discussed in first instance courts out of which 173 were met. In the second half of 2006, only 86 cases were heard and 40 out of them were satisfied. Regarding the vacation of non-served term of sentence with milder punishment, in the first half of 2007 2 such cases were discussed, one of which was not satisfied.

As for the release from term of sentence due to old age, under the reporting period the court dealt with 1 case which was satisfied. In the second half of
2006, out of 5 cases 3 had a satisfactory outcome.

In the first 6 months of 2007, 5 cases were heard on the release of prisoners due to health reasons, all of them were satisfied.

In the first 6 months of 2007, first instance court passed down 3888 sentences connected with procedural agreements on 4689 individuals. 7 cases were returned to the prosecutor's office for indictment. Thus 99% of motions made by prosecutor's office were met.

Regarding procedural agreements, in 2006 first instant courts received 2574 cases, and 13302 cases on indictment, out of which 1330 cases got the approval of procedural agreement. On the whole, 3791 cases resulted in procedural agreement, i.e. about 25% of cases. Prosecutor's office was refused to satisfy procedural agreement on 10 cases which were returned to court for indictment.

* * *

The analysis of the activities of law enforcement bodies in Georgia enables us to make the following judgment: the major requirement of the organic law of Georgia "On Common Courts" that reads: "The court is independent from other branches of state and it is implemented only by courts" is neglected. Indictments and resolutions made by Judges indicate that often their actions do not comply with law and neither do they act according to their inner belief.

No court reform can yield results to say nothing of democracy, unless the state declares its priority creating guarantees for factual independence of judges and non-interference into their business.

Prosecutor's Office of Georgia and Human Rights

Inefficiency of Investigations Carried out by Prosecutor's Office

As a result of studying materials by the Public Defender, the signs of crime committed by legal officials often come to light. The focus should be placed on the facts of torture, illegal detention, non-fulfillment of court decisions, biased investigations and the like.

In order to start the investigation, the Public Defender sends relevant materials over to the Prosecutor General's Office. In accordance with article 261 of the Criminal Procedure Code, in the event of receiving the information about the committed crime, investigator, prosecutor are obliged to start preliminary investigation. Pursuant to article 18 of the Code, investigator, prosecutor and judge are under an obligation to reliably establish whether the crime took place, who committed it and clear up all the circumstances regarding the case. Investigation of circumstances must be comprehensive, unbiased and complete. Although materials sent by the Public Defender often indicate the crime, prosecutor's office does not often commence investigation due to the alleged non-existence of sufficient grounds **(see appendix #1)**. In most cases they do not carry out complete and objective investigation or investigative actions are conducted under a different article, which provides inadequate components of crime and sanctions for the given case.

With regard of issues of torture and ill-treatment in Georgia, it must be noted that due to non-existence of political will on the investigation of concrete facts of torture, it does not present a priority for the state, and torture still remains a serious problem in the country requiring special attention. On the basis of trends that can be outlined from the materials supplied by Prosecutor's Office and the bodies of the Ministry of Internal Affairs, we can make our judgment about the attitude of investigative bodies towards beating, torture and degrading or inhuman facts of treatment.

However, certain advances in this direction must be mentioned too (for example, the facts of torture and inhuman treatment of inmates by police in police departments and preliminary detention cells have entirely been eliminated).

If we compare the investigation into facts of torture or inhuman treatment with trafficking, we will be convinced that in the combat of trafficking the success is by far more tangible, as the latter, due to specificity of investigation process is more complicated to investigate than the facts of torture. Obvious steps made on the part of the government and declaring combat trafficking the priority for the country, uncompromising position of investigative bodies and taking adequate punitive measures have determined the achievement of serious success in the fight against this organized crime and according to a special report of 2007 of the US State Department, Georgia has moved to the top position on the evaluation scale.

Under the reporting period the Public Defender sent materials on numerous cases of alleged torture and inhumane treatment to the Prosecutor's Office to start investigation, but not a single person indicated in these materials has been given any punishment so far.

In the first half of 2007, two criminal cases were submitted and heard in first instance courts, both in Ozurgeti district courts, under articles 144^1, 144^2, and 144^3.

1) The case of Elguja Todua (Police major, the head of Natanebi subdivision of Ozurgeti regional department). He was charged with offence under sub-clauses "b" and "g",

p.2 of article 144^1 and part 1 of article 332 , and Giorgi Gurgenidze (deputy head of Natanebi subdivision of Ozurgeti regional department) – accused on the bases of article 144^2 of the Criminal Code of Georgia.

By the indictment of Ozurgeti district court, Elguja Todua was found guilty under part 1 of article 335 (**forcible instigation to give evidence, conclusion, explanation 1. forcible instigation to give explanation or evidence or expertise conclusion by threat, deception, blackmail or any other unlawful action by an official or his counterpart)** and was sentenced to 3 years of deprivation of liberty. Girogi Gurgenidze was found guilty under article 144^2 (threat of torture) and was charged with fine in the amount of 5000 GEL.

Kutaisi Appellate Court did not change the first instance court indictment; by the ruling of the Chamber of Criminal cases of the Supreme Court the cassation appeal was rejected.

2) Jemal Shamatava (head of Ureki sub-division of Ozurgeti regional department of IA) was charged with offence in accordance with part 2 of article 144^1 (sub-clauses "a", "b" "g") and part one of article 139.

On the indictment of Ozurgeti district court, Jemal Shamatava was found guilty on the basis of part 2 of article 144^1 (sub-clauses "a", "b" "g") and part one of article 139 (Instigation of a sexual relationship – 1. The instigation of sexual relationship, homosexual relationship or commission of sodomy by threatening to disseminate offensive information or to inflict material damage, or by abuse of the material or official position) and was assigned the deprivation of liberty for a period up to 9 years and 6 months.

The Public Defender considers that Prosecutor's Office, which in conformity with article 20 of the law on "Prosecutor's Office" - "The Prosecutor's Office shall coordinate the fight against crime, concerted actions of law enforcement bodies to favor timely detection, solution, preclusion and avoidance of crime, improve criminal situation in order to eliminate the reasons and favorable conditions for crime" should devote equal attention to the investigation of all types of crimes stipulated in the Criminal Code, especially when it refers to such a heavy crime as is torture.

It is the mission of Prosecutor's office to fight against crime and punish criminals. It is the management and supervising body of investigation. Besides, the system should clearly articulate the message that not a single crime, whoever it is committed by, must remain unpunished.

*** * ***

In the first half of 2007, on the basis of monitoring records sent by the Public Defender to Prosecutor's Office, the problem of incomplete investigation came into view once again. The Public Defender was closely watching the implementation of investigations into cases in response to the facts of reported physical injuries in investigative bodies, temporary holding isolators or penal institutions. Upon receiving the investigation report, investigator or prosecutor met with the inmate (convict), spoke to him/ her and this way confirmed the existence of unlawful facts indicated in the report and made records in which the accused

denied an unlawful fact having taken place. The investigation never started and procedural actions were not taken either.

The Public Defender pointed to the problem in his Parliamentary report of the second half of 2006 but no results followed.

It must be taken into account that Criminal Procedure law does not imply verbal interrogation – "interview" – as a procedural action as such. Very often, when traces of torture and inhumane treatment exist, investigative bodies do not open investigation but they conduct the so called "interviews" with the victim. In such case it is easily possible that the person charged with criminal offence denies the facts of torture or degrading treatment inflicted to him by law enforcement bodies in exchange for some corrupted bargain. Thus, the threat is posed to the implementation of effective and impartial investigation into the cases of torture and ill treatment, stipulated both by Georgian legislation and international documents ratified by Georgia.

In August 2007, the Public Defender sent a letter to the head of general inspectorate and the head of Human Rights Protection department of Prosecutor General's Office regarding the "interviews". The letter described that Mikheil Shakhulashvili, the head of the department of Tianeti district prosecutor's office, personally met with the inmate Merab Lomidze who, in the conversation, told him about the psychological pressure used against him. The reply sent from the prosecutor' Office does not mention the conversation. The Public Defender was only informed that the prosecutor's decision to refuse to open the investigation was complying with law (See appendix #2: The case of G. Lomidze).

Public defender spoke about this problem in his report of the first and second halves of 2006. But the situation remains unchanged.

The problem of non- recognition of victim status

In the process of preliminary investigation the problem of recognition of victim status is a big problem. Article 68 (recognizance of the victim) of the Criminal Procedure Code of Georgia is defined incorrectly by Prosecutor's Office and investigative organs of internal affairs and is applied in practice in a distorted way. Namely, upon the opening of preliminary investigation about the fact that has taken place, the investigative bodies do not immediately recognize the person in question as victim or his/her assign, motivating it that the criminal nature of the action has not been established yet – and as if first they must carry out investigative activities as a result of which it will be decided whether to prove the person a victim or his assign or not.
Such approach of the investigative body to the question is incorrect. According to part 1 of article 68 of the Criminal Procedure Code of Georgia, "the victim is the state, physical or legal person, whose moral, physical or property damage was inflicted on him by an unlawful action of the direct offender or mentally insane person or who was inflicted injury by a mentally deranged person after committing the crime". According to part 2 of the same article, "On the case that ended in death of the victim, his rights are delegated to his close

relative". Proceeding from the mentioned norm, as soon as the preliminary investigation starts (on the fact, presumably on the criminal action), the persons who were inflicted damage must be automatically recognized as victims or their assign.

As the investigative bodies do not recognize the victims or their assign they do not get the chance to enjoy the rights determined by article 69 (the rights of victims and their assign) in the course of the investigation , which according to article 18 of the CPC (investigation of the circumstances must be comprehensive, objective and complete), questions the objectivity of the investigation.

In the course of investigation, it must be within the interest of the investigative body that the authorized persons raise the questions regarding dubious circumstances and seek for adequate answers by conducting investigative actions, which in the long run will lift the distrust towards the investigation.

Along with this, if in the course of investigation it turns out that there is no basis to recognize the person a victim, the procedural body will pass the ruling (resolution) in accordance with part 8, article 68 of CPC, which will annul the ruling on recognizing the person a victim. Proceeding from the above, the issue of recognition of victim or his assign must not be problematic for the investigative body **(see appendix #3: The case of M. Gogolashvili, the case of G. Kutaladze).**

*** * ***

All the above said clearly points out that the Prosecutor's Office often fails to fulfill their authority and duties assigned by law.

One of the leverages for the Public defender in the Protection of Human Rights is the examination of the obtained materials and addressing them to the Prosecutor's Office. However, sometimes when there is an obvious lack of support on the part of the Government, restoration of violated right of a person becomes very difficult. Especially when it refers to the systemic violation of human rights, which is the constituent part of the state policy, or if the right is infringed upon by the high official, it is very difficult to achieve adequate response.

All the above in its turn has a negative impact on the quality of judiciary system, the standards of protection of human rights and the introduction of rule of law in the country.

Ministry of Internal Affairs and Human Rights

Introduction

Under the reporting period the problem of physical violence against citizens used by the employees of the Ministry of Internal Affairs (MIA) still remains persistent. The citizens mainly complained about the use of violence by police during arrests.

After the "Rose revolution" public expectations towards police has increased drastically. The population conceived the hope that the Government would use more benevolent, orientated at human rights approach while performing its duties. Until 2005, torture and ill treatment of the detainees was a crucial problem in police units and temporary holding isolators, which later moved out into the street.

It is known that reforms are going on in every sector of the Government, among them, quite intensively - in MIA. Police reform can be considered successful when the main mission of this body - to establish order in the country, reduce crime and protect human rights – is being implemented effectively.

Analysis/ recommendations of the current situation

Article 8 of the Georgian law "On Police" specifies that "police is under an obligation to strictly protect legal rights of a citizen when performing official duties"

To achieve this goal, the premises under the subordination of MIA have been refurbished and equipped with latest technologies. The Ministry has undergone structural reorganization, police staff got numerous trainings, personal equipment, but all this did not seem to be enough to turn the police into a real defender of human rights. It is true that every policeman knows that he must not beat or torture a person, but the main thing is to get prevention mechanisms function and to have an effective system of punishment in place.

The use of force by police is a global problem and Georgia is no exception.

The excessive use of force by police can be caused by the following:

- Non-existence of political will;
- Inadequate control over employees' actions;
- Psychological disposition of a policeman (prone to aggression);
- Lack of special knowledge;

Political will

The main tool for human rights protection in the hands of the Public Defender is Parliamentary reports and addresses to different bodies with proposals and recommendations. When there is no support from the government, the restoration of human rights and achievement of adequate results becomes rather difficult. In particular, when it refers to systemic violations or concrete infringement of human rights by high ranking officials, which is the constituent part of the state policy.

For instance, in 2007, the Public Defender investigated the fact regarding Irakli Kodua, the head of Special Operative Department of the MIA. On 18 February 2007, at 3*a.m.*, a young man called Nanuka Zhorzholiani, the head of the information Center of NATO, on her

mobile phone. Because of this fact, on the order of Irakli Kodua, the owner of the mobile phone, Lasha Khurguani and two young brothers, Gocha and Khvicha Mildiani, who occurred to be on the same mini bus by chance, were arrested. For some reason, police thought they were friends. In order to create legal grounds for the arrest, the police concocted a document which allegedly proved that these three people were the members of "a well organized criminal group". After their detention, official records said that they had narcotic drugs in large quantities and three shells. They also reported that they had fought back the police while detention. The representatives of the Public Defender interrogated 6 witnesses - the mini bus driver and 5 passengers and all of them verified that the detainees had no drugs or shells during the search and neither did they confront the police. After the arrest, 3 persons were given narcotic drugs.

When the police found out that the brothers were detained by accident, they released them in two days, however, the false documents have not been changed and the court charged both of them with the use of drugs, confrontation against police and drug traffic, and one of them was charged with having the shell. Consequently, the sanction of punishment towards one brother was 17 years and the other - 25 years of deprivation of liberty.
Given the background that the two key priorities of the state criminal policy is to fight against crime, drugs and drug dealers, the investigation, prosecutor's office and court show an unprecedented kind-heartedness and assign to the representatives of the criminal world or members of criminal organizations minimal charges - 5 years of deprivation of liberty, and as an additional punishment – the penalty in the amount of 3 thousand GEL.

The third person, the telephone owner, was released only after 2 months with 5 years of probation sentence and additional penalty in the amount of 5 thousand GEL, and that was only after they had made sure that the call was made from his phone but by another person. Despite the fact that the Public Defender has the documentary proof of the above, the likelihood that the investigation will confirm the same truth is rather low (see the case of Mildiani and Khorguani).
The Parliament supervises Ministry activities. Proceeding from the circumstances, the groundless threat to every person's life and health posed by law-enforcement officials must be perceived as a great hazard to the stability of the entire country. The Parliament is responsible for making adequate response to the facts of violation of rights by MIA employees.

Insufficient control over employees' performance

International practices have shown that even under those circumstances when the state expresses the will to prevent excessive use of force, the public still have some claims about the issue.
One of the main factors of prevention of the excessive use of power of law enforcement bodies is having retroactive and control mechanisms in place. With this purpose, administration of MIA should provide the following:

1. *Effective recruitment selection process.* General principles of UN on the use of force and firearms by law enforcement officials consist in the following: "Police staff shall be selected after they have been thoroughly examined. In order that a person

performs his/her function effectively, s/he must have high ethical norms, psychological and physical abilities and should be provided with fundamental and professional training. The ability of performance of the duties must be checked at regular periods".

2. *Effective cooperation in the course of preliminary investigation.*
3. *Constant monitoring mechanisms to control excessive use of force.* For the purpose of controlling excessive use of force, the Public defender thinks it expedient to install video cameras in patrol cars or the uniforms of police officials, which will provide a documented record of the interaction of police and public. it is important that video materials obtained in this way are kept long enough to enable the authorized interested parties make use of it (this is the approved practice in the USA)

The above proposal is likely to cause the resistance on the part of the Government with the excuse that this requires large funds (e.g. spy cameras), but the fact is that where there is the will there is the way. Security of the public and order is very important but person's life and rights is of no less importance.

Psychological disposition of policemen (being prone to aggression)

One of the major causes of the excessive use of force, as international practices show, is the psychological state of the employees. It is important for prevention purposes to introduce the psychological service for employees in respective institutions. Such service enables to predetermine and avert the violence used by police which in its turn will improve the situation. The service will help the employees to observe the principle of non-use of force even if they get stressed or under extraordinary situations when performing their duties.

Lack of special education.

Following its visit in 2001, the European Committee Against Torture provided a recommendation to the government of Georgia on the recruitment and professional training of the police staff. The recommendation underscored the necessity of integrating human rights with practical professional training, especially in the sphere of management of particularly complex situations (paragraph 22). MIA of Georgia followed the above recommendation and police employees have been trained in theoretical and practical aspects. Despite this, operative management of complex situations and resorting to the excessive use of force is often still a problem for policemen which the Public Defender has repeatedly underscored in his reports.

Conclusion

The results of police reform must be measurable for the public, which means that it must find reflection in real life, in the number and contents of citizens' complaints, reports of different organizations and generally in public attitude.

At the same time, police reform must be directed at sharing best world practices and giving a broader consideration to public interests.

System of repressions and violence must be transformed by the institutions engaged in the implementation of preventive measures and human right protection.

Surveillance Cameras and the Right of Respect of Private Life

On April 13 this year letters were sent from the Public Defender's Office to the Administration of the Ministry of Internal Affairs and Tbilisi City Council. We requested information as to how much the society is aware of the places (streets, squares, etc.) which represent the object of surveillance by means of surveillance cameras; whether there exists independent authority making decision concerning the lawfulness of installation of surveillance cameras in order to perform the surveillance by cameras in conformity with the requirements of European Convention on Human Rights and Fundamental Freedoms.

On August 13, this year answer of the Deputy Mayer of Tbilisi David Alavidze was received by the Public Defender's Office, and on August 14 – the letter of the Deputy Head of Administration of the Ministry of Internal Affairs; both of them state that the relevant warning signs are installed near each camera.

Neither of the letters says anything concerning any authority. Such authority doesn't exist at all. As for the warning signs – their installation on all perimeters of video surveillance was carried out after the Public Defender's letter was sent to the Administration of the Ministry of Internal Affairs.

The Public Defender welcomes the fast of installation of surveillance cameras at the places of traffic. The cameras ensure the safety of road traffic. At the same time, they provide reliable proof to the case of administrative offence. Despite of this circumstance, the functioning of surveillance cameras must be subject to certain requirements in order to avoid the interference with the right of respect of the private life.

Installation of the warning sign and establishment of the independent authority is recommended by the public statement of European Commission of the Council of Europe ("Venice Commission") on Strengthening of Supremacy of Law through the Judgment dated July 11, 2007. Independent authority, which will examine the lawfulness of installation of video surveillance, is considered to be the guarantor of protection against the willful interference of the state in person's private life. By non-existence of the independent commission, examining the lawfulness of video surveillance Georgia infringes the obligations undertaken by European Convention on Human Rights.

European Court of Human Rights made the following judgment on the case "Pack vs. United Kingdom": publication of the record of surveillance camera, going beyond the sphere of observation of mere passer-by, representative of security service, at the extent which the object of surveillance can't predict, in particular, demonstration of scenes depicting personal life (depression) by TV or other mass media means, violates European Convention on Protection of Human Rights and Fundamental Freedoms.

Competent Council, which made decision regarding dissemination of the above mentioned recording without covering the person's face, seriously infringed the right of respect of personal life.

Respect of private life is guaranteed by the Article 20 of the Constitution of Georgia. Besides, usage of surveillance camera at public places falls under the sphere of protection provided by the Article 22 of the Constitution of Georgia and the 4th Additional Protocol (Right to Free Movement) of European Convention on Human Rights. European Court on Human Rights stated that there is no basis to doubt the necessity of the contracting state to assign the authority to the competent body to collect and keep the information for the security purposes which is not public and available for others. In this case the state has wide limits of evaluation. But such interference must be proportional. The mere purpose of avoidance of a crime can't condition the installation of surveillance cameras, with the exception of the cases, where there exist direct threat against safety and the risk of committing serious crime. For this purpose, the system of selective surveillance is admitted, when the interference in the right of respect of private life and freedom of movement can be justified.

European Court of Human Rights established one more standard: the circumstance that surveillance camera is installed at the public place must be known. Besides the data, obtained by surveillance camera must be used for the achievement of specific and legitimate purposes. The non-purposeful usage of the mentioned data is inadmissible. The mentioned data mustn't be disseminated if it places the investigation, security and respect towards private life under threat.

The usage of the video surveillance system must be carried out under the supervision of independent governmental body. E.g. in the Netherlands there exists the Commission of Protection of Personal Data, which supervises the collection and processing of personal data of any kind. Any such data, which are not subject to collection and processing, must be communicated to the Commission.

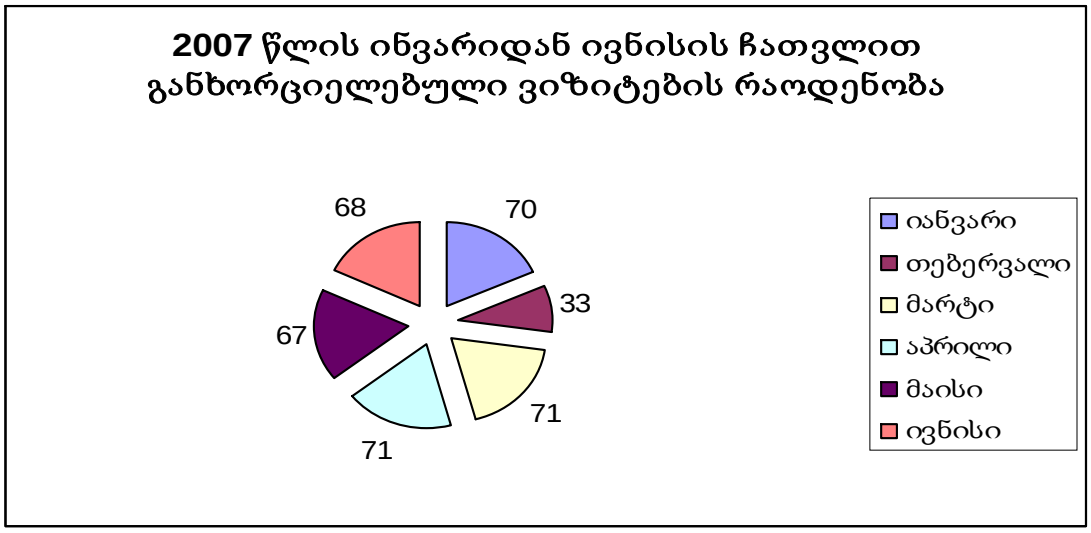
The non-existence of independent authority infringes the right of respect of personal life guaranteed by the Article 8 of European Convention on Human Rights.

Monitoring data on temporary detention isolators and police units within the system of the Ministry of Internal Affairs of Georgia, as well as hauptwahts within the defense system carried out by the monitoring group of Public Defender's Office as per the first half of 2007 (January-June)

Monitoring group of Public Defender's Office continues the implementation of intensive control over temporary detention isolator and police units in 2007. In conformity with articles 18-19 of the organic law of Georgia "On Public Defender", "the Public Defender of Georgia examines the situation of the observance of human rights and freedoms in the places of detention, custody pending trial and other places of freedom restriction. Public Defender meets with inmates and talks to detainees, persons under custodial arrest and convicts in person; examines documentation related to their detention. In the course of monitoring the Public Defender and the deputy public defender or other representatives by proxy of Public Defender have the right of unimpeded access to any state or local authority offices, enterprises and institutions, among them military subdivisions, preliminary detention units and other places of freedom restriction without any encumbrance…" Consequently, one of the key functions of Public Defender's Office is regular control of the rules of treatment of persons whose freedom is restricted; reinforce protection against torture and other inhumane or humiliating treatment or punishment of detainees. As well as that, provide recommendations to the bodies concerned about improvement of conditions and methods of treatment of people under confinement. The control of temporary detention facilities of the Ministry of Internal Affairs by monitoring group at the department of investigation and monitoring of Public Defender's Office, help us find out to which extent the national legislation and international agreements on human rights, in particular, prisoners' rights are complied with so that the Public Defender can make an adequate response further on. Besides, the above mentioned activities shall also serve prevention goals.

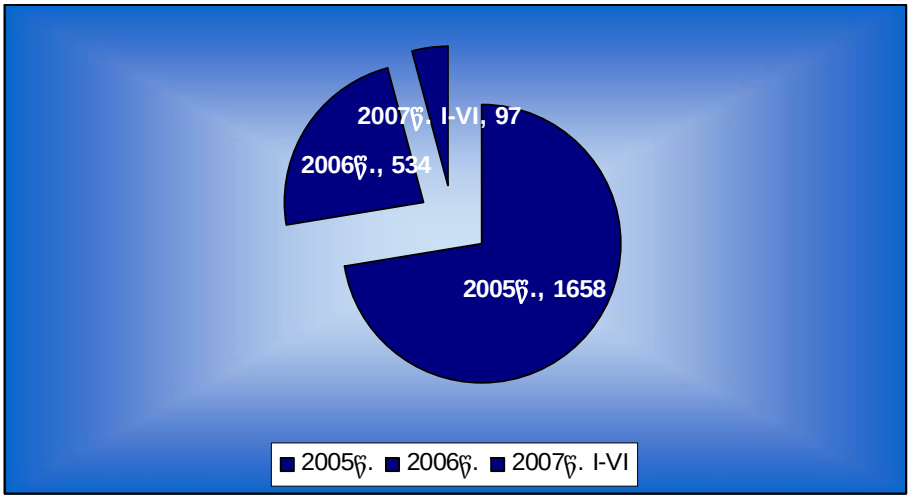
In January through June, 2007, the monitoring group of Public Defender's Office paid 380 visits to Tbilisi temporary detention isolators and police units within the system of MIA. The maximum number of visits were recorded in March and April –i.e. 71 visits and minimum – in February – 33 visits.

Number of visits paid from January to June of 2007



Under the reporting period as a result of 380 visits, 97 facts of violation of human rights were recorded, while on the data of the first half of 2006, the total amount of violations of human rights was 384, and in the second half of 2006 – 150, in total 534. Thus, in comparison with the first half of 2006, the number of violations of human rights is reduced three times.

Total amount of procedural violations and of the rights of detainees according to I-VI of 2005-2006-2007



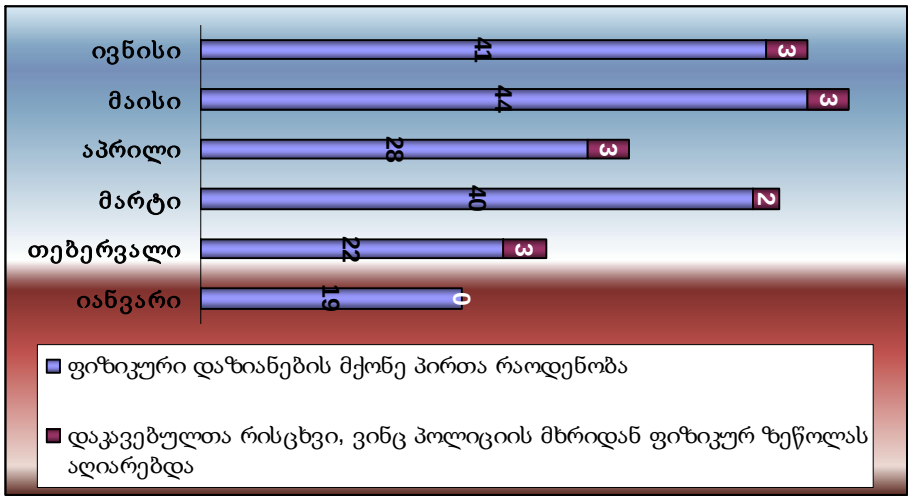
The diagram clearly shows that in 2005, the monitoring group recorded /reported/ 1658 cases of procedural violations and infringements if inmates' rights, in 2006 the number reduced and equaled to 534 and in the first half of 2007, 97 facts were reported which doubtlessly is a positive change and indicates a drastic decrease.

Maximum number of violations of the detainees - 30 cases, were reported in June, minimum – 9 cases, in January.

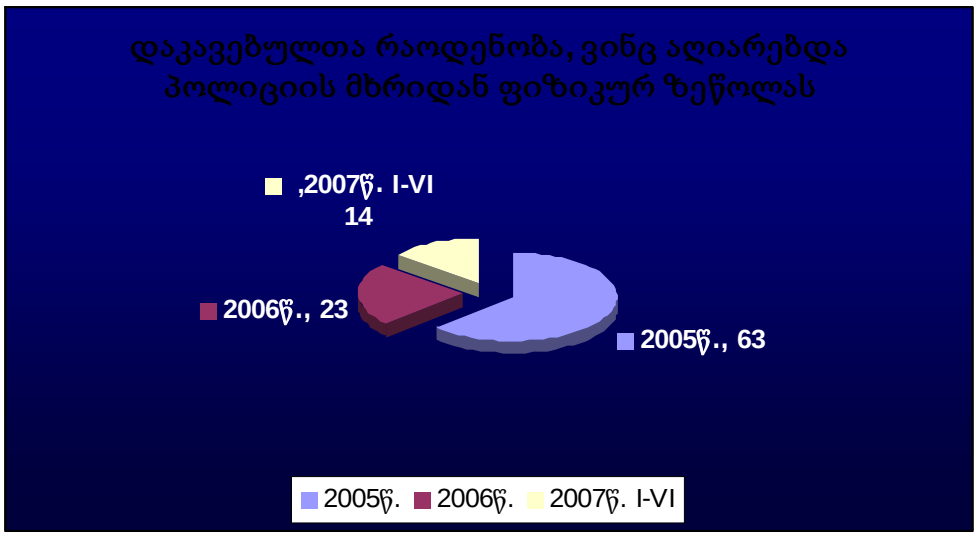
Monitoring group visited 1287 detainees in temporary detention isolators and police units, which already exceeds the total amount of detainees, i.e. 1012, who were visited in 2006. Notably, 194 persons out of 1287 detainees while external examination had physical injuries and as a result of their questioning, only 14 claimed to have been injured as a result of physical pressure exerted by police.

Number of persons with physical injuries

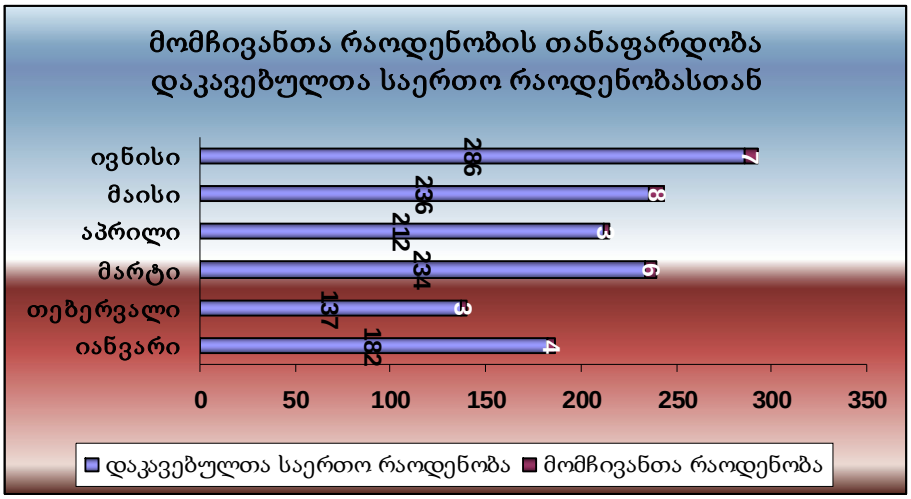
ფიზიკური დაზიანებების მქონე პირთა რაოდენობა თვეების მიხედვით



Only 31 out of **1287 detainees** claimed about the violation of rights, **14 out of them alleged to have been under physical pressure,** and the rest, 17 indicated as psychological pressure by police –on 11 occasions, as well as non-submission of the act of proving them suspects – on 4 occasions; in 5 cases they were not given explanations about their rights; in one case, they were not allowed to use the phone, in 17 cases they were not clarified about the right to have a defence lawyer, in 19 cases their families were not notified about their detention, in 15 cases they were not told about the right to silence and in 11 cases the violation of administrative arrest term was reported.



The ratio of the number of appellants to total number of detainees



As a result of monitoring in January-June of 2007 no facts have been reported on non-existence of records in the registration book about detainees.

In January-June of 2007, the monitoring group visited and recorded 1287 detainees, out of whom 1221 were males, 69 – females, 70 were underage boys and 5 – underage girls. 38 detainees were the representatives of national minorities.

Statistical data on violations revealed as a result of police monitoring by Public Defender's Office Monitoring Group in the first half of 2007 (January-June)

cal data on violations revealed as a result of monitoring	I	II	III	IV	V	VI	Total
Type of violation							
Physical injuries	19	22	40	28	44	41	**194**
Admits the facts of physical pressure		3	2	3	3	3	**14**
Admits the facts of psychological pressure		3	2	2	2	2	**11**
Not been reported as a suspect		3	1				**4**
No explanation given about the rights	2	1			2		**5**
Refused to use the phone				1			**1**
Not been explained the right of counsel	2	3	5		1	6	**17**
Not recorded in the register							
No notification made about detention	3	3	5	1	1	6	**19**
Was not explained the right to silence	2	3	4		2	4	**15**
Not been given the list of rights of detainees							
Violation of the term of administrative detention has been reported					2	9	**11**
plaintiff /the offended party	**4**	**3**	**6**	**3**	**8**	**7**	**31**
Total amount of violations of rights	**9**	**19**	**19**	**7**	**13**	**30**	**97**
Female	8	11	9	12	9	20	**69**
Male	174	126	225	201	229	266	**1221**
Minor -girl				4		1	**5**
Minor -boy	13	8	11	12	17	9	**70**
Representative of ethnic minority	4	3	6	9	7	9	**38**
total amount of detainees in 24 hours	**182**	**137**	**234**	**212**	**236**	**286**	**1287**
Geographical area (indicate the number of units)							
Tbilisi city department	8	5	8	7	8	**8**	**44**
Gldani-Nadzaladevi	22	4	22	24	22	**14**	**108**
Didube-Chugureti	9	3	6	4	6	**8**	**36**
Vake-Saburtalo	12	5	7	10	16	**10**	**60**
Dzveli Tbilisi	7	5	9	8	2	**11**	**42**
Isani-Samgori	12	11	19	18	13	**17**	**90**
Total amount of visits	**70**	**33**	**71**	**71**	**67**	**68**	**380**

Statistical data on violations revealed as a result of visits of Monitoring Group in regions of Georgia in the first half of 2007 (January-June)

The Public Defender's Office continues monitoring in the regions of Georgia. **408 visits** were paid in the first half of 2007 throughout Georgia in regional units of MIA and temporary detention isolators having covered **371 detainees**.
The monitoring group reported 49 facts of human and procedural rights violations, 24 out of which were violations of human rights and 25 that of procedural rights. **12 detainees** had the trace of physical injuries, only **2 of whom admitted** physical pressure exerted by police.

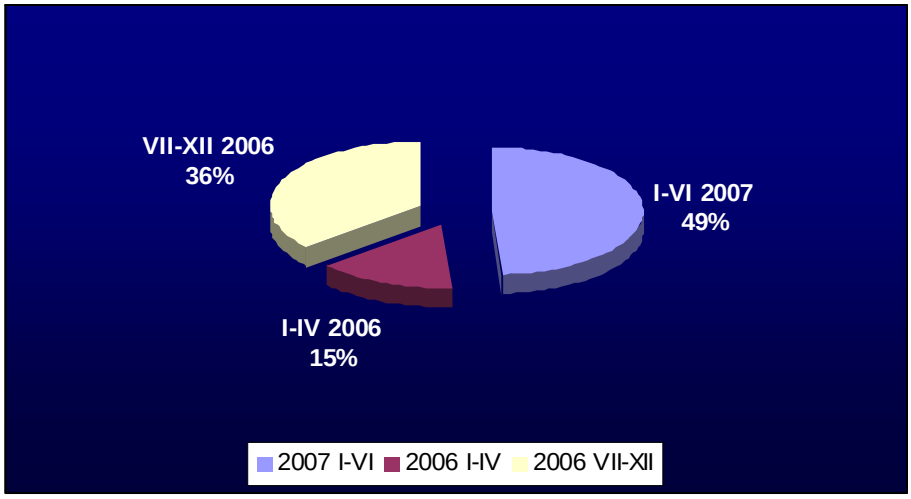
During the interview with detainees 2 of them admitted being under psychological pressure, 2 others have not been explained the right of counsel, in 1 case, no notification about the detention was sent to family members, 2 detainees were not explained the right to silence and three cases of the violations of the duration of administrative arrest term were reported.
Among procedural violations, were reported 2 cases of non-existence of a register, in the rest of 22 cases, the records entered in the register were either incorrect or incomplete. Out of 371 detainees, 355 were males, 3 females, 18 underage boys and 26 the representatives of national minorities.
Out of detainees who were visited, only 2 persons complained about the violation of their rights.

Statistical data on violations revealed as a result of monitoringdarRvevebis statistika	I	II	III	IV	V	VI	jami
Type of violation							
Physical injuries	2	3	1	2	3	1	12
Admits the facts of physical pressure			1		1		2
Admits the facts of psychological pressure			1		1		2
Not been reported as a suspect							0
No explanation given about the rights							0
Refused to use the phone							0
Not been explained the right of counsel			1		1		2
Not recorded in the register							0
No notification made about detention			1				1
Was not explained the right to silence			1		1		2
Not been given the list of rights of detainees							0
Violation of the term of administrative detention has been reported						3	3
Total amount of violations of rights	2	3	6	2	7	4	24
No register	1					1	2
Two or more registers found							0
Incorrect/incomplete records entered in the register	1	1	6	5	6	3	22
Police showed resistance	1						1
Total procedural violations	3	1	6	5	6	4	25

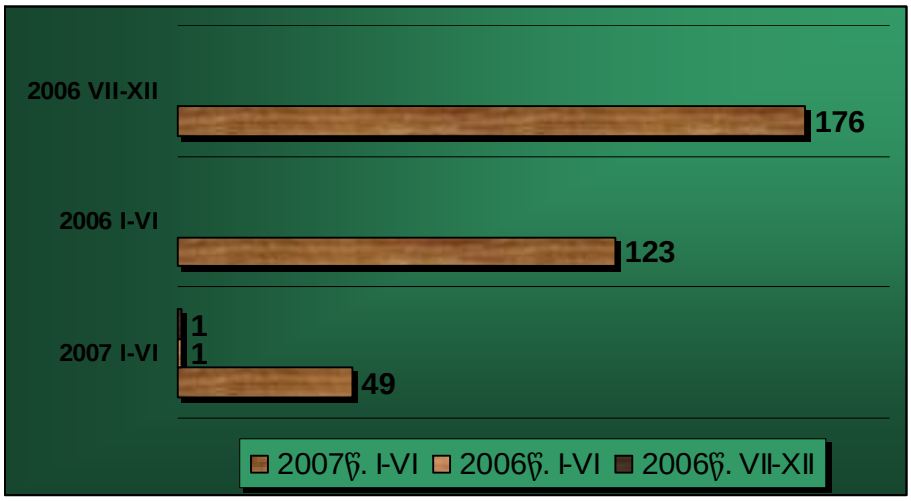
Total violations	**5**	**4**	**12**	**7**	**13**	**8**	**49**
Plaintiff/victim/ offended party			**1**		**1**		**2**
Female		**1**		**2**			**3**
Male	**64**	**40**	**60**	**59**	**47**	**85**	**355**
Minors- boys	**1**		**1**	**4**	**10**	**2**	**18**
representatives of national minority		**4**	**5**	**8**	**5**	**4**	**26**
Number of detainees in 24 hours	**64**	**41**	**60**	**61**	**60**	**85**	**371**
Number of visits (Units)	**79**	**48**	**72**	**64**	**67**	**78**	**408**

It should be noted that, compared to 2006, the monitoring group is conducting a more intensive control over police units and temporary detention isolators in the regions of Georgia in 2007, which is proved by 426 of visits during the whole year as compared to 123 visits in the first half of 2006, which is four times less than the number of visits in the first half of 2007. The total number of visits in 2006 is almost the same as those in the first half of 2007.

Visits of the monitoring groups in regions in 2006-2007 (January-June) in percentage terms.



The total number of human rights and procedural violations in regions in 2006 equaled 176. 123 cases were reported in the first half of 2006, which exceeds the reported violations of human rights and procedural violations by 2, 5 times in the first half of 2007. Consequently, we can observe a significant decrease in human rights and procedural violations in preliminary detention isolators and police units in regions.



Hereby, it must be noted that unlike monitoring results conducted in Tbilisi, where there were no reports of procedural violations (incorrect or incomplete registration, non-existence of registers), only 25 procedural violations were reported, out of which 22 were on incorrect or incomplete cases of registration by the administrations of police units.

Monitoring of technical conditions of police units

As was noted above, the Public Defender's Office representatives carried out regular monitoring of police units and temporary detention isolators both in Tbilisi and regions. Monitoring of temporary detention isolators revealed several violations and problems requiring fundamental investigation and solutions. Technical state of temporary detention isolators (accommodated in the buildings of the departments of Internal Affairs in regions) deserves attention. Though it is true that some of these buildings have been repaired and the conditions have slightly improved, not a single isolator has shower, medical office, proper plumbing and ventilation system. Besides, provision of food stuff and heating to the detainees is a problem. If their relatives do not deliver food to them, the temporary detention isolator employees have to feed them with their own means. However, in some cases they are not always able to show this goodwill for different objective or subjective reasons. The problem is especially urgent for those who are sentenced to administrative arrest.

As a result of monitoring conducted in December, 2006, that most of temporary detention isolators turned out to be in a deplorable state: the premises need immediate repairs, sewage, ventilation and heating systems are not working properly, cells and investigation rooms are leaking, window glasses are broken, cells are not heated, there are no plank beds and the detainees often have to sleep on the floor.

Another problem in temporary detention isolators is food. According to the law, the person in the temporary detention isolator must not spend more than 72 hours (48 hours as suspect and 24 hours as defendant). During this time, the food has to be provided to them by the state; however, this issue has not been settled yet.

The Public Defender considers that the existing hard and poor sanitary conditions are degrading their personal dignity which is the violation of human rights.

As for **Tbilisi** temporary holding isolator, it was repaired cosmetically which did not improve conditions much. Problems are ventilation, water supply; instead of beds are used wooden platforms, the right to walking is restricted. The hard conditions mentioned are especially unbearable for the person sentenced to administrative arrest as they have to stay under these conditions for up to 30 days. On one occasion one of these persons had been refused to use his optical glasses and the problem was settled only after our interference.

In **Tkibuli** regional temporary holding isolator out of 9 cells only three are fit for use. Five of them need urgent repairs and one is used for storing different stuff. The ceiling and floor of the facility are damaged, there is no bathroom, toilet needs repairs, no necessary conditions for personal hygiene. Water, heating and ventilation systems are out of order. Water is mostly supplied in the isolator by the staff. Sanitary conditions are unsatisfactory.

According to the information of the Ministry of Internal Affairs **Marneuli THI** has been repaired cosmetically; however, there are three cells without windows and they do not have natural light and ventilation. Technical state is unsatisfactory.

In **Dusheti** THI there are 4 cells. They have no heating or ventilation system. The cells get the light from electric bulbs installed above entrance doors. There is no proper toilet and no shower rooms. Besides, in the isolator, as well as in the whole building, there is no running water. The isolator is in bad need of repairs.

Gardabani THI has 5 cells. They are not heated, the windows have no glasses and it is cold. There are not ventilation and shower systems. The cells get the light from electric bulbs above the entrance doors which is insufficient. The isolator needs repairs. According to the information of the MIA, Kutaisi THI was repaired and the technical conditions there are satisfactory.

During the monitoring the problem of overcrowding due to numerous numbers of persons sentenced to administrative arrest in **Samtredia** IA regional department THI deserved special attention. 5 to 7 people are staying there daily. The cases were reported when the number of prisoners reached 17 there. Almost all of them were charged with 30 days of imprisonment as per article 45 of the Code of Administrative Violations (illegal drug purchase or storing, or drug use without doctor's prescription). It is important to note, that there are 4 cells in THI, one of them is in a bad emergency state and is not fit for use. Other three cells can accommodate 13 people maximum. The problem of overcrowding becomes more acute due to the fact that apart from administrative offenders there are crime suspects as well.

As a result of the information obtained through visits, explanations of THI staff and prisoners of Samtredia IA regional department temporary holding isolators, it became apparent that the THI needs repairs. There is no bathroom, no necessary conditions for personal hygiene. Water, heating and ventilation systems are out of order. The plank beds on which the prisoners lie all day are broken. The administration has no mattresses and bedding to

provide. As well as that, the prisoners are not provided with food and if the relatives are not able to deliver food, then the employees of THI themselves have to provide food stuff with their own means. However, in some cases they are not always able to show this goodwill for different objective or subjective reasons. Due to the above problems the prisoners have to serve their sentence under inhumane conditions in fact.

Samtredia IA regional department is not an exception though. Such problems exist in other departments of IA. Though it is true that some of THI have been repaired but hygienic conditions desire to be better (there are no shower rooms).

It should be taken into account, that on the recommendation of the European Committee for the Prevention of Torture (CPT), all the actions and services in prisons will deteriorate if the Administration is required to serve more prisoners than it is meant to. Although it is true that the recommendation refers to penal institutions, but THI for persons sentenced to administrative arrest is the institution were they serve the imprisonment sentence. Thus the recommendation adequately applies to the existing conditions in THI.

It is noteworthy that the persons sentenced to administrative arrest by court are placed in MIA temporary holding isolators. For member states, according to clause 99 of the recommendation #q (87)3 of 12 February 1987 of the Committee of Ministers of European Council on "European Prison Rules", in those countries where arrest is admitted by law on the basis of court order, based on the trial of any civil case, such prisoners must not be subject to more restrictions and severe rules that are required for their security and order for staying in these institutions. They must not be treated in a worse way than those in preliminary detention facilities.

Regarding lighting and ventilation issues, according to rule 11 of "Minimal Standard Rules" of treatment of prisoners of the UNO: the establishments in which prisoners live and work should provide the following conditions: (a) windows must be large enough so that prisoners can read and work by daylight, and their construction must allow the supply of fresh air even if ventilation system is in place; (b) artificial lighting must provide sufficient light so that prisoners can read and work without risking the deterioration of their sight.

European Committee for the Prevention of Torture makes provision that insufficient air and light supply create conditions for humiliating treatment. The corresponding bodies of the government must investigate each case regarding prisoners to identify whether the security measures are justifiably applied and if there is the need for such measures, the prisoners must be provided with sufficient air and lighting. After all, non-existence of the above conditions causes such disease as tuberculosis".

Also, according to "Minimal Standard Rules" of UNO (rule 20 and 26), "administration must provide edible, healthy and secure food stuff, as well as water which should be available any time for prisoners".

According to rule 13 of "Minimal Standard Rules" of UNO on the treatment of prisoners, the number of washing facilities and shower rooms must be sufficient so that every prisoner is

able and has to wash or take a shower of the required temperature (depending on the climate) and as often as it is required by general hygienic conditions, taking into consideration geographical area, i.e. under moderate climatic conditions – at least once a week. As well as that, according to rule 15 of MSR, the prisoners are required to keep themselves clean. For this purpose, it is necessary to supply them with water and the objects of personal hygiene essential for keeping clean and health protection. Cleanness and observance of personal hygiene is one of the most important factors for holding their dignity. Thus, every effort must be made to avail any prisoner with shower and hygienic conditions that is important to maintain their health and self-esteem.

As for the supply of bedding, it must be said that under international standards every prisoner should be adequately provided with individual, clean bed-cloths which have to be changed in accordance with national and local norms.
In conformity with rule 17 of the Committee of Ministers of European Council on "European Prison Rules", sanitary facilities must be adequately furnished and arranged so that every prisoner can satisfy their daily wants in the clean and tidy atmosphere.

In order to solve the above problems the Public Defender addressed the MIA with the request to create adequately suitable conditions in THI and improve the existing situation.

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In connection with the violations revealed by monitoring results, the Public Defender addresses the Tbilisi Prosecutor's Office, as well as Human Rights Protection Department at the General Prosecutor's Office of Georgia, regional Prosecutor's Offices and the Administration of MIA for an adequate response.

Under the reporting period, the Public Defender's Office sent 17 letters to THI and police units to respond to the violations of procedural character. Three facts out of them are being under criminal investigation; 15 letters were addressed to respond to the facts of physical insult and 10 cases out of them are under criminal investigation. 10 facts of violations of the term of administrative detention were reported and addressed to be responded.

On the information of the Prosecutor's Office the reported 12 facts of violations of procedural character have not been proved and 1 fact of physical offense used by police is under criminal investigation but due to non-existence of the facts of offense the investigation has stopped.
It must be noted that apart from conducting control over police units and THI by monitoring group, it is no less important to keep track of responsive actions of investigation bodies to letters of the Public Defender's Office reporting the facts of violations of rights of the detainees. Studying the above materials, will enable us to outline the policy of the Prosecutor's Office towards the investigation of facts of beating and torture of detainees and see how effectively the investigation into mentioned cases is carried out.

Monitoring of Administrative Arrest Facilities ("hauptwahts"")

In conformity with articles 18 and 19 of the organic law of Georgia on "Public Defender", in the course of monitoring the Public Defender has the right access to any military subdivisions without any encumbrance to check the observance of human rights and freedoms. Public Defender meets and talks to inmates in person; examines the documentation related to their detention; according to the first part of article 27 of the same law, Deputy Public Defender and the representatives of PDO can carry out their official duties under articles 18 and 19, by proxy of the Public Defender.

If people commit disciplinary violations while in compulsory military service, they are placed in the facilities ("hauptwahts") of administrative arrest within the system of the Ministry of Defense, charged with one of the forms of administrative responsibilities – administrative arrest on the city (district) court ruling.

Monitoring conducted in the facilities ("hauptwahts") of Administrative Arrest

Within the system of the Ministry of Defense there are 6 (six) hauptwahts functioning currently – the hauptwaht of Tbilisi-Mtskheta-Mtianeti regional department (Tbilisi), Kakheti-Kvemo Kartli (Vaziani), the hauptwaht on the premises of Samegrelo-Zemo Svaneti regional police department (Senaki), Ajara regional department (Batumi), Samtskhe-Javakheti regional department (Akhaltsikhe) and Shida Kartli regional department of military police (Gori).

Monitoring group of the Public Defender's Office of Georgia started to conduct intensive monitoring of hauptwahts to check the observance of minimal rules of treatment of prisoners by administration.
In 2007, the monitoring group continued their activities and in total they paid 26 visits in the period from January to June.

Materials obtained as a result of monitoring

In Tbilisi-Mtskheta-Mtianeti regional department hauptwaht of the military police of the Ministry of Defense, only 18 cells out of 19 are functioning. There are 14 solitary, 2, 9 sq.m. cells, two double 9, 4 sq.m cells, one 68 sq.m. cell and two cells of 9 sq.m for four persons. These cells are designed for the confinement of persons with criminal charges. As a result of monitoring a number of violations were revealed: the entire building was in need of repairs. In the 68 sq.m. cell there was no heating system; the cell had 2 windows with broken glasses; the walls were damp; the cell was cold; it had no toilet and plumbing facilities; there were 10 large plank beds; the cell got the light from one electric bulb in the corridor, which was insufficient for normal lighting.
Out of 14 solitary cells only 13 were functioning. In seven of them the plank-beds were removed during the day and put back only at night. In six cells the plank-beds were lifted to

the wall. The cells did not have plumbing and heating systems. Toilets and wash rooms were outdoors.

Kakheti-Kvemo Kartli hauptwaht within the Ministry of Defense has eight two-man cells of 55sq.m. and two, 14 sq.m. four-man cells. They are lit by an electric bulb fixed in the corridor above the door. There was no shower room.
5 cells were examined in Shida Kartli hauptwaht of the Ministry of Defense (in Gori). The cells are about 5, 6, 9 and 12 sq.m. The cells have no windows and they are lit from outside with one bulb for each cell; there is no ventilation system; in the evening hours the prisoners are given plank-beds, that are kept in corridors during the daytime. The cells and the entire building need to be overhauled.
Ajara regional hauptwaht of the General Staff of the armed forces of Georgia consists of one large and six solitary cells accommodated outdoors. The cells had no heating and consequently they were cold; instead of beds, in the evenings the prisoners were given wooden platforms mounted on the concrete elevation and in the morning they were taken away; there was no toilet inside and the detainees used the toilets in the building of the military police. There were not any shower rooms and the prisoners were taken to the military unit of village Adlia in Khelvachauri district.
Four cells were examined in Samtskhe-Javakheti hauptwaht of the military police of the Ministry of Defense – two solitary cells of 3 sq.m. and two 10 sq.m. four-man cells.
The cells did not have toilets, shower rooms, plumbing and ventilation systems; the light was supplied to cells from the bulbs in common corridor; the prisoners were given plank beds only in the evenings which were kept in corridors during the daytime. There is a wooden toilet and a tap in the corner of walking area in the yard. The building needs repairs.

The hauptwaht of military police is located on the basis of the second infantry platoon of Senaki in a repaired building which is of NATO standards. It has 9 cells for 8 persons each.
There is a 24 hour lighting which is supplied to cells from the open space above the doors and windows; plank beds are unfolded in cells for seven hours in 24, for the rest of the time, they are lifted to the wall. The prisoners have the right to receive letters.

According to clause 99 of the recommendation #q (87)3 of 12 February 1987, of the Committee of Ministers of European Council to the member states of the Council of Europe on “European Prison Rules”, in countries where the law permits imprisonment by order of a court under any non-criminal process, persons so imprisoned shall not be subjected to any greater restriction or severity than is necessary to ensure safe custody and good order. Their treatment shall not be less favorable than that of untried prisoners. “Minimal Standard Rules of Treatment of the Organization of United Nations’ concerns all prisoners in all kinds of prisons. Consequently, human rights of prisoners must be protected in all cases irrespective of status and the place of imprisonment.

According to rule 10 of Minimal Standard Rules of Treatment of the Organization of United Nations, all places which are used by prisoners, especially bedrooms, must totally respond to sanitary requirements. Besides, proper attention should be paid to climatic conditions, especially the height, minimal space, lighting and ventilation of these rooms.

The cell under cold climatic conditions must differ from the one in tropical climate. The main essence of rule 10 is that every sleeping room should meet the requirements that are necessary to secure health. Prison administration must take care that the existing conditions do not harm prisoners' health. Sleeping in too stuffy, cold or damp cells may cause a number of diseases.
Similar principles are given in the recommendation N R (87)3 of 12 February 1987 of the Committee of Ministers of European Council to member countries on "European Prison Rules". According to rule 15 the custody accommodation, especially sleeping facilities must meet the requirements of hygiene and health. Due attention must be paid to climatic conditions, in particular the content of air per cubic meter, space, lighting, heating and ventilation.

According to rule 13 of "Minimal Standard Rules" of UNO on the treatment of prisoners, the number of washing facilities and shower rooms must be sufficient so that every prisoner shall be able and are required to wash or take a shower of the required temperature (depending on the climate) and as often as it is required by general hygienic conditions, taking into consideration geographical area, i.e. under temperate climatic conditions – at least once a week. As well as that, according to rule 15 of MSR, the prisoners are required to keep themselves clean. For this purpose, it is necessary to supply them with water and the objects of personal hygiene essential to maintain cleanliness and health. Cleanliness and observance of personal hygiene is one of the most important factors in terms of holding their dignity. Thus, every effort must be made to avail any prisoner with shower and hygienic conditions that is important to maintain their health and self-esteem.
In conformity with rule 17 of the Committee of Ministers of European Council on "European Prison Rules", sanitary facilities must be adequately furnished and arranged so that every prisoner can satisfy their daily wants in the clean and tidy atmosphere.

Cleanliness and observance of personal hygiene is one of the most important factors in order to hold prisoners' dignity. Thus, every effort must be made to avail any prisoner with shower and hygienic conditions that is important to keep their health and dignity.

According to rule 19 of MSR, every prisoner shall be provided with separate bed in accordance with national and local norms.

Concerning the case of Popov v Russia (Human Rights European Court resolution of July 13, 2006), the court analyzed the conditions of prisoners in the isolation ward where the plaintiff was accommodated for more than one month in total length. The court indicated that the plaintiff was accommodated in the space from 2.03 to 2.36 sq.m. Besides, the plaintiff left the ward for only one hour when taking the walk. The court placed special focus on the fact that the bed was lifted to the wall for 16 hours in 24 and that the plaintiff could only use a narrow chair without a back. The court arrived at the conclusion that the conditions of prisoners in isolation wards, as well as non-existence of adequate medical aid represent the violation of human rights and fundamental freedoms according to article 3 of European Convention (prohibition of torture).

That the prisoners in the cells of hauptwahts are provided with wooden boards instead of beds in the evenings just for sleeping speaks for the fact that there are no normal conditions and this directly violates the principles of the treatment of prisoners, as such internal regulations directly hurt prisoners physically and mentally, make them suffer and such conditions are considered inhumane and humiliating treatment.

According to rule 11 of the UNO Minimal Standard Rules, in all places where prisoners are required to live and work: (a) windows shall be large enough to enable the prisoners to read and 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; (b) artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.

Long stay in the poorly lit lighted room can harm the eyesight. Efforts are needed to provide sufficient lighting. Long stay under artificial light can also be detrimental both to prisoner's eyesight and his/ her mental health. Thus all cells must be equipped with sufficient artificial lighting alongside with natural source of light. Every cell must have switches inside: the inability of switching on and off the lights increases the feeling of infirmity and desperation in prisoners.

According to principle 19 of the "General principles protecting detained or arrested persons by any form of their detention", the detained or arrested person has the right to meet and have correspondence with his/ her family members and s/he shall be able to have contacts with outer world provided by law or other legal decisions under certain conditions and restrictions. Consequently, there must not be any restrictions in the number of received or sent letters by prisoners. Thus the fact that the in hauptwahts of military police located on the basis of the second infantry platoon of Senaki the prisoners do not enjoy the above right is the violation of principle 19 mentioned above.

During 2006, the representatives authorized by the Public Defender paid **6 visits** in Military Detention Facilities. Following these visits they sent recommendations to the Ministry of Defense of Georgia for the purpose of improvement of humiliating situation and ill-treatment observed in these facilities. Despite the recommendations, as a result of **26 visits** from January to June, 2007, the same violations were reported and the existing situation has not improved after the first visit. It must be noted that in 15 visits out of 26, the employees of the MoD did not allow the members of the monitoring group of the Public Defender's Office to conduct monitoring.
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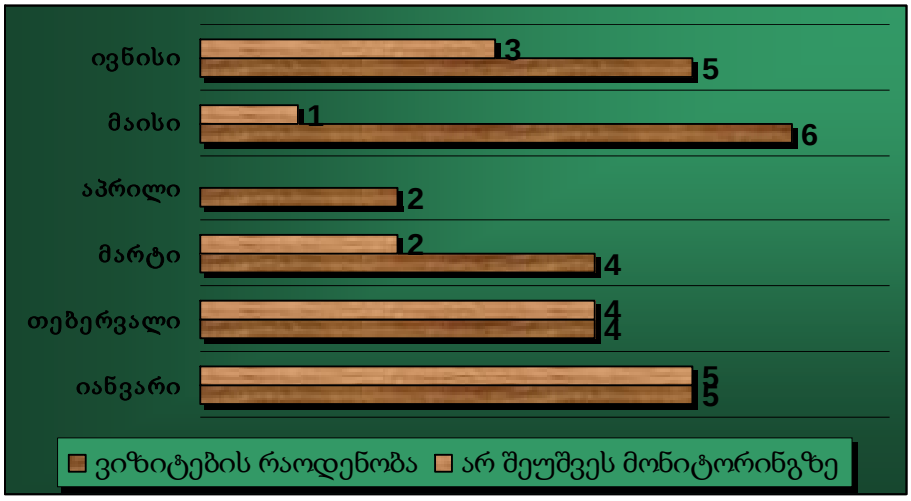
Number of visits in the first half (January-June) of 2007 in Military detention facilities by months and the number of those visits that the monitoring group were not able to conduct the examination.



As we can see from the above graph, from January to June 2007, the representatives of PDO paid 26 visits in hauptwahts under the disposition of MoD; on 15 occasions they were not admitted to carry out monitoring for the same reason, namely, the monitoring group members were not allowed to enter the territory of the isolator with the excuse that hauptwahts and department heads were in the meeting and nobody had the right to enter the territory without their permission.

It must be noted that on June 11 2007, the Public Defender received a letter from the head of military police department, M. Gelovani, which said that regarding the impediments that the representatives of PDO often face the heads of all divisions were given the warning to support the representatives in their activities and be helpful during the implementation of monitoring, in compliance with stipulations given in articles 18 and 19 of the organic law "On Public Defender".

It has to be noted that creating obstacles for the representatives of PDO, severely violates the requirements of the organic law "On Public Defender" and raises doubts about the willingness of the MoD to make the system and the conditions existing in these facilities transparent for the public. Today, one of the main goals of MoD is to support the process of integration with NATO. According to the plan of actions of the MoD reforms, its aim is to create armed forces complying with NATO standards that will favor the process of obtaining the membership of North- Atlantic Alliance.

The liabilities of Georgia before NATO, according to individual partnership plan, are to implement democratic control over armed forces. As well as that, information about security and defense must be made public in order to ensure security, transformation and modernization of defense spheres. It includes understanding democratic and civil control over the armed forces by the population and its support. According to the given plan, Georgia is aiming to introduce constant democratic control over the Ministry.

In the definition of the concept of military-civic cooperation, NATO's main focus is placed on military objective: "Coordination and cooperation in support of the objective, between NATO chief of staff and civic parties (local population and government), also between international, national and non-governmental organizations".
Besides the above, the action plan of strategy for the implementation of criminal legislation reform in Georgia envisions enhancing the effectiveness of PDO monitoring which implies monitoring of military parts in Tbilisi and in regions of Georgia.

Given the above it must be noted that the Ministry of Defense of Georgia is the only place where the representatives of the Public Defender come across barriers in the implementation of their official duties granted to them by organic law, i.e. they have no access to hauptwahts without encumbrance. It is noteworthy, that pursuant to the organic law "On Public Defender", Public Defender's institution is the only body which is authorized to control the observance of the protection of human rights and conduct monitoring in the system of the Ministry of Defense. And the fact that PDO representatives face impediments while implementing the control in hauptwahts is an obvious attempt to preclude them from carrying out their legal functions effectively. The above can also be viewed as an attempt of the Ministry of Defense to turn the system into a closed space for public, which in its turn contradicts the principle of transparency of civic control and military units and the support of the process of integration with NATO.

It must be noted that Georgia has achieved important success in the reform of the defense system. Many positive and serious changes have taken place in the defense sphere and in general in the direction of integration with NATO. It is true that the Georgian army as any army of other countries requires strict discipline and subordination but we must not ignore the principle of transparency and the respect of human rights and dignity, which will have a positive affect on the development of the army and will be beneficial for the improvement of relationships in military sphere.

The Public Defender of Georgia welcomes those positive changes currently going on in the Georgian army and has no intention to reflect upon its honor by giving publicity to the facts mentioned above. In Public Defender's opinion, that Georgia has taken the course of integration with NATO and European Union is of paramount importance and would wish to see PDO make significant contribution to the achievement of the set goal. Human Rights protection is one of the key factors on this way.

Presumption of Innocence

According to article 40. 1 of the Constitution of Georgia, each individual is considered innocent until proven guilty through the due process of law.

According to part 1 of article 10 of the Criminal Procedure Code of Georgia, the accused is considered innocent until the crime committed by him is not proven through the due process of law and confirmed by the indictment at law.

Pursuant to paragraph 2 of article 6 of the European Convention of Human Rights and Fundamental Freedoms, everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

On the case of Allenet de Ribemont v France the Human Rights Court of Europe declared that presumption of innocence protects an individual against any court decision and the statement **of the state official body** according to which the individual is presumed guilty, when at the moment of making the statement the offence has not been proven by law. It suffices, even in the absence of any formal finding, that there is some reasoning suggesting that the court regards the accused as guilty[1]. European Court of Human Rights declared on the case of Bohmer v Germany that once an accused has properly been proved guilty of a particular criminal offence, Article 6 paragraph 2 can have no application in relation to allegations made about the personality of an accused as part of the sentencing process, unless they are of such a nature and degree as to amount to the bringing of a new charge within the autonomous meaning of the Convention that clause 2 of article 6 is carried into effect until the offence is proved and the person becomes the part of judiciary proceedings. (See paragraph 55 of the resolution).

Paragraph 2 of article 6 of European Convention of Human Rights, requires that competent body of the member state does not rely on a preconceived idea during the performance of its duties that the accused has committed an alleged crime. The burden of proof lies with prosecution. Any suspicion must be settled in favor of the accused. [2] Presumption of innocence is violated when the burden of proof goes from prosecution to defendant. [3]

The European Court of Human Rights declared on the case of Dactaras v Lithuania that when making public statements regarding the committal of a crime the officials must show great caution when making statements until the individual is not proven guilty of committing a specific crime. [4] European Court of Human Rights on the case of Baars v the Netherlands differentiated the

[1] 2 Barbera, Messegue and Jabardo v. Spain judgment of 6 December 1988, Series A no. 146, pp. 31 and 33, §§ 67-68 and 77

[3] John Murray v. the United Kingdom judgment of 8 February 1996, *Reports of Judgments and Decisions* 1996-I, p. 52, § 54

words “is suspected of committing a crime” and “committed a crime”. The latter was considered by the European Court of Human Rights as contradictory to paragraph 2 of article 6.

European Court of Human Rights also considered the case of A.L. v Germany. Limburg regional court dismissed the case against the applicant and refused to pay out compensation. The applicant’s defence lawyer lodged the complaint regarding the above decision, which was replied by the chairperson of the Chamber. The letter of reply said that if the criminal proceedings resumed, there was a high likelihood that the applicant would be convicted of the accusation filed against him. The applicant considered the letter of the chairperson of the Chamber of the regional court as breaching of the presumption of innocence and applied to the Strasbourg Court in compliance with law. The latter, while checking the substantiation of the application, stated that in this specific case no breach of the presumption of innocence had taken place, as the reply letter of the Chairman of the Chamber was not the constituent part of the official decision of the Chamber, but it was the statement made by an official body (paragraph 37 of the decision).

The court emphasized that proceeding from the case of Dactaras, it is possible that statements made by official bodies breach the presumption of innocence and set relevant criteria. In the given case, the statement of the chairman of Limburg regional court was not of **public nature, as it had not been made at press-conference.** The chairman’s letter was addressed exclusively to the applicant’s defence lawyer. Along with this, the terms in the letter of the chairman were used in the form of proposed judgment and not the affirmative form saying that the applicant committed a crime (see paragraph 38 of the decision).

According to the established view in the Georgian scientific doctrine, charging the person with offence implies the assumption that the likelihood that the person committed the crime is high. Consequently, when making public statement, an official body must take into consideration that the fact of committal of a crime by the suspect or the accused has not been proved yet, despite the fact that there might be reliable evidence in the case file. However it is not infrequent when on TV, the officials prosecuting the criminal case, instead of notifying the public about the fact of committal of a crime by a certain person in an assumptive tone, their accusation sounds affirmatively. Such approach is a harsh violation of the presumption of innocence.

On 6 March 2007, the Department for Constitutional Security carried out special operation in the Municipal Surveillance Service of City Administration of Tbilisi. During the working session, the chief specialist Davit Makharadze and the employee of the City Urban Planning Service Giorgi Lashkhi were detained. They were suspected of bribery. Broadcasting TV Company “Rustavi 2” spread the information that the above persons got a bribe in the amount of 7 000 USD from Keti Gogolashvili, the employee of the association “Genesis” for legalizing of the building that had been built against the standards of the project. Intermediary between them was Citizen Kakha Khaindrava presumably.

Ioseb Topuridze, the deputy head of the Department for Constitutional Security made the comment on the above fact on TV Company “Rustavi 2”:

"The detainees committed the crime –bribery which is charged with deprivation of liberty from 12 to 15 years. The intermediary who was involved in bribery will be sentenced to 15 years of deprivation of liberty and the one who gave the bribe will be sentenced to 8 years of deprivation of liberty".

The given case illustrates the harsh violation of presumption of innocence. The information about the crime committed by specific individuals was not delivered in the form of assumption. Ioseb Topuridze was obliged to state that the detainees are suspected of presumed bribery and he should not have used that affirmative tone as if **the detainees have committed the crime – bribery**. Besides, the head of the Department for Constitutional Security combines the function of the court and states that the intermediary will be sentenced to 12 years of imprisonment and the one who gave the bribe – to 8 years. The head official of the Department for Constitutional Security had the right to only point to the minimal and maximum measures of sanction prescribed by the relevant article for the assumed crime committed by the detainees.

There have been several other cases when the deputy head of the Department for Constitutional Security, Ioseb Topuridze declared the individuals as offenders having been suspected of bribery thus severely violating the presumption of innocence. For example:

On 7 May 2007, the Department for Constitutional Security detained four officials from the railway department: Davit Grdzelidze, Nika Razmadze, Otar Chipashvili and Irakli Peshkov. They were suspected of getting 30 000GEL from one of the commercial organizations in return for winning the tender. Ioseb Topuridze aired the fact on TV Company Imedi and evaluated the above with the following words:

"No **bribe taker** will leave his office. The one who does take the bribe will be detained in his office. They **took 30 000 GEL and the investigation is underway".**

If, as Ioseb Topuridze declares, the bribe takers took 30 000 GEL and according to the tone of declaration the fact has already been proved, it is unclear what the purpose of the preliminary investigation or what the function of the court, which has to serve charges on the persons mentioned.

When making comments on the detention of Kutaisi vice-mayor and 24 employees of the city council on TV Company "Rustavi 2", Ioseb Topuridze states: "These people, whom we are detaining now, have stolen 600 000 GEL from Georgia, but the money has been returned to people and we will pay out pensions from that sum".

Instead of finding the correct, delicate form of speaking about the fact of the assumed crime committed by the official of Kutaisi City Council employees, Ioseb Topuridze offensively declares – "these people have **stolen** 600 000 GEL from Georgia" thus violating the presumption of innocence. The head of the deputy head of the Department for Constitutional Security takes the responsibility of the court upon himself trying to return unlawfully obtained funds to the state, he also combines the function of the Parliament – to

approve the expenditures of the budget and the function of the Ministry of Labor, Healthcare and Social protection – to pay out pensions within the limits of budget funding.

Ioseb Topuridze is not the only official body who violates presumption of innocence by making public statements. The above principle is also harshly infringed upon by the prosecutor Giorgi Gviniashvili. The latter made a comment on 22 March 2007 on the case of a minor Giorgi Zerekidze who was convicted by Tbilisi Appellate Court. Before we evaluate the statement made by the prosecutor, we should look at the practices of the Human Rights Court of Europe.

On the case of Asan Rushiti v Austria, the applicant was detained on charges of attempted murder. On 1 September 1993, the jury of the regional Graz Court of Appeal acquitted Asan Rushiti by 7 votes against 1 on the grounds that there had been insufficient evidence proving his guilt in the case file. In November of the same year the applicant addressed the same court to claim compensation. His claim was dismissed by the Graz Court of Appeal, on the ground of reasonable suspicion of the committed murder which the trial jury did not rebut. The European Court of Human Rights considered that there had been a breach of article 6 paragraph 2 (presumption of innocence) as the competent bodies of Austria continued making statements about suspicions against the applicant on the dismissed case.

In the case of Baars v the Netherlands, the applicant was detained on suspicion of forgery and being an accessory to bribery. On 11 October 1995 the Maastricht regional Court considered the case of offence inadmissible as the statute of limitation had expired. Despite the fact, the Hertogenbosch Court of Appeal proved Mr. B guilty who according to the indictment got a bribe from Baars. He appeared as a witness in the trial of Mr B. In the court decision the applicant was referred to as an accomplice of the defendant. The European Court of Human Rights, therefore, held unanimously that there had been a violation of presumption of innocence against Baars as the applicant was presented in the case as an accomplice when the criminal case against him had been closed.

It is interesting to what extent Strasbourg Court decisions correspond to the statements made by the prosecutor of Tbilisi at the live briefing in the program "Courier" of "Rustavi 2" TV Company. Girogi Ghviniashvili first spoke about the assault of a minor on the "Art Group" distributor Levan Bochorishvili, for which Tbilisi Court of Appeal sentenced him to 7 years of imprisonment for the attempt of G. Zerekidze's murder the day before. The prosecutor read evidence of witnesses, the victim and the defendant that had been heard by the court. The Tbilisi prosecutor, based on the verdict of the court declared that Giorgi Zerekidze was guilty of the attempt of murder. Presumption of innocence is not violated by such statements as the circumstances are verified by the court. Tbilisi prosecutor at the end of the speech told the public about the following facts of crime committed against Levan Bochorishvili:

"Giorgi Zerekidze has been noticed in committing unlawful actions several times. On 27 October 2005 he entered the supermarket "Shwab". He offended the shop assistant verbally as he wanted to get the telephone card free. When the security guard made him leave the shop, Zerakidze threw a bottle at a shop assistant, but missed as she somehow managed to dodge. The bottle hit the shop window and smashed it. **The case against him was dismissed**

as no serious damage was done. In the same period, Giorgi Zerekidze stole some article from the nearby to his house drugstore saying to people who were there at the moment that he was controlling the area and everybody was to fear him. He has committed many other unlawful actions that are under investigation".

From G. Gviniashvili's statement we learn that Giorgi Zerekidze has presumably committed two criminal actions. The first one in the supermarket – mugging the telephone card, which is the crime provided for under article 181 of the Criminal Code of Georgia (mugging) and smashing the glass in the supermarket, a crime under article 187 of the Criminal Code of Georgia (damage or destruction of other's property). As for mugging the article from the drugstore, it is prescribed in part 1 of article 223^1 of the Criminal Code (belonging to criminal underworld).

From prosecutor's statement it turns out that the preliminary investigation stopped regarding the first case, which, proceeding from the principle of the presumption of innocence, obliges the official body to restrain from using the data against the suspect if the case is dismissed.

As for the second incident, it is not clear from the prosecutor's statement whether the preliminary investigation is underway or has been closed. If we rely on the last sentence of the statement which says that the investigation is going on against Zerekidze's **other** unlawful actions, we should assume that the investigation against Zerekidze's, being the member of criminal underworld, has either not been opened into or it has, but stopped later, as the subject of investigation is another case and not this particular one. In any case we can say that the prosecutor's statement about Zerekidze belonging to the criminal underworld was not stated in the form of assumption. Giorgi Zerekidze has never been charged with the above offence. The facts mentioned by the prosecutor have never been the subject of court dispute. Consequently, the above case illustrates the violation of presumption of innocence.

On 14 August 2007, the Public Defender addressed the head of the Prosecutor General's Office, Irakli Kotetishvili and the head of the Administration of the Ministry of Internal Affairs Shota Khizanishvili. In his appeal the Public Defender pointed to the information published on the web pages of the above agencies. For example, the web page of the prosecutor's office reads the following: **"The regional head of the Department of the Environment Protection and Natural Resources issued illegal licenses".** On the official web page of the Ministry of Internal Affairs there was the following information: **"A group of organized criminals who were dealing with forged documents has been detained by the employees of the counter-terrorist center".** In given cases the court has not issued the verdict of guilty.

The Public Defender addressed the heads of relevant agencies with the recommendation that they ensure publishing of the information on their official web page so that they do not create the impression as if there already exists the court decision proving the guilt of the detained persons. Namely, they have to indicate that the above persons are suspected/ accused of crime.

Those official bodies who deal with operative-investigative proceedings, criminal investigation and prosecution, have the possibility to make public statements about committal of a crime by an individual in limited cases. The most wide spread case is when the circumstances of crime committed by the defendant are stated while investigation of the evidence of accusation is under way. The prosecutor is given such possibility due to the obligation called the burden of proof.

While it is possible to justify the statements of official bodies about the preliminary investigation/ criminal prosecution regarding the culpability of a person, the judgments of the officials on the above, who do not deal with judiciary proceedings, often appear surprising.

At about 16:00 of 11 January 2007, Nugzar Ugrekhelidze, the standing head of of Marneuli Property Registration and Privatization Division was detained by the Department of Constitutional Security. On the information of IA, the suspect presumably took the bribe from citizen Mamukas Makharadze in the amount of 70 000 USD. The Minister of Economic Development Giorgi Arveladze was present at Nugzar Ugrekhelidze's detention process who addressed the detainee in the presence of a filming crew of TV Company "Mze" with the following words: "The place for such people as you is where you are being taken now. We will never pardon anyone. This is what you have done. No official will get away with it. Not a single tetri will be forgiven".

In the interview given to TV Company "Mze", the Minister stated: "Such people must be in prison. They will stay where their place is. We will reveal such people in every organization, city or region and show them their place".

Bribery and other official offence inflict serious damage in the first place to the persons under Georgian Jurisdiction, irrespective to their citizenship. Proceeding from the specific nature of this crime, as well as the excessive interest of the public towards the combat against this crime, it is justifiable to use such means as making public, critical statements by state-political high ranking officials - ministers, showing the political will of eliminating corruption. Without such and any other legally determined measures the minister would be responsible for corruption existing in the system under his subordination. Consequently, that part of the statement where he says "No official will get by it. Not a single tetri will be forgiven" is quite acceptable.

At the same time, the legal measures directed at the elimination of corruption do not deprive the individual of the right to presumption of innocence and to fair trial as long as there is no evidence of guilt in legal force. However, the minister not only declared his employee culpable, but he also almost combined the function of the obligation of criminal prosecution, which he had no right to do. Apart from violation of presumption of innocence, the passage from the statement saying - **"Such people must be in prison" –** could have been interpreted as the pressure over the court. Only the court is authorized to define the sentence for the person in case the guilt is proven.

In the country, where the public trust towards judiciary system is low, the statements made by Mr. Giorgi Arveladze, the person having political and legal influence, can be considered as exerting pressure over the court.

Recommendation

What we have mentioned above does not mean that the official bodies must be prohibited to make comments through mass media sources on preliminary investigation and criminal cases; however, the above officials are under obligation to:

1. When speaking about the suspects, accused or the defendant, indicate that the crime committed by these persons is based on suspicion or justified assumption.
2. Restrain from pointing to suspects, accused or the defendants as to criminals using the affirmative tone or form.
3. Never use the materials filed in the criminal case against the person, if the preliminary investigation/prosecution into the case is dismissed on any basis of article 28 of the Criminal Procedure Code.

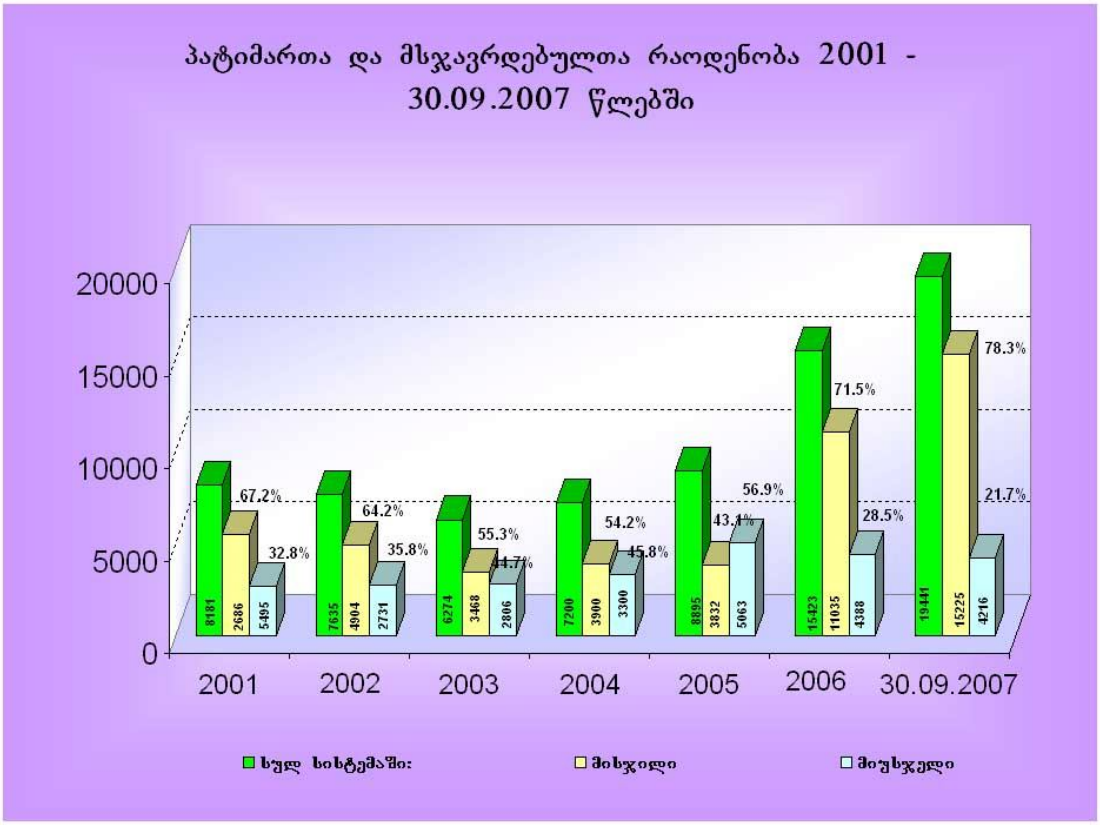
Human Rights in the Penitentiary System

Despite on- going reforms the situation in the penitentiary system of Georgia has not changed radically since the reporting period of 2006.

The number of prisoners/convicts or their family members who address the Public Defender with complaints about the existing inhuman and degrading conditions in the penitentiary system is still high. In comparison with the first half of 2006, the number of complaints about penal department has increased by 7% in the first 6 months of 2007 (and as compared to the second half of 2006 – by 3%).

Eleven penitentiary establishments are under the supervision of the control commission, whose representatives are not allowed to take photos or make audio-video recordings during monitoring despite numerous recommendations of the Public Defender. PDO representatives are also deprived of such right which makes it difficult to document the violations reported during the monitoring process.
PDO monitoring group continued intensive monitoring of penitentiary institutions in the reporting period too.
Compared to previous years the number of prisoners in penal establishments has increased significantly. Namely:

The number of prisoners and convicts in 2001 – 30.09.2007



It is interesting to look at the number of prisoners per 100 000 of population in foreign countries. The US State Department report of 2006 shows the following figures per 100 000 of population:
Albania – 85 prisoners;
Belorussia – 360;
Bulgaria – 163;
Finland - 79;
Greece – 92;
Hungary – 146;
Iceland – 39;
Poland -233;
Romania – 159;
Slovakia – 153;
UK: England and Wales – 148;
Germany- 93;
Denmark- 67;
Italy – 67;
Spain – 147;
Switzerland – 79;
Norway – 75;
Lithuania -292;
Latvia- 292;
Estonia – 333;
Czech Republic – 146;
Turkey – 112;
Armenia – 104;
Azerbaijan – 202;
Russia – 628;
USA – 750;
Georgia - 401 (as of July 2007). It must be noted that the figure has grown fast up to 500 by the end of October 2007. Such rapid variability can be observed only in Georgia.

Conditions in the Penitentiary System

Nourishment of Prisoners and Opening Shops inside Penitentiary Establishments.

Opening food stores inside penitentiary institutions has resulted in relevantly better nourishment of inmates, although only a few prisons have such shops for the given moment. These are: # 6 and #2 Rustavi prison, # 7 common and strict regime establishment in Ksani, #5 prison for women and juveniles in Tbilisi, Ksani medical establishment for prisoners with TB and # 2 Kutaisi common and strict regime establishment.

After placing the defendant/convict in the establishment, the People's Bank issues plastic cards based on the data processed in the special information division. Prisoner's family

members and close relatives can deposit money to the account of plastic cards kept in shops which the prisoners can use for buying the desired products.

The problem encountered here is the nourishment of vegetarians and those who require special diets but there are no practical or normative regulations in place. For example, in Batumi # 3 prison, due to insufficient funding, the prison administration cannot provide proper nourishment to the prisoners belonging to the category mentioned. Neither in Ksani medical establishment for prisoners with TB, juvenile correction facility and Zugdidi prison N4 do they prepare food for special needs of inmates.

Recommendation: The penitentiary department should provide food for prisoners who are vegetarians and require special diet (such as nutritional therapy, Lent) that must be regulated by a normative act.

Lighting and Ventilation

Artificial ventilation system is not installed in any penitentiary establishment in Georgia. Due to overcrowding, the situation becomes more acute in the summer months, when natural ventilation is insufficient and it is difficult for prisoners to breathe normally.
Overcrowding of prisons where there is no proper ventilation system creates unbearable conditions and leads to a sharp deterioration of prisoners' health.

Recommendation: It is necessary to install artificial ventilation system in all prisons.

The problem of lighting is more or less settled; however, we must mention bare wires, especially in Zugdidi prison #4 where the electricity system is out of date and order that creates danger for prisoners' life and health. On the explanation of the administration, there are bare wires and in this respect Ksani medical establishment for prisoners with TB and Tbilisi prison #5 are in bad need of repairs.

In the summer of 2006, Mikheil Tokhadze, 31, died as a result of a fatal accident in Tbilisi prison N 1. The reason of death was that the prisoner touched the bare wire.

In order to prevent such alarming facts we address the relevant structures to ensure security in penitentiary establishments regarding electric wires.

Recommendation: Penal Department should take immediate measures to ensure security in penitentiary establishments regarding electric wires.

Hygiene of Inmates

In most penitentiary establishments the situation is rather grave in terms of hygiene.
Monitoring results in Kutaisi prison N 2 and strict regime establishment report the inoperative state of water supply system. The trace of water leakage in some parts of the cells

can obviously be seen. The administration says that Geguti # 8 common and strict regime establishment has been repaired in order to settle the existing problem and they are planning to revamp Kutaisi prison # 2 as well.
Because of the damaged water supply system, no showers are functioning in the establishment and the inmates have to take a shower in the cell (toilet).
Prisoners in Batumi and Zugdidi prisons have to clean toilets in their cells themselves. Due to insufficient water supply in Batumi, the hygienic conditions are unsatisfactory. There is no regular supply of technical water for cleaning toilets in Ksani medical establishment for prisoners with TB. Prisoners take care of cleanliness of the cell by themselves. They also combine barber's function, do washing or their family members take care of their laundry (Tbilisi prison N 7, Ksani medical establishment for prisoners with TB, Ksani common and strict regime establishment, Kutaisi prison N 2 and strict regime establishment, Zugdidi prison N 4 and Batumi prison N 3). It is useless to speak about hygiene in Tbilisi prison N 5, where the number of inmates exceeds the limit of the capacity of the establishment by 2, 5 times.

Recommendation: Ministry of Justice should pay more attention to hygienic conditions in penitentiary establishments. In all penitentiary establishments there should be Laundromats, the problem of showers should be settled. It is necessary to provide inmates with the means of personal hygiene and barber's service.

Clothing and Bedding

In most penitentiary establishments bedding is a problem. In a large number of Tbilisi penitentiary establishments and in prisons in the west of Georgia bedding and clothing are provided by families and what is more, bedding is not changed for months.

During the time of the visit of the Human Rights Commissioner, Mr. Thomas Hummarberg, some prisoners at Rustavi establishment N 2 had no bed sheets at all and those who had, they had not been changed and laundered for three months.

According to international standards: "Each prisoner shall be provided by a separate bed and bedding in accordance with national and local norms, which at the moment of their issuance must be clean and often washed in order to keep cleanliness'.

Work and Education

Provision of work and education that is necessary for prisoners' rehabilitation is still not a priority for the Penal Department. The prisoners do not enjoy their legal right to work and education.
In Tbilisi establishment N 5 for women and juveniles and prison N 7 no library is functioning at all.
Recommendation: Ministry of Justice should implement the program of prisoners' work and education in stages.

Recommendation: There are many illiterate prisoners in penitentiary establishments and it is necessary to work with them. It is essential that the regulations of joint orders of the Ministries of Justice and Education come into effect.

We welcome the fact that educational programs have already started in some penitentiary establishments. Namely, in Kutaisi N 2 prison and strict regime establishment educational and work programs are being carried out.

Video cameras

According to current legislation the time for short-term visits is still limited and long-term visits are abrogated. However it is a welcome fact that the draft penal code has made a provision on the above.

On 16 June 2006, the Public Defender addressed the Penal Department with a recommendation, requesting to dismantle video surveillance cameras in meeting rooms for defence lawyers and their clients, investigators and the Public Defender in Kutaisi prison N 2 and Tbilisi prison N 7, as article 84 of the Criminal Procedure Code of Georgia contains an imperative provision, according to which "the defence lawyer shall have the right to meet with the client without anyone's presence and without any surveillance".

The recommendation has not been followed on by the Ministry of Justice. Apart from Kutaisi N 2, Batumi N 3 and Tbilisi N 5 prisons, video surveillance cameras have been installed in Rustavi N 6 and Tbilisi N 5 prisons as well. Video surveillance cameras seriously undermine the right of confidential meeting of prisoners with their defence lawyers.
Penal Department persistently evades the fulfillment of the above recommendation thus violating Georgian legislation.

Recommendation: Ministry of Justice should dismantle surveillance devices in the meeting rooms of lawyers and their clients.

Recommendation: We recommend the Minister of Justice that they raise the question of responsibility of the head of Penal Department for the violation of law and evading the fulfillment of the recommendation of the Public Defender.

Overcrowding of Prisons

Regrettably, overcrowding still remains an alarming fact. As of 2007 the situation is as follows:

- Ksani strict regime establishment N 7: capacity – 1336, the number of inmates held - 1042;
- Zugdidi prison N 4: capacity – 305, the number of inmates held -502;
- Batumi prison N 3: capacity – 250, the number of inmates held -885;
- Tbilisi prison N 5: capacity – 2020, the number of inmates held -4668;

The representatives of PDO visited **prison # 5 of the Penal Department** where they saw the most overcrowded cells. Namely:

1. Cell N 97: there were 88 inmates and 26 plank beds. Half of the inmates were pre-trial and half of them were sentenced to 1-1, 5 years of imprisonment.
2. Cell N 80: 67 inmates and 26 plank beds. Half of them were pre-trial. In the same cell there were 5 prisoners with TB.
3. Cell N 72: 83 inmates and 24 plank beds.
4. Cell N 55: 83 inmates and 30 plank beds. Most of them were sentenced. Among them were inmates with TB.

The cells have no ventilation, lack of air and unsanitary conditions are unendurable. Actually, there is no oxygen to breathe.

Due to such overcrowding of penitentiary establishments in Georgia, the European Committee against Torture appealed to the Government of Georgia to double their efforts to eliminate overcrowding and meet the committee standard – at least 4 m^2 per prisoner, for which purpose the state has to elaborate the relevant strategy.

Prisoners' Beating and Torture and Degrading Treatment

It is noteworthy that the number of cases of prisoners' torture in penitentiary establishments has decreased. However, such facts still exist and it is especially alarming that they often remain uninvestigated or investigation is open into these facts under an inadequate article (see appendix).

In the report of the second half of 2006, the Public Defender pointed to the facts of keeping prisoners undressed in Rustavi prison N 6 isolation ward. They were placed there for the purpose of punishment. Two of the representatives (one of them was the employee from UNDP project of "Public Defender's Institutional Strengthening Project and the other – from PDO) of Public Defender witnessed the above fact. The same facts have been confirmed by the inmates themselves. The situation clearly was the one to be viewed as torture, inhuman and degrading treatment.

On 26 October 2006, the Public Defender sent the relevant materials to the Prosecutor General's Office with the request to open the preliminary investigation into the above facts. On 27 October the investigative division of the prosecutor's office opened the preliminary investigation into the facts of possible excessive use of official power by certain employees of prison N 6, the crime qualified under part 1 of article 333 of the Criminal Code of Georgia.

A year later, nothing has changed practically. On the contrary, according to Public Defender's information, inmates are still subjected to pressure, which they do not deny in their notes (see more details in the report of the second half of 2006).

The government permanently declares that they are building a liberal, democratic state and yet ignores the facts of torture and beating. Hence, the level of impunity syndrome is going up in law –enforcement bodies.

The rule of law implies that not a single individual and high official shall stand above the law. In a democratic country, the Government acts within the legislative framework. But this is not the case in the penitentiary system of Georgia, where forceful methods are used to impose "order".

The situation is especially alarming in several establishments. Take Kutaisi prison N 2. All juveniles who had been transferred from Kutaisi to Avchala establishment for juveniles pointed to the facts of being beaten by employees.

That the facts of torture and inhuman treatment are not being investigated regularly and that the perpetrators go with impunity indicate the fact that the above manner of treatment is allowed and encouraged by the management.

Torture in penitentiary system reflects the policy and the perception of the system that such treatment can be the means of punishment of a concrete prisoner.

If the fact of torture taken place in the establishment is the result of the sole judgment of an employee, then this indicates mismanagement of the system and insufficient control over employees.

The report of 2006 mentioned some facts when due to inhuman treatment of prisoners the employees were demoted but not punished.

European Committee against Torture underscored the existence of violence in penitentiary establishments in Georgia in the report of 2007. Namely, the report indicated several establishments from where numerous complaints had been filed by prisoners about the facts of physical violence. The Committee gave the following recommendation to the Government of Georgia: "The management of Rustavi prison N 6 should send a clear message to its employees that any kind of physical violence, verbal offence or any other degrading treatment is unacceptable and shall be severely punished. Managers should closely watch that their representatives are in direct contact with prisoners, investigate complaints and provide better trainings to prison staff".
The Public Defender considers that it is necessary to implement the above measures in order to prevent violence in every penitentiary establishment.

Conclusion

Ministry of Justice should apply more efforts to the cause of democratization of the penitentiary system:

- Create human living conditions for inmates;
- Improve educational and professional skills of inmates;
- Make effective steps towards re-socialization of inmates;
- Hold cultural and recreational events in the places of detention;
- Support and carry out effective preventive measures of investigation into cases of torture and beating;

Recommendations:

1) Penal department should ensure nourishment for prisoners who are vegetarian or require special diet (e.g. Lent) and make such provision in the normative act.

2) Penal Department should immediately guarantee the observance of security rules in terms of electric wiring in penitentiary establishments

3) Overcrowding of prisons and non-existence of ventilation system create unbearable conditions and lead to severe deterioration of prisoners' health. It is necessary to have ventilation systems installed in every prison.

4) We recommend the Ministry of Justice to pay more attention to the hygienic conditions in penitentiary establishments. All penitentiary establishments of MoJ must have Laundromats; problem of showers is to be settled. Prisoners must be provided with necessary products of hygiene and barber's service.

5) Educational and work programs should be implemented in stages.

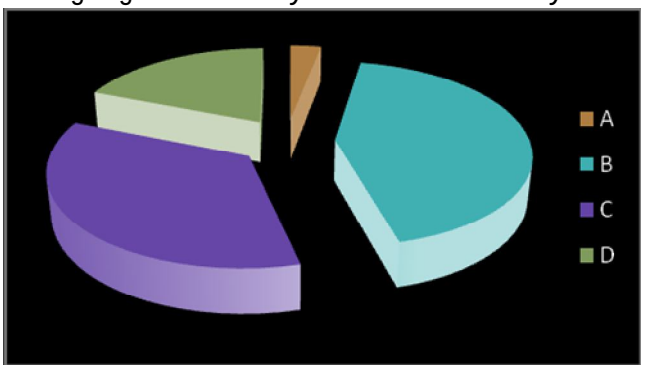
6) There are many illiterate prisoners in penitentiary establishments. It is necessary to work with them. We recommend the MoJ and MoE to put the joint regulatory norms of order #614/6 (Education and professional training of prisoners) into force.

7) Surveillance video cameras installed in the meeting rooms of defence lawyers and prisoners should be dismantled. Changes need to be made to the order dated 28 December 1999 "On Serving the Term" and delete the last sentence of part 9 of article 19 of the order: "The prison employee has the right to watch the meeting, without eavesdropping".

Due to the infringement of the law and persistent evasion of carrying out Public Defender's recommendations, we address the Minister of Justice to bring the chairman of the Penal Department to legal responsibility

Medical Service in the Penitentiary System

In the first half of 2007, 53 prisoners died in different establishment of the penitentiary system of Georgia which exceeds the respective figure of the previous year. All of them were males between 16 – 88 years old. The average age of the deceased was 42, 7. According to age groups, 2 prisoners were of the age of 20 (3.77%); 23 prisoners were between 20 and 40 (43.4%); 19 prisoners were 40-46 (35.85%) and 9 prisoners were above 60 (19.98%). I.e. the average age of mortality is between 20 - 40 years.



/A: up to 20 years old / B: 20-40 / c: 40-60 / D: 60 and above/

In the beginning of the year the death rate was higher and it steadily equaled 10, while in the second half of the reporting period the figure was relatively low. Despite this, the monthly indicator exceeds the respective data of the previous year.

According to the information published by the Ministry of Justice, in most cases death was caused by Tuberculosis. Regrettably, under the reporting period there were reported such cases as tuberculosis of nervous system or abdominal organs which speaks for the lack of care and treatment in prisoners. It must be noted that among causative factors of mortality is listed such traditional concept as "acute cardiovascular insufficiency". Despite the recommendation of the Public Defender the above has not been considered. On 8 cases of death of patients no reasons have been published under the reporting period. 2 prisoners died of AIDS and 2 suicides have been reported. In both cases the reason of death was mechanical asphyxia. Compared to the last year's reporting period liver diseases have increased, also increased the number of deaths from impaired cerebral blood circulation and cancer. According to conventional grouping of diseases we can observe the following picture in the first half of 2007:

Tuberculosis(lung, mesenteric adenitis, meningitis	**18**	
Liver diseases	**4**	
	8	
Undiagnosed	**4**	
Impaired cerebral blood circulation	**4**	
Cancer	**2**	

Suicide	**2**	
Aids	**1**	
Myocardial infarction	**1**	
Bronchpneumonia	**1**	
Enteric infection	**2**	

As well as the above, in complicated cases the reason of death was named the following: pneumatothorax, acute insufficiency of lung artery, lung bleeding, peritonitis, rectal bleeding. In these cases it must be thought that the death might have been caused to non-existence of first medical aid in place or extremely low quality of the rendered professional service.

Out of 53 cases in 25 (47%) the reason of death was indicated by the traditional phrase "acute cardiovascular insufficiency" and in 6 cases (11%) – "acute heart and lungs insufficiency". We must note that these are syndromes and not diagnosis. Heart insufficiency could have been developed due to different reasons in majority of the given cases of death, thus it does not give any information about the real cause of death. Moreover, naming cardiovascular insufficiency as the reason of death evokes the feeling in the people with no medical education that the death was caused by one of the cardiovascular diseases; besides, we do believe that such approach is used in order to conceal the real cause.

Out of 53 deceased prisoners, 35 died in the medical establishments for prisoners of the Ministry of Justice of Georgia; 5 patients died in the medical establishments for prisoners with TB of the Ministry of Justice of Georgia; 4 prisoners died in hospitals of different cities of Georgia (Tbilisi, Kutaisi, Batumi); 9 prisoners died in different penitentiary establishments of penal department. Among them 2 – in Tbilisi prison N 5, one in Rustavi prison N 1, one in Batumi prison N3, one in Rustavi prison N6 and N9, one in Zugdidi prison N 4, one in Kutaisi prison N2 and N5 establishments for women and juveniles respectively.

Place	**Absolute number**	**%**
	35	**66,0%**
Medical establishment for prisoners of penal department	**5**	**9,4%**
Medical establishment for prisoners with TB of penal department	**4**	**7,54%**
Different clinics of the city	**9**	**17,0%**

The deceased prisoners were listed in the following prisons and establishments of penal department of the Ministry of Justice

		Absolute number	%
1	Medical establishment for prisoners with TB of penal department	7	

2	Prison #5	11	
3	Rustavi prison#1	2	
4	Ksani#7	4	
5	Tbilisi#1	5	
6	Batumi#3	2	
7	Medical establishment for prisoners of penal department	6	
8	Rustavi #2	1	
9	Rustavi#6	4	
10	Zugdidi#3	3	
11	Geguti#8	2	
12	Khoni#9	1	
13	Kutaisi#1	1	
14	#5 establishments for women and juveniles.	1	

PDO addressed L. Samkharauli National Forensic Expert Bureau of the Ministry of Justice with the letter and requested the conclusions of the forensic expertise of death cases. Despite the request, the response came 2 months later which made it impossible to conduct final analysis of post-mortem cases for this report.

The study of the spectrum of causative factors of death in different establishments of the penitentiary system of Georgia is clearly illustrative of how medical services are being rendered to prisoners. In this respect, we can say that medical services either do not exist in prisons or if they do, then the quality of these services is beneath any criticism. According to monitoring results in the reporting period, it can be said that in terms of medical care, the situation has not changed much. In some particular spheres there are even signs of deterioration. Medical services are not adequately provided, there is almost no access to a physician, and as for the quality of treatment and care (if such exists at all) it is absolutely inadequate to the person's health and dignity (see appendix: The Case of R. Margvelani).

Critical situation in medical sphere can occur due to minimum three reasons. Firstly, we need to note the crisis of legislative regulations in this sphere, both at the level of laws and enactments. In this regard we should primarily mention the factor that, the Medical establishment for prisoners and convicts of the Ministry of Justice of Georgia has no license for conducting their activities. Despite the fact that the Georgian law "On Licensing and Permissions (amendments)", does not require such license from so called "prison hospital", clause 2 of article 37 of the Constitution of Georgia straightforwardly declares that "The state controls every health institution". As for the mechanisms of state control of health institutions, Georgian law on healthcare provides a clear wording on that.

Despite the above, we come across one more important paradox. Medical establishment for prisoners and convicts of Penal Department of MoJ is not registered under any organizational-legal form as such, suggesting that the patients' treatment and care and generally any kind of medical activities in these so called institutions are carried out directly by MoJ through one of the departments under its structure, which is a discriminative approach and violates the legislation of the country as well as international agreements and pacts ratified by the Parliament of Georgia. One cannot find many countries whose

healthcare legislation provides clear regulations for the issues of medical activities regarding prisoners and detained persons. In this respect, Georgian legislation is rather sophisticated. Georgian laws on penitentiary healthcare issues in the sphere of medical activities and patients' rights are regulated by separate chapters (quite extensively). As well as that, provisions in the Georgian law "On Imprisonment" are quite acceptable. But despite the above, the relevant laws in this direction are absolutely ignored. It should be noted that in the establishments of penitentiary system of Georgia, the costs of prisoners' treatment and care are envisaged in the budget of the MoJ, while the law of Georgia on "Patients' Rights" directly stipulates that the prisoners' and convicts' treatment is funded by state healthcare programs. Violation of this law obviously creates the discriminative approach to prisoners.

The existing problems at the level of enactments are in the first place connected with documents issued by MoJ which besides being non-qualified in medical terms, they do not correspond to current legislation of healthcare in Georgia. The following examples prove the above: first of all, it is interesting to look at the normative act issued by MoJ which regulates the transfer of sick prisoners and convicts from prison to medical establishments of prison or other hospitals of the country. From the medical point of view, the organization of medical aid, for example in surgical cases, is possible to be scheduled and carried out in an emergency or scheduled regime. In this case medical aid is to be provided according to the relevant scheme while on the order of MoJ the emergency aid has to be rendered according to a scheduled scheme which inevitably results in patient's death or health deterioration. According to healthcare legislation of Georgia, the Ministry of Healthcare of Georgia on the order of the Minister approves the forms of medical documents, their procedures and filing rules. Despite the above, there are healthcare forms approved by the Minister of Justice (stationary and outpatients) that structurally and by content differ from ordinary "civic" forms of analogous documents existing in the healthcare system. It should also be noted that the documents filled up in the above manner are mostly inaccessible for patients or their relatives and legal representatives and it takes great efforts to obtain them, which is a harsh violation of national and international legislative standards.

The second group of problems refers to the issues of scarce human resources in the sphere of healthcare and their extremely low qualification. The problems existing in the sphere of medical service consist in the crisis in both administrative and clinical field. Most physicians do not have state certification in the field of medicine they carry out their medical practices, i.e. they conduct illegal medical activities. We have also revealed several facts when physicians have no state certificates in any of the fields of specialization. Continual professional education and cycles of professional assistance for prison physicians is almost inaccessible which is negatively reflected on patients' health.

The third group of problems having a negative impact on patients' health state consists in unethical behaviour of persons holding various positions. If they showed their goodwill then the rate of mortality and morbidity would drastically fall and the dynamics in this direction would be positive.

High mortality rate in penitentiary establishments of Georgia is caused not by objective reasons (for example in the cases of terminal illness) but due to non-existence of state policy, lack of necessary resources and the fact that administration ignores the problems of people's life and health.

A Joint Commission of the Ministry of Justice of Georgia and the Ministry of Labor, Healthcare and Social/Security Protection

A joint commission of the Ministries was established On 7 September 2006, on the basis of a joint order N714-241/m issued by the Ministry of Justice of Georgia and the Ministry of Labor, Healthcare and Social Protection of Georgia. In the preamble of the mentioned order it is said that **proceeding from humanistic principles, at the transitional stage of reforms in the penitentiary system of Georgia it is necessary to establish a regular joint commission of the Ministry of Justice of Georgia and the Ministry of Labor, Healthcare and Social Protection which will study and prepare relevant conclusions regarding the discharge of convicts kept in medical establishments of penal department due to their illness.**

1. According to article 2 of the provision of the joint commission of the Ministry of Justice of Georgia and the Ministry of Labor, Healthcare and Social Protection of Georgia, the function of the commission is **to study the state of health of the convicts in medical establishments of Penal Department who have serious and terminal disease and prepare the relevant conclusion on their release from further serving of a sentence to be submitted to the court.**

According to article 608 of the Criminal Code of Georgia: In the event of occurrence of conditions stipulated by article 74 of the Criminal Code of Georgia and article 67 of the Georgian law "On Imprisonment", the convict or in case of his mental derangement, on the motion of his legal representative and/or the director of the penitentiary establishment, due to convict's old age or on the basis of **medical or state expert conclusion** on serious or terminal illness of the convict, the court has the right to pass down the ruling on the release from serving of a sentence.

On 15 May 2007, the judge of the Chamber of Criminal Cases of Tbilisi City Court Revaz Nadoi passed down the ruling which refused the defence lawyer Zaza Khatiashvili's motion requesting to release the convict Nanuli Alaverdashvili from serving of a sentence due to illness.

From the above ruling it occurred that on 20 December 2006, on the basis of the address of the defence lawyer Zaza Khatiashvili the joint commission of the Ministry of Justice and the Ministry of Labor, Healthcare and Social Protection of Georgia diagnosed the convict Nana Alaverdashvili with lung cancer and metastasis **T4NXM1** in liver, stage 4, clinical group 4 on 12 April 2007. The defence lawyer requested the release of Nanuli Alavaerdashvili from serving of a sentence due to her extremely serious state of health.

The representative of Tbilisi N 5 common and strict regime establishment for women and juveniles of the Ministry of Justice Giorgi Shalamberidze did not support the motion saying that the conclusion had not been made by expert bureau and consequently the experts had not been warned about the responsibility for false conclusion. Because of the health state of the convict the Penal Department addressed the medical forensic expertise of MoJ on 19 April 2007 regarding the postponement of the sentence. Also the representative of Tbilisi prison N 5 noted that they had not received the conclusion from the Expert Bureau by that time.

The court indicated in the decree #60/10024 that the given case contained the conclusion of the joint commission of the Ministry of Justice and the Ministry of Labor, Healthcare and Social Protection of Georgia of 12 April 2007 while the convict **had not been examined by**

the state expert bureau expert (**that is envisaged by part 1 of article 608 of the Criminal Code of Georgia**), thus they had not been warned in accordance with part 2 of article 370 of the Criminal Code about "bringing them to criminal responsibility for issuing of false conclusion. As well as that, according to part 2 of article 74 of the Criminal Code, the basis for release of a convict ahead of term of service is serious illness preventing them from serving a sentence, which in the opinion of the judge had not been established in the given case.
Following the above, the motion of the defence lawyer Z. Khatiashvili on the release of N. Alaverdashvili from serving of sentence due to serious illness was not met by the court as no substantial grounds existed.

Convict Nanuli Alaverdashvili died.
On 30 August of the current year PDO sent a letter to the deputy minister of Labor, Healthcare and Social Protection requesting to provide them with the following information: during 2006, as well as since January 2006 till present, several cases of convicts with serious and terminal illnesses have been studied by the joint commission of the Ministry of Justice and the Ministry of Labor, Healthcare and Social Protection of Georgia with the aim to release them from serving a sentence. The commission also drew up conclusions on some of the cases to be submitted to the court.
From response we learned that from 7 September 2006 till 1 January 2007, the commission was addressed regarding the release of a convict from serving of a sentence on one occasion, while since 1 January 2007 till present there have been 13 such addresses. All cases have been studied and responded within the legal timeframe. In 11 instances, due to the lack of relevant supporting medical documentation, the applicants were given written recommendation on completing necessary procedures and documentation. In **3 (three)** instances the joint commission drew up the conclusions that are to be submitted to the court by the penitentiary establishment where the convict belongs to.
From the letter received by PDO on 18 September 2007, it turns out that from September 2006 till present, on the basis of joint order N714-241/m of the minister of MoJ and the minister of Labor, Healthcare and Social Protection, no applications on the release of convicts from serving the sentence have been lodged in the court by penal department.
Obviously, the regular commission at MoJ and the Ministry of Labor, Healthcare and Social Protection fails to serve its function.
Consequently, we consider that part 1 of article 608 of the Criminal Code of Georgia should have the following wording:
1. In the event of occurrence of conditions stipulated by article 74 of the Criminal Code of Georgia and article 67 of the Georgian law "On Imprisonment", the convict or in case of his mental derangement, on the motion of his legal representative and/or the director of the penitentiary establishment, due to convict's old age or on the basis of the joint order of the regular commission of the **Ministry of Justice and the Ministry of Labor, Healthcare and Social Protection,** medical or state expert conclusion on serious or terminal illness of the convict, the court has the right to pass down the ruling on the release from serving of a sentence.

Enforcement of Court Judgments

Authority of judicial power depends on immediate execution of its decisions put in force. Compulsory execution of court decisions in Georgia is the responsibility of the Enforcement Department of the Ministry of Justice. Weaknesses of the above department were described in the previous report in details, thus, we will not dwell on these issues now. We should reiterate that a lot depends on the performance of this department and that is why the Ministry of Justice and other relevant agencies concerned should place a greater focus on it. Several cases mentioned in the previous report that had not been executed at that time, have been enforced by Penal Department on the recommendation of the Public Defender. For example, the cases of Ledi Saghianidze and Temur Silagadze (both were concerned with arrears in wages). On the official data from January through July 2007 of the enforcement department of the Ministry of Justice, territorial units of Enforcement Bureaus of the Enforcement Department executed the total of 113 293 cases of which 34 057 cases were closed, i.e. 30% of all cases; 79 236 cases remained non-executed that accounted for 70% of the total amount.

As for the cases to be executed against state budget and state budget-funded organizations, their number as per January- July 2007, accounted for 2 729, of which 722 cases have been enforced, i.e. 26% of total amount. 2 007 cases remain non-executed, thus it amounts to 74% of cases to be executed against state budget.

As we can see the share of enforced cases involving claims against the state budget and state funded budget organizations is only a fraction of the total number of enforced cases, accounting for only 26% (twice as much in comparison with the last year's data). That is why the most complaints are concerned with enforcement. Non-payment of arrears in wages, and the like are the most frequent claims featuring in citizens' applications to the Public Defender.

Several applications addressed to the PDO refer to non-enforcement of a court judgment on litigations between individuals. For example, the **case of Natela Goderdzi or the case of Maya Muradidi.** The case of Londa Tsitaishvili refers to arrears of wages. It must be noted that among claims against budget, the cases of Amiran Diakonidze and Kakha iobishvili have been enforced (see details in the appendix).

It is worth mention that in general I am content with the work of the Enforcement Department that has shown promptness to execute the Public Defender's recommendations and I consider our cooperation fruitful enough.

Freedom of Speech and Expression

During the first half of 2007 regional media representatives appealed to the Public Defender regarding infringement upon the right of freedom of speech and expression. They were claiming to be threatened by the representatives of local authorities, forcing them to disclose confidential sources. They were also complaining about the facts of discriminating media in public agencies and labor rights of journalists.

Threatening

In the first half of 2007, representatives of the local authorities in regions conducted acts against journalists that according to the preliminary investigation fall under Article 151 (threatening), Article 143 (unlawful imprisonment) and Article 154 (unlawful interference with professional activities of journalists).

On 17 January 2007, by the Public Defender's recommendation, Interior Ministry Zugdidi Regional Division launched an investigation of the criminal case regarding unlawful imprisonment and unlawful interference with professional activity of Ilia Chachibaia (journalist of newspaper "Gia Boklomi" ["Open Lock"]) by the head of the press center of Presidential Plenipotentiary in Samegrelo-Upper Svaneti Region Lali Gelenava and Dimitry Markoidze.

On 11 May 2007 by the Public Defender's recommendation, Shida Kartli district Prosecutor's office launched a preliminary investigation of the criminal case #8207842. According to the case materials, the head of Gori Municipality Council Marlen Nadiradze threatened Badri Nanetashvili, the founder of "Trialeti" TV and Radio Company.

On 19 February 2007 by the Public Defender's recommendation district Prosecutor's office of Shida Kartli opened an investigation of the fact of the crime falling under Article 151 (threatening) of Criminal Code of Georgia. The offence was committed against Nino Chibchiuri – TV and Radio Company "Trialeti" journalist. She claimed that threatening was related to her professional activity.

Protection of confidentiality of source

The most serious infringement upon the right of freedom of speech is to force journalist to disclose the source of information. Such incident happened in Zugdidi on 17 December 2006. Lali Gelenava, the head of the press center of Presidential Plenipotentiary in Samegrelo-Upper Svaneti region and a security guard Dimitry Markoidze attempted to force journalist of the newspaper "Ghia Boklomi" ("Open Lock") Ilia Chachibaia to reveal a confidential source. In the explanatory note given to the representative of the Public Defender, the head of the press center Gelenava confirms the incident and clearly states that Dimitry Markoidze demanded from Ilia Chachibaia to disclose the source of information. In order to make him to do so Lali Gelenava and Dimitry Markoidze took away Chachibaia's cell phone and detained him at the Plenipotentiary Zaza Gorozia's office.

According to Article 3, paragraph 2, subparagraph 'd' of the Law of Georgia "On Freedom of Speech and Expression", journalists have the right to maintain confidentiality of the source. According to Article 11, paragraph 1 of the same Law the source of a professional secret enjoys an absolute privilege and no one has the right to demand its disclosure. Only Court may oblige defendant to disclose the source of confidential information in cases prescribed by law.

On hearing the case *Goodwin v. United Kingdom* the European Court of Human Rights emphasized the importance of keeping confidentiality of source. The Court stated that confidentiality of source is not only embedded in the codes of conduct of journalists, but is also recognized by international agreements and laws of contracting states. Without protecting the right of confidentiality "sources may be deterred from assisting the press in informing the public on matters of public interest. As a result, the vital public watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected."

Therefore, a state is obliged to refrain from forcing journalists to disclose the confidential source of information. Moreover, the State shall deem such forced actions against journalists unlawful and take necessary steps to suppress them since this is not only an infringement upon the personal immunity and freedom of a journalist but the interference with professional activities of the latter. As a result, violating the right to protect confidentiality of source undermines the right of a public to receive important information about matters of public interest.

There is no direct norm in the Criminal Code of Georgia banning the actions against journalists forcing them to disclose the source of information. Such actions may fall under different articles of the Code including Article 154 that imposes general restriction on forcing journalist to spread information (this also applies to coercion for the purpose of revealing the source). This article coupled with Article 143 (unlawful imprisonment) served the basis for opening preliminary investigation on the journalist Ilia Chachibaia's case.

Employment agreements and editorial freedom

Applicability of employment agreements is still problematic in Georgian media; while normally this mechanism should be a guarantee for editorial freedom that first and foremost means a guarantee for avoiding interference of media owners with the right of freedom of expression. Editorial freedom as a principle is recognized by the Law "On Freedom of Speech and Expression", however there is no legal definition of this term and there are no real mechanisms to enforce this principle. There is no norm that would constrain a media owner from influencing news service's editorial decisions. Therefore, in order not to lose the job journalists force themselves to work for the interests of political or business groupings closely connected with the media owner.

After adopting a new Labor Code, employment agreement that should have been a guarantee for protecting editorial freedom was challenged. Article 19 of Labor Code being in force before 25 May 2006 imperatively defined the written employment agreement, but media

companies were not signing the contracts with employees, violating the law thereby. The case of Rusudan Nikuradze, TV Broadcasting Company "Rustavi-2" Moscow bureau journalist is a clear example. The Public Defender also examined Tamar Okruashvili, Saba Tsitsikashvili and others' cases against the founder of TV and Radio Company "Trialeti" Badri Nanetashvili. Absence of employment agreements caused confusions regarding rights and responsibilities of hired journalists. As a result the journalists were forced to fulfill different unskilled assignments, such as, for example cleaning the TV and Radio Company's yard.

Article 6 of the new Labor Code makes things easier for media owners. According to Article 6, paragraph 1 **"Employment agreement is executed in writing or verbally, for definite, indefinite term or for the period of employment duration".** In this case the burden of proving the existence of the verbal agreement on employment is taken solely by journalist; however the problem in itself is not to proof the existence of agreement (unlike other jobs it is easy to prove this fact given video, audio and newspaper materials), but to know what kinds of mechanisms protecting employee from employer's willfulness are envisaged therein.

This problem was revealed in Tsaulina Malazonia's case. The journalist had been working for an independent newspaper "Samkhtretis Karibche" ("Southern Gates") issued in Akhaltsikhe from 1 September till 31 December 2006. A written employment agreement had been signed with Tsaulina Malazonia where her rights and responsibilities as well as a salary in amount of GEL300 were defined. However the initial salary had started decreasing significantly from January till April next year which caused her discontent so she quitted the job. According to Lela Inasaridze, editor-in-chief, there were no written agreements signed with journalists for the year 2007. The agreement on remuneration of work existed only verbally.

It is essential that salary, which is remuneration for permanent and repeated works, cannot be regulated by verbal agreement. In case of long-term employment relations it is necessary to have written employment agreement with clearly defined rights and responsibilities. If we go through the debates regarding adopting the current Labor Code we can see this was the intention of the law-makers and yet the final wording of the Labor Code failed to define clearly when applying the form of the verbal employment agreement is permissible. Written employment agreements are especially important for the journalists permanently working with a specific media organization.

Discrimination Practices with Relation to Media

From the beginning of 2007 there have been cases when different governmental agencies and authorities showed different attitude towards media. Printing media representatives have been complaining that unlike their colleagues from electronic media they are not invited or allowed to attend briefings of high officials. Not all the national broadcasters enjoy the equal positions either. Representatives of the parliamentary majority and executive branch refuse to appear on "Imedi TV" and do not take part in the talk-shows of this TV station, while participating in the same kind of programs on other broadcasters. This attitude surely does not mean severe discrimination practices from the government's side; neither is it a violation of Georgian Constitution.

The right to choose among TV stations and agree to give live interview is the right safeguarded under the freedom of expression. However, attitudes of politicians and highest authorities towards journalists and media motivated by political views of the latter negatively affect development of free press and formation of healthy environment for competition.

Situation in regions is more dramatic and in less convergence with the Georgian legislation. It is essential that to ensure the normal functioning, neither public office nor documentation protected there can be accessible for everybody and always. Consequently, a legitimate reason does exist for establishing limitations on movement within the building of the public agency such as accreditation and permits. However, accreditation and permits should be regulated by normative acts, meaning it's accessible for all. These rules should comply with the requirements of the European Court of Human Rights as well: the binding normative act shall be worded in a way that clearly defines mechanisms avoiding interference from public authorities. Also the rules should be giving the opportunity to foresee possible outcomes of actions undertaken by an individual. The main requirement is that these rules should not contribute to discrimination practices.

There have been two cases in Batumi when absence of accreditation was used against the newspaper "Batumelebi" journalists; they were refused to attend a public meeting. According to Nino Chichbiuri (TV and Radio Company "Trialeti" journalist), she had been permanently denied attendance to the Gori Municipality sessions, for the reason of non-issuance of the permit. In addition, Kareli Municipality public relations specialist did not provide her with the information that was available for the representatives of other media outlets. As the civil servant of Kareli Municipality explained, TV and Radio Company "Trialeti" was broadcasting biased information regarding municipality's activities thus violating the rights of the Head of the Municipality and citizens. In the explanations given to Public Defender's representative, Kareli Municipality public relations specialist Thea Paikashvili put it straight: **"Besides "Trialeti", I cooperate with other TV stations and press; we provide them with information as requested (including photo materials)."** "Trialeti" journalists had not been given any information because "despite the correct information given, their coverage will be biased and interests of Kareli Municipality and those of population living here will be violated", says Tea Paikishvili.

On processing the case *Guerra v. Italy* the European Court declared that the right to receive information implies an independent right of an interested public to read or listen to the information or ideas spread by others, which means the professional responsibility of the journalist to disseminate information about the public information saved at state agencies, for which it is necessary to allow access to such documents, protocols and property of the public agency.
"Press has to distribute information and ideas on questions that are discussed on the political stage or cover other sphere of public interest. Along with the right to distribute such information, there is a right of community to receive this information" *(Lingster v. Austria*).

As for the media disseminating biased information or even gossips, the European Commission on Human rights on the case *Thorgeirson v. Iceland* stated that requiring from journalist to prove the truth over the issues of public concern is unreasonable if not

impossible. The press will be unable to issue any news if it is required to refer the proven facts only. On the case *Handyside v. United Kingdom* the Court stated that freedom of expression "is applicable not only to "information" or "ideas" that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population."

The statement made by the public relations specialist that "Trialeti" makes an tendentious coverage on materials provided by Municipality and that this becomes the reason why the TV company should not be given a public information, contradicts not only the European Convention on Human Rights but also the Georgian domestic legislation; specifically, Chapter 3 of the General Administrative Code of Georgia. Georgian legislation does not foresee refusal to give information as a sanction against biased journalist; moreover, the Law of Georgia "On Freedom of Speech and Expression" does not envisage any responsibility whatsoever for the journalist making a statement concerning the civil servant and/or the issue of public interest, even if the facts given in the statement are wrong.

The explanations provided by the Kareli Municipality public relations specialist prove the existence of discrimination practices in said Municipality. Thea Paikashvili claims that she cooperates with the representatives of all the other media sources except for "Trialeti". By doing so, Kareli Municipality puts other media sources in a privileged position without any grounds, which contradicts country's domestic legislation as well as international norms. According to Article 14 of the European Convention on Human Rights: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, **political or other opinion,** national or social origin, association with a national minority, property, birth or other status." In this particular case Kareli Municipality violates Articles 10 and 14 of above-mentioned Convention.

Recommendations:

1. The Interior Ministry Zugdidi Regional Division shall ensure effective investigation of the facts of depriving liberty of Ilia Chachibaia and interference with his professional activities.

2. The Public defender addresses the Parliament with a legislative suggestion with regard to Article 6 of the Labor Code, requesting to define imperatively the issue of concluding an employment agreement in writing for repeated work activities.

3. Issues related to the accreditation of media representatives to the state and local self-government bodies must be regulated by a statutory act. Norms regulating accreditation should be defined in a way that does not have discriminating character and does not contradict with the international norms on human rights and the state's domestic legislation.

Freedom of Information

Freedom of information is one of the most prominent democratic achievements in our country so that neglecting thereof can be regarded as an infringement upon these principles and values.

Different organizations and citizens often complain about delays in receiving public information, also they complain that sometimes it is impossible to receive any information at all. There have been cases when public information is requested in large volumes and responds of the governmental agencies are insufficient and incomprehensive. In response officials refer to the web pages where the information requested can be obtained. According to the General Administrative Code of Georgia however citizens have a full right to choose the form in which they want to get public information.

The Director for the Center for Impeachment Procedures Initiation George Mkurnalidze has repeatedly requested different types of public information from Tbilisi City Hall. Only after recommendations from the Public Defender he was given the requested information. Lia Todua – Coordinator of the Environmental Protection Program of the Center for Strategic Research and Development, Eka Urushadze – Director of the Center, Irakli Kandashvili – lawyer of a law firm "Andronikashvili, Sachsen-Altenburg, Murat and Partners" had same problems with regard to receiving public information from Tbilisi City Hall.

Geronti Gasviani, a participant of the contest held by Ivane Javakhishvili Institute of History and Ethnology requested a copy of the Contest Commission's Decision and also requested to read the original. Despite the fact that this is public information and according to the Law he had a right to read the original text of the decision, his appeal was not satisfied, while in response of the Public Defender' recommendation, the institute's administration stated: "According to the Ivane Javakhishvili Institute of History and Ethnology Contest Commission's Resolution of 26 August 2006, the views voiced by the commission members about contest participants and their documented positions are confidential and shall not be disclosed to other persons including contest participants." The answer proves that the public information that should be open and accessible for all interested persons is groundlessly classified as secret.

We believe the parliament should treat these issues with special attention. It is necessary that those who directly deal with public information issuance have a good understanding of the fact that statutory acts of a lower instance cannot regulate laws adopted by higher instances. Georgian Constitution defines types of information and Georgian Administrative Code interprets them. The type of information and reasons of its classification are regulated by these laws. Therefore it is not obligatory to adhere to any other views or resolutions adopted by the management of institution regarding confidentiality of information.

Unlawful approach to the issue is very important and significant in this case. When citizens cannot receive public information from public agencies, this should be considered as an

administrative offence and the respective public servant should be sanctioned, for example by imposing fine.

During the reporting period we have raised above-mentioned legislative initiative; however no response followed for the Parliament.

It is extremely important to spread and issue public information timely, within the timeframes set by law. Postponing or delaying the issuance or spreading information may depreciate its value and importance.

However, the present societal attitude, an interest to get information collected in public or other types of organizations regarding concrete facts, developments and circumstances points to the increase in civil activity. This should be nurtured, since it is one of the main values of democratic society. Governmental agencies should respond adequately to those activities. We believe it should be in state's interest to give appropriate information to the citizens in a timely and comprehensive manner.

Freedom of Assembly and Manifestation

Freedom of assembly and manifestation is embedded in Article 25 of the Constitution of Georgia, paragraph 1 of which reads:

"Everyone except for personnel of the Armed Forces and Ministry of Internal Affairs has the right to unarmed public assembly either indoors or outdoors, without prior permission."

Freedom of assembly is guaranteed as well by Article 11 of the European Convention on Human Rights and Fundamental Freedoms.

In terms of violation of the right to assembly and manifestation, the strictest measure applied towards persons using this right for the first half of 2007 was administrative arrest. Members of the protest rallies had to face an un-proportional force used by the government, which affected the state of health of one of the rally participants. One of the opposition party members in Zugdidi met serious obstacles when organizing party conference.

Applying administrative arrest

According to Article 174^1, paragraph 1 of the Code of Administrative Offences of Georgia: "Violating the procedure established for organizing and conducting an assembly or manifestation shall entail the imposition of an administrative fine in the amount of ten to thirty minimum wages." Notwithstanding, for the first half of the year no any individual had been called for said administrative responsibility.

However, above-mentioned does not mean that within reporting period no administrative sanctions were applied towards people exercising rights safeguarded by Article 25 of the Constitution of Georgia and Article 11 of the European Convention on Human Rights. The measure of administrative responsibility has more than once become the grounds for interfering with this right; among them, the strictest measure such as administrative arrest was applied as well.

The letter #2830 dated 07.08.2007 of the head of the chancellery of Tbilisi City Court Administrative Cases Board shows that for the period of 1 January - July 2007 on the basis of Article 173 of the Code of Administrative Offences ("Non-compliance with the lawful demand of law-enforcer"), 3 participants of the protest rally were called for responsibility. The "Equality Institute" members Jaba Jishkariani, Levan Gogichaishvili and David Dalakishvili have been repeatedly detained with charges of organizing a protest action. The grounds for imposing administrative penalty on said persons have become disobedience with the law-enforcer's demand to stop the protest action held within 20 meters from the Prosecutor's Office.

Said case confirmed once more how groundlessly an unconditional banning of the right to hold a manifestation within 20 meters from the state institution may be used. Namely, according to Article 9 of the Law of Georgia "On Assembly and Manifestation": **"The assembly and manifestation shall not be held in the building of Parliament of Georgia,**

residence of the President of Georgia, buildings of the Constitutional Court and Supreme Court, courts, Prosecutor's Office, police, penitentiary institutions, military units and facilities, railway stations, airports, hospitals, diplomatic missions and within a 20-meter radius of their territory".

A legitimate reason for this banning is to ensure normal functioning of the state institution. However, it bears an abstract and absolute character. Said wording of the legal act does not envisage how it's possible to hamper normal functioning of the state agencies listed in Article 9 at a distance of 20 meters in all cases. Surely, this banning is justified if, for example, assembly members use amplifiers that may interfere with normal working of particular state institution. In case such tools are not used but the participants hold protest banners and write protest slogans on the pavement, again it's hard to imagine how these actions may hamper normal functioning of the state institution. In aforementioned case, the factual grounds for opening a legal case was that David Dalakishvili was painting slogans on the pavement in front of the Prosecutor's Office.

Comparing this case with the one discussed by the European Court of Human Rights *Nidham and others v. United Kingdom* may be interesting. At the Queen Elizabeth's conference hall in Westminster the participants of the protest action were detained, holding banners "Serve peace, not war". The European Court of Human Rights established the fact of violation of Article 11 of the European Convention. The Court was based completely on the concept of the English case law, stipulating that the grounds for interfering with the right to assembly and manifestation may become such violation, due to which a person is deprived the opportunity to carry out lawful activities due to illegal and violent acts (Lord Denning's definition). According to judge Lord Watkins, for dispersing assembly and manifestation, a fact of damage or its real threat should exist, which may be inflicted by attack, riot, unlawful assembly or other destructive measures. European court decided that bringing a pacifist slogan before Queen Elizabeth's conference hall did not fall under these circumstances and was a violation of the rights envisaged by Article 11 accordingly.

The second problem the "Equality Institute" members' administrative case identified is that law-enforcers wrongly understand the notion of disturbing public order and fully blocking entrances of state institutions. We agree on law-makers position to impose administrative responsibility in case when the entrance of concrete state institutions or strategic objects listed in Article 9 of the law of Georgia "On Assembly and Manifestation" are blocked. In order to impose a responsibility for blocking a building, a fact should be confirmed through examining the evidence that the blocking interfered with normal functioning of the building and its normal use.

In the administrative records on the case of "Equality Institute" members Levan Gogichaishvili and Jaba Jishkariani it's mentioned that these persons were disturbing the public order in front of the Office of the Prosecutor General, insulting verbally law-enforcers and blocking the building of the Prosecutor's office.

Verbal insult of law-enforcer, especially at the places of public assembly is of course a violation of public order. This fact substantiates the law-enforcer's right to demand to stop such activities and in case this demand is not satisfied, impose responsibility envisaged by Article 173 of the Code of Administrative Offences. In his specific case it's interesting to define what is considered as a verbal insult.

In accordance with Article 9, paragraph 1, subparagraph 'b' of the Law "On Freedom of Speech and Expression" content of the speech and expression may be regulated by law, if it refers to obscene words. The same law defines the term "obscene language". Particularly, a statement may be deemed obscene if it does not have political, cultural, educational or scientific value and grossly violates the ethical norms widely accepted in the society. The slogans of "Equality Institute" members brought in front of the Office of the Prosecutor General read: "No to Violence", "Adeishvili [prosecutor-general] - Grey Cardinal", "Your Life is under Threat". Said expressions may sound insulting but bear obviously political character; they do not belong to obscene language and are protected by freedom of expression. As the European Court of Human Rights stated: "is applicable not only to "information" or "ideas" that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population." *(Hendyside v. United Kingdom).* Since the slogans presented by "equality institute" were not obscene, policeman did not have lawful grounds to consider them as insulting and demand to stop "Equality Institute" activities. Consequently, there were no grounds for drawing up a protocol on administrative offence.

As far as the blocking of the building is concerned, in the practice of Tbilisi city court's administrative board, this notion is defined as "**creating a real threat of blocking** the entrance". Police officers consider lifting blocking of the building lawful when this act has not even started. According to the first part of Article 9 of the "Law of Assembly and Manifestation", an entire blocking of the Prosecutor's office is prohibited. The standard of assertion "entire blocking" obliges a law-enforcer to confirm the fact that despite great efforts, a citizen failed to enter the building. If blocking the building puts obstacles on the way, but does not exclude the possibility to enter the building, we can not talk about its entire blocking. The case of "Equality institute" members confirms that law-enforcers can impose an administrative responsibility on the fact of non-compliance with the lawful demand of lifting the blocking of building, irregardless whether the fact of blocking has been confirmed by evidence of the victim, and whether there is one concrete citizen or Prosecutor's office staff member available, who confirms that (s)he failed to enter the building.

The judge avoided to assess law-enforcers' acts as unlawful. Court failed as well to confirm the facts of blocking the building and insulting policeman. The ruling is based on the circumstances, which have not been studied in accordance with established rule. Policeman's demand to stop a protest action held within 20 meters radius from Prosecutor's office was not reflected at the protocol on administrative offence. Judge was not entitled to go beyond the limits set by the protocol on administrative offence. Accordingly, resorting to arrest as a form of administrative responsibility towards the representatives of "Equality Institute" by the reason of non-observing the limits of 20 meters radius is obviously unlawful.

Using excessive force against action participants

The facts of psychical abuse while exercising official duties against participants of assembly and manifestation were apparent within reporting period. Since 2004 such facts have become the subject of studying by the Public Defender more than once. These activities are punished by the Criminal Code of Georgia. A preliminary investigation according to Article 333 (excessive use of official duties) of the Criminal Code of Georgia has been opened regarding majority of cases submitted since 2004 by the Public Defender to the Office of the Prosecutor General. Unfortunately, a preliminary investigation on only one case out of all above-mentioned – dispersal of protest rally organized by the non-governmental organizations in village Anaga of Sighnaghi region by governor of village Vakiri of Sighnaghi region Josef Nanobashvili, village Sakrebulo's [administration] secretary Jemal Demetrashvili and Vasil Mujirishvili on 15 July 2006 was completed successfully. Activities of accused persons were classified in accordance with Article 239, part 1 of the Criminal Code of Georgia. Josef Nanobashvili and Vasil Mujirishvili were sentenced to 2-month preliminary detention. At present the case has been submitted to the court and meanwhile Josef Nanobashvili and Vasil Mujirishvili serve a non-custody measure.

According to Article 9, paragraph 1, subparagraph 'e' of the Law of Georgia "On Police", police officer is authorized to ban **illegal** assembly, demonstration, picketing or other action, as well as ongoing action, if the latter imposes threat to public security, health, lives, property and other rights of human beings, protected by law. Terms for considering assembly and manifestation as legal are defined by Articles 7 and 9 of the Law of Georgia "On Assembly and Manifestation". According to Article 7 of the said Law: "**The rule of mandatory notification does not apply to regular citizens participating in the assembly or manifestation who would like to express their opinion publicly using posters, slogans, transparencies and other visual tools, however, they may not use entrances and stairs of buildings, block roads or hinder the movement of transport and pedestrians."**

Article 9 of the same law specifies the state institutions, within 20 meters radius of which holding assembly and manifestation is prohibited. Hence, no legal grounds existed for considering demonstration held by the non-governmental organization 'Equality Institute" on 26 May 2007 on the territory adjacent to Kashveti church as illegal. On the roadway on Rustaveli Avenue a military parade dedicated to the Independence Day was held at a time. The action participants held banners: "No to Violence", "Your Health is under Threat", "Murderers Should be Punished". Law-enforcers did not allow participants to unfold their banners and psychically insulted one the participants David Dalakishvili.

In terms of using official duties excessively, using a sharp object by policeman for dispersing demonstration was a novelty. On dispersing demonstration on the territory adjacent to Kashveti church on 26 May 2007, Interior Ministry representatives hit one of participants David Dalakishvili in the back with foot and continued beating the latter after her fell down; and at this moment Dalakishvili was injured by a sharp object. He was moved to Javakhishvili clinical hospital when he was diagnosed with having cuts on 3 fingers of the left hand.

Article 12 of the Law of Georgia "On Police" specifies special tools, which as an exception, may be used for achieving a legitimate reason while using force by police. These are: handcuffs or other restricting tool, rubber truncheon, tear-gas, light-and-sound devices for psychological impact, tools for lifting barriers and forced stopping of transport means, water cannons, armored car and other special transport mean, special paints, working dog and horses, electric shock device. This list does not include a sharp object, which means that policeman should no way use it upon exercising his official duties.

On 15 August this year the Human Rights Department of the Office of the Prosecutor General of Georgia responded the Public Defender by the letter #G 13.08.2007/84, confirming that a preliminary investigation was opened at Dzveli Tbilisi regional Prosecutor's office on 26 May 2007. David Dalakishvili was identified as victim and questioned. Police officers, executing their official duties on May 26 on Rustaveli Avenue, were questioned as witnesses. Forensic medical expertise and a complex phono- and habitoscopic examination of the tape recorded by TV Company Rustavi 2 were held.

Indoors assembly

The right to assembly and manifestation extends not only to the protest actions held on public in accordance with established rule, but also to the indoors assembly. Considering that this latter may impose less threat to life and health of human beings and the state security, it may less become the subject of interference from the state. The interest of hindering transport and people's movement loses its importance. It's noteworthy that a very few measures, if nothing at all is envisaged by the law of Georgia "On Assembly and Manifestation" to this end. Enforcement of this right is more related to Article 26 of the Constitution of Georgia, envisaging the freedom of activities of public, professional and political associations. The right to meet with a broad public is more frequently exercised by political and public organizations and this opportunity surely is the core of their activities. It's notable as well that Article 11 of European Convention on Human Rights combines freedom of assembly and association. This factor once more illustrates inalienability of these two rights.

The only one restriction to the freedom of indoors assembly may be considered the circumstances envisaged by Article 26, paragraph 3 of the Constitution of Georgia and Article 4 of the Law of Georgia "On Assembly and Manifestation" - namely, during the assembly it's inadmissible to call for overthrowing or forcedly changing the Georgian constitutional system, encroaching upon country's independence and territorial integrity, campaigning for war and violence or provoking ethnic, religious or social sentiments. Such calls are punished if they make a real threat of putting the above-mentioned risks into practice. As stated the European Court of Human Rights, expressions should not instigate a group of people (decision concerning Kurds) to use force or should not break rules of democratic co-existence (*Freedom and Democracy Party v. Turkey,* paragraph 40). A political program may contradict principles of organization of the State (Turkish Republic), but it does not mean that it breaks rules of democratic co-existence. The essence of

democracy lies in stimulating different political projects (Ruling on the case *Socialist party v. Turkey,* paragraph 47).

Due to having a different political program on political structuring of Abkhazia under single Georgian state, the right of assembly of Republican Party and its member Paata Zakaerishvili was violated. According to the information aired by the TV Company Rustavi 2, Paata Zakareishvili, who went to Zugdidi on 12 July for meeting with IDPs from Abkhazia, was not allocated a hall for the meeting; moreover, the representatives of legitimate authorities of Autonomous Republic of Abkhazia [in exile], among them, the head of Gali Direction Fridon Kilanava, expelled Paata Zakareishvili from Zugdidi Center for Diagnostics. This fact was assessed by the Public Defender as a breach of the freedom of assembly. According to Article 174^2 of the Code of Administrative Offences of Georgia: "Obstructing the exercise of the right to assembly or manifestation, or participation therein shall entail the imposition of an administrative fine in the amount of fifty to hundred minimum wages."

In accordance with said Article, on 30 July this year the Public Defender's recommendation #2420/05-2/1253-07 was sent to the Samegrelo-Upper Svaneti main department of the Ministry of Internal Affairs of Georgia and Zugdidi Internal Affairs Department to draw up a protocol on administrative offence of Fridon Kilanava within the period stipulated by law.

On 5 September this year the head of Zugdidi regional department addressed the Public Defender by the letter, considering request of drawing up a protocol on administrative offence as groundless. Despite a video material broadcasted by TV Company Rustavi 2, Interior Ministry Department's response indicates that meeting with IDPs was thwarted by reasons having nothing to do with the head of Gali direction Fridon Kilanava. At the same time, Fridon Kilanava's behavior was not deemed as misusing his official duties.

Freedom of Assembly and Manifestation
Recommendations:

1. The Public Defender addresses the Georgian Parliament with legislative suggestion to define clearly in Article 9 of the law of Georgia "On Assembly and Manifestation" the legitimate reason for restricting the freedom of assembly within 20 meters radius from the state institution and accordingly, the basis for dispersing manifestation.

2. The Public Defender addresses the Ministry of Internal Affairs with the recommendation to re-train respective patrol-inspectors for the purpose of better understanding of applicable legislation on Freedom of Assembly and Manifestations, that would enable them to distinguish between violating the public order and pursuing the right of assembly and manifestations in due manner.

3. To identify and hold accountable a policeman, who, in violation of the Law of Georgia "On Police" on May 26, 2007 for the purpose of dispersing demonstration on the Rustaveli avenue, at the territory adjacent to Kashveti church used sharp object, as a result of which one of the participants of the demonstration David Dalakishvili was injured.

4. We address relevant bodies of the Prosecutor's office and the Ministry of Foreign Affairs of Georgia with the recommendation to effectively investigate the cases of insulting members of non-governmental organization "Equality Institute" during the protest action on Rustaveli avenue on June 7, 2006; and of dispersing peaceful demonstration of the personnel of TV and Radio company "Trialeti", held in front of Presidential Administration and State Chancellery on June 21, 2006.

About Protection of Rights of People Living in Conflict Zones

According to the data of the first half of 2007, the situation with the protection of rights of people living in conflict zones is still alarming. Achievement of certain progress in the mentioned issue, certainly, depends upon the success of Georgian legitimate Government in peaceful process and step-by-step restoration of its jurisdiction. Parliamentary Assembly of the Council of Europe, in one of its resolution (1477(2006)), expresses regret that in the result of negotiations actual progress haven't been achieved in regard to the issues related to Abkhazia and South Ossetia. "All parties interested in the regulation of the conflict, especially Russian Federation, in parallel with respect towards territorial integrity of Georgia, must demonstrate their aspiration towards peaceful and democratic solution, principally, as well as in practice" – states the mentioned Resolution.

Existence of political conflicts on Georgian territory represents serious obstacle for full implementation of jurisdiction by the state and, consequently, implementation of obligations related to protection of human rights in conflict zones. Abkhazian and Ossetian territories still remain beyond effective control. This is the case where the notions of "territory" and "jurisdiction" of the state don't coincide. In the opinion of European Court on Human Rights, the states in such situations still have certain obligations in regard to de-facto territories. In the case "Ilakshu and others vs. Moldova and Russian Federation" European Court on Human Rights clearly indicated that "if the contracting party is unable to exercise its authority due to de-facto situation existing on its territory, such as establishment of separatist regime, where military occupation by another country may also take place, by virtue of the article one of the Convention its jurisdiction on the territory doesn't stop. Irrespective of the circumstance that such situation lessens the scale of the mentioned jurisdiction the court reviews the obligations of the state in regard to people on its territory only in cross-section of positive obligations. In regard to foreign states and international organizations the state must use all available legal and diplomatic means to proceed with guaranteeing the rights and freedoms defined in the Convention". On its part, "positive obligations" mean, that states must ensure the protection of guarantees provided by the Convention even by third parties.

In its Resolutions (1547 (2007), 1548 (2007)) the Parliamentary Assembly of the Council of Europe states that the law supremacy in some contracting countries isn't realized to the full extent. In most cases independence of court and efficiency of legal proceedings need strengthening. Furthermore, geographic "black holes" still exist, where the implementation of mechanisms of human rights of the Council of Europe is impossible. South Ossetia and Abkhazia are among them.

Right to Life

The situation related to guaranteeing the right to life is still serious. In addition to specific facts of infringement of the mentioned right, "legal" practice of death penalty existing in de-facto regions demonstrates it.

In accordance with amendments introduced in the Constitution of Georgia on December 27, 2006, "death penalty is prohibited" (Constitution of Georgia, article 2, p.2). As a result, the State of Georgia has joined the number of states – de jure abolitionists of death penalty. But on de-facto level the situation existing in Abkhazia and South Ossetia still represents a problem.

In accordance with Amnesty International report of the year 2007, Tskhinvali separatist government keeps on moratorium on sentencing to death and its execution. In Abkhazia moratorium is announced only in regard to its execution. According to the same report two persons are in turn waiting for death penalty in Abkhazia. Since early 1990-ies at least 16 people were subjected to death penalty in this region.

In its resolution (1560 (2007)) the Parliamentary Assembly of the Council of Europe strictly pointed out that death penalty must be abolished in Abkhazia and South Ossetia. Punishment of all prisoners expecting death penalty must be immediately lightened within the limits of confinement in order to put an end to cruel and inhuman treatment of all persons who are in incomprehensible situation in regard to their final fait during years.

Disappearance Related to Conflicts and the Lost Persons

Disappearance related to conflicts and the issue of lost people remains one of the most important, specific problems. The basic principle of International Humanitarian Court on the mentioned topic is "the rights of the families to be aware of final fate of their relative (article 32 prot.1)" Consequently, each party of the conflict has the obligation of searching for persons announced lost by the other party.

If the lost person is dead, communication of information to the family becomes more difficult. Separate parties may hot have the obligation to perform the identification of a dead body. They should simply try and collect information which will make easier to identify the dead. The dead should be respected and buried properly. The relatives may be provided access to these burials and obtain the dead body in accordance with the concluded agreement.

The relevant Resolution (1553 (2007) of Parliamentary Assembly of the Council of Europe it was defined that the parties of the conflict bear responsibility for prevention of loss of people, clarification of final fate of lost people and the relevant needs of their families. The issue of lost people is a humanitarian problem from the view of human rights and international humanitarian law. It shouldn't be considered as a political issue and,

accordingly, shouldn't depend upon the political resolution of the conflicts existing in the region.

In accordance with the same Resolution, the regulation of the issue of lost people will contribute to significant decrease of the level of military actions, lack of trust and tolerance. Strengthening of trust in the region will, at the same time, facilitate political resolution of the conflicts.

173 Georgians and 197 Abkhazians are lost from Abkhazian Region. In regard to South Ossetian conflict, Georgian side managed to reveal 10 lost Georgians and 122 lost Ossetians. In this context the Assembly applies with recommendation not only to Georgia, but to Abkhazian and South Ossetian "administrations" and at the same time, stresses sovereignty and territorial integrity of Georgia.

Governmental Commission on Searching and Protection of the Rights of Families of the Fighters lost for Territorial Integrity of Georgia was established on the basis of Decree #218 dated March 18, 1996 of the President of Georgia. The Governmental Commission was subordinated to the Ministry of Refugees and Resettlement of Georgia in accordance with the Decree #1067 dated December 20, 2005 of the President of Georgia. The members of the Commission point out that their activities came to a blind alley – during recent years they didn't manage to achieve compromise with the parties to conflict and accordingly, no dead bodies were transferred.

Situation with Human Rights in Abkhazia

Illegitimate elections

On February 11 and March 4, 2007 the so-called Parliamentary and local election were held in Abkhazia. The mentioned elections weren't recognized legitimate by any of international organizations and states. On March 15 the same year, the Chairman of the Committee of Ministers of the Council of Europe, Fiorenzo Stolfi made official statement, that the Council of Europe doesn't recognize the legitimacy of the so-called election and confirms full support of territorial integrity of Georgia. Only after political decision, which will ensure the right of all people to safe and adequate returning to their homes, the elections held in the mentioned region may be valid.

On February 12 in the district "Shvernik" of the village Nabakevi of Gali region, the Abkhazians settled about 40 armed representatives of police and special task groups in Olaphante Eliava's family in connection with the day of election. The group behaved in the village willfully, extorted money from local population, abused them orally, and demanded food and beverage from the community. On February 13 the drunken members of the group made several shots with no address from submachine gun, twice shot from hand-mortar.

According to the existing information, in connection with the election of March 4, armed group on armored troop-carrier moved around in Gali region villages for the purpose of compulsory taking of ethnically Georgian population to electoral districts, but nobody was at home. The population temporarily left residences on March 4; some of them moved to Zugdidi, some hid in the forest.

On March 18 the so-called second tour of Parliamentary election was held in Abkhazia in 17 electoral districts. According to the existing information, even special task force entered Fichori and Gagida for the purpose of frightening the population, but they failed to take population to electoral districts even under the fear of arms. Electoral districts weren't open in the afternoon either.

Kidnapping, disappearance of people

Criminogenic situation existing in Abkhazia remains grave. Recently, especially on the territory of Gali region, the facts of kidnapping for the purpose extortion of money occur more often. Allegedly for the purpose of clarification of the committed crime the so-called policemen enter the villages, disturb peaceful population, arrest various persons as groundlessly suspected and extort money in return for their release, orally and physically abuse them. In connection with Pravasha Chekheria's case the police representatives arrested and then extorted money from Lezhava, Shamugia, also brothers Shamugia, living in the village Sida, etc.

The right to free movement

The right of free movement is being permanently infringed. The mentioned issue depends upon the licence of the employees of the so-called Abkhazian customs. In most cases they take certain sum for crossing of administrative border. Facts of beating and physical abuse of citizens also occur. Periodically the border is closed and its crossing is impossible.

The right of ownership

According to the data of the 1st half of 2007, Abkhazian de-facto government alienated 72 objects which were in state ownership. Mainly Russian investments are made on uncontrolled territory.

In accordance with p.7 of the Decision dated March 10, 1994 of the Parliament of Georgia "Concerning Apartheid and Racist Legislative Practice in Abkhazian Autonomous Republic: "all decision, infringing the right of ownership and use of property of a citizen, legal entity and state on Abkhazian territory is null and void". In accordance with p.1 of the Resolution # 1331 dated March 20, 2002 of the Parliament of Georgia "Concerning Unlawful Alienation of State Property and Private Ownership of Refugees and IDPs in Abkhazia", "all civil-legal transactions concluded since August 14, 1992 concerning the alienation of state property and private ownership of refugees and IDPs on Abkhazian territory will be recognized unlawful".

The number of crimes against ownership increased on Abkhazian territory. The fact of seizure of money, valuables, agricultural products often occur.

Unlawful deprivation of liberty and unauthorized arrest

The facts of unlawful deprivation of liberty and unauthorized arrest occur from the side of employees of the so-called Abkhazian police. Compulsory draft to Abkhazian army of ethnically Georgian young men, returned to Gali occurs.

On May 23, in accordance with the existing information, in correction with obligatory military drafts, the Commissariat of separatist government stirred up activities throughout Gali territory. The Commissariat handed over to the managers of local administration the call-up papers, which were delivered to addressees. The so-called Gali Military Commissariat performs raids, arrests draftees and extorts money in return for release.

On May 29-30 the employees of police and military division came to the village Rechkhi of Gali region and arrested three persons for the purpose of army draft. Passenger bus was also detained but they couldn't find any draftees.

On June 1-2 in the Village Kvemo Barghebi of Gali region the employees of Abkhazian Commissariat and police came with two "UAZ" cars. They arrested B. Shamugia and Z.

Abukhbaia, who had already served obligatory military service in Georgia army. They demanded the ransom of 50 000 Russian Rubles for their release. The family members were unable to pay such sum and they, together with other arrested persons, were forcedly taken to Abkhazian Army.

Extraordinary Representative of the Secretary General of UN on the Issues of IDPs Mr. Walter Kellin applied with recommendation to de-facto Abkhazian government not to take measures, including forced training of ethnic Georgians in Abkhazian military forces, which may have discriminating nature in regard to IDPs or returned persons or interfere with returning of IDPs to their places of residence.

Discrimination on national basis

The so-called "Law of Abkhazian Republic Concerning the Citizenship of Abkhazian Republic" which entered into force since October 2005, potentially creates significant difficulties and administrative obstacles for the returned persons, who don't want to acquire Abkhazian citizenship. The mentioned "Law" contains provisions, which have discriminative nature in regard to persons of non-Abkhazian origin, including the returned ethnic Georgians. The article 6 of the mentioned "Law" grants the right of dual citizenship only to ethnic Abkhazians, whilst non-Abkhazian "citizens" have the rights to acquire only the citizenship of Russian Federation. Thus the persons returned to Gali have no chance to retain their Georgian passport in the case of acquisition of Abkhazian "citizenship". According to the appraisal of the Extraordinary Representative of the UN Secretary General Walter Kellin, the mentioned "Law" created hostile environment in regard to the returned persons and established psychological barrier for the further returning.

As is well known, about 70 ethnic Georgian students study at Sokhumi University. They are demanded to change the citizenship. If they young students don't obtain Russian passports, they are threatened to be expelled from the University. The Administration of the University took such decision on June 28, after the students, together with Abkhazian friends, came to the court hearing related to the three arrested Georgian students. Georgian students aren't going to fulfill the ultimatum.

Limitation of education

Abkhazian de-facto government makes permanent attempts to limit or prohibit the use of Georgian language in public schools. The mentioned practice is implemented with various levels of cruelty. In some cases educational materials and Georgian language teachers were rejected, which resulted into the deficit of educational materials and personnel.

The appeals against educations in Georgian language from the side of Abkhazian de-facto government bear sometimes the nature of advice, sometimes that of threat. In one case, in the village Pirveli Gali of Gali region, at Narinjovani Secondary School the employees of Tkvarcheli Security Service performed searching, destroyed the classroom of Georgian

language and literature, took away textbooks and video materials related to the history of Georgia.

Finally, such action could be appraised as interference with regular functioning of local schools and negative affect on the quality of education.

Torture, inhuman and degrading treatment

The facts of **t**orture, inhuman and degrading treatment mainly occur from the side of the so-called Abkhazian customs officers and border guards, as well as other representatives of de-facto government. The committed offences are distinguished by discriminative character, as the victims in such cases are mainly ethnic Georgians. In one case, on April15, in the village Tagiloni of Gali region drunken Abkhazian border guards and customs officers located at "Lakoba" collective farm, physically and verbally abused young people living in the same village. The motive was that the young people didn't congratulate them with Easter.

Freedom of expression and information

Freedom of expression and information has major importance in peaceful process. Guaranteeing of the mentioned freedom, at the same time, encourages dialogue, facilitates full, comprehensive awareness of civil society and, consequently, its wide and successful involvement in the issue of conflict regulation. Unfortunately, problems are still encountered in this regard and the issue is pressing.

On may 13, unidentified persons physically abused the Editor of the newspaper "Gali" published on Abkhazian territory Nugzar Salakaia. In one of the edition of the newspaper he placed the article, where called three students, arrested by the so-called Abkhazian policemen, "Abkhazian's hostages" and states that Abkhazians couldn't understand up to present that they are threatened not by Georgians but by Russia. Publication of the mentioned article became the motive of physical abuse of the Editor.

According to the existing information, Nugzar Salakaia was beater so cruelly that he was places in reanimation department of one of the hospitals in Sokhumi. The newspaper "Gali" is disseminated on Abkhazian territory; it is being published in Russian, Georgian and Megrelian language for 5 years already, but seldom.

Terrorism cases

The number of facts of terrorism on Abkhazian uncontrolled territory increased. Their majority is directed against high officials of de-facto government. Against the background of strict punishments in de-facto political elite the feeling of vulnerability increases and human safety is being deprived of basis.

On June 20, at about 5.30 a.m. near Akhali Atoni there was a powerful explosion. The so-called policemen saw a pit with 1 m diameter and 4- cm depth, explosive assembly and parts of radio-control device. The diversion was directed against de-facto Prime Minister. According to the existing information, de-facto Prime Minister Alexander Ankvab was to pass that route, for whom the mentioned exploding assembly was installed.

On May 11, at about 20:00 in Abkhazia, in Dranda-Ganaxleba road section an identified person raked with fire a car "VAZ-2107" belonging to one of the high officials of de-facto Ministry of Internal Affairs of Abkhazia Tolik Kvaratskhelia, which was going in Sokhumi direction. At the moment of incident T. Kvaratskhelia was in the car together with his driver. In the result of purposeful shooting both persons sitting in the car were lightly wounded.

Forced labor, trafficking

Facts of exploitation of human labor occur from the side of Abkhazian de-facto government for their own needs. The mentioned measures bear discriminative nature and, as a rule, are applied towards ethic Georgians.

On February 19 Abkhazian separatist government introduced additional forces in high and low zone villages of Gali region. They carried on propaganda among population, frightened people, made them dig trenches, carry sack full of sand. Such facts were encountered in the villages Tagiloni, Chuburkhinji and Meore Otobaia.

Situation with Human Rights in Tskhinvali Region

Temporary administrative-territorial entity

In accordance with p.1 of the Resolution #4735 dated May 8, 2007 of the Parliament of Georgia "Concerning the Establishment of Temporary Administrative-Territorial Entity", it was defined: "temporary administrative-territorial entity to be established on the territory of former South Ossetian Autonomous Republic". In accordance with the Decree #297 dated May 10, 2007 of the President of Georgia, the authority of implementation of state governance on the territory of the entity was granted to Dimitry Sanakoev. In accordance with the Decree #296 of the President "Concerning the Establishment, Rule and Framework of Activities of Temporary Administrative-territorial Entity on the Territory of Former South Ossetian Autonomous Republic" the function of temporary administration were defined. The same department was obliged "to secure protection of law and order on the territory of temporary administrative-territorial entity; to protect the rights and freedoms, as well as interests of persons and ethnic groups living on this territory" (sub-point "c" of p.3). Also it was defined that the leader of the administration is the representative of local political forces and society, who is granted the authority of implementation of state governance of the territory of the temporary administrative-territorial entity.

Property restitution and compensation

On December 29, 2006 the Parliament of Georgia adopted the Law "Concerning the Property Restitution and Compensation to the Aggrieved on the Territory of Georgia in the Result of Conflict in the Former South Ossetian Autonomous Republic".

I would like to take the opportunity and express my positive attitude towards all efforts and activities, aimed at effective restoration of property-related rights of the owners aggrieved in the result of the conflict.

The above mentioned legislative act clearly defined specific time limits of its execution in its transitional provisions. In accordance with the article 36, the Commission of Restitution and Compensation will be established within 5 months from the date when the law enters the force; the Commission will adopts its statutes not later than during 2 months, and will start receiving application after 9 months from the date when the law enters the force. In accordance with the article 37 of the Law, it began entered into force on January 1, 2007.

In accordance with p.10 of the Article 9 of the Law of Georgia "Concerning the Property Restitution and Compensation to the Aggrieved on the Territory of Georgia in the Result of Conflict in the Former South Ossetian Autonomous Republic", "the rule of appointment of the members to be appointed according to quota of subject (subjects) of international law and the rule of implementation of authority by them, as well as the rules and terms of conducting the contest will be defined by the resolution of the Government of Georgia, in accordance with the memorandum concluded with the subject (subjects) of international law participating in the process of establishment of the Commission".

The Public Defender, in accordance with the Organic Law of Georgia "Concerning the Public Defender", applied to the Prime-Minister of Georgia and requested information related to the fulfillment of the mentioned requirements of the Law; in particular, on which specific stage the process of the law implementation is, what measures have been taken by the Government of Georgia, copy of the relevant resolution of the Government of Georgia, also, information concerning the progress of execution of the mentioned resolution.

On the basis of information, informally supplied to us by the legal expert of the State Minister's Office of Georgia in the Issues of Civil Integration Zurab Jamagidze it became clear that the Commission of Restitution and Compensation hasn't been established yet, and conducting of negotiations with the subjects of international law for the purpose of agreement on candidatures of members to be appointed according to their quota, was entrusted to the First Deputy Minister of Justice Tina Burjaliani.

The right to personal inviolability, security

In South Ossetia the facts of body injuries of various levels are frequent. The basis of such offences is national discrimination and most of them are directed against ethnic Georgian population. In the report of UN Commission in the Issues of Elimination of Racial Discrimination (contractual institution) it's mentioned that in the result of conflicts existing in Abkhazia and South Ossetia, discrimination formed against people of different ethnic origin, including great number of IDPs.

Principle #2 of UN "Guidelines Concerning Forced Displacement" states in regard to the responsibility of de-facto government on territories beyond the direct state control: "such de-facto government, irrespective of its legal status, is obliged to respect the rights of the relevant IDPs. It means that de-facto governments of Abkhazia and South Ossetia are responsible for avoiding any action which can result in displacement of people, protect people who move on territory controlled by them and protect the rights of the IDPs who want to return to their places of residence or settle on other territory controlled by them.

The rights to ownership

The facts of infringement of the right of ownership mainly are related to the incidents of robbery and burglary of population by armed bandit formations. Facts of car hijacking are frequent. On July 21, 2007 at 01:30 Noe Iantbelidze, resident of the village Likani, Borjomi region, while being at his brother's residence in the village Sunisi, Znauri region, was attacked by 5 armed bandits, who hijacked his car "VAZ-2121".

Facts of unlawful deprivation of liberty, willful detention

The achievement of certain success in the case of the facts of unlawful deprivation of liberty and willful detention is directly proportional to the interference of foreign observers and peaceful forces in the mentioned processes. At night of May 9-10, 2007, persons, unidentified by investigation, unlawfully deprived of liberty the Minister of Refugees and Resettlement Giorgi Kheviashvili and his accompanying persons. They were released after interference of foreign observers and peaceful forces.

On June 3, 2007 near the village Kokhi, Tskhinvali region, the Head of Mdenisi police subdivision of the so-called Ossetia Regional Ministry of Internal Affairs Nodar Babilov and his colleagues detained Alika Tedelauri. He was released after interference of foreign observers and peaceful forces.

Freedom of expression and information

According to the data of Amnesty International, the freedom of expression in South Ossetia is under risk. In June 2007, the mother of civil society activist Alan Jusoit was dismissed from the position of the Director of Tskhinvali School occupied by her. It was clear attempt of Ossetian de-facto government to apply pressure on her son so that he terminated his contacts with Georgian civil society. Several days later Alan Jusoit and young activists – Alan Parastaev and Temur Tskhovrebov participated in TV discussion held in Tbilisi. They called Georgians and Ossetians to freedom and dialogue, and requested from Georgia to recognize that the population of South Ossetia has the right of self-orientation. Later de-facto President of South Ossetia Eduard Kokoiti invited the activists and prohibited them to have contacts with Georgians.

Social and Economic Rights of Internally Displaced People

General situation

For the first half of 2007, a new range of problems have become apparent parallel to those traditionally associated with the Internally Displaced People (IDPs). First of all, the problems are connected with the amendments made to the Civil Code of Georgia and the Law of Georgia "On Police", enforced on 1 January 2007. Also, the ongoing process of registration of the IDPs should be mentioned, which started on spring 2007 and hasn't been yet completed. The issues of power supply of the centers of compact settlement of IDPS, paying compensations upon privatization of the places of compact settlement and providing shelters for temporary residence are still problematic. Due to multiple problems and mass violations of IDPs rights, based on the subparagraph 'h' of the Organic Law of Georgia "On Public Defender", the Public Defender addressed the President of Georgia on 30 April 2007 since no other mechanisms have left under the competence of the former (See Annex).

Eviction

Analysis of the IDPs applications showed mass violations of IDPs rights by the structures subordinated to the Georgian Interior Ministry. Mainly these violations apply to the increasing number of cases of eviction of IDPs from the places of their compact settlement. The activities planned and implemented by the Interior Ministry personnel, to this end, obviously exceeded law limits and in number of cases might be qualified as an excessive use of authorities.

Applying Article 172, Part 3 of the Civil Code of Georgia to the IDPs residing in the state-run places of compact settlement was illegitimate and contradicted the legislation applicable in the country. At the same time, the Law "On Internally Displaced Persons - Persecuted" regulated IDPs housing disputes differently that caused collision between the legal norms of the same level. However, as far as the Law of Georgia "On Internally Displaced Persons - Persecuted" is the special law targeting the specific group of people – displaced persons, the Public Defender in his recommendations has repeatedly called on law-enforcing authorities to apply this legal instrument on a preferential basis. According to Article 5, paragraph 4 of said Law, "Housing disputes shall be settled through the court procedure. Meanwhile, before restoration of the Georgian jurisdiction on the respective territory of Georgia IDPs shall not be expelled from the places of their temporary compact residence". Said formulation makes clear that the specific law recognizes the sole way of resolving disputes – through court. The social group of IDPs is so vulnerable in Georgian society that, according to the legislation, the right to their eviction has been transferred to the court – an institution having higher legitimacy over law-enforcing bodies.

Law-enforcers carried out similar actions stipulated by Article 172, part 3 of the Civil Code of Georgia in cases when court hearings were ongoing. In their deeds, policemen even ignored court rulings. In one concrete case, IDPs addressed Tbilisi City Court Administrative Cases Board in securing their complaint. According to the court ruling on

19 April 2007, the Inferior Ministry Tbilisi Central Department Isani-Samgori 2nd police unit was banned to evict IDPs from the residential area belonging to G.Giunashvili on 15 Shandor Petefi St., before adopting the court ruling. However, that very day when IDPs were handed the act of execution, the owner and policemen broke in and threw IDPs personal belongings out to the street. Presenting the act of execution by IDPs had no effect. In result, eight IDP families left without shelter under pouring rain and spent couple of days this way. Due to unlawful acts of policemen, citizens suffered a serious damage – part of their property was destroyed. The Public Defender sent all relevant documentation to the Interior Minister of Georgia and appealed to the latter with the recommendation to carry out relevant measures; namely, examine each case and, in case of establishing the fact of violation, raise the issue of responsibility of the persons involved. Apart from that, the relevant recommendations were sent to the police units. In result, the facts of IDPs eviction according to the cases processed by the Public Defender were stopped.

Concerning above-mentioned, the Public Defender addressed the Minister of Interior of Georgia with the recommendation (#751/05-3) on 14 May 2007. On 29 May same year the Decree #747 of the Minister of Interior "On Approving the Rule on Eradication of Encroachment Upon or Other Disturbance of the Right of Ownership of Immovable Property" was issued. Also before, on 4 May 2007 the above-mentioned issues were discussed at the session of the interim parliamentary commission for restoring territorial integrity of Georgia.

New regulation

The Decree #747 of the Minister of Interior "On Approving the Rule on Eradication of Encroachment Upon or Other Disturbance of the Right of Ownership of Immovable Property" envisages certain mechanisms for protection of IDPs rights. Specifically, the Decree considers the IDP's card and the certificate issued by the Ministry of Refugees and Accommodation according to the place of temporary residence of the IDP is a lawful basis for executing the right to own and/or use said property. Article 1, paragraph 4 of the Decree reads: "in each concrete case, the measures for eradication of encroachment upon or other disturbance of the right of immovable property against refugees and internally displaced persons should be carried out on agreement with the Ministry of Refugees and Accommodation. Execution of said measures should be stopped before receiving a written consent of the agreement from the Ministry." These paragraphs of the Decree can be assessed as an example of harmonization of internal legislation and coordination activities with regard to IDPs.

However, the Decree #747 of the Interior Minister protects only those IDPs residing in the places of compact settlement. The Law of Georgia on "Internally Displaced Persons - Persecuted" differentiates the place of temporary residence of the IDP (place of registration) and the place of their compact settlement. Moreover, the first term is broader than the second. It should be said that the Law "On Internally Displace People - Persecuted" repeats the same logic, which the Decree # 747 of the Interior Minister is based on, stating that IDPs shall not be evicted form the place of their compact settlement unless certain preliminary conditions are met.

However, even in case the IDPs are not registered at the place of compact settlement, it's noteworthy that in interaction stipulated by Article 172, part 3 of the Civil Code of Georgia, a law-enforcement body acts as an administrative one. Article 2, part 1, subparagraph 'a' of the General Administrative Code of Georgia serves the ground for such definition: "Administrative agency" means any state or local self-government agency or institution, a legal person of public law (except for political or religious associations) as well as any other person that exercises public authority in accordance with law." Article 3, part 4 of the same Code specifies that: "This Code may not affect those activities of the executive bodies that are related to:

(a) Criminal prosecution and criminal proceeding against the person, who committed a crime,
(b) Investigation and search activities,
(c) The enforcement of a valid judgment rendered by a court,
(d) Rendering decisions on military matters and matters of military discipline, except those related to a person's constitutional rights and freedoms,
(e) The appointment or dismissal by the President of Georgia of a person to or from the offices stipulated by the Constitution and the exercise of authority according to paragraph 1, subparagraphs (a), (d), (e), (g), (h), and (n) and Article 73, paragraphs 2, 4, and 5 of the Constitution of Georgia, and
(f) The implementation of international treaties and agreements and the pursuance of foreign policy.

Not any of above-mentioned circumstances took place while a law-enforcing body was performing activities stipulated by Article 172, part 3 of the Civil Code. In said case a law-enforcing body does not persecute a person for committing crime, neither it processes a criminal case or perform investigation and search activities; which means that for the purposes of General Administrative Code this law-enforcing body will be considered as an administrative body and will be guided by the rule of administrative proceedings established by said Code. In each concrete case a law-enforcing body is obliged to observe the range of norms regulating participation of the party in administrative proceedings, establishing the facts over the case, studying evidence and presenting materials of administrative proceedings to the party. All these norms were neglected and violated in all cases, which were processed by the Public Defender.

Registration of IDPs

The registration of IDPs started in spring 2007 and has not yet been completed. The whole process was going on with the range of violations. Chronologically, the first breaches of law have become evident at the initial phase of providing the legal basis for the process of registration. Article 5 (transitional provisions) of the Decree #217 (2 October 2006) of the Minister of Refugees and Accommodation of Georgia "On identifying person as internally displaced – persecuted, granting the status of internally displaced person; and approval of rule of registration of internally displaced persons, form of ID card of internally displaced person – persecuted, provision on IDP's card and form of questionnaire" prescribes as follows:

"1. The ID cards of internally displaced persons of the 2004 sample shall be replaced and new cards shall be issued within the period of 15 August – 15 December 2006.
2. The ID card of 2004 sample will be valid until 15 December 2006.
3. Parallel to registration of IDPs in 2006 (with issuing new ID cards), the questionnaires with IDPs data shall be filled up or updated. "

Said Decree were enforced on 9 October, while 15 August was set as a starting date for the procedures mentioned therein. The question rises, how does the minister imagine by his Decree enforced on 9 October, "to replace the IDPs' cards of the 2004 sample and start issuing new IDPs' cards" from 15 August? Apart from that, Article 1[1], subparagraph 'j' of the Law of Georgia "On Internally Displaced Persons - Persecuted" defines the registration of IDPs, as "the procedure of registration of IDPs and issuance of new ID cards **within the timeframes announced beforehand** by the Ministry."

The Decree #127 of the Minister of Refugees and Accommodation violated the standard established by the special law, prescribing the "announcement of the registration beforehand". Such approach undermines one of the main pillars of the state based on rule of law – legal safeguard, which makes possible to forecast the legal outcomes of the process. It should be taken into account as well that the Decree #127 of the Minister of Refugees and Accommodation may become the basis for stopping paying monthly allowances to IDPs if they fail to undergo registration within timeframes set by the Ministry which may cause suspending the IDP status. Besides, Article 5[2], subparagraph "b" of the Law of Georgia "On Internally Displaced Persons - Persecuted" obliges an IDP to undergo registration only within timeframes established by the ministry beforehand.

Notwithstanding above-mentioned, the Minister amended this act by his Decree of 18 December (enforced on 21 December) and "prolonged" the timeframes established by the latter initially. It's interesting, why the Minister's Decree was not duly fulfilled? Who was responsible for its implementation and why the relevant persons were not held accountable?

In addition to the lack of legal accuracy, the process of registration of IDPs was also going on problematically. For instance, according to the previous registration data, an IDP Merab Pipia was registered at the one of the buildings of the hippodrome complex. This complex was privatized but no compensation was paid to M. Pipia. The Ministry representatives refused to register the IDP at the same address and wrote into his new ID card "Saburtalo" (name of the district of his former residence) as the place of his temporary residence. An IDP Nana Lomadze was registered in the private sector in Ozurgeti, at her relative's flat. However, she has not lived there for more than 1 year and was left without shelter. Ministry representatives registered her again at the old address and promised verbally that she would be re-registered in "nearest future".

It should be said that not infrequently the Ministry avoids the responsibility on providing IDPs formally registered at the private sector with shelter, by referring to the argument that according to the registration data, they have one (in reality, an IDP's friend's or relative's address is indicated as the formal place of the temporary residence).

Several conclusions can be made from above-said. First of all, a registration data should contain the exact address instead of unclear and generic geographical indications such as districts and other settlements. Otherwise a registration data will be indefinite and incomplete and fail to achieve the purpose of identification of the temporary residence of the internally displaced person.

In the "case of the trading house" located at the Nutsubidze St. the Public Defender was interested in information on internally displaced persons registered at the residential area of 150 sq. meters total on the 2nd floor (as indicated in official papers) at the same building. The Deputy Minister of Refugees and Accommodation Irakli Gorgadze responded by the letter (#01/01-17/5045) stating that: "Concerning concrete persons registered at the residential area of 150 sq. meters indicated in the letter, ministry cannot provide you with such data for we do not have such detailed information since we do not have master plans and other relevant data on the above-mentioned place as well as on the other places of compact residence of IDPs." A clear indication of the place of temporary residence is very important for the purposes of the Decree #747 of the Minister of Interior of Georgia "On Approving the Rule on Eradication of Encroachment Upon or Other Disturbance of the Right of Ownership of Immovable Property" (an IDP's card or certificate issued by the Ministry of Refugees and Accommodation on the IDP's temporary residence must be presented). Also, the Ministry's written agreement should be available in order the measures for eradication of encroachment upon or other disturbance of the right of ownership of immovable property be executed against refugees and internally displaced persons. Naturally, the Ministry's agreement should be based on a clear and complete data written in registration forms and not refer to the general indication of some district or settlement.

Secondly, the registration should reflect new findings and should not repeat old and/or already updated facts. This is a logical and legitimate purpose of the registration - to harmonize official recordings and real facts.

Issues related to repatriation

On 27 January 1999 (3 months prior to Georgia's joining the Council of Europe), the Parliamentary Assembly of the Council of Europe issued the Opinion #209 (1999) concerning the application of Georgia submitted to the Council of Europe on becoming the CE member. The Parliamentary Assembly responded with the expectation that Georgia would settle range of issues including those related to domestic legislation. The subparagraph 'e' of the paper refers to the following commitments to be fulfilled by Georgia:

- Within the period of 2 years from becoming the member of the Council of Europe: elaboration of the relevant legal mechanism for repatriation and integration of Meskhetian population exiled by the Soviet regime, including granting the right to Georgian citizenship;
- Holding consultations with the Council of Europe on the relevant amendments to the legislation, prior to their adoption;
- Within the period of 3 years from becoming the member of the Council of Europe: launching the process of repatriation and integration;
- Within the period of 12 years from becoming the member of the Council of Europe: Completing the process of repatriation of Meskhetian population.

On 11 July 2007 the parliament of Georgia adopted the Law "On Repatriation of Persons Forcedly Exiled by Former USSR from the Soviet Socialist Republic of Georgia in 40s of XX Century". Subparagraphs 'd.a' and 'd.b.' of the explanatory note to the draft law submitted to the parliament read: "international organizations/agencies did not participate in the working meetings on the elaboration of the draft law", "No any expert assessment is available on the draft law". Despite the international commitments envisaged agreeing the text of the draft law with the Council of Europe, this was not fulfilled. The law itself was adopted only after 8 years. Consequently, a 4-year period left before planned finishing of the repatriation is rather short for conducting the process properly.

The Law of Georgia "On Repatriation of Persons Forcedly Exiled by Former USSR from the Soviet Socialist Republic of Georgia in 40s of XX Century" only specifies procedures for granting the status of repatriate, saying nothing about the social and economic guarantees of repatriates and their property restitution, without which "restoring historical truth and fulfilling the principle of dignified voluntary return" – being the purpose of the law and declared in Article 1 – would lose its sense. The Law does not legally assign the responsibility to regulate the above-mentioned issues to any agency. The State assumes only the responsibilities on considering the application, drawing conclusion on the issue of granting status and procedures related to granting citizenship in simplified way.

Subparagraphs 'b.c' and 'b.d' of the draft law submitted to the parliament stipulated that: "Adoption of the draft law won't be affected on the expenditure budget" and "the draft law will not entail generating new financial obligations."

To our opinion, at the transitional provisions the agency responsible for execution of the law should be specified. This latter means informing the target group about rights and obligations stipulated by law so that the obligation to inform persons living in Georgia and applying for the status of potential repatriate should be assigned to the Georgian Ministry of Refugees and Accommodation, while dealing with people abroad – to the diplomatic missions of Georgia.

The obligation of informing means to provide the target group information in understandable language as to when and whom a person interested in gaining the status of potential repatriate should apply to and what kind of documentation is needed. Also, the latter should be provided with other information (about state obligations, legislative guarantees, etc.).

The Law of Georgia "On Repatriation of Persons Forcedly Exiled by Former USSR from the Soviet Socialist Republic of Georgia in 40s of XX Century" entitled the Ministry of Refugees and Accommodation to broad discretional rights. The law does not specify the timeframes for consideration of the documents submitted. Hence it's unclear from when exactly the person will be entitled to the right to be registered as a person applying for the status of potential repatriate.

According to Article 6, paragraph 4 of said Law, the Ministry submits the documentation to the Ministry of Interior and in case of need, to other bodies, which, under the sphere of their competences, will issue a well-grounded conclusion about expediency of granting the status of potential repatriate to the persons applying for the latter. Accordingly, the Law entitles the Ministry to the broad discretional authority as to which agency the latter will submit the documentation for conclusion.

The Ministry of Refugees and Accommodation enjoys broad discretional rights as well in decision-making. According to Article 8, paragraph 1 of the Law of Georgia "On Repatriation of Persons Forcedly Exiled by Former USSR from the Soviet Socialist Republic of Georgia in 40s of XX Century", upon obtaining the information from relevant agencies and analyzing thereof, the Ministry issues a conclusion on granting the status of repatriate to the person applying for the latter or on its refusal, following which the Minster of Refugees and Accommodation issues a Decree on granting the status of repatriate to the person applying for the latter or its refusal, respectively. Pursuant to Article 4, paragraph 1 of the Law "On Normative Acts", the Minister's Decree is a Normative act, though pursuant to Article 8, paragraph 3 of the Law "On Repatriation of Persons Forcedly Exiled by Former USSR from the Soviet Socialist Republic of Georgia in 40s of XX Century" considers Minister's Decree as an administrative legal act.

According to legislation, the Minister's Decree is final, shall not be appealed in court or other administrative body, which runs counter to Article 6 of the European Convention on Human Rights and Basic Freedoms. On hearing the case *Golder v. United Kingdom* the European court ruled that Article 6, part 1 of the European Convention stipulates the right to access to court despite there is no direct indication of this right in the text of the Convention. "Article 6, part 1 does not formulate directly the right to access to court or tribunal… If Article 6 were formulated in a way that it concerned only the process raised in the court, the

contracting state would close down its courts or delegate their authorities to the bodies subordinated to the government… From all above-mentioned arguments it can be concluded that access to court is a part of the right stipulated by Article 6, part 1", *Golder v. United Kingdom,* Paragraphs 28, 35, 36*)*. In accordance with the Article 42, part 1 of the Constitution of Georgia, in case of such collision, priority is given to the statutory act having higher authority – the Constitution.

The threat of bureaucracy is obvious given that documentation needed for gaining the status of repatriate is not thoroughly specified. According to the legislation, Georgian government is authorized to set additional requirements when considering the case of granting the status of repatriate, however, no reasonable timeframes are specified for the latter. Hence this provision runs counter inter alia to Article 81, part 1 of General Administrative Code of Georgia: "An administrative agency may not require an applicant to present any other additional documents or information other than stipulated by law".

In accordance with Article 10, paragraph 1 of the Law, if the person, who has been granted the status of repatriate, commits crime, the status of repatriate may be suspended before the investigative bodies decide for closing down the case or the court ruling on acquittal of criminal offence enters into force. We believe said paragraph breaches the presumption of innocence stipulated by Article 40 of Georgian Constitution and Article 6, paragraph 2 of the European Convention on Human Rights and Basic Freedoms; since certain legal results will be generated not by enforced accusatory verdict issued by court, but imposing a criminal responsibility on the accused person. On processing the case *Barbera, Messegue and Jabardo v. Spain* the European Court specified that "presumption of innocence inter alia requires that the members of the court should not start proceedings with the preconceived idea that the accused has committed the offence." "The presumption of innocence will be violated if defendant were not found guilty according to law, but the relevant court ruling reflects the idea of his alleged guilt" (*Barbera, Messegue and Jabardo v. Spain,* paragraphs 77, 91).

While upon processing the case *Sekanina v. Austria* the European Court ruled that "admitting the presumption of innocence is obligatory not only for criminal courts processing the case, but for other authorities as well". (*Sekanina v. Austria*, paragraph 21).

The status of repatriate entitles a person to live on the territory of Georgia legally. Accordingly, upon suspending the status, the legal base of person's residing in Georgia will become void and (s)he will become subject to eviction from the country.

Article 8 of European Convention on Human Rights and Basic Freedoms stipulates the principle of uniting the family. However, for implementation of this principle adequately, a consistent and harmonized legislation should exist. Whereas Article 6, paragraph 3 of the Law "On Repatriation of Persons Forcedly Exiled by Former USSR from the Soviet Socialist Republic of Georgia in 40s of XX Century" directly indicates that the Ministry will consider the applications of family members simultaneously, the administrative act of the Minister should exist allowing the granting the status of repatriate to the members of one family simultaneously.

On the Rights of Refugees

Certain progress has been achieved for the first half of 2007 with regard to protection of the rights of refugees. There's a positive tendency of implementation of international commitments by State.

On 27 April 2007 the Law of Georgia "On Refugees" was amended; namely, Article 4[1] concerning a temporary residence card of the refugee was changed, resulting in regulating the problem of providing this social group with travel documents. The said issue was articulated in the previous reports of the Public Defender. Due to prolonged process of harmonization of the Law of Georgia "On Refugees" with UN Convention, the Ministry of Refugees and Accommodation couldn't provide refugees with documents needed for traveling. Hence, refugees were deprived the opportunity to visit their family members living in Azerbaijan, Turkey and other countries. They had problems when receiving of money transfers in banks.

At present, according to the Law of Georgia "On Refugees", a person identified as a refugee is given a temporary residence card, where information on a citizenship, name, address and the status of its holder is written. The card is issued for the period of 3 years and extends to the while territory of Georgia. In the temporary residence card the word "refugee" will be written and the address mentioned by the holder will be indicated.

The Public Defender mentioned as well that despite the requirement stipulated by Article 7, paragraph 'g' of the Law of Georgia "On Refugees" and the recommendations of the Public Defender, the State did not issue money allowances to the Chechen refugees, as far as a humanitarian aid provided by the international organizations is concerned, as the Chechen refugees report, the latter is insufficient and of poor quality. Also, Chechen refugees did not enjoy the benefits for electricity costs, envisaged for internally displaced persons.

For the time being, Article 51, paragraph 1 of the Law of Georgia "On State Budget of Georgia 2007" establishes a monthly allowance for refugees in amount of GEL11 for IDPs residing in compact settlement and GEL14 for refugees residing in private sector.

According to paragraph 2 of same Article, costs of the electricity consumed by a refugee living at the place of compact settlement are financed in centralized way and for 2007 amounted to GEL13.48 in Tbilisi and GEL12.98 in regions. According to paragraph 3 of same Article, administrative and communal costs for the places of compact settlement of refugees and IDPs (including costs for consumed water, household refuse disposal, sanitation, disinfection/ disinfestation, maintenance and ongoing repairing) were defined as GEL4 per person. Said financing in allocated in accordance with contractual obligations. The terms of contract and the necessary documentation for its conclusion are specified by the Ministry of Refugees and Accommodation.

Despite the progress, it's clear that monthly allowances and other benefits issued by State are not enough for creating more or less normal living conditions for refugees. Given inflation and increasing consumer basket, the living standards of refugees are dramatic.

It's noteworthy that Pankisi valley still remains the main area of settlement of Chechen refugees. According to UN Tbilisi office data, they live in both the state-own buildings and the private houses. In villages refugees live in abandoned houses, in other cases, they occupy such dwellings through permission and assistance of relatives. As to the places of compact settlement, former hospitals, kindergartens, outpatient clinics, etc. are used, however, sometimes refugees face problems – when these buildings are privatized and they have to search for the new place of residence.

Generally, the economic and social situation in the valley is alarming. According to the report issued by the Human Rights Information and Documentation Centre, the living conditions of refugees fall far behind normal. Sanitary conditions are extremely bad, especially in community shelters, being under supervision of the international humanitarian organizations operating in Pankisi valley. Those owning land plots gain a minimal income from a low yielding land. Though majority of refugees lack even this minimum income and are thus forced to search for other sources of income.

Many refugees are willing to work in enterprises or in service sector. Only few people work in international organizations, which serves as a source of income, couple of refugees work in schools and kindergartens as teachers and nurses – they are not paid salaries but are given additional portions of humanitarian aid instead. Chechen refugees complain that on allocating job places, the local population due to traditional kinship, tends to involve their friends and relatives so refugees suffer discrimination when searching for jobs.

Unemployment remains one of the acute problems for refugees. According to Article 7, subparagraph 'c' of the Law "On Refugees", the executive and local self-governing bodies are obliged to "assist refugees, according to their profession and qualification, to find job in given region, considering employment rates in said region." On the basis of Article 12, part 1 of said Law, the minimum standards of "housing, employment, education and security" are guaranteed not only for refugee, but even for the person, applying for the status of refugee. Article 17 of the Convention related to the status of Refugees reads: "The Contracting States shall accord to refugees lawfully staying in their territory the most favorable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment."

According to Article 34 of the Convention related to the status of Refugees: "The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees.". However, the Georgian legislation does not envisage a simplified procedure for granting citizenship, which itself runs counter to the above-mentioned provision. Acquiring Georgian citizenship is comparatively easy for Kist refugees, several of generations of which were born and have lived in Pankisi to date.
Refugees assess an ongoing integration process in the educational sphere as unsatisfactory. Especially, they have pretences towards the process of integration in the sphere of higher

education - majority of them think the process has failed. Likewise, they assess negatively the integration process in the sphere of professional education. According to Article 7, subparagraph 'f' of the Law "On Refugees", "the executive and local self-governing bodies are obliged to assist in placing refugee children to state educational institutions". According to Chapter 4, Article 22 of Convention related to the status of Refugees: "On Refugee Status" (public education), "Contracting States shall accord the refugees the treatment as favorable as possible, and in any event, not less favorable than that accorded to aliens generally in same circumstances."

It's noteworthy that majority of Chechen refugees express the wish to move to the third country and are complaining about the activities of the UNHCR office in Georgia. However, upon launching the antiterrorism campaign worldwide, comparatively less number of countries signals their readiness to accept Chechen refugees.

Situation in Terms of Protection of Freedom of Religion

The cases of violence and discrimination on the grounds of religion increased nearly 3-fold within reporting period, as compared to the second half of year 2006: 20 out of 22 registered cases are related to Jehovah's witnesses activities, one case is related to unlawful detention of Krishnait religious literature by customs and border authorities (see Annex - Valery Skvoruov's case); while another case reveals the facts of verbal abuse on public of citizens of Georgian ethnicity following Islamic religion by high-rank Interior Ministry official on religious and national motives (See Annex - Zoti case). It should be said that cases of xenophobia occurred towards Georgian followers of Islamic religion (sometimes involving civil servants), coupled with the relevant media coverage and certain public opinion expressed in public schools, constituted a new stroke on the Georgian map of religious intolerance. Georgian Muslims has openly complained about state of things lately.

At the same time, it should be noted that activities of Interior Ministry and the Office of the Prosecutor General of Georgia have become more efficient in terms of protection of freedom of religion: on one hand, there's a political will to protect the fundamental principles of the freedom of religion and eliminate violence on the grounds of religion, and, one the other hand, cooperation of the Public Defender and law-enforcers has yield certain positive results. However, existing problems stemming mainly from biased attitude, negligence and ineffective first response acquire "traditional" character and no any positive dynamics has been shown to this end.

Certain progress has been achieved on the issue of the church in village Ivlita (see the report of the Public Defender of Georgia, second half of 2006, freedom of religion). The village population held voting on church ownership in February 2007. Majority of locals voted for returning ownership rights back to the Catholic congregation, which was followed by restoring dialogue between Georgian Patriarchy and Catholic Church. The commission gathered twice in reporting period, but no any real result has been achieved so far. No progress has been made in case of other "disputable" churches as well. (See the reports of the Public Defender of Georgia, freedom of religion, years 2004, 2005, 2006).

A significant step has been made forward in terms of courts' activities regarding protection of freedom of religion. Negative and stereotyped coverage of religious minorities or their complete ignoring by Georgian media still remains an extremely problematic issue.

Situation in public schools can still be assessed as discriminative. This problem is explicit especially in schools of Adjara autonomous republic. Muslim children are taught only orthodox religion, while teachers are illegally pursuing proselytism and indoctrination. Symbols of Christian religion are displayed for non-academic purposes.

1. Violence towards Jehovah's witnesses, discrimination and the State

Violence towards Jehovah's witnesses has diversified lately. During previous reporting period these people had mainly been physically and verbally abused in streets and buildings while

preaching their religious beliefs, which was unlawful but a certain reaction on missionary activities of this religious missionary association. Nowadays, the cases of violence became more scaled, organized and proactive. In Tbilisi (Gldani, Varketili and Didube-Chughureti districts) as well as in Gori and Kutaisi Jehovah's witnesses' offices were permanently attacked, people were throwing stones and writing abusive and threatening inscriptions on the office buildings' walls; and sometimes even, Jehovah's witnesses being in the office building or those just left, were physically abused without any "irritating" grounds.

Written claims of similar character registered at the Public Defender's office are noteworthy. They describe attacks on the building for religious meetings of Jehovah's witnesses ("royal hall"), located on 24 Moret St. in Gldani micro region, a physical and verbal abuse of the members of this religious association, negligence of law-enforcers towards the incidents of criminal character occurred on the grounds of religious hatred and a wrong legal qualification of these incidents by relevant authorities.

Considering number of claims of similar character, the Public Defender addressed the Interior Minister and the Prosecutor General of Georgia with the recommendation #1662/05-2/0455-06/1 to eliminate wrong practice introduced in investigative bodies and give an adequate legal qualification to the crimes of above-mentioned character. The Human Rights Department of the office of the Prosecutor General of Georgia responded by the letter #G12.07.2007/40 on 13 July 2007, confirming that all five cases (see Annex) indicated in the Public Defender's recommendation (T. Jikurashvili, I. Gnolidze, T. Jikurashvili and B. Khachapuridze, D. Elizbarashvili and S. Michelashvili, G. Gilijashvili) were adequately addressed.

There are other cases as well when the law-enforcers' response to the crimes committed on the grounds of religious intolerance was delayed and biased; and religious motive of the crime was ignored. Particularly alarming is the fact that in one case a persecution on the grounds of religious intolerance was exercised by the Interior Ministry's Constitutional Security Department's Samegrelo-Upper Svaneti regional officer Vakhtang Gabelia; while the Deputy Chief of Investigative Department of the Office of the Prosecutor General of Georgia Valery Grigalashvili in his letter addressed to the Interior Ministry Samegrelo-Upper Svaneti district Prosecutor Roland Akhalaya assessed the activities of Jehovah's witnesses as "subversive" and justified the law-enforcer's behavior (see Annex, Mikava and Gamakharia's case).

Activities of patrol police. As it can be concluded from claims, patrol police officers usually delay their response to the reports on crimes having religious grounds; they delay visiting scene and take urgent investigation and search measures inadequately, or do not take them altogether. Patrol police officers do not persecute crimes occurred at their presence and do not detain perpetrators. In two cases patrol police officers, instead of defusing the situation and detaining offenders, contributed to further escalation of violence (see Annex - incidents in Gldani, Moret St.). Police response becomes adequate often only after the Public Defender's intervention – when its representatives learn about the case and require adequate response from police. It should be noted however that upon Public Defender's intervention police officers' response usually becomes more effective.

Activities of the Prosecutor's Office. The Prosecutor's Office mainly reacts adequately on crimes committed on the grounds of religion; however there are certain shortcomings in its work. The office of the Prosecutor General of Georgia declared protection of the freedom of religion as a priority and achieved certain success in this direction though certain cases are not investigated to the end. According to victims, investigators sometimes try to suspend preliminary investigation. In number of cases Prosecutor's Office intervention was limited only by opening investigation and failed to achieve tangible results in reasonable timeframes. Investigative bodies and Prosecutor's Offices tend to ignore religious grounds of the criminal act. It can be suggested that law-enforcers avoid admitting facts of violation of right of freedom of religion.

According to the statistical data from January to June 2007, 16 acts of violence have been registered on the grounds of religious intolerance. For the time being, two cases were suspended and 14 cases are in-progress. In 10 cases out of these 14, prosecution has been started according to Articles 142, 155 and 156 of the Criminal Code, and in 7 cases out of these 10, crimes committed on religious grounds were qualified as hooliganism and attempts to damage others' property. Only after the Public Defender's recommendation these cases were qualified as religious persecution (Article 156 of Criminal Code), interference with religious activities (Article 155 of Criminal Code) and discrimination on religious grounds (Article 142 of Criminal Code).

The cases given in Annex confirm that law-enforcing bodies sometimes show biased attitude towards crimes committed on religious grounds, which unfortunately is the strongest incentive for multiplying religious intolerance and violence.

Resistance of local governing bodies. From the measures executed against Jehovah's witnesses it can be mentioned two cases when the local governing bodies were unlawfully delaying issuing resolution on commissioning buildings for religious meetings of Jehovah's witnesses ("royal halls"), thus discriminating the religious association.

Particularly, in Rustavi, on the territory adjacent to Paliashvili St., upon overcoming too many obstacles, a building for Jehovah's witnesses' meetings was finally built. On 2 November 2006 the owners submitted application to the Rustavi city municipality with request of receiving exploitation rights on the building. No response was given during 4 months, while, according to the law, the answer should have been issued within 30 days. On 12 March 2007 the building was visited by the representatives of Rustavi City Municipality Supervisory Service instead of the representatives of the Commission for Giving Permission for Buildings' Exploitation. Having failed to find any irregularity, Supervisory Service representatives drew up a record indicating the offence, namely: "illegal occupation of the land plot being in state property", however no details were provided exactly what this "offence" meant. According to the verbal explanation, the exterior side of the fence went beyond the fixed borderline of the property by 20-30 sm. At present, following Rustavi city court ruling, the issue is settled, and one representative of local governing body is under legal persecution according to Article 142 of the Criminal Code (discrimination on the grounds of religion).

Upon completing construction works, the owners of the building envisaged for Jehovah's witnesses' meetings in Akhaltsikhe submitted application to the local governing bodies with request of receiving exploitation rights in September 2006. On 26 September they were given a protocol #6 on commissioning the building; however, despite multiple efforts of the owners, resolution on granting exploitation rights has not been issued within the reporting period.

Notwithstanding compliance with all requirements prescribed by law for construction, Jehovah's witnesses, starting from 2004, cannot overcome artificial, unlawful and discriminative barriers imposed by local "bureaucrats" and thus fail to conduct construction properly and complete it timely. Launching, conducting construction works and putting the building in commission cost great efforts and normally, becomes possible only after court, law-enforcers or administrative bodies' intervention. Jehovah's witnesses faced such problems last years in Chiatura (2003-2004), Telavi (2004-2006), Samtredia (2003-2005) and Kutaisi (2005-2006).

Considering above-mentioned it may be concluded that local administrative bodies deliberately, by excessively using their administrative authorities, discriminate Jehovah's witnesses, on the grounds on religion.

Position of the parliamentary committee for legal issues. One more case contains discriminative element against Jehovah's witnesses. The Chairman of the Parliamentary Committee for Legal Issues Levan Bezhashvili did not deem the legal status of Jehovah's witness priest authorizing for the preference of postponing compulsory military service as an analogue of the status of the priests of other confessions. Discriminative attitude was indicated in the Parliamentary Committee Chairman's letter # 4407/4-10/635 of 10.04.07 submitted to the head of Isani-Samgori district administration George Korkashvili in response to the address of the latter, where Korkashvili was asking the chairman of the parliamentary committee for legal issues to specify, whether Erekle Magradze, a priest of religious association "Jehovah's witness" could enjoy the right to postpone compulsory military service stipulated by Article 30, paragraph 1, subparagraph 'k' of the Law of Georgia "On Military Duty and Military Service". The chairman of the committee explained that when discussing the issue at the committee session a position was formed, according to which a Jehovah's witness priest wouldn't be able to enjoy the preference envisaged by law. The answer was not duly grounded.

The Public Defender expressed his position regarding the issue (See the report of the Public Defender of Georgia, second half of 2006, alternative vocational service, Erekle Magradze's case. pp. 79-80): "This norm should be explained to wide range of people. The formulation of the norm itself substantiates the wide coverage since it applies to clergy in general and doesn't limit to any confession. This interpretation complies with constitutional standards of human rights. Article 14 of Georgian Constitution underlines equality of all before law, notwithstanding "… religion". This is a general provision prohibiting discrimination and ensuring that all citizens should be treated equally under similar circumstances. Considering

above-said, it may be concluded that L. Bezhashvili's answer groundlessly treats Jehovah's witness priest differently and thus can be assessed as a discriminative approach.

Finally, the issue of equal rights of Jehovah's witness priest and the priests of other confessions was discussed by Tbilisi city court administrative cases' board, which concluded that Jehovah's witness priests should enjoy the same right to postpone the military service as the priests of other confessions.

Court rulings. Concerning violence towards Jehovah's witnesses, in the first half of 2007 the court issued 4 rulings, according to which offenders were tried based on Article 145 of the Criminal Code (persecution on the grounds of religion) and sentenced to jail. (On the basis of Rustavi city court ruling G. Melikidze was sentenced to 1 year imprisonment; K. Ninikuri, G. Alasania, N. Tsikhelashvili, S. Mosiashvili were sentenced to 8 years imprisonment; based on Zestaponi regional court ruling, George Peradze was sentenced to 1 year imprisonment and following Kharagauli regional court ruling, S. Dvali was sentenced to 7 years imprisonment - see report for the second half of 2006, freedom of religion, pp. 277-279). Currently, 3 cases related to the violence on religious grounds are being discussed, while the administrative cases' board processes 2 cases.

On 3 May 2007 the European Court of Human Rights issued ruling on the case *"97 members of the GIdani congregation of Jehovah's witnesses' and 4 others v. Georgia"*, where 138 cases of violating freedom of religion and 784 complaints lodged in years 1999-2002 were discussed simultaneously. The European Court of Human Rights ruled against Georgia due to violating Articles 3, 9 and 14 of the European Convention on Human Rights. The Court imposed a fine in amount of USD 56 thousand for reimbursing damage to victims.

Public schools. Discriminative and xenophobic environment in public schools remains one of the acute problems. Within reporting period two claims from Jehovah's witnesses from Rustavi and Telavi were submitted to the Public Defender. Despite relevant response from the Ministry of Education and Science, the issue still remains problematic in public schools.

In **Telavi public school #2,** concern about discrimination on religious grounds was raised in the letter submitted by the legal firm "Law and Justice in the Caucasus" to the Georgian Ministry of Education and Science on 20 June 2007. The letter quotes the parent Eka Rusishvili, who claims that, according to her daughter, the teacher of Georgian language Natela Beridzishvili was selling candles, church literature and incense in the classroom, explaining how to use them. In parent's words, teacher used abusive language towards Jehovah's witnesses and insulted them. This fact was followed by school's advisory board session where in attendance were teachers – members of the board: Lali Elibegova, Nana Chidrashvili, Tina Zurabashvili and the school director Natela Janashvili. At the session teachers criticized Jehovah's witnesses' religion and insulted parents Eka Rusishvili and Tina Zautashvili of having Jehovah's witnesses convictions – they were blamed in upbringing their children wrongly. The school director also stated her negative position towards Jehovah's witnesses; only one teacher – Nana Chidrashvili's approach was objective.

Article 18 of the Law of Georgia "On General Education" specifies that "Pupils, parents and teachers enjoy the freedom of religious belief, denomination and conscience according to the rule established by law, and have the right to choose and change any religious belief or denomination at their will."

Holding a session of the advisory board in above-described form runs counter to the requirement stipulated by Article 13, paragraph 6 of the same Law, which reads: "School is obliged to protect and contribute to strengthening tolerance and mutual respect between pupils, parents and teachers regardless their social, ethnic, linguistic or religious belonging."

The letter #17-10/8596 of 31 May 2007 of the General Inspection of the Georgian Ministry of Education and Science shows that administrative proceedings are underway regarding facts of discrimination of pupils in public schools on the grounds of religion.

According to the **Rustavi public school #18** 7th grade pupil Nona Gaprindashvili, teacher of biology Nana Belidze was pushing her to change religion: "What do you fancy in this Jehovah, leave it. Join us, I'll baptize you, our families can have close bonds then and we can be good friends", she was saying to Gaprindashvili. According to Article 13, paragraph 2 of the Law of Georgia "On General Education": "Using educational process for the purposes of indoctrination, proselytism or forced assimilation is prohibited."

According to Jehovah's witnesses' lawyer Manuchar Tsimintia, other teachers in Rustavi public school # 18 do also have discriminative attitude towards pupils - Jehovah's witnesses. The lawyer addresses the General Inspection of the Ministry of Education and Science of Georgia to consider, within the scope of their competence, Nana Belidze's behavior and apply measures stipulated by law against her. Also, in compliance with Article 7, paragraph 'b' of the Provision on General Inspection of the Ministry of Education and Science of Georgia, to make an inquiry on the facts of using the authorities excessively by teachers Lia Lobzhanidze, Nino Borchkhadze, Ketino Nozadze and Iza Tsiklauri, and apply relevant measures. The Tolerance Center functioning at the Public Defender's office monitors the Education Ministry's follow-up response to the facts described in said two claims.

The Tolerance Centre at the Public Defender's office conducts interrogation of pupils and parents representing religious minorities for revealing facts of religious discrimination and intolerance. Up to 1000 respondents have been interrogated to date in Tbilisi and regions. The first results show that intolerant and discriminative attitude towards non-orthodox school pupils has systematic character. The representatives of religious minorities are treated unequally by school administration, teachers and pupils.

2. Insult on the grounds of religion in Village Zoti

In order to study circumstances concerning the fact of religious intolerance of the Georgian Interior Ministry Guria Regional Department's Chief Besik Gelenidze, the representatives of Public Defender's office visited village Zoti of Chokhatauri region on 5 April 2007. This mountainous village is populated by ethnic Georgians of Moslem faith. The representatives

of the Public Defender's office met village population to collect relevant information and learned the following:

On 10 March 2007, at about 2 a.m. police officers arrived to village Zoti. They were driving cars – firstly came a truck, then 'Niva' and jeep. According to the local population, police officers did not produce any ID documents. They came to one of the residents to take off his tractor. The population demanded the explanation of the grounds of police actions and asked for clarification where the police officers were going to take the confiscated car. The population had certain feeling of injustice regarding the cars confiscated earlier, which, according to them, were taken without any documentation.

Hence the village population gathered in the center of the village to learn why the tractor was being taken away. The police officers answered that they couldn't answer right now, but they would anyway take the tractor and an administration would inform the population about the reason later.

The policemen were waiting for their chief Besik Gelenidze. When Gelenidze arrived, he came out of the car with the gun in his hand and gave the people 3 minutes to disperse. As people are saying, Gelenidze was shooting in the air. When scared women asked him: "What are you doing? Aren't you Georgian?" Gelenidze answered: "What kind of Georgians are you! You are Turks! If you are Georgians, why do you wear scarfs on your heads?" After shooting, B. Gelenidze hit one of the kids - 16-year old Emzar Dzirkvadze and used electroshock on 4-5 persons that caused disturbance in people. From sudden pain people were falling down and screaming "Help! We are dying!" At that moment police officers shouted "we made a corpse" and went away. According to the population, people reacted at police officers' behavior of using electroshock by throwing stones, which broke a back screen of one of police cars. The population mentioned that only Besik Gelenidze was verbally abusing them, as to other officers, they mainly were silent, and, even called Gelenidze to stop abusing people.

The residents of the village expressed their concern regarding intolerance and insult expressed towards them on the grounds on religion, and demanded Interior Ministry Guria Regional Department's chief's dismissal and punishment.

On 5 April, at about 3 pm, the representatives of the Public Defender visited Georgian Interior Ministry Guria Regional Department and met a deputy chief Zurab Asanishvili. Asanishvili said that Gelenidze was in Tbilisi at the moment. The next day at about 4.30p.m., the Public Defender's representatives again visited police department. This time they were explained that Gelenidze was out for the scene of the crime committed in the woods, where a dead body was found. The representatives talked with Gelenidze's deputy Murman Tsirdava, who appeared a witness of the village incident. According to his words, on 10 March he accompanied Gelenidze to village Zoti and no such incident took place. He said that population itself was rather aggressive – they were throwing stones and hurt police officers. Tsirdava added that in November 2006 on investigation purposes, police confiscated number of vehicles ("Ural" type heavy trucks) as an evidence. In his words, the investigation is establishing the real owners of these vehicles. He specified as well that upon confiscating

trucks, the officers produced the relevant documents directly to the owners of the vehicles and surely, it was no need to presenting thereof to the whole population of the village.
According to Article 4 of the Law of Georgia "On Police": "The activities of Police shall be based on the principles of legality, respect and protection of personal dignity and esteem, humanism and transparency. Police is obliged to respect and protect personal rights and freedoms irregardless a person's property status, racial and national origin, sex, age, education, language and faith, political and other convictions." Pursuant to Article 8, subparagraph 'c' of the same Law, police, upon exercising tasks, is obliged to: "strictly follow the norms of ethics in relations with citizens"; while pursuant to Article 98, paragraph 1, subparagraph 'f' of the Law of Georgia "On Civil Service", "unsatisfactory professional behavior is the basis for dismissal of the civil servant from occupied position." According to Article 78, paragraph 1, subparagraph 'c' of the same Law, a disciplinary departure is defined as an "inappropriate behavior (offence) contradicting universal ethical norms or discrediting civil servant or institution, whether committed in or out of the office premises".

Considering above-mentioned legal norms, pursuant to Article 21, subparagraph 'd' of the Organic Law of Georgia "On Public Defender", the Public Defender appealed to the Minister of Interior of Georgia Ivane Merabishvili on 20 April 2007 to examine the incident and apply the relevant disciplinary measure towards Besik Gelenidze.

On 15 May 2007 we received the Interior Ministry's General Inspection's deputy chief M. Chikviladze's letter confirming that the General Inspection is carrying out a personnel checking administrative procedure regarding the raised issue; and by the letter dated 25 June we were informed that according to the conclusion, drew on the basis of personnel checking following the Public Defender's claim, Georgian Interior Ministry's Guria Regional Department chief Besarion Gelenidze, for excessive use of his authorities, pursuant to Article 2, paragraph 2, subparagraph 'c' of the disciplinary provision on Interior Ministry personnel and, on the basis of the Decree # 874 of 18 June of the Minister of Internal Affairs of Georgia was imposed a disciplinary measure – a reprimand.

3. Unlawful detention of Krishnait literature
Valery Skvoruov's case

On 7 April 2007 a Russian citizen Valery Skvoruov appealed to the Tolerance Centre of the Public Defender's office. Mr. Skvoruov is a follower of Krishna spiritual doctrine. On 7 April 2007 he crossed Georgia-Azerbaijan border through the "red bridge" customs checkpoint. He brought a religious literature about Krishaism (24 books of different titles). The border police officers found books upon checking the passenger and said to Skvoruov that he wouldn't be allowed to bring the books in and that he could take them when leaving the country. The border officers told Skvoruov as well that he could keep the books with someone Fedya, however, urged him to wait for the chief, so that maybe the latter would let him bring the books through the customs. Negotiations with the chief of the 8th sector Temur Gvenetadze did not yield any results. The police officers' position did not change so Skvoruov was compelled to find Fedya. Fedya lives on the Azerbaijani territory. He himself called Skvoruov and made a deal with the latter on keeping his books at a cost of USD1 per day. However, Fedya also offered Skvoruov to transport books to Tbilisi for USD40.

On 7 April 2007 the Public Defender's representatives visited the customs checkpoint "red bridge" and met the checkpoint's deputy chief Nugzar Chubinidze and 8th sector's chief Temur Gvenetadze. Nugzar Chubinidze pointed out that he was always informing the Special Operations Department (SOD) personnel about the cases of bringing religious literature into the country's territory. He even produced the notebook with telephone numbers of SOD officials. In Chubinidze's words, Georgian constitution directly obliges him to detain religious literature on the state border that may cause damage to the state interests; however, when asked to point out the respective article in the constitution, he failed to produce one (and of course, he wouldn't be able to). Regarding potential threats, Chubinidze said that literature printed in Iran and Arabic countries is considered as harmful and there is a need to familiarize with their content. However he could not clarify how they intended to establish these circumstances.

Nugzar Chubinidze and Temur Gvenetadze said they did not detain Skvoruov's books and such procedures were in the border police officers' competence. Temur Gvenetadze refused to give clarification on this fact though he was explained the requirements imposed on him by the Organic Law "On Public Defender". N. Chubinidze wrote an explanatory note, however, he did mention neither his position nor the specific law on paper.

The Public Defender's representatives talked to customs authorities' personnel as well. Morning duty was not at place at that moment; however, upon request of Public Defender's representatives, the chief inspector of duty team Merab Girsiashvili contacted his colleague George Gelashvili, chief inspector, who was informed about the case. The latter said that religious literature was detained on the basis of border officers' decision.

Rights and obligations of Georgian border police are specified in the Law of Georgia "On Georgian Border Police". Article 10, paragraph 1, subparagraph 'e' of the said Law envisages imposing restrictions on movement of certain goods by border police, however, a religious literature is not indicated among restricted goods. Namely, border police officers are obliged to "prevent, disclose and eliminate trading of human beings (trafficking), in and out movement of contraband goods including drugs, arms, explosives and weapons of mass destruction on Georgian state border, within the border zone and the maritime space". According to the amendments made to the Tax Code of Georgia on 29 December 2006, the following items are exempted from the customs duties: (Article 270/5, paragraph 'k.b'):

"Import of goods corresponding to 28-96 groups of commodity nomenclature of foreign economic activities with total costs of GEL300 (when importing by natural person traveling by air – up to GEL1.500), different items of 50 kg weight total, intended for private use (in case of natural person)." 28-96 groups of goods from the commodity nomenclature for foreign economic activities include printed literature.

With attendance of the Public Defender's representatives, Valery Skvoruov brought his books along Georgia-Azerbaijan border without any hindrances. The Checkpoint officers did not protest this fact this time.

The Public Defender's representative Beqa Mindiashvili met with above-mentioned Fedya, who lives at the so-called neutral territory. While speaking with the Public Defender's representative, Fedya confirmed that in case of the owner's wish, he could bring the books through the border at a certain cost.

Due to controversial information, the Public defender's representatives failed to establish a specific body and person, whose direct decision became the grounds for detaining Skvoruov's religious literature at the state border. However, the fact of illegal deal and intention of money extortion in exchange for bringing literature through the border is apparent. Someone Fedya's involvement confirms this fact. A reasonable doubt arises that Fedya collaborates with border and customs authorities and is involved in illegal deals this way. Apart from that, the information provided by border police officers that they should contact the Special Operations Department in case they find religious literature to be moved through the border is not stipulated by any legal act and, consequently, runs counter to Georgian legislation.

According to Article 21 of the Organic Law of Georgia "On Public Defender", the Public Defender appealed to the Head of Border Police of the Interior Ministry of Georgia Badri Bitsadze and the head of Revenues' Service of the Ministry of Finances of Georgia Mr. Mindia Gadaev on 24 April 2007 with recommendation to study the above-mentioned issue and in case of revealing irregularities, proceed with an appropriate response.

On 14 May 2007 Mr. Bitsadze responded by the letter confirming that V. Skvoruov crossed the Georgian state border without hindrances. The customs checkpoint staff did not check his bag. According to the same letter, 20 minutes after Skvoruov had undergone the passport control procedure, border police officers learnt from customs officers that religious literature was found in Skvoruov's bag during customs checking, 24 books in total, and as they found out later, Skvoruov handed his literature to someone Fedya for keeping. Fedya lives at so-called neutral territory. Questioning of V. Skvoruov and establishing all circumstances over the case was not possible since on 25 April 2007 he left the country. Meanwhile, results of administrative checking showed that on 7 April 2007, when Skvoruov entered Georgian territory, no irregularities where detected from border police side.

On 18 May 2007 we received the letter of M. Gadaev, chief of Revenues' Service of the Ministry of Finances of Georgia, who informed us about the following: As the customs officers report, they were on duty on 7 April this year, when Valery Skvoruov was traveling from Azerbaijan to Georgia bringing religious literature. Interior Ministry border police officer, who checked the literature, did not allow Skvoruov to bring these books to Georgia. According to customs officers, they did not carry out customs procedures regarding Skvoruov's handbag.
On 18 June 2007 we received a letter from Kvemo Kartli district Prosecutor S. Rekhviashvili that on the basis of materials submitted by the Public Defender, according to Article 333, part 1 of Criminal Code of Georgia, a preliminary investigation has started in Kvemo Kartli district investigative body. However, urgent investigation can not be performed since Skvoruov's address is unknown.

4. Dismantling church on Peria hill being under construction

By the initiative of the Public Defender of Georgia, the legal grounds of dismantling church being under construction on the Peria hill in Adjara Autonomous Republic on 19 May 2007 was studied.

Meetings were held with Batumi and Skhalta archbishop Dimitry (Shiolashvili), head of Khelvachauri regional administration, Batumi Mayor Irakli Tavartkiladze and local population; we obtained other relevant documentation so that the following may be concluded:

In archbishop Dimitry's words, construction of church on Peria hill started at about year and a half ago, with the help of local population. At the territory where the church was being built and which is known as village Anaria from relevant documents, the Soviet army divisions were deployed before. In Archbishop Dimitry's words, in 70s of the last century this territory belonged to the shelter for elderly and disabled people, which is now under the supervision of patriarchy.

When the army divisions left the territory, Batumi and Skhalta archbishop Dimitry addressed Khelvachauri administration with a request to hand over this territory for construction of church. According to the land legislation, the church is entitled to, upon agreement with local administrative bodies, get a land plot free of charge.

The administration did not react on the application and did not reply, which is a violation of the Article 76 of the General Administrative Code of Georgia and envisages commencing administrative proceedings, however, **administration's inactivity did not allow Batumi and Skhalta archbishop to start church construction.**

Said territory is a property of Adjara Autonomous Republic which is confirmed by relevant documentation; Batumi and Skhalta archbishop confirms this fact. Consequently, construction was illegal and the state was entitled to suspend works and suppress encroaching upon its property rights by police force, which was not made.

On 19 May, for the period starting from 3a.m. till dawn, church being under construction had been dismantled, supposedly, by using a special technical equipment. The local administration refused its involvement in dismantling. It should be noted that on 18th of May TV broadcasts showed local government officials stating that they had full right to dismantle church which was in fact made in next hours.

If the church has not been dismantled by the local administration, an investigation on the fact of damaging and destroying others' property should start (Article 187 of Criminal Code) and the relevant persons identified. However, if dismantling by local government is confirmed, we conclude that the following procedures are violated: The Ministry of Finances and Ministry of Economics of Adjara Autonomous Republic should have addressed police with a request to stop encroaching upon property rights, according to Article 172.3 of Civil Code of Georgia and Article 9, subparagraph 'u' of the Law "On Police". Police should have

started administrative proceedings, draw up the relevant form and submit to the Batumi and Skhalta archbishop a proposal on stopping encroaching upon property rights. According to the information obtained by us, these procedures were not observed, that may be assessed as an excessive use of authorities.

National Minorities

As compared with the previous year, there have been no significant changes with regard to protection of the rights of national minorities and their social integration in the first half of the reporting period of 2007. Problems revealed in past years' reports regarding education and social integration, as well as media correctness, involvement of national minorities in decision-making process and other still persist.

The issue of teaching state language in the regions of compact settlement of national minorities

In the first half of reporting period of 2007 one of the most significant problems such as access to the resources for learning state language in the regions of the compact settlement of national minorities was not yet resolved. This issue is very important for social integration and education of national minorities. Suspending functioning of "The Georgian Language Houses" in Kvemo Kartli and Samtskhe-Javakheti is especially problematic. Georgian Language Houses in Kvemo Kartli and Javakheti were operating under the OSCE aegis; in 2007 they were transferred to the Ministry of Education; however houses have not been reopened yet.

In the regions of the compact settlement of national minorities Russian was the language of communication and clerical work for many years, during Soviet times as well as after gaining Georgia's independence. As a result there was no need and aspiration for Georgian language. Due to ethnocentric attitudes of the government and majority of society, national minorities did not see any perspective in learning Georgian. Even 3-4 years ago most of the people living in these regions considered it useless and even shameful to learn Georgian. Nowadays the situation has changed. Majority of youth, people working in different spheres and those employed by governmental agencies consider knowledge of Georgian language an absolute necessity in order to have successful career and be involved in public life of the State. Despite an increasing demand for learning Georgian language, within reporting period there were no governmental programs running in these regions (excluding educational programs in schools) that would satisfy above-mentioned demand.

The state language communication area in the regions of the compact settlement of national minorities on districts and settlements' level is very limited which hinders the process of learning Georgian. Still unresolved is the issue of teachers of Georgian language - Georgian language classes are either formally held or not held at all in most of the schools, especially in villages. As a result, the youth graduating from these schools don't have even a basic knowledge of Georgian.

International and local organizations implement several projects in Kvemo Kartli and Javakheti regions aimed at teaching Georgian language to those interested. Unfortunately these projects are not enough and they do not fully meet demands in the regions. It is worth mentioning that in several kindergartens of Akhalkalaki bilingual instruction was

introduced, Georgian - Armenian. As the Public Defender's monitoring group was told, many parents do like and show the interest towards the program.

Access to information

National Minorities still do not have full access to information on the developments in the country, legislative changes, governmental programs and ongoing or planned reforms in different spheres. This, of course, hinders national minorities, especially those from the regions of the compact settlement from social integration and full involvement in the processes ongoing in the country. It is worth mentioning that the only exception is national minorities' languages news programs aired by public broadcaster and the program "Italiuri ezo" ("Italian yard"). Nevertheless, these programs are not enough for informing the national minorities adequately.

Issues of employment and participation

The Georgian Legislation and other international legislative norms ratified by Georgia ensure equality of all citizens despite their national, religious or other differences. Discrimination on the basis of these differences is prohibited under Criminal Code. The position of the country's authorities completely coincides with the above-mentioned legislative norms; and nevertheless, representatives of national minorities still are not fully involved in the political and social developments in the country. In past as well as in at present involvement of national minorities in political and social life is minimal. One can find minimum number of national minorities working in governmental agencies; that is stipulated by the following:

1. Deficiency of adequate Governmental Programs
2. Migration of skilled and qualified representatives of national minorities from Georgia
3. Perception of a "second-rate citizen" stemming from the nationalism existed in the past years' Georgia is still strong in the majority of national minorities.

The latter is a decisive factor for lesser activity of national minorities in country's social life. Majority of national minorities, even if they do not vocal it, consider themselves to be second rate citizens. This stereotype makes them think of themselves as uncompetitive; consequently they do not participate in announced vacancy competitions. Participation of national minorities was inadequately low even on the vacancies announced by the Public defender. As is known to us, the situation persists in other governmental agencies.

The special employment programs for national minorities could be a solution. These programs should be aimed at training, interning and finding employment opportunities for national minorities.

It is of a drastic importance to timely inform the population in the regions of the compact settlement of national minorities about the governmental programs that are already running or are supposed to be launched soon, as well as about the necessity of those programs and their positive aspects. Lack of information or misinformation of the population living there generates distrust and impedes the process of social integration. For example, it is desired to

better inform the population on the essentiality and positive aspects of Karsi-Akhalkalaki railway construction. As a result, Javakheti will become a transit region which will mean new investments, improved turnover of goods and finances, increase of the employment opportunities and other positive effects. It is also important for the people living in Ninotsminda to have full information about the necessity of building prison and about the outcomes that construction will bring to the region. Many consider building prison in this area undesirable; however if the positive sides of this construction are explained, the attitude might change. Local population can be employed on construction works and in the administration of the prison, also part of products needed for prisoners might be purchased from local residents; that would be positively effected on the population in the region.

Ethnocentrism and problem of nationalism

Ethnocentric and nationalistic aspirations are still present in Georgia. Some leaders, journalists and officials who are ethnic Georgians or represent minorities, often propagate radical nationalistic ideas, or make decisions based on ethnocentric or nationalistic views.

Nationalistic ethnic Georgians consider even existence of ethnic minority groups as a threat to the national security. They treat them with lack of confidence, and therefore any kind of activity or demonstration on any issue is politicized and understood as an action against the state; while similar actions in the regions populated mainly by Georgian population are considered to be manifestations of social activity.

On the other hand, leaders of national minorities suspiciously and negatively look at any governmental programs conducted in the regions of the compact settlement of national minorities. For example, before the construction of Akhaltsikhe-Akhalkalaki road majority of population living in Javakheti region were complaining about the low quality of the road. After finishing construction works nationalistic groups were complaining about financial resources allocated to construction works, claiming that they were "spent on air and are harmful" since "only Georgians will be using these roads, and they have built them for the purpose of banishing us [minorities] from this country." At the same time they consider unemployment – which exists in all regions of Georgia, heavy social and economic conditions, high level of immigration as the problems affecting national minorities exclusively. Even though people having such ideas are not in a majority, persistent ethnocentric and nationalistic attitudes negatively affect confidence building, social integration and cooperation possibilities between minorities and non-minorities living in this country.

There have been practically no any governmental programs oriented on social integration of citizens with religious and ethnic differences implemented during the reporting period. The results show that efforts taken in this regard are not enough; more effective programs are needed for managing integration processes. There is a significant lack of media products and cultural and educational programs aimed at social integration. None of the governmental agencies except for public broadcaster and the Ministry of Education implement appropriate programs in this regard. Cultural and educational programs initiated by the Ministry of Culture could have much more positive impact on the process of social integration.

Unfortunately this governmental agency has not been involved yet in above-mentioned process.

Regional integration

Neither the population of the regions of the compact settlement of national minorities, nor the one with majority of Georgian population have sufficient information about each other's culture, traditions, problems, perspectives and opportunities. Populations living in regions where national minorities are less present, receive information about the latter mainly from Georgian media which usually disseminates mostly negative information about minorities that hinders the process of social integration. It is very important to build better connections between minorities and the capital as well as between minorities and other regions, in order to contribute to social integration and protection of the rights of national minorities and overcome negative ethnic stereotypes and attitudes.

Problem of media correctness

As the practical examples show, media spreads mostly negative information about national minorities. All domestic, legislative and other types of problems voiced by the latter are politicized.

For many years the negative stereotypes about Chechens were inculcating in Georgian Society. They were often labeled as terrorists and criminals. Chechen refugees also were stereotyped negatively. They were associated with people involved in human kidnapping and drug dealing. However based on the information collected by the Public Defender's office, there have been no criminal cases registered in Georgia involving Chechens charged with kidnapping, which once again proves an artificial character of above-mentioned stereotypes.

In 2007 the Georgian media has been covering the issue of ethnic Chechen solders in Russian peacekeeping battalion deployed at the river Enguri (Abkhazia) with great interest. Georgian media often underlines the national origin of Chechen soldiers in Russian military forces, while ignoring nationalities of other soldiers (Kalmukhi, Adyge, Ossetians, Dagestanis, others) also serving there. This kind of "attention" creates a negative attitude towards Chechen soldiers. It is worth mentioning that based on the decision of Russian military leadership there are soldiers of different ethnic origins in Russian peacekeeping forces all being under subordination of Russian commanders so that their ethnic origin does nor play any role.

Withdrawal of Russian military base from Akhalkalaki

Withdrawal of Russian military base from Javakheti positively affected ethnic relations in the region. The number and scope of provocations with ethnic hue have decreased substantially. As a result, one can judge that Russian military base in the region was the source of provocations and artificially contributed to tensions.

The environment for social integration became friendly after the withdrawal of the Russian base however the process needs an effective managerial control. Local population is looking forward to the follow-up of the promises made by the country's highest authorities at different times. The issue of purchasing potatoes for the Ministry of Defense in Javakheti region was of a vital importance for the local population. During the withdrawal of the Russian base then Defense Minister Irakli Okruashvili made a promise to locals that Ministry of Defense would buy potatoes for Georgian army in Akhalkalaki and Ninotsminda. This promise was not fulfilled causing dissatisfaction and distrust of the local population towards central government. The Javakheti population is still looking forward to fulfilling the promise given by the central government.

Council of Europe's Framework Convention for the Protection of National Minorities

The Public Defender's Council for National Minorities came up with recommendations regarding implementation of the Council of Europe's Framework Convention for the Protection of National Minorities in Georgia. Representatives of NGOs and national minorities' diasporas working on the social integration in Georgia were involved in elaboration of recommendations. Consultations were held with different governmental agencies. The recommendations were officially presented on 29 May 2007. Representatives of the governmental agencies shared the main pathos of recommendations and signaled readiness for carrying out all measures necessary to fulfill recommendations aimed at Framework Convention's implementation.
However, despite promises, the Council of National Minorities has not received any official answer regarding the implementation of recommendations from governmental agencies except for the Ministry of Education and Science of Georgia and the Parliamentary Committee on Protection of Human Rights. It should be mentioned that many important issues are touched upon in recommendations addressing of which would have positive impact on social integration. (See Annex - Recommendations).

National Minorities
Recommendations:

To the Georgian Government: It is recommended to elaborate a special governmental program encouraging social activities of national minorities, full participation in country's life, increasing their qualification and employing them in different governmental agencies.

To the Georgian Government: To elaborate and implement a special program supporting connections and integration between regions densely populated by national minorities and other regions of Georgia.

To the Georgian Government: To elaborate and implement special program that will assist initiating, stimulating and support of the cooperation between media outlets working in regions densely populated by national minorities and other regions of Georgia.

To the Ministry of Education: To select and send qualified teachers of Georgian language to the regions densely populated by national minorities. Priority should be given to those who have the knowledge of respective minorities' language.

Social and Economic Rights

The Right to Property

The right to property was thoroughly covered in the previous reports of the Public Defender. This right is unalienable and is guaranteed by the Constitution and legislation. However, in most cases this principle is not well enough protected. In the reporting period there were cases when the private immovable property was destroyed, mainly by unlawful dismantling. The rules established by law when carrying out dismantling were violated in most cases, the works had been implemented without necessary administrative procedures.

It's noteworthy though that Tbilisi City Hall Municipal Surveillance Service has improved the practice lately and often initiates administrative proceedings in case it finds illegal ongoing construction or the building constructed already with violation of law. However according to the Public Defender's records, there are cases confirming that the rules on dismantling were not duly observed or the process was entirely unlawful.

Tsitsino Bochorishvili is a legal owner of the land plot at the Rike territory, were she also had a building. In April 2006, during massive dismantling of the buildings on that territory, the building belonging to Tsitsino Bochorishvili was demolished without carrying out administrative proceedings or any other procedures prescribed by law. The Public Defender appealed to the Tbilisi City Hall regarding this issue; the latter promised to take into consideration the Public Defender's recommendation. Nowadays, there is an ongoing negotiation with the owner regarding possible compensation payments.

Dismantling of a trade center near the **underground station "Gotsiridze"** was also unlawful and violated the right to property of the owners. Despite numerous appeals to the Tbilisi City Hall regarding this issue, the Public Defender has not received any response yet.

The fence of the **TV Company "Trialeti"** in Gori was illegally dismantled. TV Company "Traleti" has leased the land plot belonging to JSC "Kartuli Filmi" ("Georgian Film") from 2005. The term of lease is 10 years and expires by 1 May 2015. The metal fence plan is attached to the application, approved by Gori chief architect and coordinated with Gori local administration. This documentation proves construction of the fence to be legal nevertheless it was dismantled. The Public Defender appealed to the management of Gori Municipality asking for compensation for damages; also to the Gori regional Prosecutor for investigation on the case.

The Public Defender received an answer from the Gori regional Prosecutor on 26 September current year. According to the response the Prosecutor opened a preliminary investigation on the above-mentioned case and the director of the TV Company "Trialeti" Badri Nanetashvili was interrogated as a victim. As the answer of Gori Municipality shows, the Public Defender's claim regarding compensation was not satisfied.

The right to property of the citizens Gela Bezhashvili and Jemal Tsiklauri was severely violated.

Until 14 December 2006 Gela Bezhashvili had owned a land plot in Sighnaghi, 1ª Erekle II str. (720 sq. meters in total). Sighnaghi market was functioning on this territory. The records from the civil registry confirm the ownership. On 14 December 2006 a deed of gift was concluded between Gela Bezhashvili ("Acho" ltd.) and the State (Sighnaghi State Property Registration and Privatization Department), according to which Gela Bezhashvili handed over the market belonging to him, located on Sighnaghi, 1ª Erekle II str. to the State, without any compensation.

According to Gela Bezhashvili he was forced to sign this agreement. In the Annex bellow the details of the deal are given (see Annex).

The case was sent to the parliamentary inter-fraction group for further response however the Public Defender has not received any answer yet.

Jemal Tsiklauri's case is similar to the above-mentioned. In 1996 on the basis of competition Tsiklauri bought Gori agricultural market and founded an individual enterprise "Liakhvi". He was carrying out business activities in Gori, 5 Guramishvili str. and owned a functioning market in Gori – located at the land plot with relevant facilities. On 12 January 2006 representatives of law-enforcement agencies arrived for checking the market. Shida Kartli governor Mikheil Kareli was among them. The Interior Ministry Gori Regional Investigation Department started an investigation on the criminal case instituted on the charges raised by a citizen claiming that a seller at the market deceived him; therefore if sellers were lying to buyers, logically there was a high possibility that the owner of the market Jemal Tsiklauri was involved in tax evasion. As a result, charges were mounted against Tsiklauri and as a measure of constraint he was imposed preliminary imprisonment. Tsiklauri gifted his property to the state in prison. According to him, this was a forceful act, he was threatened; in reality he did not have any intention to gift the property (see Annex).

On 30 May 2007 Tbilisi City Hall adopted a resolution #07.01.205. This legal act invalidated Tbilisi Municipality Cabinet resolution of 26 October 1998 as well as other resolutions granting **apartments** in ownership to the citizens living in Tbilisi. The representative of the citizens **Nino Gventsadze, Anzor Abralava, Jemal Khutsishvili, Gulnara Ksovreli, Jemal Sepiashvili, Irakli Tchiabrishvili and Zaza Kolelishvili** appealed to the Public Defender claiming that resolution #07.01.205 was passed with violation of law. The representatives were asking for protection of the right to property. After examining the case, it was revealed that above-mentioned citizens were acting in full compliance of Article 14 of the resolution #15-5 adopted by Tbilisi Sakrebulo (city administration) on 20 December 2000. According to this resolution, "families living in heavy dwelling conditions and having at least 5 years of living record in Tbilisi shall be given residential spaces." According to Article 15 of the same resolution: "priority shall be given to those suffering extremely heavy conditions: 1. Families whose apartments became unsuitable for living due to force majeure; 2. War veterans and families of those dead, missing or disabled as a result of the fighting for the territorial integrity of Georgia; 3. Families with many children (3 and more)".

In order to protect the rights of above-mentioned citizens, the Public Defender appealed to the Tbilisi City Hall with a recommendation, but to no avail. Nowadays the parties are disputing in court.

Dodo Giorgadze's case applies to the same issue. According to the application, Mtskheta regional administration annulled the resolution granting the right to the land plot. After examining the application, the Public Defender addressed Mtskheta municipality with a recommendation to invalidate the Decree #447 of Mtskheta regional administration as an unlawful resolution, and based on comprehensive and objective inquiry of the case, ensure adoption of a new administrative-legal act that would take into consideration human rights and lawful interests of citizens. Unfortunately the recommendation was not taken into consideration, and in response, Mstkheta Municipality informed that the court of first instance ruled against claimants. Currently, the case is processed in the Court of Appeal (see Annex).

Different normative acts adopted in connection with Land Reform were highlighting the government's obligation towards citizens to ensure friendly environment for normal life and development. However, despite obligations and even court rulings to satisfy the citizens within the frameworks of the land reform, **Soso Sutiashvili** together with other aggrieved parties is deprived of the land which legally belonged to him:

Since 1992 an agricultural land reform has been ongoing in Georgia. Pursuant to the governmental resolution (Cabinet of Ministers' Decree #48 of 18 January, Decree #128 of 8 February and Decree #290 of 10 March 1992), the land plots should have been allocated first of all to the citizens (all categories) permanently living in the villages. Hence, in village Dighomi common land plots were distributed among the village residents. Soso Sutiashvili, one of the village residents, did not receive a land that was caused by unlawful activities of the Head of the Land Reform Commission of village Dighomi of Mtskheta region Nodar Lasurashvili, who did not distribute the land plots in accordance with the procedures prescribed by law. On 7 September 2006 Lasurashvili was tried and was sentenced to 11 years imprisonment by Mtskheta Regional Court. Soso Sutiashvili and others affected by above-mentioned unlawful activities have been recognized as aggrieved parties. And yet the Public Defender found lots of flaws in this case and addressed Tbilisi City Hall with a recommendation to study the case thoroughly. No response has been given so far (see Annex).

On 28 October current year the Public Defender's office organized a round table "Mechanisms for Protecting Private Property" in Batumi. Representatives of local self-government, the Supreme Council and non-governmental organizations attended a round table discussion. The topic of the discussion was a range of problems associated with the implementation of land reform in Adjara. It was identified that the reform was implemented only partially, and as a result, majority of the population were left without land. Violations regarding land reform and right to property will be discussed in detail in the special report of the Public Defender.

Right to work

From the applications received since January 2007, most problematically stands the issue of violating citizen's right to work. This is revealed in different forms of breach of the written employment agreements and firing employees without reason. After the Rose Revolution discharging thousands of employees from governmental agencies and administrative structures was introduced as a common practice. In most cases these actions were justified by reorganization, optimization and the need to reduce staff. After the careful examination of the received applications it was found out that firings were carried out groundlessly, without any reasonable justification. Citizens were not explained why they became victims of reorganization, while a colleague having the same skills but less professionalism still kept working; or the name of their unit or position changed but the workload and functions stayed the same.

Citizens had problems with the job opening contests announced by different structures. From the complaints received by the Public Defender it's becoming clear that the rights of citizens were violated in most cases. The contest regulation created on the basis of individual administrative act is a juridical foundation for announcing and conducting job contests in most governmental or other bodies that are legal persons of public law. The contest regulation consists of articles and paragraphs describing and defining the basic requirements of the contest and goals; also functions and obligations of the contest commission. However in most cases the documentation on the results of the contest ignores the main and priority requirements of the contest regulation - the members of contest commission, while making final decisions abuse their powers; in the minutes there are no sound arguments for why a contestant failed. The contest principles of equality, fairness and transparency are often violated. From the applications sent to the Public Defender as well as from applicants' explanations it is easy to conclude that often the commission was tendentious and biased and its appraisals deviated from reality.

In September 2005, Tbilisi Ivane Javakhishvili State University announced a vacancy on an academic position. According to Article 14 of the Temporary Provision on the Contest Commission: "The contest commission shall select the academic staff in accordance with the predefined criteria and then report to the dean. The views expressed by the contest commission are confidential. Only decision in minutes shall be made public."

Chapter 3 of the General Administrative Code of Georgia clearly defines what kind of information is classified as secret and what circumstances are necessary to designate information to be classified. Pursuant to those principles the contest commission did not have right to decide upon the confidentiality of the information. Neither there are any decisions made by the commission correct and superior to the law.

On the contest, **George Goroshidze** applied for the position of an associated professor. According to the contest commission branch group's recommendation, he was denied the position due to incomplete materials submitted and the lack of professional pedagogical working experience whereas Goroshvili's application was in a full compliance with the requirements of contest provision and in fact he had longer professional pedagogical working

experience than any other contestant. The argument provided in commission's recommendation does not sound persuasive while the other applicant, not having a professional working experience at all successfully participated in the contest. Based on the materials provided to the Public Defender it can be concluded that the contest commission made partial and biased decision and thus violated the citizen's right to work. The Public Defender addressed a recommendation to George Khubua, the President of the Tbilisi State University asking for partially annulling the administrative act (regarding decision on George Goroshidze). The recommendation was not satisfied.

In the process of building a lawful state, none of its citizens should feel they are deprived of jobs with groundless arguments and their social conditions are worsened at the expense of protecting others. The citizens should have the feeling that their positions were filled by more professional, competent and worthy candidates and that they did not become victims of a chance and circumstances. If the law-makers don't start working on the draft law on contests and the process is not regulated on a legal basis, the bureaucrats will be tempted to decide upon contestants not objectively, but based on their personal attitudes and sentiments.

Therefore the Public Defender addresses the recommendation to the Parliament of Georgia to adopt a law on qualification/certification contests in public and private agencies. This will be one of the guarantees for protecting the rights of contestants.

The results of entry exams to the Academy of Arts and results of the contest for selecting directors for the Ministry of Education and Science revealed the necessity of regulating above-mentioned issue legally. (See the Annex: directorial elections conducted with violations of law by the board of trustees of the public school of Akhasheni village in Gurjaani, with the relevant recommendation elaborated; the case of the art contest at the Academy of Arts, etc.)

There have been cases when citizens were refused a job position due to the offence they had committed in the past and despite their charges were later annulled. Nobody is entitled to take away the opportunity from the citizen, because of his past, to integrate into society and become its full-fledged member. **Shakro Kobaidze** was refused a position in the Border Police only because he had previous conviction. On the recommendation from the Public Defender to review Kobaidze's application anew the head of the legal support unit of the Border police Department came up with a very original refusal. The word 'with conviction' was understood and explained by them not as it's interpreted in the Criminal Code of Georgia but as it's given in the Georgian language explanatory dictionary. This is the case when no comment can be made. It is sad that the fate of the citizens is sometimes decided by officials of such competence. This is a classic example of improper governance.

A contest held with violations became an excuse for firing employees from the **Ivane Javakhishvili Institute of History and Ethnology**. The results of the contest carried out with defiance of law on 5 September 2005 were annulled by an individual administrative-legal Decree of the Minister of Education and Science of Georgia. The administration of the institute was advised to re-announce job openings for the academic position. However, this

request was not fulfilled. The institute's administration held the contest only formally, did not provide contestants with the information regarding the announcement of the contest as it was prescribed by law and willfully decided upon the candidates. According to the response of the administration, the unsatisfactory results of the contest became the grounds for employees' dismissal; therefore there was no need for issuing an individual administrative act/decree on dismissal of employees.

Non-compliance with the requirements of the contest became the basis for **dismissing employees from the Monitoring and Forecasting Center of the Ministry of Natural Resources and Environmental Protection of Georgia.** It is worth mentioning that according to the provided case materials, not only the requirements specified by the contest provision were violated, but the signatures of the contest commission members were falsified. Unauthorized persons were involved in the activities of the commission. The Public Defender addressed the recommendation to David Tkeshelashvili, Minister of Natural Resources and Environmental Protection requesting to annul the individual administrative act issued by the latter. The recommendation was not satisfied. Non-compliance with law and violations of citizens' human rights were so obvious that the Public Defender decided to send the case materials to the parliamentary committees for Human Rights, Civil Integration and Natural Resources and Environmental Protection. In addition to violating the labor rights, the Ministry of Natural Resources and Environmental Protection did not pay the salary liabilities to the dismissed contestants for the years 1998-2000.

Goga Khachidze, Presidential Plenipotentiary in Samtskhe-Javakheti region dismissed **Irina Gogoladze,** mother of an underage child while she was on a maternity leave. This action completely contradicts the labor legislation – the relevant administrative act was unlawful and legally ungrounded. The Public Defender recommended annulling the administrative act. The recommendation was not satisfied. It is worth mentioning that the Court of First Instance ruled for Irina Gogoladze. The other party appealed against this ruling.

From the applications on labor suits the Public Defender distinguished one more tendency. Heads of governmental agencies make decisions on dismissing employees following own views and opinions. The documents provided reveal the lack of adherence to the principles of fairness and equality.

Keeping or promoting experienced and professional staff or hiring new professionals and motivated persons is the heart of the reform. However, this should not happen in a way that offends others or ignores their interests.

Judge **George Giorgadze's** case is an example of violating right to work. He was appointed to a position without his consent. The Public Defender addressed recommendation to the President of Georgia to examine the case materials and recover Giorgadze's constitutional rights (see Annex).

Lieutenant of Justice **Darejan Meparishvhili's** case also represents a violation of the right to work. Since 2002 she'd worked as a senior specialist at the press center of Penitentiary Department of the Ministry of Justice of Georgia. Upon returning from maternity leave, she

was denied permission to enter the premises of Penitentiary Department; she'd been disturbed while trying to resume her professional activities and a month later she was dismissed by the management of penitentiary department.

After examining the case materials it was found out that during one-month period (2 March - 3 April) Darejan Meparishvili was permitted to enter the premises only three times, for a short time. As a result, she was unable to work appropriately after the maternity leave. Other very important aspects that became the basis for violation of Darejan Meparishvili's labor rights were also identified.

The Public Defender addressed the recommendation to the Ministry of Justice of Georgia for the purpose to protect D. Meparishvili's rights. The recommendation requested annulling the administrative order dismissing Meparishvili and restoring her position. The Public Defender also demanded to examine the actions of respective employees of the Penitentiary Department who hindered Meparishvili from doing her work and to deliberate upon possible disciplinary procedures against them. The Ministry of Justice refused to study the case pursuant to Article 182 of the General Administrative Code of Georgia, since for protection of her rights she had appealed to the court.

Unfortunately, when there is a lawsuit ongoing in the court, the administrative structures consider the legal nature of Public Defender's recommendation incorrectly; hence we receive a rejection that is ungrounded and unlawful. Administrative bodies are guided by Article 182 of the General Administrative Code of Georgia: "An administrative agency may not review an administrative complaint if the case regarding the same claim, involving the same parties, and based on the same ground is in a court." Pursuant to Article 2, part 1, subparagraph 'i' of the General Administrative Code of Georgia, an administrative complaint: "means a written request submitted by an interested party to a competent administrative agency pursuant to this Code for the purpose of seeking redress through invalidation or modification of an administrative act issued by that agency or its subordinate body, or through issuance of a new administrative act."

There is a considerable difference between the Public Defender's recommendation and administrative complaint from material-legal standpoint. The Public Defender must not be regarded as an interested party, whose legal interests are directly influenced by the administrative act or the action of an administrative structure. Therefore, it is unacceptable to consider the Public Defender's Recommendation as an administrative complaint.

Salary liabilities

Frequently, encroaching upon somebody's right to work is accompanied by denial to pay compensations, which is a violation of social rights. Position of the governmental structures is the most trivial "you are entitled yet you are not." The applications received by the Public Defender confirm the acuteness of the problem of paying back the old budgetary liabilities. The citizens not only are unable to receive due compensation within the deadlines set by law but they are practically forced to sue in the court in order to protect their rights and receive

payments. However, after court ruling, they still wait for months or years since these decisions are not enforced.

For example, despite considerable budget of the Ministry of Defense, the latter has not yet paid off salary liabilities accumulated for years. **Tariel Bzhalava, Jumber Bendeliani, Merab Gvasalia, Nazi Lobzhanidze and Elguja Lobzhanidze** have been working for years in Khoni separate reconnaissance battalion military units of the Ministry of Defense. They collectively appealed to the Public Defender. The Ministry owes them payments accumulated during last years including salary liabilities, food compensations, monetary awards and rent payments. Despite appealing to respective agencies, they have not received any payments yet. The applicants have all relevant documentation.

Nana Japaridze's application applied to the same issue. She was working for the Ministry of Defense Akhaltsikhe brigade #22, in secret services. In 2005 she was dismissed from her job because of her age. She has not received salary for years 1998-2000.

Ministry of Defense similarly responds to the Public Defender's recommendations on salary liabilities. According to this response, liabilities that are credited by the Ministry of Finance will be remunerated from the appropriated funds allocated from the state budget; and in case of existence of respective source the ministry will consider the issue of paying liabilities.

The cases of ex-employees of the Interior Ministry **Galaktion Bibileishvili** and **Tariel Kapanadze** also apply to the same issue. They have been waiting for due payments for years (see Annex).

There are many applications of citizens complaining about different agencies' salary liabilities at the Public Defender's office.

Tsisana Khetsuriani in her application mentioned the fact that her husband Vakhtang Tsomaia was waiting for salary liabilities reimbursement from JSC United Distributional Energy Company till death. Notwithstanding appealing to the respective agencies Tsomaia failed to receive own money in his life. The family was suffering from harsh economic condition.

On the basis of the Public Defender's recommendation United Distributional Energy Company issued to Tsomaia's family a part of his salary, in the amount of GEL460. According to the response from the company, the family would be paid the rest of the debt as soon as the economic state of the company improves.

Citizens **Azarashvili, Markoishvili, Gegeshidze and others** request to be paid the debts from the Ministry of Natural Resources and Environmental Protection. Citizen **Makvala Bochorishvili** also was asking the same ministry to pay her the salary liabilities owed to her died husband. According to her application, her husband Vakhtang Tsivtsivadze had worked as the head of Abastumani hydro meteorological station for 30 years. This service was abolished on 31 December 2006 thus generating 18-month salary liability. Bochorishvili

addressed respective agencies regarding this issue many times however failed to receive any resolution whatsoever.

The Ministry of Natural Resources and Environmental Protection sent a standard answer in response to the Public Defender's recommendation: "Pursuant to Article 9 of the Georgian Law "On Georgian State Budget 2007", the Ministry does not have reserve funds to cover the liabilities generated during previous years, therefore the Ministry is unable to guarantee reimbursement of salary debt until appropriated funds have been allocated."

This is one of the significant problems that should be addressed on national level and not on the level of separate agencies. The obligation to pay off salary liabilities lies on the state as a whole and not on the particular governmental agency. Ministers and the heads of different state agencies should have state-mind thinking and, instead of sending these cliche answers, should be intensively addressing the Ministry of Finance, prime-minister, etc. to settle this shameful problem; especially at present, when the state budget allows for this opportunity.

Hereby I publicly address the Ministry of Finance and Prime Minister with the recommendation to take necessary measures in order to pay off the salary liabilities.

The issues of social protection

Despite the increased budget, majority of the population of Georgia live in the heaviest social conditions and are absolutely unprotected. The statistics in this regard is alarming, which is proved by the huge number of applications registered at the Public Defender's office in the first half of the year. Our inquiries showed that the implementation of State Program on Poverty Reduction lacks transparency. People who really are in need do not actually receive any aid under this program. Neither are our legally justified recommendations satisfied by the heads of respective agencies.

It's been already three years since **Inna Komakhidze** lives without shelter on Machabeli street. She appealed to the different governmental agencies for help many times but to no avail. Even more, Ministry of Social Aid and Employment to the response of the Public Defender's recommendation pointed out that the state will not able to help the citizen, as she does not have a permanent residential space.

Logically the question arises – if a person without shelter, food and money is rejected to have a right to participate in the state aid program then whom are we helping? We have received numerous complaints regarding this issue from citizens. It is time for respective agencies to prepare necessary amendments to the different statutory acts since those who are socially vulnerable and suffer an extreme hardship cannot be commiserated by just saying that their problem cannot be solved as far as particular ministerial order does not regulate their problem. Procedures should be simplified and the State should be giving the aid to all in need.

Citizen **Gaioz Giorgadze** officially applied to respective agency on 8 August 2006 requesting to be added to socially vulnerable citizens' database. He was in urgent need of a surgical

operation and every delay of the surgery date had negative impact on his health. Social Aid and Employment Agency with an excuse of having abundance of applications (at least the official response was stating this) did not examine his case in a timely manner and failed to assign rating scores. As a result G. Giorgadze could not receive medical insurance policy. In case of examining the application in the deadlines set by law, the citizen according to the assigned rating scores would have become a beneficiary of medical aid card. The Public Defender addressed a recommendation to the Ministry of Labor, Health and Social Affairs regarding the issue. However, the ministry refused to give medical insurance policy to G. Giorgadze (see Annex).

Please see Annex for similar cases (e.g. Ala Samsonadze, Zhuzhuna Odikadze, Svetlana Bondoiani, Marina Mskhiladze, etc.)

Dwelling issues

Majority of the applications received by the Public Defender during the first half of 2007 apply to heavy dwelling conditions of citizens. In most cases they are complaining about not having shelter. Some of the applicants live in such conditions that may become dangerous for their lives at any time. None of the recommendations sent to different governmental (self-governmental) agencies were satisfied. Mostly the agencies respond in similar manner, claiming that there is no state fund of free residential spaces available.

On 1 January 2007 **Liza Mzhavanadze's** apartment was burnt down as a result of force majeure. L. Mzhavanadze's husband died during the fire. The family was left without inventories needed for ensuring satisfactory dwelling conditions. They had to move in to 22 Kerchi str. (former intelligence academy). Intolerable dwelling conditions jeopardize their underage children's health.

Based on the application received from L. Mzhavanadze we addressed a recommendation to Tbilisi City Hall. In response the latter explained that due to absence of unoccupied residential spaces in Tbilisi it's impossible to satisfy L. Mzhavanadze. The agency confirms however that as soon as the first opportunity arises, the Tbilisi City Hall Local Property Management Service will consider Mzhavanadze's case (see the similar recommendations and responses in the Annex on social issues. E.g.: individual cases of **Mzia Jatchvliani, Liza Barnabishvili, Tsisana Mamisashvili, Nazi Bichashvili, Inna Komakhidze, Murman Tolordava, etc.)**

Whilst the State has taken the responsibility to provide its citizens with dwellings (Law of Georgia "On Social Aid", Article 18), the arguments stating that the free dwelling spaces' fund does not exist and therefore the local self-government agencies are unable to provide the citizens in need of residential space are legally unsound.

The issue of registration of the right to property in the civil registry

On 12 February 2007 citizen Mariam Todadze, living in Tbilisi, 7 Tsereteli Ave., apartment #19 appealed to the Public Defender. Her complaint applied to the privatizing her apartment

and registering her right to own said apartment in the civil registry. Mariam Todadze lives in heavy social conditions; she is registered at the database of extremely vulnerable households and is unable to move freely due to state of health. According to the legal representative of M. Todadze, she addressed a request to the National Civil Registry Tbilisi Registration Service and provided all necessary papers for registration. On 4 December 2006 the civil registry issued an administrative act #0113-032968, which rejected the right of the citizen to register her apartment in the civil registry; at the same time, the agency refused to reimburse the undertaken service costs and send submitted documentation back. The Civil Registry National Agency adopted the similar act pursuant to order #01/11-43/T-39 of 10 January 2007. Following the amendment made based on the order #84 of 6 March issued by the head of the agency, M. Todadze was repeatedly rejected the right to register her apartment as a private property.

According to the case materials submitted to the Public Defender, on 2 October 2006 Didube-Chughureti district government issued an Order #359 on privatization of the apartment located on Tsereteli Ave., registered in the district residential fund. On November 16, an agreement was made and certified by notary between the representative of district administration Nino Sakhvadze and Levan Gigashvili, the legal representative of Mariam Todadze on transferring the apartment into private ownership, without any compensation. According to Levan Gigashvili, on 22 November an agreement on privatization together with GEL37 and other necessary documents was submitted to Tbilisi registration service and accordingly, the citizen was given an acceptance note informing that the registration service would issue the document verifying the registration of the private property after five working days, on November 29.
According to Article 7, paragraph 1, subparagraph 'f' of the Organic Law "On Local Governance and Self-governance" it is a local governance agency's exclusive authority to establish and manage local self-government's dwelling fund. Hence, paragraph 6 of the above-mentioned administrative order (#01/11-43/T-39) states that on 2 October 2006 the local administration issued an order on privatization and the act of privatization was implemented by authorized agency that fully complies with the requirements set by law. From 19 October, the day when the results of the local government elections of 2006 were officially announced, the Organic Law of Georgia "On Local Governance and Self-governance" was invalidated and a new Organic Law of Georgia "On Local Self-governance" was enforced. Article 16 of this Law defines exclusive authorities of self-governing body, which pursuant to paragraph 2, subparagraph 'a', include "managing and handling the property belonging to self-governing body".

Later, on 29 December 2006, the Law was amended and Article 65^2 was added, which defined transitional authorities of local self-governing bodies: "Executive bodies of local self-government in accordance with the procedures prescribed by Georgian legislation shall carry out the transfer of non-privatized residential or nonresidential (isolated or not isolated) spaces to their lawful users without compensation."

According to provided documents, all this time Mariam Todadze had been sending official letters to civil registry service regarding the registration of her apartment (see the Annex, receipts issued by the Civil Registry National Agency, incoming letters #t-39(18.12.2006), t-

43 (26.12.2006), 345/(12.02.2007)), payment receipts of the JSC Bank of Georgia 17.11.2006, 21.11.2006, etc.) However, she was receiving denials in response to her letters. The basis of the civil registry agency's refusal and issuing above-mentioned administrative order #01/11-43/T-39 has become the claim that the agreement was made by an unauthorized representative of district administration. The last sentence of the paragraph 7 of the mentioned order states: "The privatization agreement was made on 16 November 2006. For that time, representative of Didube-Chughureti district administration was not authorized to act on behalf of district administration as party to privatization agreement." The privatization agreement states the opposite. According to the agreement, Nino Sakhvadze is a representative of Didube-Chughureti district administration and acts on its behalf based on the power of attorney issued by Didube-Chughureti district administration (n 03.02.2006 #gas 18-05).

Article 24 of the Law of Georgia "On Registering the Ownership Rights on Immovable Property" clearly defines the grounds for rejecting registration. In case of existence of any of the circumstances listed in this article the decision should be well-grounded and satisfy the legal requirements. In given case no sound arguments are provided why Nino Sakhvadze was not authorized to make an agreement and therefore the circumstance that became the basis for issuing the administrative order is not justified.

Pursuant to Article 53, paragraph 5 and Article 96 of the General Administrative Code of Georgia, an administrative agency shall not base its decision on circumstances, facts, evidence or arguments that were not examined during administrative proceedings. Whilst these proceedings, the administrative agency should study all the case-important circumstances and make a decision based on evaluating and confronting these facts. It is inadmissible for an administrative agency to substantiate the issuance of an individual administrative-legal act by the facts or circumstances that have not been examined according to procedures prescribed by law.

An administrative-legal act is invalid if it contradicts the law or is prepared or issued through violating procedures prescribed by law. An administrative-legal act should be annulled if other conditions identified by Article 60^1, section 2 of the General Administrative Code of Georgia exist.

Order #84 of 6 March 2007 issued by the head of the Civil Registry National Agency can not be counted as a correction of the technical or calculation errors made in #01/11-43/T-39 administrative-legal act. Order #84 changed the administrative legal act (#01/11-43/T-39) of the Civil Registry National Agency and the applicant was refused the registration of her apartment, while the original decision was granting her this right. The substantial correction of an administrative act, according to Article 59, section 2 of the General Administrative Code of Georgia means the issuance of a new administrative act; hence, we cannot agree with the stipulation stated by the Order #01/11-1242/T-39/345/T of March 7, 2007: **"When considering letters and complaints of citizens, the Civil Registry National Agency is acting within the limits of the Georgian legislation which does not always allows to exercise justice and show mercy."**

The Public Defender addressed the civil registry service a recommendation on invalidating the administrative-legal act #01/11-43/T-39 of 10 January 2007 and other decisions made on the issue, and to issue a new administrative-legal act drafted and adopted in accordance with law.

The Civil Registry National Agency responded to this recommendation, however did not take the latter into consideration and again failed to explain why the representative of Didube-Chughureti district demonstration Nino Sakhvadze was not authorized to act on behalf of the administration and make an agreement of 16 November 2006.

Land legalization issues

On 8 February current year, citizen **Apolon Gadelia** appealed to the Public Defender with a request regarding legalization of the land plot. Apolon Gadelia is the Colonel of Police, Veteran of Armed forces of Georgia and was awarded an order of honor (see Annex). Presidential order #273 of 13 March 2003 by a rule of private use gave a right to Apolon Gadelia to buy a land plot (220 sq. meters) located nearby the garage owned by him on 38/6 Engineer str., in between #6 auto-school and an apartment building locating on 8 Virsaladze str. for utilization. The second part of the presidential order obliged Tbilisi City Hall (I. Zodelava) to draw up a document attesting the purchase of the land plot within a month after actual purchasing the land and submitting necessary documents by A. Gadelia.

On 20 February 2004 the citizen paid the costs for the land plot in an amount of GEL2244.50 (see Annex, page 5, TbilBusinessBank cashier receipt #001, 0402008). This amount was defined according to the tariff assigned by Tbilisi self-government council. Tbilisi municipal service of urban projects prepared a plan of the land plot that was approved by the city chief architect.

As for registering the land plot in the civil registry, in order to attain the right to immovable property according to law and pursuant to the Civil Code of Georgia, the citizen failed to attain this right notwithstanding numerous applications and letters addressed to the respective municipal services with the request to prepare necessary papers.

Tbilisi City Hall is an administrative agency and pursuant to Article 12 of the General Administrative Code of Georgia: "Any person may apply to an administrative agency to solve the matters that fall within the area of responsibility of the agency and directly affect the applicant's rights and legal interests." Also: "An administrative agency shall review the application pertaining to the matter that falls within the area of its responsibility and render an appropriate decision, unless otherwise prescribed by law." According to Article 100 of the same Code, an administrative agency must inform the applicant regarding the decision within the timeframes and according to the procedures prescribed by Law."

Administrative agency is required to provide an interested party with the information regarding rights and obligations of the latter; request submission of additional documents and set the dates for submitting them; inform the applicant on the rules of reviewing the matter,

type of review and dates; also the requirements that the application or appeal should be in accordance with, and refer to errors if any exits.

Pursuant to Article 15, paragraph 2, subparagraph 'a' of the Law of Georgia "On Management and Alienation of State-Owned Non-Agricultural Land", the land-using natural and legal persons must draw up a land-use confirming documents within four years from the day of adopting this Law. In case of failure to adhere to above-mentioned requirements the land-using persons have to pay a fine in an amount of the annual tax on the land on their disposal. Apolon Gadelia is right in claiming that refusal on legalization of the land plot or denial of this process will entail a material damage.

Regarding delays in the in above-mentioned case, we would like to point out that adherence to the presidential decrees is obligatory for every agency and this obligation extends to the while territory of Georgia. We would also like to add that pursuant to the presidential Decree #273 of 13 March, 2007 Tbilisi City Hall was given a month to draw up the papers for attesting the purchase of the land plot.

Based on above-mentioned the Public Defender concluded that A. Gadelia's rights have been violated. Therefore according to Article 21, paragraph 'b' of the Organic Law of Georgia "On Public Defender", the Public Defender addressed the recommendation to the Tbilisi City Hall, requesting to review the given case in accordance to the procedures prescribed by law.

Tbilisi City Hall responded on 20 March current year, pointing out that no agreements has yet been concluded with the winners of the auctions and tenders held regarding the non-agricultural land plots, neither with the citizens who have been granted the land plots by the presidential decree. According to the Municipal Commission on Management and Alienation of Land Plots, they do not have information why the presidential Decree was not enforced in a month period in order to make purchase agreement and draw up documents certifying the purchase of a land plot.

The same commission pointed out that the application with supplementary documents was transferred for further response to the City Hall General Inspection of Law Observance.

The Rights of the Child

Violence

The Public Defender's Center of Children's Rights studied many cases of violence on children including psychical abuse, psychological pressure and sexual violence. Certain gaps were identified on legislative and executive levels, putting obstacles on the way of providing a full-fledged assistance to children.

It becomes clear that there is no systematic approach to this problem in Georgia. On processing each fact, in order to achieve desired results, the representatives of the Public Defender had to explain to the relevant structures the activities they were supposed to fulfill. This situation points out once more that the system of children's care in Georgia needs to be addressed through coherent state efforts.

Resource Centers

The positive changes implemented for the last years are noteworthy: local bodies for guardianship and care - so-called resource centers have been created. Their existence at the regional level is very important for effective working of child care system.

Resource centers are comparatively new establishments and supposedly this is the reason why their important role is not fully acknowledged by different segments of childcare system as well as the resource centers' staff.

Another reason for that is an imperfect and inflexible legislation. And, finally, the scope of work resource centers have to deal with, requires considerable resources since it covers practically all aspects of childcare.

According to the Provision, a resource center fulfills all functions of the body providing guardianship and care, accordance with the rule established by law; namely, it coordinates the processes of adoption of the child, or placing the orphan child or the child lacking parental care to foster family, processes relevant database and submits reports on the implemented work to the Ministry periodically or on as-need basis. Apart from that, this structure supervises activities of educational institutions including out-of-school educative institutions. Also, "studies and monitors the processes ongoing in educational institutions, out-of-school educational institutions, general educational institutions, centers of professional education and preschool institutions of orphan children, children lacking parental care and children with disabilities, located at the given territory."

When parents evade their parental duties, the guardianship and care body appeals to court, raising the issues of removal of the child and establishing guardianship. On relevant conclusion of the guardianship and care body, court rules for adoption of the child. At the same time, following the child's interests, the guardianship and care body is authorized to raise an issue of annulling on adoption.

For efficient working of said structure it's important to elaborate a clear action plan, to have qualified human resources and to be able to react quickly and effectively.

For the time being, maximum 3 staff members work in the resource centers; there are no social workers involved, and the professional qualification of the personnel needs updating.

Law "On Eradication of Domestic Violence, Protection of and Assistance to the Victims of Domestic Violence"

The Law "On Eradication of Domestic Violence, Protection of and Assistance to the Victims of Domestic Violence" was adopted in 2006, which envisages also protection of and assistance to the children – victims of domestic violence. The Law stipulates measures protecting child against the violence of parents: As it's formulated in Article 4, the sign of psychical violence on the child is an unconditional ground for raising an issue of his/her separation from the parent, who committed violence. According to the data of the Ministry of Interior, 96 restraint orders were issued by Tbilisi patrol police central department and 16 restraint orders were issued by Adjara patrol police department in 2006. From 1 January to 1 July 2007, 326 restraint orders in total were issued in Georgia; of that, 234 orders were issued in Tbilisi, 40 - in Adjara region, 19 - in Imereti region, 7 - in Kakheti region, 18 - in Shida Kartli and 8 - in Kvemo Kartli. Also, in Interior Ministry's response it's mentioned that no statistical data is available at this stage as to what proportion of orders applied to the violence against child. However, the information provided needs to be duly processed since it's important to have exact data on how many children have become victims of domestic violence, especially when the relevant cases were opened.

In case of urgent need, in order to protect victim and partially restrict an offender, an authorized body can issue a restraint / protective order as a temporary measure, which can be required by guardianship and care body, in case of violence against child.

Proceeding from above-said, it's clear that the legislation envisages almost all steps to be made for protecting victim against violence. Though there are gaps hindering achieving the further progress.

This first and obvious obstacle on the way of protecting child against violence is the attitude of society towards such facts, which does not have a clear understanding what psychical and/or moral damage can be inflicted on child in case of violence occurred from parent(s) or other persons' side. Psychical violence towards child is not perceived as an offence, moreover, not infrequently, it represents a usual occurrence.

It's not infrequent when child is suffering from violence for a long time, being afraid of complain about it openly, since (s)he knows that society wouldn't share his/her position.

An application was addressed to the Public Defender's office on the facts of sexual violence of father against his minor daughter (see Annex). Despite the child warned relatives about her physical abuse and attempts of sexual violence from father occurred more than once, no

one helped her no how. Resistance of the victim and her sister and brother exacerbated father-daughter relations, but nevertheless, father again did not hide his sexual interest towards his daughter.

After one month, with the help of the close relative, the victim addressed the Public Defender's office. In her application, the minor girl described everything what had happened. The case was re-sent to the Office of the Prosecutor General for response. Due to the pressure from relatives, the girl was forced to go back home.

However, the course of events changed soon after – a relative, who initiated addressing the Public Defender, asked not to submit the application to the Prosecutor' Office, so that the father would not learn about the state of affairs.

Quite often the victim, having addressed the relevant structures for help, continues to live together with the person committed violence. The situation is more acute when a minor is involved – a parent's aggression increases and accordingly, increases a danger towards the minor child.

In above-mentioned situation, the victim was living with her father together with her sister and brother, without mother, and knew very well that after speaking about the state of things loudly, living together with father would be impossible. Absence of shelter was one of the reasons why she couldn't address the relevant bodies for help earlier.

The Public Defender's Center of Children's Rights addressed the relevant governmental and non-governmental structures for response. Particularly, we addressed with recommendation the Office of the Prosecutor General, Ministry of Education and Science and the non-governmental organization "Empathy" for carrying out an independent expertise.

On the basis of the address of the Public Defender's Center of Children's Rights, on 14 May 2007 an investigation was opened in the Interior Ministry Kvareli regional department on the criminal case instituted on the facts of violence of father against his minor daughter. In said letter it's mentioned that on questioning the victim denied the facts of violence against her. However, it should be mentioned here as well that while talking with the social worker of the Ministry of and Education and Science, the child confirmed the facts of sexual violence committed by father. From the letter of said Ministry we learnt that all of three children moved to grandmother's house.

Protection and restraint order

Protection and restraint Order is a document temporarily restricting the rights of parents, accused of violence against their children until the case has been studied completely. Said order is the only document allowing different shelters and rehabilitation centers to take care of the child without parent's permission.

In order the child can ask for shelter without parent's consent, a well-grounded doubt should exist that a person responsible for the child does not execute his/her duties and restricts

child's rights so as to leave the child with such person puts child's welfare and health under risk.

According to Article 14, paragraph 1 of the Law "On Eradication of Domestic Violence, Protection of and Assistance to the Victims of Domestic Violence": "the sign of psychical violence on the child is an unconditional ground for separation of child from parent by issuing a protection order, as a temporary measure until the case has been studied completely."

Confirming the sign of violence requires a state expertise that envisages procedures, while executing of which these signs may disappear. Said rule may be effective only in case the victim calls police for help at the very moment of violence so as the sign of violence (psychical injury) is heavy and won't go off soon.

The practice shows that in such heavy cases it's difficult for child to make right and well-thought steps and inform timely the relevant structures that, in turn, makes difficult to separate the latter from the parent.

Majority of applications submitted to the Public Defender's Center of Children's Rights were of this category and underlined an inexpediency of leaving the minor child with his/her parent(s), who resorted to violence against the child.

On processing the above-mentioned case, we addressed couple of shelters and rehabilitation centers (NGOs) but were responded that without parent's consent and restraint order they were not in the position to provide shelter for the child.

The next level was the Ministry of Education and Science. As the Ministry representatives told us, while talking with the social worker, the child admitted the fact of sexual violence committed by father, which made possible to send the child to the institution for alternative care. However, the issue of guardianship has not been resolved until today, the children have just moved to grandmother's house on own initiative.

There are cases when police refrains from asking for a restraint order even if the facts of violence do exist. The case which the Center of Children's Rights submitted to the Ministry of Education and Science in summer 2006 is the example. The case applies to the family of mother and her 14-year old daughter. Both persons had mental problems, mother couldn't provide due care for her child and the situation was unbearable. After our address, the girl was placed at Martkopi boarding house, but mother wanted to have her back and took her from the institution. The child did not want to come back and hence, the relations have become very tense between mother and child. As reported neighbors, one day the voices of strife and threats were heard loudly from the house where the family lived; then the child ran out at the balcony and called for help. The neighbors called patrol police. Mother did not allow police officers to come in, so policemen took the child from the balcony and placed her back to Martkopi boarding house.

Said act was carried out without mother's consent, since it was clear that the tense situation within the family put the child's health under threat. However, despite the evident fact that a co-existence of the mother and child is impossible and the case has been processed for more than one year so far, the issue of restricting mother's rights has not been yet raised. According to the law, despite the real threat from mother's side, she has the right to take her child from boarding house until present. The Law "On Eradication of Domestic Violence, Protection of and Assistance to the Victims of Domestic Violence" envisages the legal mechanisms for protecting victims of violence. So implementing by law-enforcers the certain measures stipulated by legislation would create a safety guarantee for the child and restrict mother in her activities.

Problems sometimes are substantiated by the gaps in legislation. The process of implementing established procedures is delayed and as a result, more than one structure has to deal with the problem for providing assistance to the child.

According to applicable legislation, for providing efficient and timely assistance to the victim it's necessary to inform police and the guardianship and care body about the fact of violence immediately. Existing system is incapable to ensure protection of the minor child from domestic violence. Police officers' qualification should increase and the structures of care bodies improved. Also, it's very important if society acknowledges its role in protection and welfare of children.

According to Article 1198[1], paragraph 2 of the Civil Code of Georgia: "Natural and legal persons who learn about the cases of violations of rights and interests of minors shall report about these violations to the guardianship and care body according to the place of residence of minors".

Enforcement of this Article will make any citizen witnessing violence, feel obliged to react adequately and thus ensure children's' safety. The necessary condition for enforcing this Article is raising public awareness in the relevant field – by arranging public campaigns, planning and holding educational programs and events, broad involvement of electronic and printed media. **Also, each citizen should know that (s)he will be held accountable for indifference**.

According to the Article 172 of the Code of Administrative Offences: "Failure to carry out by parents or other legal representatives of their obligations regarding upbringing or training of children or minors as well as taking addictive substances by minors without doctor's prescription or other offences (appearing in public places in the state of alcoholic intoxication or drinking alcohol) shall entail a warning or imposition of an administrative fine on parents or other legal representatives in the amount of twenty to thirty times the minimum wage. A minor hooliganism or hooliganism, committed by juvenile aged 14 to 16 shall entail imposition of an administrative fine on parents or other legal representatives in amount of two to four minimum wages. **Not informing a guardianship and care body on the facts stipulated by part 1 of this Article shall impose an administrative fine in amount of ten minimum wages."**

In the chapter dedicated to the Rights of the Child of the Public Defender's Report for the second half of 2006 there are concrete cases given which include the above-mentioned facts; the Public Defender's Center of Children's Rights sent each concrete case to the relevant agency for further response. Namely, 17-year old B.A. and brother and sister L.A. (12-year old) and M.A. (15-year old) cases showed that in both cases children do not attend school for the reason of their parents. These cases were re-sent by the Center of Children's Rights to the police and the resource centers of the Ministry of Education and Science. In another - M.N., L.S., G.G., M.P., S.B.'s cases the parents are alcohol addicts and therefore, children are forced to spend most of their time in the street begging. The facts of psychical and psychological violence committed by parents were also present in mentioned cases.

Activities of respective bodies, namely, law-enforcers and educational resource centers did not have effective results in terms of improving the rights of above-mentioned children. According to the latest information; children continue living in same conditions.

Despite the Georgian legislation envisages certain protective measures it is rather incomplete and does not provide the agencies responsible for response with a clear definition of the activities to be carried out for full-fledged protection of the rights of the child.

On the other hand, if said agencies are interested in above-mentioned, the children's safety would be better ensured. More specifically, despite absence of concrete definition of activities, by applying different articles and norms dispersed in Georgian legislation it would be possible to eradicate the cases of violations of the rights of the child.

It's obvious that under present realities providing efficient response lies completely upon a good will of the agencies involved. Article 1198[1] of the Civil Code and Article 172 of the Code of Administrative Offences do not work. No one was fined for indifference. Though in the above-mentioned case it was clear that a child was asking for help from relatives so if they responded adequately and timely, the heaviest events that unfolded later, would be avoided. In the course of processing the case this issue has not been raised.

Proceeding from above-said, it can be concluded that the law should be improved; it should become harsher and more precise; and the personnel of the relevant structures should be retrained.

As it was mentioned above, separation of the child from parent is practically impossible even if there is a direct evidence of violence. The process of studying such cases is usually delayed. As the practice shows, often it's unclear who is responsible for supervising the safety and state of health of the child while processing his/her case. Accordingly, this requirement is not fulfilled; so the child can become victimized after his/her case has been submitted to the relevant agencies.

In his addresses to the Parliament of Georgia, the Public Defender has repeatedly demanded for specifying the timeframes for response. In the report of the second half of 2006 a recommendation was made to shorten the timeframes for processing the cases concerning minors in the Ministry of Education and Science and its structural units, and the Ministry of

Labor, Health and Social Affairs, since the rapid reaction in such cases plays a decisive role. In the report of the second half of 2006 it was mentioned as well that on establishing the facts confirming that the child is forcedly pushed to be begging in the street, the strictly determined timeframes of the state structures' response should be set. In order to ensure the normal development of the child it's necessary the response to be rapid and efficient. The Public Defender addressed the Ministry of Interior in the same report with the recommendation to specify the mechanisms of response and the agencies responsible for protecting the child against parents - perpetrators of violence. It was also mentioned that is advisable to set the shortest timeframes possible when there's a direct evidence of crime and/or a well-grounded doubt does exist. Also, it's necessary to determine and legally approve the period for carrying out the first measures and nominate a concrete structure responsible for health and safety of the victim while processing the case. The Georgian legislation does not envisage said provision. Availability of the above-mentioned service would reduce the risk of abusing the victim of violence after submitting the application to the state structure. The child, asking for help and stating that (s)he is beaten and mistreated should be protected by state immediately upon the latter has complained about such facts openly.

The application of Mrs. Ketevan Kobaladze, director of the Tbilisi Center of Social Adaptation of Children, addressed to the Public Defender's Center of the Rights of the Child is a clear example of above-mentioned (see Annex). The application applied to the minor U.A. born in 2000, who found himself in the above-mentioned Center. As confirmed by the doctor, the child had multiple injuries on the body and face. The child said that these injuries were inflicted by the parents; he said as well that mother and aunt forced him to beg in the street and bring money. The Center of Children's Rights drafted a protocol on said case and the persons involved were asked for explanations. The child himself was asking for help and categorically did not want to go back home. The materials concerning the case were sent to the Office of the Prosecutor General, The Ministry of Education and Science childcare department and Gldani-Nadzaladevi regional educational resource center for further response.

The next day, despite the child resistance, the mother forcedly took him home. Only after one week he was separated from the mother and placed to the Tskneti children's boarding house. While before, the child had been victimized and had been begging in the street.

It's beyond any critics that after confirming the fact of violence, the child continues the practice of forced begging, is starving and suffers insulting, humiliating and brutal treatment from parent(s) or any other person. Such facts have more than once become the subject of consideration of the Public Defender.

Said gap puts the credibility of state structures under threat in the eye of the regular citizens, and repeated addresses to this end completely lose the sense.

Stigma

The Public Defender deemed necessary to mention one more detail - the fact of domestic violence is thoroughly hided usually by the victim, which asks us to study the case confidentially and to the maximum extent possible, without any publicity. The victim of violence as usual does not want the situation within his/her family to become known to other people.

The victims of sexual violence are the most insistent in asking for confidentiality, especially if the sexual violence is committed by the parent or other family member and this very shameful, in the public eye, form of violence is coupled with the facts of incest.

Article 19 of the Law "On Eradication of Domestic Violence, Protection of and Assistance to the Victims of Domestic Violence" stipulates: "Information on the name, state of health and psychological condition of the victim of domestic violence is confidential and may be disclosed only according to the rule established by law." Though this norm is not enforced.

Stigma means a non-acceptance of the personal trait or value by society which, according to the latter, contradicts culture and accepted norms of this particular society. That's why revealing the fact of tabooed form of violence (sexual violence, incest) is particularly difficult since first of all, it is a victim who hides the fact him/herself.

Fighting with stigmatization of said categories of crime is very problematic and needs time. Therefore, the state should start tackling the problem by filling the legislative gaps. It is a positive sign that a citizen acknowledges necessity of the cooperation with state in revealing the facts of violence against her/him or other person, but it would be better if the law is enforced which will hold the citizen for hiding the fact of violence accountable. It should be taken into consideration as well that it's difficult for the victim to talk about the fact of violence, especially when this victim is minor.

It's very important that talks with the victim are conducted by a high-qualified professional, who has undergone a special course, has necessary skills and enjoys the child's confidence. Since for the child, who is a victim of violence it's difficult to talk with an unknown people, which often even exacerbates the child's condition.

Attendance of the family member of the child, who enjoys the greatest confidence of the latter is desirable at the meeting of the child with the social worker or other representative of the childcare system (psychiatrist, psychologist or tutor).

It's also important that the victim of violence be interrogated in accordance with the Code specially designed for this particular purpose, an "informed consent" should be put into practice, and the interrogation should be conducted according to the special rules, which will protect the child form additional trauma.

Rehabilitation

The issues of rehabilitation and the further assistance of the victims of violence are problematic in Georgia. The victim of violence, especially minor, needs rehabilitation, while

the applicable legislation does not envisage rehabilitation activities as necessary treatment. Neither does it oblige the parent to provide the child with this kind of support.

On 25 May 2007, the child became the victim of the sexual violence of her stepfather (see Annex). The representative of the Public Defender's Center of Children's Rights together with the representatives of the resource center of Didube-Chughureti regional department of the Ministry of Education and Science studied the case on the ground. The girl urgently needed a medical-gynecological help, she was severely beaten. However, helping her turned to be impossible since after the visit of the resource center's representative, both mother and child disappeared and they have not been found until present. As the head of Didube-Chughureti resource center informed the Public Defender, they continue searching for the child. It's noteworthy although that the resource center did not turned to police. Mother did not acknowledge the importance of rehabilitation for the child, and as to the law, it does not directly oblige parent to provide a full-fledged treatment of child in such cases.

Unfortunately, such cases are not adequately regulated by law. Notwithstanding requests of the Public Defender's Center of Children's Rights, no any rehabilitation activities were implemented, whereas without a special help, adapting to the environment would be difficult even for adult.

Above-mentioned cases illuminated that much work needs to be done for improving a childcare system and protecting children against violence. Working in this direction would make possible to render a full-fledged assistance to victimized children and prevent the violence.

Such facts are indeed alarming. Each case described is the heaviest. The fact of violence may have the gravest consequences on the human being and the facts of physical and psychological abuse is extremely hard for juvenile psyche; especially given the lack and inconsistent character of the rehabilitation programs for the victims of violence. Accordingly, despite that quite a number of children suffering violence, such cases are not fully revealed due to absence of the mechanisms of systematic approach. Accordingly, many cases remain without any response that has a very negative impact on society.

The Rights of the Child
Recommendations:

1. The Ministry of Education and Science of Georgia should enhance the efficiency of resource centers, as the bodies responsible for guardianship and care. Namely, the qualified social workers should be added to the personnel of the resource centers, who will be well aware of the forms of response to the facts of violence.

2. The Ministry of Interior of Georgia should create a database to include an exact information and statistical data on the children – victims of domestic violence.

3. The Ministry of Interior and Ministry of Education and Science by applying different means, should enhance public awareness and knowledge in order to protect children against domestic or other forms of violence.

4. The Ministry of Labor, Health and Social Affairs of Georgia, together with the Ministry of Education and Science should provide the functioning of the system of alternative care specially for the children – victims of violence, that will enable to move the victim child to the safe environment in the shortest timeframes possible, according to the urgent needs of the victim, until the relevant agencies make sure that the returning the child back to the family is safe.

5. The information on the fact of domestic violence should become unconditional grounds for carrying out psychical and psychological expertise on the child.

6. According to the Article 1198^1, part 2 of the Civil Code of Georgia: "Natural and legal persons who learn about the cases of violations of rights and interests of minors shall report about these violations to the guardianship and care body according to the place of residence of minors. The guardianship and care bodies, upon such notification, shall carry out measures stipulated by Georgian legislation". It's advisable to make an amendment to the Code of Administrative Offences, which will stipulate an administrative penalty for the persons, who, knowing about their obligations, won't act accordingly in the case stipulated by Article 1198^1 of the Civil Code of Georgia; since the responsibility in case of breaching said Article exceeds the limits of civil responsibility and is a subject of pubic law.

7. The Ministry of Interior and the Ministry of Education and Science should define the exact timeframes for response on proceeding cases related to the minor victim of violence:

If it becomes clear that the situation is alarming and there is a risk of child's abuse, the child should be moved to the safe environment within 24 hours.

If there's a doubt that child suffers domestic violence, the issue should be studied within one week in order to decide upon the extent of danger of child's presence in the family.

a. We address the Parliament of Georgia to make an amendment the Law of Georgia "On Eradication of Domestic Violence, Protection of and Assistance to the Victims of Domestic Violence"" stipulating an immediate enforcing of Article 19, Chapter 6 of said Law.

b. The Ministry of Interior and the Ministry of Education and Science should provide that interrogation of the child - victim of violence will be conducted by the qualified person with relevant skills.

Children's homes

In the first half of 2007, the Public Defender's Child's Rights Center conducted a detailed analysis of 7 orphanages in Georgia: Lagodekhi Educational Institution for Orphans and Children Lacking Parental Care, Upper Bodbe Boarding House, Etseri Shelter for Orphans and Children Lacking Parental Care, Tskneti Orphanage, Akhaltsikhe School (Open home for children with different kinds of disabilities), Sanatorium "Gazapkhuli" and NGO Child and Environmental Psycho-rehabilitation Center "Beghurebi" for street children.

Those houses have been monitored the second time. This time we have conducted more detailed monitoring. Living conditions of children, their education, health condition and other aspects were studied. Also we inquire about the qualifications of guardians.

Living conditions

None of the examined children's homes had satisfactory elementary living conditions. Most of the buildings are almost collapsed. Minor repairs had been done in most of the buildings in 2003-2005. It is obvious that these efforts are not enough, since the buildings are very old and dilapidated. There are no real improvements of living conditions in children's homes and this problem becomes more authentic as time goes by. Despite the fact that the Children's homes personnel is trying to keep it clean, the existing problems like broken faucets, destroyed bathrooms, sewage system, broken walls in hallways – this is an ordinary picture one can see everywhere. According to the Convention on the Rights of a Child every child has a right to live in an environment that is necessary for his physical, mental, spiritual, ethical or social development. The State is obliged to take appropriate measures to enable a child to remain in such environment.

The Public Defender's office has conducted monitoring of children's homes for three years so far. The existing situation has not improved in any of them. The Public Defender permanently addresses a recommendation to the Minister of Education and Science of Georgia on discovering a concrete violation. In most cases, the violations revealed by the Public Defender are of the same kind.

For example, on monitoring of one of the establishments, a "fantasy room" attracted our attention. Children's toys were put in this room. The room is a glassed veranda and it's easy to see all toys from outside. The room is closed for children. The tutors explained this by saying that children easily damage toys. Thus, the personnel do not refuse the fact that there is a limited access to children's stuff for children; and the staff does it intentionally and openly (see Annex #5).

Medical service

Health cabinets and medical documentation was checked and numerous violations were found out in the documents and medication provision.

During monitoring of Etseri Shelter for Orphans and Children Lacking Parental Care it was found that the nurse's room, where the urgent medicines are placed, was locked. Despite our request, opening the nurse's room was not possible. On the question what the tutors would do if the child gets an accidental injury or high temperature, they answered they would call ambulance. If this is true, then the need of the room for keeping medicines is to be questioned.

The representatives of the Public Defender's Center of Children's Rights studied the medical documentation together with the senior expert of the Public Defender's Center of Protection of Patients' Rights Irma Manjavidze (see Annex #4). Upon inspection of the institution it was discovered that records made by the nurse in medication's book did not coincide with a doctor's records on inmates on health cards.

For examining said question, the Public Defender applied to the Ministry of Education and Science and the Medical Activities State Regulation Agency of the Ministry of Labor, Health and Social Affairs.

The State Regulation Agency explored that the doctor of the Children's Boarding House of the village of Upper Bodbe of Sighnaghi region is certified in "internal diseases" and has an illegal practice in "pediatric service". Concerning above-mentioned, a protocol on administrative offence was drawn up and sent to the Sighnaghi court; also, an issue of doctor's responsibility was raised before the Council issuing State Certificates according to the Law of Georgia "On Medical Activities". According to the court ruling, an administrative fine was imposed on the doctor in amount of GEL1000. The charged doctor is on maternity leave; no decision has been made on applying a different measure against her.

The State Regulation Agency confirmed as well the fact of issuing medication by nurse without prescription. The issue of disciplinary responsibility of the nurse was raised before the director of Upper Bodbe Boarding House; as a result, the nurse got a severe reprimand.

It is obvious how vulnerable a child can become in closed institution and how deeply his different rights can be abused by tutors or other staff of children's homes. In this particular case we face violation of the right of the child stipulated by Article 24 of the Convention on the Rights of the Child, according to which a child should be provided with the first medical aid; besides, Article 30 of the Convention envisages the right of the child to leisure and the right to participate in games and entertaining activities according to the age.

The Center for Children's Rights carried out a survey on children's homes; the questionnaire include questions that reveal the skills and abilities of tutors, how do they behave when discover the facts of psychical abuse among children as well as among tutors and children. The negative answers of the tutors regarding the occurrence of the facts of violence in their institutions and therefore no need of having any specific knowledge applicable in such cases were not convincing.

Above-mentioned concrete facts represent just the separate cases of violations of the rights of children. However, upon making final conclusion, the necessity of reforms and changes in

policy regarding children's homes become obvious. It is necessary to change the old-fashioned attitude for the one based on the personal dignity and respect.

The Public Defender's Center of Children's Rights and NGO "Civil Development Institute" implement a project "Through Our Eyes" financed by the Council of Europe. The main purpose of educational-recreational-leisure camp is to help children from different regions and different educational establishments to learn about liberal-democratic principles, familiarize with the principles of the Convention on the Rights of the Child and establish a healthy lifestyle. One of the purposes of the camp was to integrate children and build confidence between them.

In the process of holding a competition, serious gaps were found out – majority of selected inmates of children's homes were falling behind in terms of education, some of the children were illiterate. As was assessed by invited trainers, there was a huge gap between children from public schools and inmates of children's homes. It may be concluded that excluding exceptions, the rates of children's progress in studies are not satisfactory.
It is apparent that administrations of children's homes and tutors need to improve their qualifications. In most cases there is a necessity to renew the staff.

Improving the living conditions is important since existence of such conditions in some children's homes is already a violation of rights of the child to leave and develop in normal, stable and clean environment.

It is necessary to define state standards in care homes, since the existence of the standard is a pre-condition for protection of the child and monitoring the institution.

The ongoing process of deinstitutionalization is acceptable and welcomed. Thanks to this reform 3 children's homes had been abolished by 2007. In the period of 2007-2008 it is planned to abolish 3 children's homes and reorganize 3 others. It should be taken into consideration that children that were not integrated into children's homes have to stay in the institutions and forced to bare harsh conditions and sometimes humiliating treatment, indifference and negligence from the staff. There are 50 homes throughout Georgia were 4.000 children live and grow.

The problems described above have been repeatedly addressed in all reports of the Public Defender from the second half of 2005, and the relevant recommendations developed. However, according to the monitoring results, the situation has not been improved.

Domestic Violence

Domestic violence is a threat that destroys society and is the most terrifying and hidden form of violence. In most cases the society turns a blind eye to the real scope of this problem and prefers to believe that only alcoholics, drug addicts of mentally disabled persons use violence against their family members, and only in exceptional cases. Unfortunately there are no cultural, economic or social boundaries to violence, and we may face it in any society. [UN agency groups in Georgia (UNDP, UNFPA, UNICEF, UNIFEM, RC Office) "Domestic Violence and Violence against Children in Georgia" 2006].

The victims of violence in most cases are women, children and elderly people. Unfortunately women are most vulnerable in families and most of the violence is committed against them by the family members. One part of society has problems with recognizing this problem; another part thinks of this problem as private / family issue and not as severe social problem.

In the recommendations (rec. #(2002)52) of the EC to the Member States regarding protection of women from violence the Ministerial Committee confirms that violence against women is a result of inequality women and men, which is a source of discrimination against women in society as well as in the family. The Ministerial Committee advises member states to look at this problem as a severe manifestation of gender inequality.
The State should take care of implementation of gender policy by creating equal opportunities for men and women in every sphere – politics, economics, etc. This will help to balance their status in families and will diminish facts of domestic violence.
On 9 June 2006 the Law of Georgia "On Eradication of Domestic Violence, Protection of and Assistance to the Victims of Domestic Violence" adopted by parliament came into effect. However enforcing the law turned out extremely difficult.

A Monitoring Council was set up in the Public Defender's office that consists of members of governmental, non-governmental and international organizations. The goal of the council is to monitor implementation of the Law, reveal existing flaws and draw up recommendations for the further improvement of the Law.

One year has passed from the moment this law was enforced. Our aim was to find out what steps were taken in order to implement the Law, whether there are any real mechanisms created to protect the victims of domestic violence, to reveal the factors that favor the effectiveness of the Law. The conducted research found certain problems such as:

- There are gaps regarding court proceedings in the existing legislation. These flaws are mostly regarding the execution of court rulings, which means supervision of protection and restraint orders.

Restraint Order is issued by police on identifying the fact of violence, upon separating parties, and represents a temporary measure for protecting the victim of violence. However, according to the existing legislation, an individual who, having committed the act of

violence, brakes this Order afterwards is not held accountable. Therefore it is necessary to make an amendment to the law that will envisage responsibility for breaching the Order.

Protection Order is issued by a court, which sets the constraints on the individual committed an act of violence with regard to victim. Pursuant to Article 10, paragraph 4, "Non-compliance with requirements of protection orders results in a criminal responsibility." We believe this article requires certain amendment.

Particularly, in case the protection order's requirements are not fulfilled, imposing a criminal responsibility is not a priority, since non-compliance with these requirements does not fall under criminal offence quite often. Hereby it applies to the violations that do not have severe forms, do not cause harm of any significance, etc., so that it wouldn't be justifiable to hold an individual criminally responsible for that. Therefore we believe it is appropriate to raise an administrative responsibility against an individual who neglected requirements of protection and restraint orders, especially, processing a case of criminal responsibility is much more complicated and time-consuming, while an administrative responsibility would enable judge to resolve the issue more efficiently.

Considering above-mentioned issues, a working group was set up from the representatives of NGOs, Ministry of Internal Affairs, Ministry of Justice and judges of Tbilisi City Court Administrative Board. The group has developed a legislative package that includes amendments to the Georgian Law "On Domestic Violence, Protection of and Assistant to the Victims of Domestic Violence" and to the all relevant legal acts.
The issue is difficult to resolve for one more reason. District inspectors are in charge of 5 thousand citizens; serving that much people and protecting them is very difficult if not impossible. Even so the district inspectors are responsible not only for domestic violence but other issues as well. Also, there are cases when the victim of violence is not against of continue family relations with a person who committed the act of violence against the former.

- Equality principle that is recognized by adopted law, first of all means financial equality. In most cases a victim is financially dependent on a person who commits an act of violence and the former is forced to stay with the family in order not to lose a shelter. Therefore it is very important to create effective social assistance service that will enable to conduct monitoring and regulate situation in risk-families.

- The social worker's institution is very ineffective in Georgia. The importance of the issue requires from the state to organize certain social activities, namely, to introduce an institution of social worker, well approved in the world. The mission of social assistance services is to improve a well-being of the certain groups of people. This service should take into account needs and potential of separate individuals, families, groups of people, organizations and society as a whole, and by its activities, shall contribute to mobilizing available resources, increasing self-confidence of persons and groups of people and their self-realization in a society.

- According to the Law, the article envisaging social service should have been enforced from 1 July 2007. Particularly, the Ministry of Labor, Health and Social Affairs should have defined the mechanism for implementing social services and ensure training of respective social workers.

According to the Law, social worker has to actively participate in protection of victims of domestic violence (research causes of domestic disputes, analyze, find risk-groups), giving assistance (supportive activities), carry out rehabilitation and prevention of violence, conduct monitoring of implementation of protection and restraint orders, attend court trials, give recommendations regarding temporary measures for protecting victims of violence and timeframes for placing victims at the shelter.

On 9 February 2007 in accordance with the order #43/o of the Ministry of Labor, Health and Social Affairs a special group working on the issues on eradication of domestic violence, protection of and assistant to the victims of domestic violence was set up. The group developed a concept on the mechanisms for implementing social services and training of social workers.

There are no social workers in Georgia that have received higher education in this field from accredited universities, neither are mechanisms developed for implementing social services. Therefore the concept designed a list of measures to be implemented for putting social services into operation as well as principles of professional standards of social workers dealing with domestic violence, principles of organizing and structuring social service and criteria for selecting staff, and topics for re-training for social workers considering specifics of domestic violence (there are ongoing discussion regarding training of 20 social workers).

- The Law does not properly regulate issues related to violence against children. It is concentrating on carrying out necessary provisions for separation and protection. Taking into account that child's safety is very important; every issue concerning children requires special attention. Specifically, should the child be taken from the family, where it's advisable to put him/her, for how long, how many visits are appropriate, when should a child be returned back to the family, what kind of services does a child and child's family require. This process will not be resolved only by involvement of court and law-enforcement agencies but rather requires involvement of social services.

- Unfortunately there are no special shelters for victims available at present, where they would be paced on a temporary basis and be provided due care. It is also important to create rehabilitation centers for individuals who committed acts of violence, where they could be treated accordingly. According to law, shelters and rehabilitation centers should start functioning from 1 January 2008.

The Ministry of Labor, Health and Social Affairs working group created a package of legal and other types of documents necessary for admitting victims to the shelter and providing necessary care, relevant calculations and standards for shelters and rehabilitation centers have been developed. The policy on rehabilitation measures is to be elaborated.

- The costs associated with medical expertise are also a problem. It is true that surface analysis is free of charge on the basis of police request. Nevertheless more thorough medical examination is needed for receiving a full picture of victim's heath. The state does not cover these costs. Victim of violence does not always have financial resources to pay for this examination and receive medical assessment report.

- The society is not well aware of this law, thus a comprehensive public awareness campaign should be held. The role of media outlets is also very important in highlighting the issues regarding domestic violence; how effectively, ethically and with high quality does it provides he coverage on acute issues in connection with domestic violence.

- Pursuant to the Law, the Georgian government was tasked, in a 4-month period (before 9 October 2006) to develop and approve the special action plan envisaging necessary measures to be implemented for putting the law into operation. This plan (should have been operating for 2006-2008) was developed with participation of governmental, non-governmental and international organizations; however it was not adopted in a timely manner.

- According to Decree # 185 of 7 April 2007 of the Government of Georgia the above-mentioned action plan was amended and 2007-2008 Action Plan was designed. The latter was approved only on 30 July 2007 after the Amnesty International issued a public statement, where the latter denounced non-approval of the plan and requested the Georgian government to: "demonstrate its commitment to combat domestic violence by promptly approving an updated version of the draft Action Plan on measures to prevent and combat domestic violence."

It should be said that this action plan represents a reduced version and sometimes creates an impression of being unfinished. For instance, the fist goal envisages improvement of a legal database on eradication of domestic violence, protection of and assistance to the victims of domestic violence; but the relevant activities do not envisage preparing amendments to the Georgian Law "On Domestic Violence, Protection of and Assistant to the Victims of Domestic Violence" and the relevant legal acts and submitting them to the Parliament.

The Plan would have been more effective, had the functions of ministries been more differentiated; since there are some overlaps when defining obligations or the "Government of Georgia" is referred as an implementer. This can cause misunderstandings and enable Ministries to avoid responsibilities.

The Plan does not foresee launching a shelter and rehabilitation center from 1 January 2008. This means not only that the Law is not implemented but also that there is no political will to resolve this issue.

According to the Information of the Interior Ministry, the patrol police recorded 3254 facts of domestic conflicts for 2005 throughout Georgia (1785- in the fist half, 1469 in the second half), 3665 in 2006 (1910 in the first half, 1755 in the second half). According to 2007 data for six months the number of incidents is 1103; 274 restraint orders were issued.

Patrol Police Data for first half of 2007:

Regions	I		II		III		IV		V		VI		TOTAL	
	Dom confl	Rest ord	Domest confl	Resr order	Dom confl	Restr order	Dom confl	Rest rorder	Dom confl	Restr order	Dom confl	Restr Order	Dom cnfl	Restr order
Tbilisi	47		81	34	72	40	70	36	92	45	75	29	437	184
Imereti	26		14	2	14	9	17	3	17	1	10	4	98	19
Kakheti	2		5	4	6		4		4	1	2		23	5
Shida Kartli	7		11	4	8	4	6	3	17	5	7	2	56	18
Kvemo Kartli	75		58	4	49	3	44	1	48		60		334	8
Adjara	10		31	31	17	5	11	3	7		17	1	93	40
Samegrelo-Upper Svaneti	8		15		3		17		7		12		62	
TOTAL	**175**		**215**	**79**	**169**	**61**	**169**	**46**	**192**	**52**	**183**	**36**	**1103**	**274**

The numbers above do not show the real picture. As we have already mentioned, domestic violence is perceived something that is private / family issue and not a severe social problem. This problem needs to be better addressed in different regions of Georgia.

According to the data provided by Tbilisi City Administration there were 63 criminal investigations regarding domestic violence from 9 June 2006 till July 2007. In 34 cases the guilt was proved. The rest of the cases are being processed in court.

According to Tbilisi City Court Administrative Cases Board, from 22 September 2006 when the first protection order entered the court until 1 July 2007, 22 applications were sent to the court regarding protection orders. 9 protection orders were issued. In all cases the victim is a woman, there was one case where the victim was a juvenile. 8 orders were issued with respect to physical and physiological domestic violence and one with respect to psychological violence.

From 16 November 2006 until 1 July 2007, 313 petitions were recorded regarding issuance of restraint orders. In accordance to the Law, 275 of them were fully satisfied, 5 partially satisfied and 31 rejected, 2 cases were suspended.

According to the court's statistics, in 248 cases a restraint order for eradicating any form of domestic violence was issued with respect to other family member (victim) - woman, 25 orders were issued with respect to victim - man, and 5 - jointly for man and woman. 2 restraint orders were issued with respect to juveniles, and 2 with respect to a woman and a juvenile.

As a result of combining court's statistics it was found out that in most cases the issuance of a restraint order was provoked by the aim of eliminating all possible forms of violence against the victim that is envisaged by the Law.

There have been cases when one or two different types of violence have been conducted simultaneously. According to the available data, the most common is a combination of physical and psychological violence meaning a humiliating and insulting treatment followed by physical violence.

Below is given statistical data on the different types of violence when restraint / protection orders were issued:

Psychological-physical -132
Psychological -121
Physical -11
Economical - physical-psychological - 7
Economical - 6
Economical - psychological -7
Psychological - compulsion -3
Economical - physical- 2
Sexual -1
Compulsion -1
Psychological-sexual-compulsion - 1
Physical-psychological-compulsion - 1
Physical-psychological-sexual - 1.

Domestic Violence
Recommendations:

- Government of Georgia should ensure implementation of necessary measures for enforcing Article 8 and Chapter 6 of the Law of Georgia "On Eradication of Domestic Violence, Protection of and Assistant to the Victims of Domestic Violence" within the timeframes stipulated by law, namely, by 1 January 2008. Particularly, it should create social and job-placement guarantees for victims of domestic violence and carry out rehabilitation measures of persons, who committed an act of violence. For this purpose, adopted action plan should be processed and the functions stipulated by the action plan allocated between ministries.

- The Law of Georgia "On Eradication of Domestic Violence, Protection of and Assistant to the Victims of Domestic Violence" and the relevant statutory acts should be amended in order to impose an administrative responsibility for noncompliance to the restraint order.

Problem of Trafficking in Georgia

In the US State Department's **Trafficking in Persons Report 2007,** Georgia was assessed positively as a state strongly fighting with the trading of human beings (trafficking). State policy, legislative base, efforts of governmental and non-governmental organizations operating in the country are the factors which caused shifting Georgia close up to the countries in the assessment scale such as Austria, Belgium, Denmark, France, Switzerland, Great Britain, Luxemburg (up to 30 countries total).

"Government of Georgia fully complies with the minimum standards for the elimination of trafficking. Over the past year, the government made considerable progress in the prosecution and punishment of traffickers, protection and assistance for victims and prevention of trafficking. Georgia developed and implemented a victim-centered national referral mechanism, provided a building for the country's first trafficking victims' shelter, dedicated on-going funding for victim assistance, passed comprehensive and toughened penalties for traffickers, and initiated multiple proactive prevention programs. The government should ensure proactive identification of all potential and returning trafficking victims and ensure consistent implementation of its national referral mechanism", reads the Report.

The steps made forward and achieved results do not mean however that the country has solved the problem of trafficking completely. The problem still exists in Georgia and needs to be addressed by state through its constant and active efforts.

In order to coordinate the process of combating trafficking, on 25 January 2007 by the Decree of the President of Georgia, the Action Plan for 2007-2008 for combating trading of human beings (trafficking) was adopted. The Plan envisages the list of practical measures to be carried out by relevant agencies.

The Action Plan is drafted following the principle of "3 Ps", which means that *Prevention* of crime of trafficking, *Protection* of victims and *Persecution* of criminals should be addressed adequately. The goals and activities specified in the Plan have been elaborated according to this principle and can be accomplished only through close cooperation of Georgian government, non-governmental and international organizations.

Hence, the Interagency Coordination Council responsible for carrying out measures against human trafficking should more actively cooperate with relevant stakeholders and involve them in monitoring process. Close cooperation with the non-governmental organizations working directly with the victims of trafficking will make possible assessing the situation in the field of human trafficking more accurately.

At the same time, non-governmental and international organizations should become actively involved in the implementation of the strategy of rehabilitation and re-integration of victims of human trafficking and, through close cooperation with the State Fund for the Protection

and Assistance of Victims of Trafficking, include certain re-integration measures in their activities.

The Action Plan envisages as well a regular monitoring of activities carried out by relevant governmental agencies; each agency is obliged to report on implemented activities to the Coordination Council once in 3 months.
A system of assessment criteria should be elaborated in order to assess implementation of anti-trafficking measures, the format of national referral mechanisms, activities implemented by stakeholders and accounting system. The criteria should include quantitative and qualitative indicators.

As it was mentioned, the Action Plan 2007-2008 for combating trading of human beings (trafficking) consists of 3 main objectives. These are: prevention of crime of trading of human beings (trafficking), protection of victims and persecution of criminals.

One of the principal objectives of prevention is a public awareness campaign, which plays an important role in fighting with trafficking and serves as a prevention mechanism. At the same time, the campaign should be focused on familiarizing people with modern methods of identifying and avoiding the risks of trafficking; and putting these methods into practice. Namely, organizing trainings is vital for the target groups like border authorities, neighborhood officers, healthcare staff, media representatives and education sector personnel.
In order to raise a public awareness on the essentiality of the crime of human trafficking and the methods for its combating, certain activities have been implemented: a video clip was produced, radio and TV programs were made, articles were published in printed media, meetings were organized and public discussions held at the higher educational institutions (Ivane Javakhishvili State University, Ilia Chavchavadze State University, Batumi State University) and at the office of the Public Defender of Georgia.

It's noteworthy that an impact of the video clip produced by the Office of the Prosecutor General and the State Fund for the Protection and Assistance of Victims of Trafficking in cooperation with Georgian Public Broadcaster proved rather high, if judged by the inquiries registered at the hotline announced in the clip.

Working with the mass media representatives and raising their awareness on mentioned issues is rather important meaning that more focus should be made on professional training of journalists in the relevant field. Apart from separate trainings and public discussions, the topic of combating trafficking is advisable to be included into journalists' curricula.

Trafficking in human beings is a rapidly growing global phenomenon and is a gross violation of human rights. Accordingly, society should be properly informed about the threats it represents. Media is one of the most important tools for informing public on trading of human beings and its possible outcomes. However, while making coverage on specific cases of trafficking in human beings, certain guarantees should exist, especially, when respondent is a victim of violence or is under age. Journalists should remember that while working on the cases of trading of human beings, ensuring security of the victim is important. Hence,

keeping confidentiality of identification data is a primary guarantee for protecting human rights of the victim.

One of the goals of protection of the victims of trading of human beings (trafficking) is to return the victims safely to the country of origin.

By joint efforts of the Office of the Prosecutor General, Ministry of Foreign Affairs and International Organization for Migration (IOM), in January 2007 the victim of trafficking, citizen of Uzbekistan was sent safely back from Georgia to the country of origin. In December 2006 the person, accused of this crime was sentenced for 11 years imprisonment. Number of Georgian citizens were also sent safely back to Georgia and granted the status of victim. Preliminary investigation has been completed on one of the cases and it was submitted to the court for consideration.

In the process of creating necessary mechanisms for protection of victims of trafficking in human beings, target-oriented efforts of Georgian diplomatic representations and consulate departments abroad are very important for providing assistance to the victims of trafficking and fighting against traffickers. Consulate departments should pay significant attention to protection of rights and interests of Georgian citizens (regardless their legal or illegal presence in the foreign country). Also, the law-enforcing agencies of the country of location should work closely with international organizations for providing support to the persons who find themselves in troubles and have been identified as victims of trafficking.

According to the information of the Ministry of Foreign Affairs, facts of trading of human beings (trafficking) are mainly registered in Turkey. It's noteworthy that in the first half of this year nine Georgian citizens identified as victims of trafficking were sent back to Georgia.

Here it should be noted as well that protection of rights and interests of both the Georgian citizens residing illegally in foreign countries and the victims of trafficking is possible only in case such persons address Georgian consulates. However, they refrain from dealing with consulate departments thus their full-fledged tracking is difficult.

In the process of fighting with trafficking in human beings, development of the programs of reintegration of victims of trafficking and enforcing these programs is significant. A framework program for rehabilitation and social reintegration of victims of trafficking has been drafted at present phase.

Fighting with trafficking is included in the curricula of the police academy of the Georgian Interior Ministry in order to familiarize students with the specificity of the crimes related with trading of human beings (trafficking). In the curricula developed by the training center of the Office of the Prosecutor General, the issues related with trafficking are included in the basic studying course of prosecutors on probation and in the retraining course of incumbent prosecutors. However, more emphasis should be made on learning the special mechanisms of protection of witnesses / victims of trafficking and peculiarities of putting these mechanisms into practice. Methods of fighting with organized crime, drugs and trafficking should be addressed as well.

Trafficking of minors is the one of the biggest problems in the modern world and is one of the heaviest crimes. Consequently, it needs to be addressed by State seriously, meaning that Georgian government should take concrete steps to combat trading of and violence against minors and thus ensure maximum protection of rights and freedoms of the latter. Namely, a research should be conducted exploring reasons and scales of children's trafficking, amendments to the legislation should be prepared on measures of protection of juvenile and underage victims of trafficking, and educational programs for juveniles developed.

Also, situation of vulnerable children (orphans, children lacking parental care, children of large families, those from socially vulnerable families and having lonely parents, street children) should be assessed and their needs adequately addressed, since the children belonging to above-mentioned categories mostly tend to turn to victims of trafficking in human beings and exploitation.

According to the information of the Ministry of Labor, Health and Social Affairs, a working group has been set up from the representatives of the governmental and non-governmental organizations, focusing on analyzing the applicable legislation and amendments thereto. Studying peculiarities of investigation of children's pornography and online pornography is planned as well.
In the first half of 2007 the working group of the Standing Interagency Coordination Council (including the representative of the Public Defender's Office) granted the status of the victim of trafficking to four persons, two of them were provided shelter. The Fund's shelter accommodated 7 persons in said period – 5 victims plus 2 children. Two victims were paid compensation within the reporting period.

Over the past 8 months, 22 criminal cases were opened according to Articles 143^1 and 143^2 of the Criminal Code of Georgia. 15 persons were tried upon processing 12 criminal cases. One convict among them, having committed crime of trafficking against two persons including one minor, was sentenced to 26 years imprisonment on 26 April 2007. According to statistical data of 2007, persons convicted for trafficking are deprived of liberty for 13-14 years average.

Problem of Trafficking in Georgia
Recommendations:

1. The State should develop economic and social policy focused on eradicating reasons causing trafficking. An emphasis should be made on elaborating employment policy to protect own labor market.

2. The Interagency Coordination Council responsible for implementing measures against trading of human beings (trafficking) should ensure access to the documents drafted by the latter for the relevant governmental and non-governmental organizations. Particular emphasis should be made on disseminating information to Georgian regions.

3. Coordination Council and the State Fund for the Protection and Assistance of Victims of Trafficking should jointly work out the methods of monitoring of implementation of the Action Plan and define assessment criteria.

Rights of People with Disabilities

Problems identified in the report of the second half of 2006 have still remained for the first half of 2007. In addition, continuing reorganization of the Ministry of Labor, Health and Social Affairs has hindered the process of elaboration of a long-term state policy for people with disabilities. (See report of the second half of 2006).

Social guarantees of people with disabilities

Number of persons granted the disability status on the basis of restricted capabilities for the first time totaled 26296 in 2005 that exceeds the 2004 data by 5998[2]; and if compared to 2000 (8914 cases), there is a 3-fold increase in the number of people identified as 'disabled' for the first time. Majority among them are people from 40 to pensionable age, 21.7% present the age under 39 and 7.9% present above pensionable age.

In 2005, the number of pensioners with disabilities totaled 226.2 thousand. Children with disabilities totaled 12754 (10722 in 2004), disabled from childhood – 22994. Number of persons eligible for social pension increased in the last years and totaled 150.6 thousand in 2005 (100.5 thousand in 2004).

Since 1 May 2007 the rule for granting the status of 'person with disabilities' has changed in Georgia (based on the Decrees of the Minister for Labor, Health and Social Affairs of Georgia). Shortly before, amendments had been made to the Law of Georgia 'On Medical and Social Expertise', on the basis of which the medical expertise bureaus were dismissed. Now the disability status can be reinstated by all medical institutions. Moreover, the Ministry of Labor, Health and Social Affairs has made changes to the list of diseases by removing less severe and treatable ones.

Pursuant to the above-mentioned Law and Decree, the status of disability according to the severity of restriction of abilities is given by the medical institutions having permission to hold a medical-social expertise. Fees for diagnostic examinations and professional consulting are defined by medical institutions independently, in accordance with the internal standards. Members of families, registered in the unified base of socially vulnerable families (with rating points under 70000) are the only exception. The service provided by the state program includes an inpatient examination according to the doctor's prescription, not exceeding GEL200 per person.

According to the Decree of the Ministry of Labor, Health and Social Affairs, disability status was revoked of 24 thousand people. Accordingly, in order to get a certificate on disability the examinations should be carried out anew. Paying fees for different examinations needed for repeated registration is difficult for pensioners since the average pension of disabled amounts to GEL38 and the above-mentioned expenses are not covered by any state program.

[2] National healthcare report - Georgia, 2005. Tbilisi, 2007

In result of these changes, number of people with disabilities found themselves deprived of pension being in fact a vital financial aid. Many of them appealed to the Public Defender's office, mainly by telephone or written application with the major concern on losing their major pensions.

The Public Defender's office repeatedly addressed the Ministry of Labor, Health and Social Affairs with a request to revise the list of diseases serving as the basis for identifying disability. Following intensive discussion, negotiations and active cooperation with the Ministry, the latter has adopted the resolution stating: "Concerning medical and social expertise, in order to resolve certain problems emerged with regard to specific categories of persons with disabilities, it was decided to re-consider, together with the representatives of professional associations, the list of diseases constituting the basis for identifying disability; and in case of need, to process a revised version of the list."

Rights of People with Disabilities
Recommendations:

1. The Public Defender has repeatedly addressed the Ministry of Foreign Affairs with the recommendation to start necessary procedures for ratification of the UN Convention on Human Rights of People with Disabilities of 13 December 2006.

2. To restore the work of the commission existed at the Office of the President of Georgia for assisting activities of NGOs representing people with disabilities and the National Coordination Council, in order to coordinate issues related to the people with disabilities and organize interagency cooperation.

3. To create a mechanism for defining a full or partial responsibility of employer in case of job-related accidents, implying an obligation of covering expenses for rehabilitation and retraining of injured employee. To define, in the framework of the mentioned project, the amount of compensation not at employer's discretion, but according to the condition and needs of injured person. The document should include as well the option of re-considering amount of compensation in case the state of health of injured person is worsentut if related to the same accident, serving the basis for issuing initial compensation.

4. The Ministry of Labor, Health and Social Affairs is recommended to develop a system for social aid and benefits specifically for persons with disabilities, which should envisage severity of restriction of capabilities and individual needs of person with restricted capabilities.

5. The Ministry of Labor, Health and Social Affairs is recommended to develop a beneficial system for providing aid and health insurance to those persons with disabilities, who won't find themselves in the unified database of the families below poverty line. Methodology of assessment of the level of restriction of capabilities in accordance with the international standards is recommended to be developed as well.

6. A special body is recommended to be set up immediately within the Ministry of Labor, Health and Social Affairs according to Article 239, Paragraph 45 of the Code of Administrative Offences or any already existed body under subordination of the latter be assigned to carry out competences stipulated by Articles 178^1 and 178^2 of the same Code.

7. Amendments to the Code of Administrative Offences is recommended to be drafted concerning increasing of fines envisaged for avoidance from creating necessary conditions for persons with disabilities stipulated by law, and imposing additional sanctions in case of repeated avoidance. The amendment should include as well the warning that paying fine does not exempt from assigned responsibilities.

Human Rights Monitoring in Elderly Homes and Boarding Houses

The Public Defender's office carried out human rights monitoring in almost all institutions for elderly countrywide in May 2007. Namely, monitoring was carried out in Tbilisi boarding house for elderly, elderly home "Beteli", charity house "Katarzisi", Dzevri boarding house for people with disabilities, Dzegvi boarding house for elderly, Kutaisi boarding house for elderly and elderly home "Satnoeba".

Purpose of monitoring

The purpose of monitoring was studying the facts of violations of human rights in elderly homes and boarding houses; collecting information on conditions concerning housing, food, safety, medical service, care, rehabilitation and respectful treatment; making analysis of the information collected and elaboration of relevant recommendations.

Results

The monitoring of institutions for elderly revealed a contrasting picture in terms of providing housing, food, etc. In general, living conditions in almost all institutions for elderly except for two elderly houses located in Tbilisi (Tbilisi boarding house for elderly and elderly home "Beteli") fall far behind minimum standards. Toilets and bathrooms are dilapidated, inmates suffer from shortage of hygienic means, heating and electricity systems fail to meet safety requirements, inventory is scarce and depreciated, buildings needs repairing.

Quality of care falls behind normal, there is a lack of personnel and inmates often lack attention. Majority of them do not have access to medical care and need consulting of doctors from different fields. Medication is not enough.

Right to information is not fully exercised. Inmates are not familiar with internal regulations, only few them have access to TV and telephone. Internal complaining mechanism does not work. The process of collecting information on inmates of Kutaisi boarding house for elderly had been carrying out with a breach of law; particularly, inmates had been given the special questionnaire, where they had to specify their religious denomination. The Public Defender addressed the Kutaisi boarding house for elderly with recommendation, which was taken into account and this paragraph was removed from the questionnaire.

Inmates often work for the needs of the institution without adequate and just payment.

Following monitoring, the situation in institutions for elderly has been repeatedly covered by media. The Ministry of Labor, Health and Social Affairs responded adequately and provided assistance to those institutions, where living conditions failed to meet minimum standards.

The Public Defender's recommendation on harmonizing the process of collecting information on inmates with applicable legislation has also been considered.

Conclusions

There are not enough institutions for elderly since the number of homeless, lonely and economically insecure elderly people exceeds resources allocated for providing their care, food, primary medical care and rehabilitation.

Management of all monitored institutions unanimously state that they receive many applications but the institution cannot accommodate all of those interested.

Conditions in elderly homes / boarding houses are not equal as well. There is no single approach towards introducing unified standards.

Inmates of institutions for elderly are often isolated from society and deprived of their social and economic role. They are not provided with quality, accessible and adequate medical care.

Inmates of elderly homes and boarding houses do not have access to cultural, social, economic and other special programs promoting their participation in different processes.

Conditions existing in elderly homes are degrading for inmates. Contrasting picture, which has been revealed at Tbilisi boarding house for elderly and elderly home "Beteli" in comparison to other institutions countrywide, allows us to suggest that in case of effective management it's possible to create a humane environment and services in these institutions as well.

In order to resolve mentioned problems in elderly homes and boarding houses, it's necessary to carry out:

- Regular monitoring;
- Control on fulfilling recommendations;
- Introducing the mechanism of internal complaints;
- Retraining personnel;
- Launching PR campaigns on elderly rights;
- Elaborating single approach by State and creating competitive and democratic mechanism of financing.

Elderly people should fully participate in development process and enjoy all advantages it offers. Parallel to the social and economic development of the country, the need for full integration of elderly into these processes increases. Apart from that, the ongoing migration, urbanization and other processes may result in marginalization of elderly people from the development mainstream and deprive them of their social and economic role.

The role of elderly people for full-fledged existence of society and families is crucial. Society, which fails to express solidarity towards its elderly citizens and does not recognize their role and importance cannot be humane and accordingly, will fail to create human rights and freedoms-oriented systems for country's governing and development.

State of Human Rights in Psychiatric Institutions first half of 2007

Human Rights Monitoring in Psychiatric Institutions

In the first half of the year 2007 the Council of Public Monitoring of the Public Defender's Office of Georgia performed monitoring in the following psychiatric establishments: Tbilisi M. Asatiani Scientific Research Institute of Psychiatry, Kutiri Centre of Mental Health, Surami Psychiatric Hospital, Bediani Physco-neurological Hospital and Batumi Republican Physco-neurological Hospital.
100.000 persons with mental problems are registered in Georgia, but only 1145 beds are allocated for in-patient psychiatric service.

Results of the monitoring:

Positive Trends

The recommendations, issued in the result of the monitoring performed in 2005-2006 have already been reflected in activities of psychiatric establishments.

In Tbilisi M. Asatiani Scientific Research Institute of Psychiatry, Kutiri Centre of Mental Health, Surami Psychiatric Hospital living conditions significantly improved in comparison to previous years.

Patients are more satisfied with the service provided by medical personnel now, than in previous years. Methods of alternative therapy have been introduced in Tbilisi M. Asatiani Scientific Research Institute of Psychiatry, Tbilisi A. Zurabishvili psychiatric Hospital, Kutiri Centre of Mental Health and Batumi Republican Psycho Neurological Hospital. Availability of non-psychiatric medical service has increased.

Patients participate in cultural activities.

The internal regulations and information about patients' rights are displayed prominently almost at all hospitals.

Claim boxes have been installed in departments.

Negative Trends

Everywhere, where monitoring was performed, patients work for the establishments without any fair remuneration. Often they perform activities assigned for lower medical personnel. The provided questioning revealed that such labor didn't bear compulsory nature but taking into account that patients are not in equal condition with medical personnel, the implementation of their labor is obvious violation of patients' rights from the side of medical

personnel. The implementation of patients' labor is most obvious and difficult in Bediani Psycho-neurological Hospital, where patients have to carry heavy containers with meals, clean the departments, put in order sanitary arrangements, etc

Social problems of patients remain unsolved in all establishments. The issues related to their pensions are not clarified, which represent the problem not only for hospitals. The most acute problem is the problem of interaction with guardians. Only Batumi Republican Psycho-neurological Hospital has the position of social worker for regulation of patients' social problems. The issues of patients' personal documentation, relations with guardians and personal incomes are relatively well arranged at this Hospital. Kutiri Centre of Mental Health has the public relations specialist, who, according to the explanation provided by the administration, overlaps the functions of social worker.

While performing monitoring at A. Zurabishvili Psychiatric Hospital lady was interviewed, who lost her home after her relatives sold her flat by deceit; several patients of Kutiri Centre of Mental Health, Surami Psychiatric Hospital and Bediani Psycho-neurological Hospital have lost their property in the result of their long stay at hospitals.

Part of patients doesn't need active in-patient treatment. In such case hospital for them is a kind of shelter, which facilitates the formation of the syndrome of "hospitalism" in patients and loss of skills required for independent life.

Salaries of medical personnel are still low, causing their dissatisfaction and absence of motivation. Low salary of medical personnel in psychiatric establishments is one of the most acute problems, as in such environment it's impossible to attract highly-qualified staff. It, in its turn, affects the quality of treatment and care.

The financing allocated in 2007 for treatment in the component of psychiatric care of specialized in-patient service, in comparison to 2006, increased by almost 20%. (In 2006 financing per patient made 8 Lari 60 Tetri, and in 2007 it became differentiated and made 32 Lari for patients with the status of acute disease, 15 Lari for patients with the status of sub-acute disease, and 8 Lari 60 Tetri for patients with chronicle status). Though, the increased financing is still insufficient for provision of patients with high-quality, present-day and effective psychiatric service.

Violation of Rights

Right to Information

Persons with mental disorders must enjoy the same rights of information availability as other citizens. Information concerning the disease and treatment must be provided to the patient with mental disorder – this information must enable him/her to participate in the process of treatment planning and decision-making.

The practice of communication of information to patients at psychiatric hospitals is inadequate and it depends upon the good will of medical personnel. On the other hand, activity of patients in regard to information need is low.

Information concerning their diagnosis, treatment, changes in treatment and prognosis isn't provided to patients understandably in psychiatric establishments. Such condition is common for all hospitals, where monitoring was performed.

Right of Private Life

The right of patients to private life at psychiatric hospitals is limited. There are no telephones for patients, they have no possibility of privacy; they can't use a bathroom as desired; individual lighting isn't installed in the wards (even at newly reconstructed hospitals – Tbilisi A. Zurabishvili Psychiatric Hospital and Batumi Republician Psycho-neurological Hospital). Patients have no safe place to keep their personal items; theft ofter occures among patients.

Discrimination

«Assistant» patients often get incentives in psychiatric establishments. The patients who help the personnel in performance of certain work, enjoy various privileges – get additional meals, tobaccoo, freedom of movement, etc. This problem is especially acute at Bediani Psycho-neurological Hospital and Kutiri Centre of Mental Health.

Torture and Inhuman Treatment

While speaking about inhuman treatment and torture in psychiatric establishments it's important to consider, that certain part of patients spend significant period of their lives in the mentioned establishments. Such patients evaluate their own status as imprisonment.

According to the results of questioning, facts of physical limitation, threatening and physical abuse ofter occur at some establishments, as well as the cases of continued isolation of patients.

It's remarkable that patients mentioned the facts of punishment by painful injections. According to the explanations provided by personnel, patients get injections in extreme situations, but, in their words, it's the part of treatment – and patients perceive it as punishment because it happens in the case of aggression and distraction.

Rights to Free Movement

The right of patients to free movement is violated at Tbilisi M. Asatiani Scientific Research Institute of Psychiatry, Kutiri Centre of Mental Health and Batumi Republician Psycho-neurological Hospital. Some patients (including those under voluntary treatment) haven't right to go out to the yard. In Tbilisi M. Asatiani Scientific Research Institute of Psychiatry walking is discriminative and is available only for some patients, amd in Kutiri Centre of Mental Health patients can walk only within the small territory enclosed by wire cloth, resembling prison. Walking in the best, landscaped part of the yard is prohibited for them.

There is no exact procedure regulating temporary leaving the establishment by patients (having holidays). Ofter patients can't enjoy the right to visit their relatives, family members even in the case of in-patient treatment during years. In this regard certain part falls on unconcenr of the patients' close relatives. In personnel's opinion, limitation of free movement of patients serve for their own good – letting them out is dangerous for patient themselves – in cold weather they may cath cold, and weak patients may get lost or get treuma.

Right of ownership

The issues related to the patients' ownership are not solved. The monitoring revealed some cases, where patients claim that his/her property has been misappropriated, or has been lost after their long stay at hospital. Such fact has been encountered at Tbilisi A. Zurabishvili Psychiatric Hospital, Kutiri Centre of Mental Health, Surami Psychiatric Hospital, Bediani Psycho-neurological Hospital and Batumi Republican Psycho-neurological Hospital.

Patients' rights to ownership aren't sufficiently observed in psychiatric establishments either. In particular, there are some cases where medical personnel or patient's relatives get his/her pension or another income without will expresses by the patient;

The patients of Tbilisi A. Zurabishvili Psychiatric Hospital attended the interviewing process with their personal belongings and foodstuffs, as fact of theft often occur among students.

Treatment and Psycho-social Rehabilitation

Taking into account the fact that majority of patients spend long time at psychiatric establishments, it's important that the establishment take care of patients' re-integration into society.

Psychiatric establishments, with few exceptions (Tbilisi A. Zurabishvili Psychiatric Hospital, Tbilisi M. Asatiani Scientific Research Institute of Psychiatry, Batumi Republican Physco-neurological Hospital) don't have individual plans for patient's psycho-social rehabilitation – for the development of their social and working skills. Methods and approaches, facilitating patients' independent co-existence in society aren't anywhere reflected in establishments' activities.

At hospitals, methods of treatment with medicaments prevail. At Surami Psychiatric Hospital and Bediani Psycho-neurological Hospital the alternative methods of treatment aren't introduced at all.

Actually, patients don't participate in the process of their treatment in any establishment and can't control it. They have very few information about treatment, which they can obtain, as a rule, only when doctor insists that this kind of treatment is necessary for them.

Patients with mental disorders have no access to specialized non-psychiatric medical care. The monitoring has revealed the case, where the patient with serious leg injury was waiting for surgeon's consultation for 4 months.

Right to Elections

In the result of monitoring performed in 2005-2006 the Public Defender applied to the Central Election Commission and administrators of psychiatric hospitals with the recommendation concerning the violation of rights of patients with mental disorders to participation in elections. In the result of monitoring of realization of the right of election we learned that majority of patients didn't have possibility to participate in local elections on October 4, 2006, and the rest of them participated with violation – without ID cards. Shortcomings have been revealed in the activities of election commissions in regard to psychiatric hospitals.

Round table was arranged in the Public Defender's Office, which was attended by the stakeholders. The Central Election Committee answered the Public Defender that his recommendations will be taken into account in the future and special measures will be implemented for the realization of patients' right of election in psychiatric establishments.

The Civil Register Agency expressed full preparedness in regard to recovery of patients' ID cards, and administrations of psychiatric establishments were provided recommendation to regulate the issue of patients' ID documents at their receipt or in the nearest future.

The monitoring of implementation of the Public Defender's recommendations to the Central Election Committee in regard to patients' right on participation in election will be continued.

Incapable Patients and their Rights

The number of incapable patients is very few, but actually more patients need to be recognized incapable. As a result, such patients don't have official guardians and the issue of protection of their decisions and interests is doubtful.

On the other hand, the patients, who are recognized incapable, often face problems in the result of their guardians' indifference and property-related interests. In such cases they have

no possibility to choose the guardian or change him/her, as incapable patients don't have the right to appeal against their guardian.

The cooperation of care-taking authorities with psychiatric hospitals is often formal or doesn't exist at all. Batumi Republican Psycho-neurological Hospital, which achieved certain success in the regulation of patients' social problems, came across this very problem. The administration of the Hospital repeatedly applied to the local care-taking authority with the request of replacement of a guardian, as the guardian refused to perform his/her duties, but up to date the mentioned issue remains unsolved. It demonstrates that the control over the performance of guardians' duties isn't executed and there is no response to improper performance.

Incapable patients are deprived of the right of marriage, which is the significant limitation of their right to private life.

Conclusions

The results of the monitoring performed in psychiatric establishments clearly indicate that traditional, centralized psychiatric service, oriented towards institutional service can't ensure the protection of interests and rights of patients with mental disorders, as such system was created for isolation of "defective" persons from the very beginning.

The Public Defender of Georgia and the Council of Public Monitoring consider that investments in superficial improvement of the ineffective system interferes with the improvement of public mental health protection, as the results of treatment, possibility of rehabilitation and integration into society of persons with mental disorders are put under the question.

The monitoring performed in 2005-2006 showed that the former system of financing, which implied allocation of certain amount per beneficiary despite his/her status of disease, enabled establishments to keep patients at hospitals for a long time. Effective steps have been made in this regard and more flexible, patients' interests-oriented differentiated financing system has been developed.

Effective measures are to be taken for the development of community-based social service, development and implementation of modern psycho-social model.

Patients with mental disorders shouldn't find themselves in long-term reservation in closed institutions!

Recommendations

With the consideration of the monitoring results, the following recommendations have been developed for various authorities:

It's necessary to increase the funding allocated for in-patient treatment of one patient per day (to the Ministry of Finance of Georgia).

It's necessary to develop the community-oriented psychiatry. Continuous psychiatric service must be developed, which will ensure the patient's treatment and further rehabilitation (to the Ministry of Labor, Health and Social Protection).

Administrations of psychiatric establishments must implement additional measures for information of patients about their rights. It's possible to include in internal regulations the obligatory information of patients concerning their rights during certain time since their receipt and/or in the process of treatment by medical personnel or social worker (to psychiatric hospitals).

Administrations of psychiatric establishments must create effective mechanism for patients' information about their disease/diagnosis, treatment and other health-related issues. Medical documentation must be available for patients (to psychiatric hospitals).

In the hospitals, where there is no position of social worker, it must be immediately created, as patients' social issues, like identification documents, personal incomes, relations with guardians and issues of patients' ownership must be solved by a competent person (M. Asatiani Scientific Research Institute of Psychiatry, Tbilisi A. Zurabishvili Psychiatric Hospital, Kutiri Centre of Mental Health, Surami Psychiatric Hospital and Bediani Psychiatric Hospital).

The issues of discharge of in-patients undergoing voluntary treatment must be immediately regulated. The monitoring shows that the patients are delayed at establishments, but the argument of the administration that it happens with the purpose of provision of help to homeless patients, contradicts with the Law "Concerning Psychiatric Care"; the contrary is proven by the results of interviewing as well – most of patients know where to return after completion of treatment (to the Ministry of Labor, Health and Social Protection, psychiatric hospitals).

Patient's role in the process of treatment must be changed and patient must be perceived not only as an object of care, but as a partner. The right of participation in the process of treatment is guaranteed to all patients by the Law "Concerning Patients' Rights" (to the Ministry of Labor, Health and Social Protection, psychiatric hospitals).

Alternative methods must be included in the process of treatment, which will facilitate the maintenance and development of skills of the in-patient. At present the patients, during their stay at hospitals, lose significant part of their useful working and social skills, which would make their life in society easier. On the one hand, psychiatric care providers must introduce such service, and, on the other hand, the sponsor of such service must demand to include it into the package of psychiatric service. Of course, provision of such service requires proper funding. Patients should have possibility to participate in sporting activities (to the Ministry of Labor, Health and Social Protection, psychiatric hospitals).

The Availability of non-psychiatric medical care for patients with mental disorders must be improved. The violation of the right of enjoying non-psychiatric medical care by patients with mental disorders required urgent response (to the Ministry of Labor, Health and Social Protection, psychiatric hospitals).

Administration must impose strict control over the implementation of the methods of patient's labor and physical restriction, so that to ensure that this action from the side of medical personnel is performed with observance of obligatory procedure by medical personnel (to psychiatric hospitals).

The system of internal claims – as the mechanism of feedback between the establishment and the patient – must be introduced and effectively used. The monitoring revealed that the existing mechanism of claims – claim boxes, which are installed at hospitals more likely for attracting guests' attention, than learning the patients' and their guardians' critical opinion, needs encouragement from the side of administration. More attention must be paid to the freedom of expression of patients' ideas and opinions (to psychiatric hospitals).

Constitutional Suits of The Public Defender

Constitutional Suit

The Public Defender of Georgia addressed the Constitutional Court of Georgia and requested to consider Article 142, par 1, subparagraph f) of Criminal Procedure Code of Georgia unconstitutional. The above norm runs that the arrest of an individual shall be permissible if there is a possibility that he would flee.

- **Article 18 of Constitution** runs that, "liberty of individual is inviolable. An arrest of an individual shall be permissible by a specially authorized official in the cases determined by law".
- **Paragraph 1, article 141 of Criminal Procedure Code of Georgia** runs that: "Arrest is a short-term restriction of a person's liberty and is used if a reasonable suspicion exists that the person has committed the crime and, at the same time, would abscond, would not appear in court, destroy the information of importance to the case or commit a new crime".
- **Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms** runs that: "everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law. The lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on **reasonable suspicion** of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so".

After the Public Defender's application, on January 29, 2003 the Constitutional Court of Georgia considered paragraph 2, article 142 of Criminal Procedure Code unconstitutional. In the above norm there was mentioned that, "the arrest shall be permissible if there existed other data, if a reasonable suspicion exists that the person has committed a crime, this person could be arrested only in the case if he tries to flee, or he does not have a permanent living place, or he is not identified".

According to the explanation given by the Constitutional Court of Georgia, "Constitution of Georgia is not familiar with the term "arrest on other data". This data could be the reason for suspicion, but not permission for deprivation of an individual of his liberty".

The Public Defender of Georgia considers that the content of the paragraph 2, article 142 and subparagraph f, of paragraph 1 of the same article are identical.

Article 142 of Criminal Procedure Code of Georgia runs that, arrest without court order, shall be permitted if: a) the person is caught in the act of committing a crime or immediately thereafter; b) an eye-witness points at the person as a perpetrator; c) clear evidence of the committed crime was found on the person, with the person, or on his/her clothes; d) the person has fled but was later identified by the victim.

“The Constitution of Georgia shall be the supreme law of the state. All other legal acts shall correspond to the Constitution” (Constitution of Georgia, article 6).

The Public Defender addressed Constitutional Court of Georgia and requested to consider subparagraph f), paragraph one, article 142 of Criminal Procedure Code of Georgia unconstitutional. The abovementioned norm comes not in accordance with the article 18 of Constitution of Georgia. The above norm should be stopped before the final decision of the Court.

Constitutional Suit

Sozar Subari, the Public Defender of Georgia filed a suit to the Constitutional Court and requested to consider article three, par. III, of the Criminal Code of Georgia unconstitutional.

According to the Questionable norm, a criminal law act, which revokes the criminality of an act or commutes punishment, shall have retroactive force. A criminal law act, which establishes criminality of an act or increases the severity of punishment, shall not have retroactive force.

The above norm does not comply with the Constitution of Georgia, article 42, par. V - the law that neither mitigates nor abrogates responsibility shall have no retroactive force.

It is clear that the Constitutional norm shall be considered in the Criminal Code of Georgia and the Code of Administrative Offences.

The law enforcement bodies and the court have possibility to give unconstitutional interpretation of the above article 3, par one of the Criminal Code of Georgia.

Mogeli Tkebuchava's case is a good example of the abovementioned. In this case, the Poti City Court gave the retroactive force to the norm of the Criminal Code, despite the fact that the norm was not revoking and commuting punishment. On the above decision, the Supreme Court of Georgia explained that the decision did not differ from the existing practice.

It has to be mentioned that the Press Centre of the Court spread the position of the Supreme Court, where it is noted that we have to use code, which has been valid during the time of the commission of the action. In addition, there is indicated that it is true that Mogeli Tkebuchava committed crime when the old Criminal Code was in force but was charged after new Criminal Code went into force. It proceeds from the above that the limitation period has not been violated towards Mogeli Tkebuchava. The mentioned issue is similarly interpreted by the court practice.

It is eminent that the Georgian courts practice observed is the same and therefore it is contrary to the Georgian Constitution.

The practice shows that the courts while interpreting the Criminal Code overlooks Constitutional principle – the criminal law only can have retroactive force if it mitigates or abrogates responsibility of an individual.

The Criminal Code of Georgia, article 71 (release from criminal responsibility due to the statute of limitations) runs that - a person shall be released from criminal responsibility if one of the following terms has passed:

- two years from the commission of the crime for which the maximum punishment provided by the special part of this Code does not exceed two years of imprisonment;
- six years from the commission of any other minor crime;
- ten years from the commission of a serious crime;
- fifteen years from the commission of the crime envisaged by this code, articles 332-342[1] in case they are not grave crimes;
- twenty-five years from the commission of a grave crime.

Release from criminal responsibility takes place in case of the statute of limitations. Accordingly, the statute of limitations excludes criminal responsibility.

Based on the article 21, of the Law on the Public Defender, the Public Defender requests to consider the Criminal Code of Georgia, article 3, par 1 unconstitutional as the abovementioned norm comes not in accordance with the article 42, par V of the Constitution of Georgia.

Constitutional Suit

On February 16, at 12 o'clock the representative of the Public Defender Giorgi Mshvenieradze will submit a suit of the Public Defender to the Constitutional Court – with the demand of recognizing part 5-prime of the Article 42 of the Criminal Code unconstitutional.

In accordance with the disputable norm, *"if a convict is a minor and insolvent, court will charge his/her parent, curator, care-taker with the payment of fine, imposed upon him/her* (this change was introduced into the Criminal Code by the Parliament of Georgia on December 29, 2006).

In criminal law, an individual can be considered guilty only by the court by validated indictment. While making decision, the court necessarily evaluates – what kind of unlawful action was committed by an individual, was he/she acting guiltily and passes the relevant verdict. Together with bringing the verdict of guilty the court sentences an individual to certain punishment. Punishment is sentenced only to the person, who committed unlawful action. The mentioned principle is known in Criminal Law as the principle of individualization of a punishment (nulla poena sine culpa).

The principle of individualization of a punishment is not declared in the Constitution of Georgia, but in accordance with the Article 39 of the Constitution of Georgia: "*the Constitution of Georgia shall not deny other universally recognized rights, freedoms and guarantees of an individual and a citizen, which are not referred to herein but stem inherently from the principles of the Constitution*".

Besides the Constitutional Court of Georgia mentioned in its Decision dated July 21, 1997 that the individualization of punishment in one of the main principles.

In accordance with the Article 39 of the Criminal Code of Georgia, *the purpose of punishment is the restoration of justice, prevention of a new crime and re-socialization of a criminal*. Consequently, the punishment will directly affect the guilty person and no other person will suffer. Imposition of a fine upon a parent, curator or care-taker will neither restore justice in any way, nor prevent a new crime and nor facilitate the re-socialization of a guilty person – on the contrary – it will lead to punishment of other individuals, which contradicts the principle of individualization of punishment.

Plenary Meeting of the Constitutional Court recognized confiscation of property – as additional punishment – unconstitutional by its decision dated July 21, 1997. In the motivation part of the mentioned decision significant place is occupied by the circumstance that confiscation of property didn't comply with the principle of individualization of a punishment, as it usually was directed not only against the criminal, bit also his/her family.

As the Constitutional Court stated in its decision, “the principle pf individualization of punishment is one of the fundamental principles” and it stems inherently from the provisions of the Constitution.

International judicial practice makes it evident that the principle “none of punishment without guilt” necessarily implies individual responsibility and, as a result, it must be recognized Constitutional principle in Georgia.

- The circumstance should be mentioned that “none of punishment without guilt” is regarded as Constitutional provision in European states.

The Public Defender considers that the disputable not seriously violates the fundamental principle of individual responsibility and contradicts the Article 39 of the Constitution of Georgia.

The Public Defender demands to recognize part 5-prime of the Article 42 of the Criminal Code unconstitutional, as it contradicts the Article 39 of the Constitution of Georgia. Besides, the application of the norm can involve irreparable consequences for the persons, towards whom the punishment could be applied on the basis of the disputable norm and demands to suspend the action of the disputable norm until the adoption of final decision.

Constitutional Suit

On April 11, 2007 the Public Defender of Georgia filed a suit to the Constitutional Court concerning the article 165 of the Criminal Procedure Code of Georgia.

Liberty of an individual is inviolable, by article 18, Constitution of Georgia. According to article 7 of the same law, the violation of the requirements of the present article shall be punishable by law. A person arrested or detained illegally will be entitled to receive compensation.

The Constitution of Georgia, article 42, paragraph 9 runs that everyone having sustained illegally damage by the state, self-government bodies and officials shall be guaranteed to receive complete compensation from state funds through the court proceedings.

According to the Law on Imprisonment there are three types of regime in penitentiary institutions – regular regime institution, strict regime institution and prison.

The same law, article 85, paragraph 1 runs that an arrested accused person (hereinafter referred to as a 'prisoner') shall be kept in a special arrest department according to rules established by the Criminal Procedure Code of Georgia. Therefore, there will only be the violation is considered to take place in case the prisoner is placed in different regime institution or was not given the right to use the rights envisaged by that regime. According to the legal act in question, individuals will receive complete compensation only if such violations take place. The above-mentioned norm violates articles 18 (paragraph 7) and 42 (paragraph 9) of the Constitution of Georgia.

According to the Constitution of Georgia, article 6, paragraph 1 the constitution of Georgia shall be the supreme law of the state. All other legal acts shall correspond to the Constitution.

Proceeding from abovementioned, the Public Defender requests to consider last sentence of paragraph 2, article 165 of CPCG – "If the illness was caused by the violation of regime of imprisoned" unconstitutional.

Constitutional Suit

The Public Defender of Georgia considers that paragraph 8^1, article 9 of the Law on Entrepreneurs is unconstitutional.

According to the abovementioned article the Georgian Labour Code does not refer to Directors and Supervisory Council Members.

Paragraph 4, article 30 of Constitution of Georgia runs that, "the protection of labour rights, fair remuneration of labour and safe, healthy working conditions and the working conditions of minors and women shall be determined by law". The abovementioned comes in accordance with International agreements (Universal Declaration of Human Rights; International Covenant on Economic, Social, and Cultural Rights).

As mentioned above, Directors and Supervisory Council Members are not protected by the Labour Code. It means that the Labour Code does not regulate labour work of Directors and Supervisory Council Members. It is clear that the Law on Public Service does not regulate it either. Therefore, there is no legal act that would regulate labour work of Directors and Supervisory Council Members.

The Public Defender addressed Constitutional Court of Georgia and requested to consider paragraph 8^1, article 9 of the Law on Entrepreneurs unconstitutional, as the abovementioned norm does not comply with the paragraph four, article 30 of Constitution of Georgia and violates human rights. In addition, Public Defendant requests to stop abovemenioned norm before the final decision of the Court, as it could violate many people's rights.

Recommendations

Presumption of Innocence
Recommendations:

Abovementioned does not necessarily mean that it should be forbidden to governmental officials to make comments in media regarding preliminary investigation and criminal cases. However while making public statements they should take into consideration the following:

1. While talking about suspect, accused or defendant, point out that possibility of them committing an offence is based either on doubts or on reasonable assumptions.

2. Refrain from referring to the suspect, accused or defendant as s a perpetrator of an offence.

3. Never use the materials of the criminal case against a person, on which the preliminary investigation/criminal persecution has been ended according to any basis of Article 28 of the Criminal Procedure Code.

Human Rights in Penitentiary System
Recommendations:

1. Penitentiary Department shall ensure nutrition for vegetarians and for prisoners with special requests (E.g., fasting) that should be determined by Normative act.

2. Penitentiary Department shall ensure immediately adherence to the safety rules regarding electricity cables in penitentiary institutions.

3. Overcrowding in prisons and absence of ventilation systems cause terrible conditions and deteriorate prisoners' health. Artificial ventilation systems shall be installed in all prisons.

4. We appeal to the Ministry of Justice of Georgia to put more accents on hygiene conditions in penitentiary institutions. To reopen laundries, fix shower tabs; provide prisoners with personal hygiene means and barber's services.

5. Prisoners' employment and educational programs shall be implemented gradually.

6. Many prisoners in penitentiary institutions are illiterate. It is necessary to work with them. We appeal to the Ministries of Justice and the Ministry of Education and Science of Georgia to enforce timely the norms of their joint Decree #614/6 (on Educating and Professional training of Convicted).

7. Observation posts installed in meeting rooms where lawyers meet with prisoners shall be removed. Decree on "Serving the Sentence" of the Ministry of Justice of December 28, 1999 shall be amended by annulling the last sentence of Article 19, part 9: "Prison administration staff member has the right to observe a meeting visually, without listening."

8. The Public Defender appeals to the Minister of Justice with the recommendation to hold head of Penitentiary Department accountable for violating the law and persistently eluding the Public Defenders recommendation.

Freedom of Speech and Expression
Recommendations:

1. The Interior Ministry Zugdidi Regional Division shall ensure effective investigation of the facts of depriving liberty of Ilia Chachibaia and interference with his professional activities.

2. The Public defender addresses the Parliament with a legislative suggestion with regard to Article 6 of the Labor Code, requesting to define imperatively the issue of concluding an employment agreement in writing for repeated work activities.

3. Issues related to the accreditation of media representatives to the state and local self-government bodies must be regulated by a statutory act. Norms regulating accreditation should be defined in a way that does not have discriminating character and does not contradict with the international norms on human rights and the state's domestic legislation.

Freedom of Assembly and Manifestation
Recommendations:

1. The Public Defender addresses the Georgian Parliament with legislative suggestion to define clearly in Article 9 of the law of Georgia "On Assembly and Manifestation" the legitimate reason for restricting the freedom of assembly within 20 meters radius from the state institution and accordingly, the basis for dispersing manifestation.

2. The Public Defender addresses the Ministry of Internal Affairs with the recommendation to re-train respective patrol-inspectors for the purpose of better understanding of applicable legislation on Freedom of Assembly and Manifestations, that would enable them to distinguish between violating the public order and pursuing the right of assembly and manifestations in due manner.

3. To identify and hold accountable a policeman, who, in violation of the Law of Georgia "On Police" on May 26, 2007 for the purpose of dispersing demonstration on the Rustaveli avenue, at the territory adjacent to Kashveti church used sharp object, as a result of which one of the participants of the demonstration David Dalakishvili was injured.

4. We address relevant bodies of the Prosecutor's office and the Ministry of Foreign Affairs of Georgia with the recommendation to effectively investigate the cases of insulting members of non-governmental organization "Equality Institute" during the protest action on Rustaveli avenue on June 7, 2006; and of dispersing peaceful demonstration of the personnel of TV and Radio company "Trialeti", held in front of Presidential Administration and State Chancellery on June 21, 2006.

Social Protection of the Victims of Political Repressions
Recommendations:

1. The Ministry of Finance of Georgia shall discuss the issue of recognizing unpaid monthly pensions to the children of those recognized as the victims of political repressions from January 1, 2002 up until July 1 2003 as a domestic debt.

2. The Public Defender addresses the Parliament of Georgia to discuss the issue of restoring social guarantees envisaged in the initial law on the victims of political repressions.

3. The Public Defender addresses the Parliament of Georgia to discuss the issue of annulling paragraph 2 of Article 22 of the law on "Social Aid".

4. The Georgian Government shall determine the amount of subsidy envisaged in Article 4, paragraph 'j' of the "Rules and Principles of Determining Amount, Granting and Procedure for Paying Household Subsidies" approved in accordance with to the Governmental Decree on "Monetization of Social Privileges" (January 11, 2007), identically to the subsidies envisaged for veterans of war and military forces.

5. According to the Article 12, part 2 of the "Law on Recognizing Georgian Citizens as Victims of Political Repressions and their Social Protection", Agency for Social Subsidies of Georgia shall guarantee the state pension payments to the persons with the status of the victims of political repressions and their family members, regardless their employment. Also, help to recover rights of those whose pension payments were suspended due to being employed by governmental agencies and were forced to reimburse payments back

National Minorities
Recommendations:

To the Georgian Government: It is recommended to elaborate a special governmental program encouraging social activities of national minorities, full participation in country's life, increasing their qualification and employing them in different governmental agencies.

To the Georgian Government: To elaborate and implement a special program supporting connections and integration between regions densely populated by national minorities and other regions of Georgia.

To the Georgian Government: To elaborate and implement special program that will assist initiating, stimulating and support of the cooperation between media outlets working in regions densely populated by national minorities and other regions of Georgia.

To the Ministry of Education: To select and send qualified teachers of Georgian language to the regions densely populated by national minorities. Priority should be given to those who have the knowledge of respective minorities' language.

The Rights of the Child
Recommendations:

8. The Ministry of Education and Science of Georgia should enhance the efficiency of resource centers, as the bodies responsible for guardianship and care. Namely, the qualified social workers should be added to the personnel of the resource centers, who will be well aware of the forms of response to the facts of violence.

9. The Ministry of Interior of Georgia should create a database to include an exact information and statistical data on the children – victims of domestic violence.

10. The Ministry of Interior and Ministry of Education and Science by applying different means, should enhance public awareness and knowledge in order to protect children against domestic or other forms of violence.

11. The Ministry of Labor, Health and Social Affairs of Georgia, together with the Ministry of Education and Science should provide the functioning of the system of alternative care specially for the children – victims of violence, that will enable to move the victim child to the safe environment in the shortest timeframes possible, according to the urgent needs of the victim, until the relevant agencies make sure that the returning the child back to the family is safe.

12. The information on the fact of domestic violence should become unconditional grounds for carrying out psychical and psychological expertise on the child.

13. According to the Article 1198^1, part 2 of the Civil Code of Georgia: "Natural and legal persons who learn about the cases of violations of rights and interests of minors shall report about these violations to the guardianship and care body according to the place of residence of minors. The guardianship and care bodies, upon such notification, shall carry out measures stipulated by Georgian legislation". It's advisable to make an amendment to the Code of Administrative Offences, which will stipulate an administrative penalty for the persons, who, knowing about their obligations, won't act accordingly in the case stipulated by Article 1198^1 of the Civil Code of Georgia; since the responsibility in case of breaching said Article exceeds the limits of civil responsibility and is a subject of pubic law.

14. The Ministry of Interior and the Ministry of Education and Science should define the exact timeframes for response on proceeding cases related to the minor victim of violence:

If it becomes clear that the situation is alarming and there is a risk of child's abuse, the child should be moved to the safe environment within 24 hours.

If there's a doubt that child suffers domestic violence, the issue should be studied within one week in order to decide upon the extent of danger of child's presence in the family.

a. We address the Parliament of Georgia to make an amendment the Law of Georgia "On Eradication of Domestic Violence, Protection of and Assistance to the Victims of Domestic Violence"" stipulating an immediate enforcing of Article 19, Chapter 6 of said Law.

b. The Ministry of Interior and the Ministry of Education and Science should provide that interrogation of the child - victim of violence will be conducted by the qualified person with relevant skills.

Domestic Violence
Recommendations:

- Government of Georgia should ensure implementation of necessary measures for enforcing Article 8 and Chapter 6 of the Law of Georgia "On Eradication of Domestic Violence, Protection of and Assistant to the Victims of Domestic Violence" within the timeframes stipulated by law, namely, by 1 January 2008. Particularly, it should create social and job-placement guarantees for victims of domestic violence and carry out rehabilitation measures of persons, who committed an act of violence. For this purpose, adopted action plan should be processed and the functions stipulated by the action plan allocated between ministries.

- The Law of Georgia "On Eradication of Domestic Violence, Protection of and Assistant to the Victims of Domestic Violence" and the relevant statutory acts should be amended in order to impose an administrative responsibility for noncompliance to the restraint order.

Problem of Trafficking in Georgia
Recommendations:

4. The State should develop economic and social policy focused on eradicating reasons causing trafficking. An emphasis should be made on elaborating employment policy to protect own labor market.

5. The Interagency Coordination Council responsible for implementing measures against trading of human beings (trafficking) should ensure access to the documents drafted by the latter for the relevant governmental and non-governmental organizations. Particular emphasis should be made on disseminating information to Georgian regions.

6. Coordination Council and the State Fund for the Protection and Assistance of Victims of Trafficking should jointly work out the methods of monitoring of implementation of the Action Plan and define assessment criteria.

Rights of People with Disabilities
Recommendations:

8. The Public Defender has repeatedly addressed the Ministry of Foreign Affairs with the recommendation to start necessary procedures for ratification of the UN Convention on Human Rights of People with Disabilities of 13 December 2006.

9. To restore the work of the commission existed at the Office of the President of Georgia for assisting activities of NGOs representing people with disabilities and the National Coordination Council, in order to coordinate issues related to the people with disabilities and organize interagency cooperation.

10. To create a mechanism for defining a full or partial responsibility of employer in case of job-related accidents, implying an obligation of covering expenses for rehabilitation and retraining of injured employee. To define, in the framework of the mentioned project, the amount of compensation not at employer's discretion, but according to the condition and needs of injured person. The document should include as well the option of re-considering amount of compensation in case the state of health of injured person is worsentut if related to the same accident, serving the basis for issuing initial compensation.

11. The Ministry of Labor, Health and Social Affairs is recommended to develop a system for social aid and benefits specifically for persons with disabilities, which should envisage severity of restriction of capabilities and individual needs of person with restricted capabilities.

12. The Ministry of Labor, Health and Social Affairs is recommended to develop a beneficial system for providing aid and health insurance to those persons with disabilities, who won't find themselves in the unified database of the families below poverty line. Methodology of assessment of the level of restriction of capabilities in accordance with the international standards is recommended to be developed as well.

13. A special body is recommended to be set up immediately within the Ministry of Labor, Health and Social Affairs according to Article 239, Paragraph 45 of the Code of Administrative Offences or any already existed body under subordination of the latter be assigned to carry out competences stipulated by Articles 178^1 and 178^2 of the same Code.

14. Amendments to the Code of Administrative Offences is recommended to be drafted concerning increasing of fines envisaged for avoidance from creating necessary conditions for persons with disabilities stipulated by law, and imposing additional sanctions in case of repeated avoidance. The amendment should include as well the warning that paying fine does not exempt from assigned responsibilities.

Human Rights Monitoring in Elderly Homes and Boarding Houses
Recommendations:

Recommendations to the Ministry of Labor, Health and Social Affairs of Georgia:

- To exercise regular and objective control on homes and boarding houses, considering that beneficiaries of these institutions are mixed and very often there are no resources available to cover the needs of all inmates (E.g., elderly with restricted capabilities);
- To improve access to medical care for inmates of institutions for elderly;
- To meet the existing demand for elderly homes / boarding houses by creating new, up-to-date institutions specialized on providing care for different groups of beneficiaries.

Recommendations to the Ministry of Economic Development of Georgia:

- The Legal Entity of Public Law "Tbilisi Boarding House for Elderly" is a legal successor of "Savane Ltd". However, the property registered on the balance of Savane Ltd. has not been transferred to the balance of the Boarding House. Despite repeated appeals to the administration of the House and the Ministry of Labor, Health and Social Affairs of Georgia, decision has still not been made, that hampers development processes. The issue is recommended to be solved immediately.

Recommendations to the Ministry of Finances of Georgia:

- Financing allocated for elderly does not cover needs for their care, food, primary medical care and rehabilitation. Financing should increase and competitive model of financing elaborated with equal approach to all institutions.

Recommendations to the Tbilisi Boarding House for Elderly:

- Safety system should be installed. As the results of monitoring show, inmates complain that their safety is not ensured and ask for installing the special alarm system that will enable them to contact personnel urgently in crisis situations.

Recommendations to the Dzevri Boarding House for people with restricted capabilities:

- Electricity system should be improved, safety norms observed. Living conditions improved.
- Stricter control should be set on the facts of physical and verbal abuse of inmates and exploitation of their labor.

Recommendations to the Kutaisi Boarding House for Elderly:

- There are no conditions for normal accommodation of people with restricted capabilities. Necessary measures should be carried out for creating adequate conditions for their living;
- Inmates' right to the freedom of speech should be observed.

Recommendations to the Elderly Home "Satnoeba":

- Safety norms should be observed in the rooms. Inmates should be assisted in getting pensions and restoring their ID documents.

Monitoring of Human Rights in Psychiatric Institutions
Recommendations:

To the Ministry of Finances **– costs for a day bed for inpatient treatment should be increased.**
To the Ministry of Labor, Health and Social Affairs **– a community-based psychiatry should be introduced, continuing psychiatric service should be developed, which will ensure the treatment and following rehabiliatiion of the patient**
To psychiatric hospitals:
- **Administration of psychiatric hospital should make additional efforts to inform the patients about their rights. An obligatory informing of the patient of his/her rights within a certain period from admittance to the hospital may be included into the internal regulations, or the patient may be informed about his/her rights during the course of treatment by the medical staff or by social worker.**

- **The administration of psychiatric hospital should create an effective mechanism to inform patients about tier disease, diagnosis and other issues related to their treatment and health. The patient should have access to the medical records.**

To Asatiani Scientific Research Institute of Psychiatry, Tbilisi Zurabashvili Psychiatric Hospital, Kutiri Centre for Mental Health, Surami Psychiatric Hospital and Bediani Psycho Neurological Hospital –
To establish a staff of social worker in hospitals where it does not exist yet, in order to deal with the issues related to ID documents, personal incomes, relations with guardian and patient's property issues through a competent professional.

To the Ministry of Labor, Health and Social Affairs, psychiatric hospitals -
- The issue of discharging the patients being on voluntary inpatient treatment should be immediately resolved. The monitoring showed that patients discharging process is delayed however the administration's argument that the reason for that is a heavy economic situation of the poor patients runs counter to the Law "On Psychiatric Assistance"; also, results of sociological survey show that majority of interrogated patients know where to return upon completing treatment.
- Patient's role in the process of treatment should change so that (s)he will be perceived not as an object for care but as a partner. The right of patients to participate in the process of treatment is safeguarded by the Law "On Patients' Rights".
- Introducing the methods of alternative care should be included in the treatment process which will contribute to maintaining and development of patient's skills during inpatient treatment. At present, while being in hospital, patients lose the useful labor and social skills which should enable their co-existence with the society later. On one hand, providers of psychiatric services should introduce such service and the services' financing agencies, on the other hand, should require to include the service into the package of services. Of course,

providing these services should be respectively financed. Patients should have access to sports activities.

- It's necessary to improve access of the patients with mental disabilities to non-psychiatric medical service. Violation of the right of the patients with mental disablities to have access to non-psyuchiatric service needs to be addresses immediately.

To psychiatric hospitals:

- Administration should set a stricter control on using labor and applying the methods of psychical constraint of patients from the lower stuff; such activities should be carried out according to obligatory procedure.

- There is a need for introducing and effective enforcement of internal complaints system, as a kind of feedback mechanism between an institution and the patient. Monitoring showed that the existing mechanism of complaints (boxes for placing complaints put in paper) installed in hospitals are displayed more for the guests than for learning a critical opinion of patients and their guardians. More accents should be made on encouraging patients' to express their opinion and to the freedom of the speech.

Annex 1. Right of Fair Court

The case of G. Lomidze and G. Popkhadze

On 22 February 2006, T. Takhadze, the judge of Khashuri district court, with the participation of Z. Gvritishvili, the state prosecutor, discussed the criminal case of G. Lomidze and G. Popkhadze accused of crime under articles 19 – 184 of the Criminal Code of Georgia (article 19: Attempt to commit a crime; article 184: Unlawful obtaining of a car or other vehicle without the intention of its misappropriation). Under clauses "a" and "c" of part 2 of the article, G. Lomidze and G. Popkhadze were found guilty for committing the crime provided under articles 19 – 184 part 2, clauses "a" and "c" of the Criminal Code of Georgia.
The Public Defender sent the copy of the indictment of Khashuri district court passed down on 22 February 2006, to the prosecutor general to consider the issue of criminal responsibility of those persons, whose unlawful actions resulted in bringing G. Lomidze and G. Popkhadze to criminal responsibility and adjudication.

On February 22, 2006 the Judge of Khashuri Regional Court T. Takadze with the participation of State Prosecutor Z. Gvritishvili heard the criminal case towards G. Lomidze and G. Popkhadze, crime provided by p.p. "a" and "c" of part 2 of the Article 19-184 of the Criminal Code of Georgia and convicted G. Lomidze and G. Popkhadze of committing crime provided by p.p. "a" and "c" of part 2 of the Article 19-184 of the Criminal Code of Georgia.

Article 184. Illegal Car Stealing or Other Mechanical Vehicle Hijacking Without Purpose of Misappropriation

1. Illegal stealing of a car or hijacking of a mechanical vehicle for the purpose of temporary use, -
shall be punishable by fine or by jail sentence for up to four months in length or by imprisonment for the term not in excess of three years.
2. The same action perpetrated:
a) by a group;
b) repeatedly;
c) under violence not posing danger to life or health or under threat of such violence, -
shall be punishable by prison sentences ranging from two to seven years in length.
3. The action referred to in Paragraph 1 or 2 of this Article, committed under violence not posing danger to life or health, or under threat of such violence, -
shall be punishable by prison sentences ranging from three to seven years in length.

In accordance with the decision of Khashuri Regional Court dated February 22, 2006, criminal action of G. Lomidze and G. Popkhadze was expressed in the following: on July 20, 2005 at about 2 p.m. in Khashuri, in front of bakery located at Tevdire Mgvdeli Street in Khashuri, the minor G. Lomidze met his friend, first year student, minor G. Popkhadze, sat together with him on the bench in front of the bakery and began to talk to him. Several minutes later the minor L. Gelashvili arrived on his own bicycle to the mentioned place in order to buy some bread; he left the bicycle at the door of the shop and entered it to but bread. G. Lomidze and G. Popokhadze agreed to seize the bicycle with the purpose of unlawful temporary usage. Both went to the bicycle and G. Popkhadze intended to sit on it.

At this very moment L. Gelashvili came out of the building and told to get off back from the bicycle as he needed it himself and he couldn't borrow it to them. G. Popkhadze explained that he wanted to use it temporarily and when he again received refusal he began to swear at him and threaten, trying to seize the bicycle; G. Lomidze helped him and thus, acting for the common purpose and common intention, applying violence which is not dangerous for life and health, tried to unlawfully seize the bicycle owned by L. Gelashvili with the purpose of its temporary usage, they made him fall down causing minor injury in the result of falling down on fire woods with temporary health damage, but they didn't manage to carry their intention into effect due to reasons not depending onto them, as the citizens living nearby, on hearing the noise, came out and there arose the danger of their seizure, and both of them hid away from the scene.

In accordance with the Article 184 of the Criminal Code of Georgia, "illegal stealing of a car or hijacking of a mechanical vehicle for the purpose of temporary use" is regarded as a crime. In accordance with p. "n" of the Article 1 of the Law of Georgia "Concerning the Road Safety", **mechanical vehicles include vehicles with engine with the exception of motor bike, as well as all types of tractors and self-propelled vehicles. The mentioned definition applies not only to the purposes of the Law of Georgia "Concerning the Road Safety".**

Besides, for the more accurate definition of the term "vehicle" we should apply to the Article 267 of the Criminal Code, which regards as vehicles **the transport means, having combustion engine or electric engine and their movement is regulated by the road rules. E.G. bicycle (like bullock-cart, sleigh, skate-board) doesn't represent the subject of this crime, as it doesn't pertain to mechanical vehicles (Comments on Private Part of Criminal Law, Prof. Lekveishvili**)

Following the above stated, stealing of other type of vehicles, including bicycle, with the purpose of temporary usage, isn't the action subject to punishment according to the Criminal Law.

In spite of the above stated, criminal prosecution was performed against G. Lomidze and G. Popkhadze, and the Judge of Khashuri Regional Court convicted them of committing the action, which is not provided by the Criminal Code of Georgia.

The case of Irakli Batiashvili

On May 17 2007, Mr. Irakli Batiashvili, Prisoner in Prison #7 (Penitentiary Department, Ministry of Justice, Georgia) filed a petition with the Public Defender against his unlawful confinement. Later, Mr. I. Baratashvili, his lawyer, presented the Public defender with the case materials, demanding a thorough examination thereof. Mr. Baratashvili argued that the applicant had been unlawfully convicted. The representative stated that the applicant's casefile contained no evidence suggesting his guilt, and that telephone conversations had been faked and Mr. Batiashvili was a political prisoner.

Considering the complexity and urgency of the case, the Public defender set up a taskforce to examine it, comprised of:

Giorgi Mshvenieradze, Chief Adviser to the Public Defender

Natia Imnadze, Chief Adviser to the Public Defender

Ia Gumberidze, Senior Specialist to the Department of Justice, Public Defender's Office.

To let the Public Defender examine the case thoroughly, he was presented with the following documentation by the counsel for defence:

1. Materials of the preliminary investigation (the criminal casefile in 3 volumes);
2. Minutes of the session of the Council for Criminal Cases of Tbilisi City Court, the trial court;
3. Judgment from Tbilisi City Court;
4. Judgment of Conviction from Gali and Gulripshi District Courts;
5. Petition by Mr. I. Baratashvili, the applicant's legal representative
    a. of December 16, 2006 to request access to material evidence from Operative-Technical Department of the Ministry of the Interior
    b. of February 14, 2007 to obtain the attendance and examination of witnesses on the applicant's behalf
    c. of March 9, 2007 to attach the evidence to the casefile
    d. of March 19, 2007 to request access to material evidence from Operative-Technical Department of the Ministry of the Interior and obtain the attendance and examination of witnesses on the applicant's behalf;
6. Decision of November 24, 2006 by Judge Maia Tetrauli of the Council for Criminal Cases of Tbilisi City Court on Examination of the Measure of Restriction;
7. Petition to obtain the attendance and examination of witnesses on the applicant's behalf.

The taskforce had been examining the case from June 1 to June 14, 2007.

Descriptive Part

According to the materials in the case-file, on July 22, 2006 *Kurieri,* a news bulletin of *Rustavi 2* TV channel and *Droeba*, a programme of *Imedi* TV channel aired the news of

Emzar Kvitsiani, the former Charge d'affaires of Kodori Gorge, announcing formation of *Monadire,* an armed group, as well as their disobedience to the government.

On July 22, 2006 the Division for Fight against Organized Crime under the Special Operative Department of the Ministry of the Interior brought a criminal charge against Emzar Kvitsiani (casefile #090060756) for crimes punishable by Paragraph 1 of Article 223 of the Georgian Penal Code (forming an illegal armed group, band, unit, etc or heading it), by Paragraph 1 of Article 236 of the Georgian Penal Code (illegal acquisition and storage of firearms, excluding smoothbore hunting rifle, ammunition, explosives, or explosive devices) and Paragraph 2 of Article 236 (illegal wearing of firearms, excluding smoothbore hunting rifle, ammunition, explosives, or explosive devices).

Taking into account the complexity of the case, Kakha Koberidze, Deputy General Prosecutor, applied his procedural right as detailed in Sub-Paragraph *a* of Paragraph 1 of Article 56 of the Georgian Code of Penal Procedure and charged a group of investigators with investigation into the charges (casefile #090060756, pp.3-4 of Vol. 1).

On July 22, 2006 Zurab Beitrishvili, chief investigator[3] of the Special Operative Department of the Ministry of the Interior, who was appointed to head the investigation taskforce, let A. Kvetenadze know, Prosecutor of the Prosecutor General's Department for Procedural Supervision of Investigation by the Ministry of the Interior's Public Security Services, (letter # 18/3/1-2527) of starting a preliminary investigation into Case #090060756 (p.8, Vol. 1).

On July 22, 2006 Zurab Beitrishvili, chief investigator[4] of the Special Operative Department of the Ministry of the Interior, asked Mr. A. Kvetenadze, Prosecutor of the Prosecutor General's Department for Procedural Supervision of Investigation by the Ministry of the Interior's Public Security Services to petition the Council for Criminal Cases of Tbilisi City Court to allow an "operative measure of tapping" 899 357729, 899 187181, 899 540007, 877 54 0007, 877 732959, 877 750488 telephone numbers from July 23 to 23 October 2006 to ascertain true circumstances of Criminal Case #090060756 (p.9, Vol. 1) and obtain the necessary evidence.

On July 23, 2006 Mr. A. Kvetenadze, Prosecutor of the Prosecutor General's Department for Procedural Supervision of Investigation by the Ministry of the Interior's Public Security Services, petitioned Mr. G. Shavliashvili (p.1,Vol. 1), Chairman of the Council for Criminal Cases of Tbilisi City Court to allow the measure. On July 23, 2006 Judge M. Nozadze of the Council for Criminal Cases of Tbilisi City Court allowed the measure (p.17, Vol. 1).

Mr. A. Kvetenadze asked L. Gurgenidze, Head of the Division for Fight against Organized Crime of the Special Operative Department of the Ministry of the Interior, to apply the operative measure of tapping the telephone numbers listed above (p.13, Vol. 1).

[3] Investigator that deals with cases of special importance.—Translator
[4] Investigator that deals with cases of special importance.—Translator

P.S. pp. 5-6 of Vol. 1 make it clear that incoming and outgoing calls of 899 357729 (a telephone number used by Mr. Emzar Kvitsiani) were tapped as part of the measures on Criminal Case # 07022906. Thus, telephone conversations by Mr. Emzar Kvitsiani were tapped before the insurgency had started.

On July 26, 2006 Zurab Beitrishvili, chief investigator of the Special Operative Department of the Ministry of the Interior, asked Mr. A. Kvetenadze, Prosecutor of the Prosecutor General's Department for Procedural Supervision of Investigation by the Ministry of the Interior's Public Security Services, to petition Chairman of the Council for Criminal Cases of Tbilisi City Court to allow tapping 899 534140, which belonged to Mrs. Nora Arghvliani, a person presumed to be like-minded with Emzar Kvitsiani (pp.38-39, Vol. 1).

Based on the request by Mr. A. Kvetenadze (pp.40-41, Vol. 1) Judge V. Pukhashvili of the Council for Criminal Cases of Tbilisi City Court allowed the Division for Fight against Organized Crime under the Special Operative Department of the Ministry of the Interior tapping 899 534740, a telephone number that belonged to Mrs. Nora Arghvliani from July 26 to 26 October 2006 (p. 43, Vol. 1).

Mr. A. Kvetenadze asked Mr. L. Gurgenidze, Head of the Chief Division for Fight against Organized Crime and Special Tasks under the Special Operative Department of the Ministry of the Interior, to tap 899 534740 after obtaining a judiciary warrant (p. 42, Vol. 1).

On July 25, 2006 a criminal charge was brought against Mr.Kvitsiani for crimes punishable by Paragraph1 of Article 223 of the Georgian Penal Code (forming an illegal armed group, band, unit, etc or heading it), by Paragraph 1 of Article 236 of the Georgian Penal Code (illegal acquisition and storage of firearms, excluding smoothbore hunting rifle, ammunition, explosives, or explosive devices), and Paragraph 2 of Article 236 (illegal wearing of firearms, excluding smoothbore hunting rifle, ammunition, explosives, or explosive devices). On July 25, 2006 Mr. Z. Beitrishvili and A. Kvetenadze petitioned the Council for Criminal Cases of Tbilisi City Court to rule Mr. E. Kvitsiani's incarceration, which was subsequently granted, and search declared (pp. 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35 Vol. 1).

On July 28, 2006 a new criminal charge was brought against Mr. Kvitsiani for crimes punishable by Paragraph1 of Article 223 of the Georgian Penal Code (forming an illegal armed group, band, unit, etc or heading it), by Paragraph 1 of Article 236 of the Georgian Penal Code (illegal acquisition and storage of firearms, excluding smoothbore hunting rifle, ammunition, explosives, or explosive devices) and Paragraph 1 of Article 237 (taking illegal possession of firearms, excluding smoothbore hunting rifle, their part, ammunition, explosives, or explosive devices or taking them by force), by Paragraph 1 of Article 236 of the Georgian Penal Code (illegal acquisition and storage of firearms, excluding smoothbore hunting rifle, ammunition, explosives, or explosive devices), and Paragraph 2 of Article 236 (illegal wearing of firearms, excluding smoothbore hunting rifle, ammunition, explosives, or explosive devices), Article 307 (high treason), Paragraph 2 of Article 312 (damaging arms or military units, causing them to break down, or destroying them or preventing a military installation from its usual operation in prejudice of the country's defence capacity);

Paragraph 3 of Article 315 (uprising to change constitutional order by force or stage coup d'etat that resulted in loss of life or other grave consequences).

On July 26, 2006 Mr. Z. Beitrishvili, chief investigator[5] of the Special Operative Department of the Ministry of the Interior, questioned the applicant as a witness regarding his relationship with Mr. Emzar Kvitsiani and legal status of *Monadire*[6] and the situation in Kodori Gorge in Room 231 of the Criminal Department of the Prosecutor General's Office.

On July 26, 2006 Mr. T. Shengelaia, investigator of Samegrelo-Upper Svaneti Regional Department of the Ministry of the Interior held that Mr. Mikheil Kokiashvili (employee of the Ministry of the Interior) and Mr. Valeri Mujirishvili (Head of the Medical Unit of the Centre for Special Operations, Ministry of the Interior) were the victims (Criminal Casefile #090060756), requesting their forensic medical examination.

At 11 pm, on July 29, 2006 the applicant was served with summons by Mr. Z. Beitrishvili, chief investigator of the Special Operative Department of the Ministry of the Interior, directing him to come to the Prosecutor's Office to be presented with accusation (p.220 Vol. 1).

On July 29, 2006 the applicant was formally charged (Criminal Casefile 090060756). The charge consisted in the following:

the Minister of Defence of Georgia disbanded *Monadire,* a Ministry of Defence battalion deployed in Kodori Gorge(Order # 180 of May 27, 2005).
to undermine the influence of the central authorities in the gorge and overthrow the government through organizing an uprising Mr. Kvitsiani, who was indignant at the government, formed an armed group in conjunction with the former members of his battalion, viz., Mr. Irakli Arghvliani and others, took illegal possession of the ammunition, firearms, military equipment and other assets that belonged to *Monadire,* a former battalion of the Ministry of Defence.
on July 22, 2006 Mr. Kvitsiani started an organized armed uprising against the government to overthrow it.
the applicant decided to provide an intellectual support to the insurgents through giving them directions, advice and information that would have made it easier for them to attain their goal. To attain the goal, however, an armed group was not enough: it was necessary to gain support by the wider public and paralyze authorities. The applicant promised Mr. Kvitsiani that he together with the leaders of a number of political parties would help form a favourable public opinion of the uprising through their addresses to the public.
the applicant, in line with his promise, publicly gave his support to the armed uprising, calling Mr. Kvitsiani a hero.
the applicant approved of Mr. Kvitsiani's public addresses as well as actions, which encouraged them to continue the uprising.

[5] Investigator that deals with cases of special importance.—Translator
[6] A disbanded armed group.—Translator

the applicant advised him to keep addressing the public and emphasize the issues that were necessary to gain public support for the uprising and paralyze the authorities.
the applicant called on the law-enforcement bodies not to contain the resistance, promising the public that he would organize an armed uprising in Tbilisi should need arise.
the applicant informed Mr. Kvitsiani of the addresses by the leaders of political parties to the public as well as his guesses as to what they could be expected to say in the coming days, assuring Mr. Kvitsiani that a number of political parties approved his moves.
the applicant thus assured Mr. Kvitsiani that the public opinion was on his side; addressed the public on a number of occasions to mobilize favourable public opinion of the uprising; with a view to paralyzing the government called on its agents not to contain the uprising.
therefore, the applicant committed crimes punishable by Article (25) 307, and Paragraph 3 of Article 315 of the Penal Code of Georgia.
the applicant was aware of the intention by the Abkhaz separatist authorities to take part in the uprising, viz., of Gari Kupalba's (the so-called Deputy Defence Minister of Abkhazia) promise to provide arms to the insurgents, but did not provide the information to the relevant authorities as he intended to help Kvitsiani's endeavours to overthrow the government.
the applicant committed a crime punishable by Article 376 of the Penal Code of Georgia.
thus the applicant committed crimes punishable by Article (25) 307, Paragraph 3 of Article 315 and Article 376 of the Penal Code of Georgia.
the audio and video evidence in the casefile (telephone conversation between the applicant and Mr. Kvitsiani on July 23-25; recordings of: July 25 evening news bulletin *Kurieri, Rustavi-2* channel; the applicant's address to the public aired on July 25 night news bulletin *Kronika*, *Imedi* channel; the applicant's telephone interview to the RTR TV channel re-aired by the *Public Broadcaster*; recordings of Mr. Kvitsiani's addresses to the public and interviews aired on July 22 news bulletin of *Public Broadcaster* channel, on July 22 news bulletin *Kurieri, Rustavi-2* channel, on July 22 news bulletin *Kronika, Imedi* channel, on July 23 programme *Droeba, Imedi* channel, on programme *Post-Scriptum, Rustavi-2* channel, and on July 24 news bulletin *Kurieri, Rustavi-2* channel) and the other evidence is sufficient to presume that the applicant committed crimes punishable by Article (25) 307(high treason), Paragraph 3 of Article 315 and Article 376 of the Penal Code of Georgia.

The applicant was convicted of crimes punishable by Article (25) 307(high treason), Paragraph 3 of Article 315 and Article 376 of the Penal Code of Georgia.

The applicant was presented with the accusation at the office of the Special Operative Department of the Ministry of the Interior. His examination started at 2:12 p.m on July 29, 2006. The accused exercised his right to silence as provided for by the Code of Penal Procedure of Georgia (p.227, Vol. 1). The applicant was arrested at 2:26 p.m. on July 29, 2006 (pp.228-230, Vol. 1).

On July 29, 2006 Mr. Z. Beitrishvili admitted the evidence and attached it to the casefile, viz., telephone conversation between the applicant and Mr. Kvitsiani on July 23-25; recordings of: July 25 evening news bulletin *Kurieri, Rustavi-2* channel; the applicant's address to the public aired on July 25 night news bulletin *Kronika*, *Imedi* channel; the applicant's telephone interview to the RTR TV channel re-aired by the *Public Broadcaster*;

recordings of Mr. Kvitsiani's addresses to the public and interviews aired on July 22 news bulletin of *Public Broadcaster* channel, on July 22 news bulletin *Kurieri, Rustavi-2* channel, on July 22 news bulletin *Kronika, Imedi* channel, on July 23 programme *Droeba, Imedi* channel, on programme *Post-Scriptum, Rustavi-2* channel, and on July 24 news bulletin *Kurieri, Rustavi-2* channel (pp.232-235, Vol. 1).

On July 29, 2006 the applicant asked Mr. Z. Beitrishvili to give him access to the video evidence and telephone conversations attached to his casefile.

On July 29, 2006 Mr. A. Kvetenadze, Prosecutor of the Prosecutor General's Department for Procedural Supervision of Investigation by the Ministry of the Interior's Public Security Services, petitioned Mr. G. Shavliashvili (p.11 Vol. 1), Chairman of the Council for Criminal Cases of Tbilisi City Court, to order[7] the applicant's imprisonment (p.237-240, Vol. 1).

On July 30, 2006 criminal investigator Beitrishvili held that new evidence had to be attached to the casefile, viz., "questioning of the applicant in his capacity as witness on July 26, 2006 at the Prosecutor-General's Office, which was filmed and later copied to a CD. As the recording was found to be an important piece of evidence to Criminal Case #090060756, it was considered advisable to attach it to the casefile."

On July 30, 2006 Judge G. Goginashvili of the Council for Criminal Cases of Tbilisi City Court ruled the applicant's imprisonment (p.253, Vol. 1). Mr. Ioseb Baratashvili, the applicant's legal representative, appealed against the order to Tbilisi Court of Appeal.

On August 3, 2006 Judge I. Zhorzholiani of Tbilisi Court of Appeal upheld the order by G. Goginashvili, Judge of the Council for Criminal Cases of Tbilisi City Court, regarding the applicant's imprisonment (pp. 83-88, Vol.2).

On August 1, 2006 Mr. Mikheil Kokiashvili was questioned in his capacity as witness regarding Criminal Case #090060756.

On August 5, 2006 Mr. Valeri Mujirishvili was questioned in his capacity as victim regarding the Case.

On July 22, 2006 the Department for Constitutional Security of the Ministry of the Interior launched an investigation into Case #089060100 brought against Mr. Emzar Kvitsiani for a crime punishable by Article 317 (call to change constitutional order by force, or overthrow the government).

On August 1, 2006 the Prosecutor-General's Office forwarded the Case to the Special Operative Department of the Ministry of the Interior for further investigation. The criminal

[7] in Georgian judicial practice judgment sentencing defendant to detention on remand is called *order*.---Translator.

case was then attached the registration number of the Special Operative Department of the Ministry of the Interior #090060788 and consolidated with Criminal Case #090060756.

On August 2, 2006 Mr. E. Kodua, Head of the Special Operative Department of the Ministry of the Interior, asked Mr. Kotaria, Head of the Operative-Technical Department of the Ministry of the Interior, to produce transcripts of 6 video-cassettes containing telephone conversations between the applicant and Mr. Kvitsiani as well as TV coverage of the situation in Kodori Gorge that were forwarded to the Operative-Technical Department (p.16, Vol. 2).

On August 2, 2006 the Public Defender's Office asked Head of the Prosecutor General's Department for Procedural Supervision of Investigation by the Ministry of the Interior's territorial bodies to insure that the request made to Mr. Zurab Beitrishvili (investigator of the Division against Organized Crime of the Special Operative Department of the Ministry of the Interior) by the defence counsel on July 29, 2006 pursuant to Paragraph 3 of Article 76 and granted on July 31 should be put in practice. Although the petition had been granted the indictee was not given access to the materials in the criminal casefile.

On August 3, 2006 Mr. Ioseb Baratashvili, the applicant's legal representative, requested Investigator Beitrishvili to give him access to the applicant's casefile. On August 6, 2006 Mr. Beitrishvili informed the representative that the recordings had been sent to the Operative-Technical Department of the Ministry of the Interior to be transcribed, and the counsel for defence and the applicant would be given access to the materials when they were returned.

On August 10, 2006 Mr. Zurab Beitrishvili, chief investigator of the Special Operative Department of the Ministry of the Interior, held that the transcripts of the recordings constituted the evidence that had to be attached to the casefile (pp. 122-129, Vol.2).

On August 11, 2006 Mr. E. Kodua, Head of the Special Operative Department of the Ministry of the Interior, asked Mr. Kotaria, Head of the Operative-Technical Department of the Ministry of the Interior, to copy k-163 11205642, 11206522, 11208208; k-270 11229465 recordings, which had been admitted as evidence and attached to the applicant's casefile by Mr. Z. Beitrishvili, to a CD (p.144, Vol. 2).

On August 11, 2006 Mr. Z. Beitrishvili admitted the CD as evidence and attached it to the casefile: "The investigation found tapescripts of important telephone conversations that expose Mr. Irakli Batiashvili, Mr. Emzar Kvitsiani, Mr. Irakli Arghvliani and their accessories as perpetrators of the crime. The CD containing the telephone conversations has an evidential value and should therefore be admitted as evidence and attached to the casefile."

The casefile contains minutes taken by Mr. Z. Beitrishvili on August 12, 2006 of Mr. I. Baratashvili, the applicant's legal representative, familiarizing himself with the telephone conversations between the applicant and Mr. Kvitsiani and transcripts of TV coverage of Kodori events, as well as: 1. July 23, 2006 transcript of telephone conversation k-163 11205642, 11206522 between the applicant and Mr. Kvitsiani 2. July 24, 2006 transcript of telephone conversation k-163 11212883 between the applicant and Mr. Kvitsiani 3. July 27,

2006 transcript of telephone conversations k-270 11229465 between the applicant and Mrs. Nora Kvitsiani. On August 15, 2006 Mr. I. Baratashvili, the applicant's legal representative, familiarized himself with k-163 11208208 transcript.

On August 12, 2006 Mr. I. Baratashvili, the applicant's legal representative, petitioned Z. Beitrishvili for:

1. tapescripts of telephone conversations between the applicant and Mr. Kvitsiani between July 23-29;
2. copies of transcripts of telephone conversations between the applicant and Mr. Kvitsiani between July 23-29;
3. copies of transcripts of TV coverage cited in the applicant's indictment
4. list of all outgoing and incoming calls of the applicant's phone number (899 941111) between July 23-29.

Although none of the requests had been granted, the prosecutor held that Mr. Batiashvili could familiarize himself with the video-recordings in Prison #7 after it was technically possible. Therefore, the petition was considered to have been partially[8] granted (pp.171-172).

Within Criminal Case # 09006065 the following witnesses were examined regarding their telephone conversations with the applicant: Lali Meladze, Zaza Bregadze, Valeri Aloiani, Davit Tarkhan-Mouravi, Avtandil Guruli, Lamara Mindiashvili, Nino Loladze, Ligia Khurtsidze, Ilia Kharanauli, Ivane Beradze, Giorgi Kandelaki, Gocha Sakevarashvili, Tamar Chikovani, Levan Berishvili, Nugzar Kereselidze, Gocha Charekashvili, Teimuraz Koridze, Gia Andghuladze, Giorgi Gagua, Tengiz Gavasheli, Aleksi Romanovski, Rezo Amashukeli, Aleksandre Kantaria, Akaki Svanidze, Nugzar Mgaloblishvili. The minutes of the questioning shows that none of the witnesses said they spoke of the situation in Kodori Gorge.

On September 7, 2006 Mr. Z. Beitrishvili admitted Verbatim DVD-RW disk #51 A8 as evidence, presented by Mr. Nugzar Kereselidze, journalist of Russian NTV channel, on September 5, 2006, and attached it to Criminal Case #090060756 (pp.267-272, Vol.2). Mr. E. Kodua, Head of the Special Operative Department of the Ministry of the Interior, asked Mr. Kotaria, Head of the Operative-Technical Department of the Ministry of the Interior, to produce transcripts of the tapescripts on the CD and translate them into Georgian.

The casefile contains the prosecutor's decisions admitting video-cassettes #9 and 10 as evidence to be attached to the casefile.

On September 12, 2006 I. Baratashvili, the applicant's legal representative, petitioned Mr. Zurab Beitrishvili, chief investigator of the Special Operative Department of the Ministry of the Interior, to admit the evidence he presented, which was of substantial importance to the investigation, viz., statements by Iakob (Bandzeladze), celibate priest of Betania Virgin

[8]As shown by the summary of the petition above, the applicant's legal representatives requested the prosecutor to provide access to the evidence to them rather than the accused. In response to the petition, however, the prosecutor let the defence counsel know that his office would let the accused familiarize himself with the video-recordings in Prison #7 after it was technically possible, which led the prosecutor to conclude that the petition by the defence counsel was partially granted.—Translator.

Mary's Monastery, Nino Metreveli, Journalist of *the Sarke* magazine and Mr. Sergo Begashvili. Mr. Zurab Beitrishvili, however, did not grant the petition (pp.3-4, Vol. 3).

On September 20, 2006 Z. Beitrishvili was notified by Tbilisi Prison #7 administration that the applicant's detention on remand had not been extended by the court and was due to end on September 29. On September 20, 2006 Mr. I. Kobidze, Prosecutor of the Prosecutor General's Department for Procedural Supervision of Investigation by the Ministry of the Interior's Public Security Services, petitioned the Council for Criminal Cases of Tbilisi City Court to extend the applicant's detention on remand by a month, i.e. by October 29, 2006 (pp. 10-14, Vol. 3).

On September 22, 2006 Judge E. Areshidze of the Council for Criminal Cases of Tbilisi City Court granted Mr. Kobidze's petition, having extended the applicant's detention on remand to October 29, 2006 (pp.19-20, Vol. 3).

Mr. I. Baratashvili, the applicant's legal representative, appealed against the order to Tbilisi Court of Appeal. Judge G. Gogiashvili of the Investigative Council of Tbilisi Court of Appeal upheld the order by the judge of the Council for Criminal Cases of Tbilisi City Court (pp.21-22, Vol. 3).

On October 13, 2006 Z. Beitrishvili was again notified by the Special Division of Tbilisi Prison #7 administration that the applicant's three month detention on remand had not been extended by the court and was due to end on October 29, 2006. On October 23, 2006 Mr. I. Kobidze, Prosecutor of the Prosecutor General's Department for Procedural Supervision of Investigation by the Ministry of the Interior's Public Security Services, petitioned the Council for Criminal Cases of Tbilisi City Court to extend the applicant's detention on remand by a month, i.e. by November 29, 2006 (pp 45-49, Vol. 3).

On October 26, 2006 Judge D. Metreveli of the Council for Criminal Cases of Tbilisi City Court granted Mr. Kobidze's petition, having extended the applicant's three month detention on remand to November 29, 2006 (pp.53-56, Vol. 3).

Mr. I. Baratashvili, the applicant's legal representative, appealed against the order to Tbilisi Court of Appeal. Judge I. Zhorzholiani of the Investigative Council of Tbilisi Court of Appeal upheld the order by the judge of the Council for Criminal Cases of Tbilisi City Court (pp.66-68, Vol. 3).

On November 1, 2006 Criminal Case # 090060756 was consolidated with Criminal Case # 051821 investigated by the Chief Division for Fight against Organized Crime and Special Tasks under the Special Operative Department of the Ministry of the Interior, which was launched on November 15, 2005 against forming an illegal armed group, a crime punishable by Paragraph 1 of Article 223 of the Georgian Penal Code (pp. 75-76, Vol. 3).

The casefile shows that members of an illegal armed group operating in Abkhazia, headed by certain O.T., conspired to explode *Kavkasioni* high-voltage line. Head of the armed group is linked with Mr. I. Arghvliani and Mrs. Nora Kvitsiani living in Kodori Gorge. Based on the

judiciary warrant, the telephone numbers of these people were tapped. Thus it transpires that Mr. Kvitsiani's phone (899 35-77-29) has been tapped since July 5, 2006 (p. 85, Vol. 3).

Thus transcripts of telephone conversations between Mrs. N. Kvitsiani and Mr. I. Batiashvili (Z-270 11209763; Z-270 11211522; Z-270 11212193; Z-270 11218326; Z-270 11218528) were admitted as evidence to be attached to the casefile on November 1, 2006 (pp. 94-97, Vol. 3).

The casefile shows that a CD containing telephone conversations between the applicant, Mrs. Nora Kvitsiani and Mr. E. Kvitsiani was attached to it as evidence, without indicating any detail as to which conversations it contains (pp 98-101, Vol. 3).

On November 2, 2006 Deputy Head of the Chief Division for Fight against Organized Crime and Special Tasks under the Special Operative Department of the Ministry of the Interior asked Head of the First Division of the Operative-Technical Department, Ministry of the Interior, to copy Z-270 11209763; Z-270 11211522; Z-270 11212193; Z-270 11218326; Z-270 11218526 telephone conversations to CD and keep it for a year (p. 102, Vol.3).

On November 21, 2006 the applicant was again charged with crimes punishable by Article (25) 307 (high treason), Paragraph 3 of Article 315 of the Penal Code of Georgia (uprising to change constitutional order by force or overthrow the government or usurp power), and Article 376 (failure to notify authorities of a crime). (pp. 109-115, Vol. 3).

The accused exercised his right to silence again.

On November 21, 2006 Criminal Case #090060756 against Mr. Kvitsiani and others was separated from the applicant's criminal case, the latter being launched for crimes punishable by Article (25) 307 (high treason), Paragraph 3 of Article 315 of the Penal Code of Georgia (uprising to change constitutional order by force or overthrow the government or usurp power), and Article 376 (failure to notify authorities of a crime). The casefile was attached a registration number of 090061129 (pp. 124-125, Vol. 3).

This ended preliminary investigation into the Case # 090061129. The case with the respective indictment was then forwarded to Tbilisi City Court (p. 132-138, Vol. 3).

Mr. Ioseb Baratashvili and Mr. Gela Nikoleishvili, the applicant's legal representatives, and Mr. Valeri Mujirishvili and Mr. Mikheil Kokiashvili, the victims, were duly notified of the completion of the investigation.

The lawsuit was filed on November 24, 2006. Pursuant to Article 162, Paragraph 8 of the Georgian Code of Penal Procedure, "the judge examines the case without oral hearing within 24 hours' time after it is filed to identify a measure of restriction."

The judge could have extended the applicant's detention on remand. She, however, was to examine the case in accordance with Article 140 of the Georgian Code of Penal Procedure (Court rule as to applying a coercive measure of Penal Procedure) and extend the applicant's detention pending the judgment, but not beyond 6 months' time.

Instead, the court (Judge Maia Tetrauli) discussed whether a measure of restriction had been appropriately applied, upholding the judgment of November 24 2006 that ruled the applicant guilty and sent him to prison.

Court examination[9] of Criminal Case #1/7189-06 against the applicant for crimes punishable by Article (25) 307(high treason), and Paragraph 3 of Article 315 of the Penal Code of Georgia (uprising to change constitutional order by force, overthrow the government or usurp the power that resulted in loss of life or other grave consequences) and Article 376 (failure to notify authorities of a crime) started on April 25, 2007. The hearing was attended by:

Mr. Valeri Mujirishvili and Mr. Mikheil Kokiashvili, who had been injured in Kodori Gorge during the period;

counsel for prosecution, represented by Mr. Irakli Kobidze;

counsel for defence represented by Mr. Ioseb Baratashvili and Mr. Gela Nikoleishvili.

The trial took ten days with in-depth hearing of nine days and verdict reached on the tenth day.

Witnesses summoned: Nugzar Kereselidze, Zurab Beitrishvili, Giorgi Gogolashvili, Nora Kvitsiani, Gocha Pipia, E. Kodua, N. Tabatadze, Z. Kotaria.

Prosecution witnesses: Nugzar Kereselidze

Defence witnesses: E. Kodua, N. Tabatadze, Z. Kotaria, G. Pipia, Z. Beitrishvili, N. Kvitsiani.

On May 23, 2007 Judge Maia Tetrauli of the Council for Criminal Cases of Tbilisi City Court with Mr. Giorgi Keratishvili, secretary, Mr. Irakli Kobidze, counsel for prosecution, Mr. Irakli Batiashvili, the defendant, counsel for defence represented by Mr. Ioseb Baratashvili and Mr. Gela Nikoleishvili examined criminal case against Mr. Irakli Batiashvili, born on August 8, 1961, in Tbilisi, Georgian citizen, received higher education, married and having children, having no conviction, domiciled at: Apartment 28, 11 Chavchavadze Ave., indicted and imprisoned for crimes punishable by Article (25) 307, Paragraph 3 of Article 315 of the Penal Code of Georgia.

According to the Descriptive Part, the indictment charged the applicant with being an accessory to high treason, uprising to overthrow the government that resulted in grave consequences, and failure to notify authorities of an exceptionally grave crime, while the new indictment charged the applicant with being an accessory to high treason and uprising to overthrow the government that resulted in grave consequences, viz.:

the Minister of Defence of Georgia disbanded *Monadire,* a Ministry of Defence battalion (Order # 180 of May 27, 2005) deployed in Kodori Gorge.

to undermine the influence of the central authorities in the gorge and overthrow the government through organizing an uprising, Mr. Kvitsiani, who was indignant at the government, formed an armed group in conjunction with Mr. Irakli Arghvliani, his relative,

[9] A kind of judicial inquest in Georgia. –Translator

and the other former members of his battalion and took illegal possession of the ammunition, firearms, military equipment and other assets that belonged to *Monadire,* a former battalion of the Ministry of Defence.
on July 22, 2006 they started an organized armed uprising against the government to overthrow it.
the applicant decided to provide intellectual support to the insurgents through giving them directions, advice and information that would make it easier for them to attain their goal.
to attain the goal, however, an armed group was not enough: it was necessary to gain support by the wider public and paralyze authorities. The applicant promised Mr. Kvitsiani that he together with the leaders of a number of political parties would help form a favourable public opinion of the uprising through their addresses to the public.
in nine telephone conversations with Emzar and Nora Kvitsiani between July 23-25 the applicant approved of Mr. Kvitsiani's public addresses as well as actions, which encouraged them to continue the uprising. The applicant was assuring Mr. Kvitsiani that political parties were supporting him, rather than advising him to stop resistance and surrender his arms to the authorities. To mobilize favourable public opinion of the uprising and paralyze the government the applicant advised Mr. Kvitsiani to call on the armed forces to refuse to contain the uprising.
having followed the applicant's advice, Mr. Kvitsiani called on the law-enforcement bodies not to contain the resistance, promising the public that he would organize an armed uprising in Tbilisi should need arise.
the applicant informed Mr. Kvitsiani of the addresses by the leaders of political parties to the public as well as his guesses as to what they could be expected to say in the coming days, assuring Mr. Kvitsiani that a number of political parties approved his moves.
thus the applicant assured Mr. Kvitsiani that public opinion was on his side, which resulted in grave consequences: the insurgents, headed by Mr. Kvitsiani, put up an armed resistance to the units of the Ministry of the Interior that entered the gorge to reinstate order there, which caused a panic among the locals. On July 25 Mr. Valeri Mujirishvili, Head of the Medical Unit of the Centre for Special Operations, Ministry of the Interior, suffered life-threatening wounds in the left chest, while Mr. Mikheil Kokiashvili, head of one of the divisions of the Centre for Special Operations, was lightly wounded in the left hip. The attack left part of the military equipment damaged. Mr. Kvitsiani and his accomplices ran away, being still at large.

Thus the applicant was charged with crimes punishable by Article (25) 307, and Paragraph 3 of Article 315 of the Penal Code of Georgia.

After the court examination[10] had been over, the counsel for prosecution held that the applicant's conduct had not resulted in grave consequences (panic in the country, destabilization, etc.), which prompted its decision to charge him on Article (25), Paragraph 2 of 315 counts of the Penal Code instead of Article (25) and Paragraph 3 of 315. The counsel for prosecution took into account the amendments to Georgian Penal Code that took effect as from May 7, 2007, which rescinded Article 307.

[10] A kind of judicial inquest in Georgia. –Translator

According to the Reasons for the Judgment the applicant pleaded not guilty, stating that he was not determined to assist Mr. Kvitsiani by giving him directions, advice and the necessary information. The applicant said that he had not promised to mobilize public opinion in favour of the uprising through his addresses to the public or those by political parties, adding that on July 24, 2006 in his telephone conversation with Mr. Kvitsiani and Mrs. Arghvliani he mentioned political parties in the context of finding a peaceful solution to the conflict, rather than mobilizing support for the uprising. The applicant also said that he was exchanging his views with Mr. Kvitsiani and Mrs. Arghvliani, rather than providing them with necessary information.

The applicant stated that he did not agree with anyone as to supporting the uprising, adding that having been head of the Georgian Security Service he knew how operative-technical division worked and even if he had intended to give his support to the uprising, he would not have done so by phone. The applicant noted that on returning from Betania Monastery on July 23, where he had gone on July 21, he was called by Mrs. Nino Metreveli, journalist of *the Sarke*[11], who let him know of Mr. Kvitsiani's statement about the disobedience. Then he called Mr. Kvitsiani to ask him what his demands were, to which Kvitsiani said that Defence Minister Okruashvili was threatening them with assault, their demand being that the assault should not be launched against them.

Mr. Kvitsiani said that although he knew that the authorities were demanding *Monadire* weapons back he did not know why the assault was going to be launched against them. Mr. Batiashvili said that disbanding *Monadire* was a mistake as the battalion had guaranteed security in the gorge for many a year, adding that he had an impression that it was a protest as they were not demanding President's resignation or threatening with coup d'etat. The applicant also said that one of the demands was that the Parliament should not reinstate the Minister of the Interior Vano Merabishvili in his post. Knowing that Parliament would reinstate the Minister in his post, the applicant tried to reassure Kvitsiani to drop the demand.

The applicant argued that avoiding bloodshed was his main concern and that he knew nothing of Mr. Kvitsiani's intention to put up an armed resistance to the government to overthrow it. The applicant said that although Mr. Kvitsiani declared his disobedience, it was engendered by a strong protest, which in that particular case was essentially the same as disobedience. The only indication of his approving Mr. Kvitsiani's addresses, the applicant said, was his telling Kvitsiani "it was good, good" and that his (Kvitsiani's) TV addresses made it clear that he was a man standing for the interests of his community. The applicant noted that he did not call on Mr. Kvitsiani to launch an armed uprising.

The applicant said that though he knew each and every family in the gorge had weapons, provided to them by the government, he did not know that Mr. Kvitsiani would be armed. He, therefore, felt that the conflict between part of the local population with the government was fraught with danger that could have caused armed clashes. When he advised Mr. Kvitsiani to call on the military not to fight, he implied both *Monadire* soldiers,

[11] A popular magazine.—Translator

who were quite experienced servicemen, and government military. The applicant also noted that at the time it was impossible to persuade Mr. Kvitsiani and his supporters to surrender arms, which was the reason why he did not advise him to do so. The applicant said that he wanted to help defuse tensions, trying to contact a number of high-rank officials of the Ministry of the Interior, to be able to go to the gorge. He, however, could not get through to any of them (see minutes of the proceedings).

The court declined the pleading by the counsel for defence as to the indictee's innocence inasmuch as it was not corroborated by the materials of either the preliminary investigation or court examination[12].

The court held that the evidence collected by both the preliminary investigation and court examination testifies to the indictee's commission of the alleged crimes:

as stated by Mr. Mikheil Kokiashvili's in his testimony, he worked for the Centre for Special Tasks of the Ministry of the Interior. On July 23, 2006 the centre was ordered to Kodori Gorge in connection with the uprising that started there. He said that they had entered the gorge on July 25. At about 5 p.m., near the village of Sakeni, the convoy came under fire from the forest. Mr. Kokiashvili was wounded while getting out of the vehicle. He stated that he received medical assistance first at Zugdidi and then at Kutaisi hospital. He was incapacitated and off work for six months (see minutes of the proceedings);
pursuant to forensic report #4719, Mr. Kokiashvili's treatment for wounds received on July 25, 2006 was carried out based on the diagnosis made on July 26, 2006 (cannon-shot wounds in the left hip). Later he was admitted to Kutaisi Z. Tskhakaia Diagnostic Department of the Centre for National Intervention Medicine of Western Georgia. Pursuant to In-Patient Card #624 he was treated for light cannon-shot perforating wound in the left hip area, fractured hip bone flank and extraneous body (bullet) in the left retroperitoneal area. The wound caused a long-term incapacitation of the victim (See pp.30-33, Vol. 3 of the minutes of the proceedings)'
as stated by Valeri Mujirishvili in his testimony, he worked for the Centre of Special Tasks under the Ministry of the Interior. Mr. Mujirishvili said that he is a physician by profession. He was ordered to provide medical assistance during the special operation in Kodori Gorge. On July 25, 2006, at about 5 or 6 p.m., near the village of Sakeni, they came under fire from an elevation. He said that he was wounded immediately after the fire was opened, which was why he was unable to assist the others. He received an emergency medical assistance on the spot. Later he was taken to Zugdidi hospital and then to Kutaisi hospital, where he stayed for a week. His treatment at home lasted for 2 and a half months (See minutes of the proceedings);
according to the forensic report #354, Mr. Mujirishvili was found to have sustained gun-shot wounds in the left chest and developed hemothorax as a result, and life-threatening gunshot wounds in the left arm and neck, which are documented in Mr. Mujirishvili's medical record. Prescription of the injuries is consistent with the date they were sustained as indicated in the medical records (See pp.68-70, Vol. 3 of the minutes of the proceedings);

[12] A kind of judicial inquest in Georgia. –Translator

examination of the witnesses that the defence counsel petitioned for afforded the court the following information: Mr. Giorgi Gogolashvili, the witness, professor, Tbilisi State University, stated that the wider public knew almost nothing of what was going on in the gorge, which prompted the Council of the University to hold an information meeting on July 24. He said that the organizers asked those who had connections with Kodori Gorge, including Mr. Irakli Batiashvili, to address the meeting. Mr. Giorgi Gogolashvili said they knew that there was some violence in the gorge and called on the authorities not to use force against the local population there to avoid bloodshed, which Mr. Batiashvili agreed with;
the witness said that he did not know of Mr. Kvitsiani's demands except those that had been broadcast. According to the testimony, Mr. Kvitsiani knew the law-enforcement bodies were going to start an operation to reinstate order in the gorge and those who were brave enough to enter the gorge would stay there. The witness said the organizers of the meeting thought that the government was violating the law when its armed forces entered the gorge in the face of the bloodshed that was expected in the circumstances. "When there is such armed opposition, bloodshed is in the air. Both the sides had to take care of avoiding it all. Had Kvitsiani started the bloodshed, he would have been punished". Nevertheless it was the government that the meeting called on not to resort to using force and thus avoid bloodshed (See minutes of the proceedings);

Mrs. Nora Arghvliani, the witness, stated that she had learned about her brother declaring disobedience to the government from TV. She said she was indignant and perplexed and called Mr. Batiashvili, who was apprehensive about bloodshed, after her brother made a number of dangerous addresses to the public. She said Mr. Batiashvili called both her and her brother to help avoid bloodshed. The witness stated that she had neither seen her brother since July 25, 2006 nor had a chance to convey Mr. Batiashvili's message to him. The witness noted that she did not know what advice the indictee gave to her brother (See minutes of the proceedings);
Mr. Gocha Pipia, the witness, Member of Parliament of Georgia, said that after Mr. Kvitsiani had declared about his disobedience, Mr. Pipia contacted him to agree to meet him. He went to Kodori and met Mr. Kvitsiani the other night. The witness said that they spoke of disbanding *Monadire*, the unbearable conditions in the gorge and the government's neglect of the gorge, rather than disobedience. The witness said: "I can safely say there was no mention of uprising, overthrowing the government, or forceful change of constitutional order". Mr. Pipia noted that Mr. Kvitsiani had not spoken to the applicant while he had been there. Mr. Pipia explained that when Kvitsiani said Pipia was with him, Kvitsiani meant that he(Pipia) was in the gorge rather than that he helped him with the uprising or resistance (See minutes of the proceedings).

The court declined the applicant's interpretation of disobedience being the same as protest in the circumstances, or his assertion that he did not know what objectives Mr. Kvitsiani and his supporters pursued for:

on July 22, 2006 *Interpress news* reported that "a popular battalion declares of its disobedience to the government", with Emzar Kvitsiani quoted to say: "We declare of our

disobedience to the government, as Okruashvili[13] intends to make an assault on us on July 27, which is a beginning of civil war. We want everyone to note that it is they that are starting the war, not we, and that the armed forces and their commander are threatening the gorge." Mr. Kvitsiani never gave any details of when Mr. Okruashvili, the Minister of Defence, threatened to make an assault on the gorge (See p. 5, vol. 2, minutes of the proceedings);

the indictee and his legal representatives emphasize Mr. Kvitsiani saying "there is no armed uprising", arguing that the indictee did not know of any other TV address, which the court declined to accept inasmuch as Mr. Kvitsiani, answering a question whether there were armed people with him said: "each and every family in the gorge is a fortress. All our arms are here. We have further reinforced the gorge against our enemies. We would have never thought that the enemy would close in on us from Khida pass...Georgia's liberation from devils may well start from here" (See minutes of the proceedings);

regarding the TV address the indictee said that he had seen it, and it was immediately after he had seen it that he had called Mr. Kvitsiani to say: "it was good, good. Now it is clear that you are a man standing for the interests of his community." It has been established that after *Kurieri* news bulletin broadcast the address on July 24, 2006, the applicant called Mr. Kvitsiani to say: "it was good, good, Emzar", followed by Mr. Kvitsiani telling him "you watch Grigolia's programme" (See p. 21a, vol. 1, telephone conversation # 11212883, minutes of the proceedings). In an interview to the programme (*Pirvelebi),* which he asked the applicant to watch, Kvitsiani did not deny that he put up an armed resistance, saying: "As we Monadires[14] decided on doing this, we shall not draw back from what we intend to do. We know what to expect. We are ready for action. We shall not give up to enemy. The enemy at the moment is Okruashvili, who hopes to bring us to our knees." (See minutes of the proceedings);

in an interview to *Kronika* news bulletin Kvitsiani said: "They are a bit mistaken if they think that there are 350 of us. Our battalion had 1500 men[15]. In an interview to *Kurieri* news bulletin Kvitsiani said: "It was not me who took the initiative in coming here. I was asked by the former members of the battalion, and I am going to guide them against those who are coming to assault us. We shall repel them, repel them all..." Mr Kvitsiani said that by "those who are coming to assault us" he meant Georgian law-enforcement bodies. Mr. Kvitsiani tells the applicant about his readiness in telephone conversation #11205642: "It is their threat to come and assault us on July 27 that caused the tensions here and we got ready to repel them (See pp. 18-19, vol. 1, minutes of the proceedings);

apart from this, in one of the interviews Mr. Kvitsiani says: "Okruashvili, allegedly, wanted to talk to me and sent him[16]. Okruashvili is planning to launch an assault against us and we are ready to repel it. They launched a challenge against us and we shall meet it. They like issuing ultimatums, and so shall we. It is either them or us. That's all there's to it." When asked when the ultimatum would expire, Mr. Kvitsiani said: "It is them who set the date of

[13] Minister of Defence at the time. –Translator
[14] Members of the disbanded *Monadire* battalion. –Translator
[15] Apparently meaning that there were 1500 of them by the time the battalion was disbanded. –Translator
[16] It is not clear who this "him" is.--Translator

assault, which is July 27, and we are waiting for that. Our decision to go to Tbilisi depends on how things develop there and how they treat the demonstrators." When asked to clearly say whether he would go Tbilisi, Kvitsiani said: "Of course, we will. Does it make sense to live without the capital?" (See minutes of the proceedings);

in a telephone conversation #11211522 (pp. 88-89, Vol. 3) on July 24 the applicant advised Mr. Kvitsiani to "call on the military in his TV address not use force against their brethren," as he believed that it was the main concern then. In the following telephone conversation (p. 21a, Vol. 1) the applicant tells Mr. Kvitsiani that the address is very important. The applicant said that by the military he meant those that were with Kvitsiani, who were servicemen experienced in combat, and the government military;

the applicant also said that he was not aware of whether Mr. Kvitsiani and his supporters were armed. In one of the TV addresses, however, the applicant said: "Let's not simplify things by saying that this is a protest and disobedience by Mr. Kvitsiani and a group of his supporters. This is a situation where a large array of people is gathering round Kvitsiani, who are servicemen experienced in combat and all kinds of military operations."

in one of his addresses the applicant said: "You really have to make an effort in both the army and the country in its entirety to have such loyal people[17] rebel against you." At a press-conference the applicant said: "as far as I know from people in the gorge, including Mr. Kvitsiani, fighting broke out there and is still going on." (See minutes of the proceedings);

in his telephone conversations with Mr.Emzar Kvitsiani and Mrs. Nora Arghvliani between July 23-25 the applicant approved of Mr. Kvitsiani's addresses, providing directions, advice and necessary information on the addresses to the public by the leaders of political parties as well as his guesses as to what they could be expected to say in the coming days, assuring Mr. Kvitsiani that they supported his moves and would give their support to him in the future. In a telephone conversation (#11212883) the applicant tells Kvitsiani: "What else would one want, opposition supports you, buddy."

in a telephone conversation (#11209763) the applicant tells N. Argvhliani (Kvitsiani): "Kalbatono[18] Nora, I want you to know that the majority of political parties support you". When Mrs. Argvhliani complained that it was only him (Irakli Batiashvili) who spoke up and asked the applicant to mobilize support, the applicant tried to calm her down: "No, no, I know what the others think: Shalva Natelashvili's address was very good, *Traditionalists* have a very favourable attitude. They will soon speak out, and so will Gubaz, National-Democrats and Tbilisi University professors. When asked if they made their addresses on TV, the applicant said: "They will, all of them will", adding, "Don't worry and tell everyone there that the majority of the public, 90%, is on their side".

after the conversation the applicant calls Mrs. Nora Arghvliani, because he is unable to reach Mr.Kvitsiani and finds the latter with her. In a telephone conversation (#11211522) the

[17] Population of Kodori Gorge. –Translator
[18] A form of address to woman in Georgia.--Translator

applicant tells Mr.Kvitsiani: "leaders of the political parties made favourable addresses: "Koko's and Gamkrelidze's addresses were very good, and the addresses by the majority of them were good. The others will follow suit: traditionalists, etc. Labourists' address was very good" (See pp. 18-21a, vol. 1; pp. 86-93, Vol.3, minutes of the proceedings).

The crime committed by the defendant[19] has been established by: the telephone conversations (pp.18-21a, Vol. 1; pp.86-93, Vol.3); Order # 180 of May 27, 2005 by the Minister of Defence, which disbanded *Monadire,* infantry battalion, as from June 1, 2005 (p. 139, Vol. 1); Order #172 by the Head of the Headquarters of the Georgian Armed Forces (p. 136, Vol.1); deed of inspection of the ambulance station of Village Chkhalta (district of Gulripshi, Kodori Gorge) (pp. 254-265, Vol. 1); deed of inspection of theVillage School (pp. 92-96, Vol. 1); report by ballistic examination #6/8-13/b (pp. 130-135, Vol. 2); expert report #am-123 (pp. 152-1541, Vol. 2); Mr. Kvitsiani's records (pp.303-305, Vol. 2); material evidence attached to the casefile.

Having deliberated over the case, examined and assessed the evidence obtained through preliminary investigation and court examination[20] from the point of view of their relevance to the circumstances of the case, admissibility and incontestability, the Court holds that the defendant acted as accessory to an attempt to overthrow the government:

the Minister of Defence of Georgia disbanded *Monadire,* a Ministry of Defence battalion (Order # 180 of May 27, 2005) deployed in Kodori Gorge.
to undermine the influence of the central authorities in the gorge and overthrow the government through organizing an uprising, Mr. Kvitsiani, who was indignant at the government, formed an armed group in conjunction with the former members of his battalion, viz., Mr. Irakli Arghvliani and others, took illegal possession of the ammunition, firearms, military equipment and other assets that belonged to *Monadire,* a former battalion of the Ministry of Defence.
on July 22, 2006 Mr. Kvitsiani started an organized armed uprising against the government to overthrow it. The applicant decided to provide intellectual support to the insurgents through giving them directions, advice and information that would have made it easier for them to attain their goal. The applicant promised Mr. Kvitsiani that he together with the leaders of a number of political parties would help form a favourable public opinion of the uprising through their addresses to the public.
in the telephone conversations with Emzar and Nora Kvitsiani between July 23-25 the applicant approved of Mr. Kvitsiani's public addresses as well as actions, which encouraged them to continue the uprising. The applicant was assuring Mr. Kvitsiani that political parties were supporting him, rather than advising him to stop resistance and surrender his arms to the authorities. To mobilize favourable public opinion of the uprising and paralyze the government, the applicant advised Mr. Kvitsiani to call on the armed forces to refuse to contain the uprising.

[19] Indictee, applicant, defendant, Irakli Batiahvili are used synonymously throughout the text. –Translator
[20] A kind of judicial inquest in Georgia. –Translator

having followed the applicant's advice, Mr. Kvitsiani called on the law-enforcement bodies not to contain the resistance, promising the public that he would organize an armed uprising in Tbilisi should need arise.
the applicant informed Mr. Kvitsiani of his guesses as to what the leaders of political parties could be expected to say in the coming days, assuring Mr. Kvitsiani that a number of political parties approved his moves.

Thus the applicant assured Mr. Kvitsiani that public opinion was on his side, which resulted in grave consequences, viz., the insurgents, headed by Mr. Kvitsiani, put up an armed resistance to the units of the Ministry of the Interior that entered the gorge to reinstate order there, which caused a panic among the locals. On July 25 Mr. Valeri Mujirishvili, Head of the Medical Unit of the Centre for Special Operations (Ministry of the Interior), was severely wounded in the left chest, while Mr. Mikheil Kokiashvili, head of one of the divisions of the Centre for Special Operations (Ministry of the Interior), was lightly wounded in the left hip. After the attack Mr. Kvitsiani and his accomplices ran away, being still at large.

Thus the applicant committed offences punishable by Article (25), Paragraph 2 of 315 of the Penal Code of Georgia.

In establishing the sentence, the court had regard to both mitigating and aggravating circumstances, motivation behind the crime and the purpose thereof, the defendant's criminal will in committing the offence, the character of and extent to which one's duties were breached by committing the offence, how the offence was committed and outcomes of the commission, as well as the defendant's personality.

The defendant has no conviction and there are no aggravating circumstances in the case, which are the mitigating circumstances.

Taking into account the circumstances of the case, the Court holds that the end of the sentence for a crime punishable by Article 39 of the Penal Code of Georgia may be achieved if a measure of restriction as detailed in Paragraph z of Article 40 of the Penal Code of Georgia is administered to the defendant.

Pursuant to Article 124 of the Code of Penal Procedure 10 *Panasonic* videocassettes, 1 small *Panasonic* videocassette, 1 DVD and 2 CD-s attached to the casefile should be kept with the casefile.

Material evidence attached to the case-file, viz., firearms, cartridges and ammunition (pp. 272-282a, Vol. 1, pp. 176-179, Vol. 2), constitutes evidence to Criminal Case #090060746 as well. Therefore, the question of the evidence is to be decided when the final judgment is rendered.

On May 23, 2007 the court rendered its judgment and convicted Mr. Batiashvili pursuant to Article (25), Paragraph 2 of 315 (uprising to change constitutional order by force, overthrow the government or usurp the power) and sentenced him to 7 years in prison.

Conclusion

Having examined the case, we found that the applicant's rights had been violated during the trial, which affected the judgment in a significant manner. Apart from this, a number of procedural requirements were breached in relation to the applicant when his detention on remand was extended. The judgment itself is not grounded in uncontested evidence. This conclusion was prompted by the following considerations:

1. The indictment is not grounded in uncontested evidence
As evidenced by the materials of the preliminary investigation, on August 2006 Mr. E. Kodua, Head of the Special Operative Department of the Ministry of the Interior, asked Mr. Kotaria, Head of the Operative-Technical Department of the Ministry of the Interior, to produce transcripts of the 6 video-cassettes containing telephone conversations between the applicant and Mr. Kvitsiani as well as TV coverage of the situation in Kodori Gorge that were forwarded to the Operative-Technical Department (p.16, Vol. 2).

1.1. The applicant was charged with violating Article (25), Paragraph 3 of 315 and Article 376 of the Penal Code of Georgia, the indictment being grounded in the evidence as follows: telephone conversation between the applicant and Mr. Kvitsiani on July 23-25; recordings of: July 25 evening news bulletin *Kurieri, Rustavi-2* channel; the applicant's address to the public aired on July 25 night news bulletin *Kronika*, *Imedi* channel; the applicant's telephone interview to the RTR TV channel re-aired by the *Public Broadcaster*; recordings of Mr. Kvitsiani's addresses to the public and interviews aired on July 22 news bulletin of *Public Broadcaster* channel, on July 22 news bulletin *Kurieri, Rustavi-2* channel, on July 22 news bulletin *Kronika, Imedi* channel, on July 23 programme *Droeba, Imedi* channel, on programme *Post-Scriptum, Rustavi-2* channel, and on July 24 news bulletin *Kurieri, Rustavi-2* channel. This as well as the other evidence is sufficient to presume that the applicant committed crimes punishable by Article (25) 307, Paragraph 3 of Article 315 and Article 376 of the Penal Code of Georgia.

It, therefore, transpires that there were no transcripts of the recordings, the latter being attached to the casefile on August 2, 2006, which means that the applicant's indictment was not grounded in uncontested evidence. This is a gross violation of Paragraph 3 of Article 40 of the Constitution of Georgia: "A resolution on proceeding against a person, a bill of indictment or a judgment of conviction shall be grounded only in uncontested evidence."

1.2.Minutes of the proceedings recorded Z. Beitrishvili saying that he had neither sealed, nor listened to the tapescripts of the telephone conversations (between the applicant, Mr. Kvitsiani and Mrs. Nora Arghvliani) as required by Paragraph 4 of Article 121 of the Georgian Penal Code. The applicant's indictment of July 29, 2006, however, was based on the recordings of TV coverage of Kodori events and the telephone conversations.

2. Mr. Ioseb Baratashvili and Mr. Gela Nikoleishvili, the applicant's legal representatives, petitioned the court for examination of the applicant's illegal custody on a number of occasions. On November 24, 2006 Judge Maia Tetrauli of the Council for Criminal Cases of Tbilisi City Court rendered a decision on a measure of restriction, which states:

On November 24, 2006 a criminal case with indictment launched against Mr. Irakli Batiashvili for crimes punishable by Article (25) 307, Paragraph 3 of Article 315 and Article 376 of the Penal Code of Georgia was filed with the Council for Criminal Cases of Tbilisi City Court.

On July 30, 2006 the Council for Criminal Cases of Tbilisi City Court sentenced the applicant to imprisonment. The order[21] holds that:
"In identifying a measure of restriction, the court took into account that there were both formal (procedural) and factual circumstances (sufficient evidence to apply a measure of restriction) underpinning the order. Mr. Batiashvili was indicted on both felony and lesser charges and a measure of restriction other than instititional treatment would have rendered achieving the ends articulated in Article 151 of the Penal Code of Georgia impossible.

Having familiarized myself with the Criminal Case, I found no circumstances that warrant review of the sentence (measure of restriction).

Therefore, pursuant to Paragraph 8 of Article 162 of the Code of Penal Procedure, I hold that:

The measure of restriction (custody) has been appropriately applied in relation to the indictee and there are no circumstances that warrant review of the sentence.

No appeal lies against the decision."

The decision reviewing the measure of restriction applied earlier does not fully comply with Article 156 of the Code of Penal Procedure, which requires that "when applying or reviewing a measure of restriction the court reviews a relevant petition pursuant to the procedure articulated in Article 140". The wording of the decision, however, is not a gross violation of the procedure detailed in the the Code of Penal Procedure.

3. Mr. I. Baratashvili, the applicant's lawyer, petitioned the court for examination of Davit Gamkrelidze, Shalva Natelashvili, Konstantine Gamsakhurdia, Gubaz Sanikidze, Giorgi Kobakhidze, Zurab Beitrishvili, G. Gogolashvili, Nora Kvitsiani, Gocha Pipia, Erekle Kodua, Nikoloz Tabatadze, Zaza Bregadze, Zurab Kotaria etc in their capacity as witnesses. In prejudice of the interests of the defence counsel the following witnesses failed to appear in court: Mr. E. Kodua (The judge, referring to the letter by the Deputy Head of the Chief Division for Organizational Analytic and Regional Management Department of the Special Operative Department, the Ministry of the Interior, noted that Mr. E. Kodua was on a business trip, which made it impossible to serve him with the summons), Mr. Z. Kotaria (failed to appear because of his being on a business trip), Mr. Tabatadze (the court was unable to serve summons on him, as the counsel for defence had not provided his address to the court).

Judge Tetrauli gave the following explanation to the defence counsel: The court granted the petition by the defence counsel for summoning and examination of witnesses. Mr. E. Kodua and Mr. Z. Kotaria were served with summons on two different occasions. They, however,

[21] In Georgian judicial practice judgment sentencing defendant to detention on remand is called *order*.--- Translator

failed to appear in court. As for, Mr. Tabatadze, although the court asked the defence counsel for the witness' address, the defence counsel failed to provide the information to the court, which prompts the court to proceed to the next stage of court examination[22] (See minutes of the proceedings, p.61).

The argument by the chairperson of the court proceedings is devoid of legal rationale. Assuming that it was the defence counsel's negligence that made it impossible to examine Mr. Tabatadze, why did the court fail to summon Mr. E. Kodua and Z. Kotaria, considering that the court knew where Z. Kotaria was? Mr. I. Baratashvili, the applicant's legal representative,
apprised the court that Mr. Kotaria's business trip was ending on 10 May, 2007, while it was not known where Mr. Kodua went on his business trip, which aroused suspicion as to whether he was trying to avoid examination.

The court was to have ascertained where Mr. Kodua was and summoned Mr. Kotaria on May 11, 2006 to appear as witness. Should the witnesses have failed to appear in court, the court was to have exercised its right as articulated in Article 173 of the Georgian Code of Penal Procedure ("those summoned by an investigator, a prosecutor or judge concerning criminal proceedings, as required by law, shall appear at exactly the time specified in the summons. Should participants in the proceedings fail to appear for an inadequate reason, they may be brought before the court by force"). Therefore, the judge did not exercise the right conferred upon her by law, thus limiting the counsel for defence's procedural ability to exercise effective defence.

The Court also violated Paragraph 6 of Article 42 of the Georgian Constitution ("The indictee shall have the right to request summoning and examination of his/her witnesses under the same conditions as prosecution witnesses").

The counsel for defence petitioned for examination of Mr. Zaza Bregvadze, Deputy Head of the Special Guard Division of the Centre for Special Operations. Mr. Bregvadze had been examined at the stage of the preliminary investigation. The defence counsel stated that Mr. Bregvadze had given evidence in favour of the indictee, which would forbid the assumption of the applicant's guilt. The judge, however, declined the request to examine Mr. Bregvadze, which deprived the defence counsel of an opportunity to make use of a piece of evidence in favour of the indictee.
The foregoing, therefore, prompts us to the understanding that the Court did not ensure that the witnesses summoned should appear before the Court and testify.

Complicity and the accessory nature thereof

1. Different legal systems treat the question of complicity differently. To illustrate the difference, we may refer to two essentially different treatments, with *equivalency* theory arguing that all actors are committers and should therefore bear equal responsibility. In the State of California, for instance, all actors in the crime

[22] A kind of judicial inquest in Georgia. –Translator

(including accomplices) bear the same responsibility as committers (California Criminal Code, Ch. 31). The *equivalency* theory is well tested in the US. The German system, however, differentiates among committer, abettor and accessory. Their responsibility is proportional to the extent of their participation in the crime, which may be illustrated by abettor and committer. Quintessential to the American system is "liability for another's conduct". According to the doctrine, one is answerable for the other's conduct in the same manner as he is for his/her own: one who acts through the other is an actor himself, or the co-committer, or the "ego" of the committer. The doctrine thus equates complicity with the commission of crime.

The German law, however, eschews such treatment, advocating the principle of each person being answerable for his/her actions. Georgian Penal Code falls within the German legal system. Therefore, liability for another's conduct may not be assigned to anyone who has not committed the crime.

2. Pursuant to the Penal Code in force, unlike its Soviet predecessor, committer stands at the centre of complicity, the accomplice's conduct being contingent on the committer's. According to the Penal Code in force committer's guilt is different from accessorial guilt. Hence, there can be no accessory without a committer.

3. Pursuant to Paragraph 3 of Article 24 of the Georgian Penal Code, "accessory is the one that aided commission of an offence". No one shall be answerable as accessory unless commission of the crime has been established. It, therefore, follows that having regard to the benefit of doubt as articulated in the Constitution, commission of the crime can be established through a guilty verdict.

4. Although legal proceedings have been instituted against Mr. Emzar Kvitsiani as a committer, no judgment of conviction has as yet been rendered against him. Convicting the applicant of a crime, of which committer has not as yet been convicted, is a gross violation of the accessorial concept, which leads us to conclude that the applicant was found guilty of committing a crime that has not as yet been established by the Court.

5. In the indictment the counsel for prosecution refers to the applicant's telephone conversations with Mrs. Nora Arghvliani as evidence (p. 134, Vol. 3).

   The applicant, pursuant to the indictment, was charged with crimes punishable by Article (25), Paragraph 3 of 315 of the Penal Code. Finally, however, the applicant was charged with crimes punishable by Article (25), Paragraph 2 of 315 of the Penal Code. Being accessory, the applicant was to have aided the committer/s with advice, persuasion as well as his actions. It follows that neither giving advice nor expressing one's personal opinions to those who are not participants in the crime may be treated as psychological support for commission of the crime. The telephone conversation between the applicant and Mrs. Arghvliani may not be treated as support by advice or persuasion as Mrs. Arghvliani has not been indicted for the crime.

6. Therefore, charges of telephone conversations with Mrs. Arghvliani as articulated in the judgment should be dismissed, as advice given or personal opinions expressed to her do not imply that the applicant was advising Mr. Kvitsiani as to either organizing or conducting the uprising.

The aggrieved party

1. Pursuant to Paragraph 1 of Article 68 of the Code of Penal Procedure "the aggrieved party is either state or individual/legal entity that suffered moral, physical or material damage following the crime..."

2. I believe that it is state that is to be considered aggrieved in the case, as the applicant was charged with crimes punishable by Article (25), Paragraph 2 of 315 of the Penal Code (uprising to change constitutional order by force, overthrow the government or usurp the power), which is an offence against state (Part 11 – Offence against the State, Penal Code of Georgia). As shown by the casefile materials, however, the investigation admitted two individuals (employees of the Ministry of the Interior) rather than state as aggrieved.

3. It is noteworthy that, as evidenced by the casefile materials, it has not been established beyond reasonable doubt that Mr. M. Kokiashvili and Mr. V. Mujirishvili, the aggrieved, were wounded as a result of the uprising or which armed group they were wounded by.

4. It is also noteworthy that the individuals were admitted as victims of the violation of Paragraph 1-2 of Article 223 and Paragraph 1-2 of Article 236 of the Penal Code, whereas the applicant had neither been indicted for, nor convicted of the crimes punishable by the articles.

5. Such view would not have been devoid of certain rationale, had the court found beyond reasonable doubt that the victims had been injured as a result of the uprising and rendered judgment/s of conviction against participants in the crime (the organizer, committer).

6. Admitting a close relative of Mrs. Rusudan Gerlian-Gugusian of the Village of Chkhalta, who had died as a result of the operation by the Ministry of the Interior against the uprising, as the assignee would have been a reasonably defensible position.

Other evidence

The court held that the evidence collected by both the preliminary investigation and court examination testifies to the indictee's commission of the alleged crimes:

1. As stated by Mr. Mikheil Kokiashvili's in his testimony, he worked in his capacity as head of one of the divisions of the Centre of Special Tasks under the Ministry of the Interior. On July 23, 2006 he was ordered to Kodori Gorge to participate in a special operation there. He said that they had entered the gorge on July 25. At about 5 p.m., near the village of Sakeni, Mr. Kokiashvili was wounded while getting out of the vehicle in an exchange of fire. Mr. Kokiashvili stated that he had received an appropriate medical assistance at Kutaisi hospital. It is noteworthy that Mr. Mikheil Kokiashvili's testimony does in no way implicate the applicant as being complicit with the insurgents. Hence, it is unclear why Mr. Kokiashvili's testimony is a major piece of evidence submitted by the counsel for prosecution (See minutes of the proceedings, pp. 21-22).

It is noteworthy that neither the casefile materials, nor the witnesses' testimony conclusively show whether Mr. Kokiashvili was wounded by the insurgents or other perpetrators. Assumption that the victims were attacked by the insurgents, however well-founded it may be, is not sufficient;

2. Pursuant to forensic report #4719, Mr. Kokiashvili was treated for light cannon-shot perforating wound in the left hip area, fractured hip bone flank and extraneous body (bullet) in the left retroperitoneal area. The wound caused a long-term incapacitation of the victim. The applicant's involvement in wounding Mr. Kokiashvili has not been established, with witness saying: "I do not know the accused and have no interest related to him." (See p.22, minutes of the proceedings);

3. As stated by Mr. Valeri Mujirishvili in his testimony, he is Head of Medical Unit of the Centre for Special Tasks, Ministry of the Interior. On July 25, 2006, at about 5 or 6 p.m., near the village of Sakeni he had been wounded in an exchange of fire. The witness said that he did not know the applicant, adding that he had not seen who fired at him. The witness also said that he did not think it was the applicant or a person aided by the applicant that shot him (See p.23, minutes of the proceedings);

4. According to the Forensic Report #354, Mr. Mujirishvili was found to have sustained gun-shot wounds in the left chest and developed hemothorax as a result, and severe gunshot wounds in the left arm and neck, which are documented in his medical record. That Mr. Mujirishvili suffered life-threatening wounds is confirmed by the expert. However, it is absolutely unclear how the report of forensic examination of Mr. Mujirishvili, wounded in an exchange of fire, may serve as evidence against the applicant;

5. Mr. Giorgi Gogolashvili, the witness, stated that he had to deal with the applicant in his capacity as his colleague at the university. To inform the wider public of what was going on in the gorge an information meeting was held on July 24, 2006. The organizers asked those who had connections with Kodori Gorge, including the applicant to address the meeting. Mr. Gogolashvili said they called on the authorities not to use force against the local population to avoid bloodshed, which Mr. Batiashvili agreed with.

It is unclear how Mr. Gogolashvili's testimony may serve as evidence against the applicant, when the witness says that the applicant joined their call on the authorities to avoid bloodshed, having expressed no support for the uprising;

6. Mrs. Nora Arghvliani, the witness, stated that after her brother had declared disobedience to the government she talked to Mr. Batiashvili on a number of occasions, who was surprised at his conduct. The witness said the applicant did not express his support for Emzar Kvitsiani's decision. "Had Batiashvili told Emzar that time had come for them to overthrow the government, I would have made sure he was Emzar's enemy. Those who would have instigated Emzar would have been sworn enemies of my family and myself," she said. Mrs. Arghvliani said she did not convey the applicant's message to her brother. "What message should I have given Emzar? Irakli was apprehensive about bloodshed, which was why he was calling."

Mrs. Arghvliani's testimony shows that the applicant's objective was avoiding bloodshed and armed conflict. It is unclear why either the counsel for prosecution or court considered Mrs. Arghvliani's testimony part of the evidence against the applicant. Easing the tension without an armed clash was the best possible solution to the situation in Kodori Gorge;

7.Mr. Gocha Pipia, the witness, said that Mr. Batiashvili expressed no support for and had no connection with the uprising, as he(Pipia) was in the gorge and met Mr. Kvitsiani personally, who said nothing about the defendant's participation;

8. On July 22, 2006 *Interpress news* reported that "a popular battalion declares of its disobedience to the government." Allegations that the applicant had anything to do with this address by Kvitsiani are unfounded;

9. Telephone conversation (#11212883) between the applicant and Mr. Kvitsiani (p. 21a, Vol. 1);

10. Mr. Kvitsiani's interview to *Pirvelebi* TV programme;

11. Interviews to *Kronika* and *Kurieri,* news bulletins;

12. Telephone conversation (#11205642) between the applicant and Mr. Kvitsiani (pp. 18-19, Vol. 1);

13. Mr. Kvitsiani saying: "Does it make sense to live without Tbilisi?" in an interview to *Kronika* news bulletin (See minutes of the proceedings, pp. 57-58, Vol.2);

14. Telephone conversation (#11211522) between the applicant and Mr. Kvitsiani (pp. 88-89, Vol. 3);

15.Mr. Batiashvili's press-conference.

The applicant's indictment by the counsel for prosecution presented at the court examination drew basically on July 23-25 2006 telephone conversations between the applicant, Mr. Kvitsiani and Mrs. Arghvliani, of which transcripts were attached to the casefile together with recordings of TV coverage containing a number of interviews, comments, etc.

A number of video-cassettes and two CD-s, containing telephone conversations between the applicant, Mr. Kvitsiani and Mrs. Arghvliani, were attached to the casefile as evidence (decisions to admit CD-s as evidence of August 11, 2006 and November 1, 2006).

The preliminary investigation does not make it clear in which form the Operative-Technical Department of the Ministry of the Interior provided the investigation with the operative materials. The examination of the casefile, however, shows that originally the materials must have been provided as a transcript.

Pursuant to Paragraph 2 of Article 19 of the Code of Penal Procedure the court, apart from establishing the relevance and admissibility (whether the evidence was obtained, admitted as evidence to be attached to the casefile as required by the Code of Penal Procedure) of the evidence, was to have examined the incontrovertibility thereof as well.

Pursuant to Paragraph 3 of Article 40 of the Constitution a judgment shall be grounded only in uncontested evidence. The principle is enshrined in Paragraph 3 of Article 10 and Paragraph 3 of Article 496 of the Code of Penal Procedure.

The law gives no definition of incontrovertible evidence, the latter being essentially different from inadmissible evidence[23]. Thus a piece of evidence may be admissible, but not incontrovertible. The tapes and transcripts of telephone conversations are not inadmissible inasmuch as pursuant to Article 111 of the Code of Penal Procedure

1. evidence is inadmissible if:
    a. it is collected by an unauthorized official;
    b. it is collected from a source no listed in the applicable law;
    c. it is obtained in contravention of the applicable procedure as detailed in the law, or by threats, force, deceit, blackmail, degrading treatment of others or through other illegal means;
    d. it is obtained from a person who breached the law and is therefore unable to name the source, where, when and how he/she obtained the piece;

2. A burden of proving admissibility of the evidence submitted by the counsel for prosecution as well as inadmissibility of the evidence submitted by the counsel for defence shall be on the prosecutor;

3. A piece of evidence shall be declared inadmissible by a decision of an authorized body;

[23] According to the Code of Penal Procedure ascertaining incontrovertibility of the evidence is within the judge's discretion, whereas inadmissible evidence is clearly defined, which warrants the conclusion that though a concept is not defined we may still compare it to another concept. —Translator

4. A piece of evidence found inadmissible shall be removed from the casefile and be deposited with the body conducting the proceedings for the entire life of the criminal case;

5. A piece of evidence by the counsel for prosecution declared inadmissible may be admitted if the counsel for defence petitions for the piece to be admitted.

If that is the case incontrovertibility of the evidence should be thoroughly examined.

A judge examines incontrovertibility of the evidence based on his/her discretion. Exercising one's discretion, however, implies thorough, comprehensive and impartial examination of the circumstances that are of material importance to the case, rather than unlimited freedom. Pursuant to Article 111 of the Code of Penal Procedure:

1. The investigator, prosecutor, judge and the court shall establish beyond reasonable doubt whether a crime was committed, who committed it, and ascertain all the circumstances related to the contention;

2. A case shall be examined thoroughly, impartially and comprehensively. Examination of both incriminating and exculpative circumstances of a suspect or accused as well as their aggravating and mitigating circumstances shall be equally thorough;

3. Each petition and complaint by the suspect, accused or defender regarding innocence, lesser charge, complicity, violations of law during the investigation or court proceedings shall be given a thorough examination.

Pursuant to Article 19 of the Code of Penal Procedure:

1. No evidence has a pre-determined weight. The investigator, prosecutor, and the court shall examine incontrovertibility of the evidence based on their discretion;

2. Evidence shall be assessed to ascertain: its relevance to the case, whether procedural requirements were complied with when collecting it, and the extent to which its incontrovertibility and sufficiency suggest commission of the crime. The evidence shall be examined in conformity with the requirements of the Penal Code and the Code of Penal Procedure.

Pursuant to Article 132 of the Code of Penal Procedure:

1. Each piece of evidence shall be assessed to ascertain: its relevance to the case, admissibility and incontrovertibility, while the evidence in its entirety shall be assessed from all the three angles to determine whether it is sufficient to suggest commission of the crime. The evidence shall be examined in conformity with the requirements of the Penal Code and the Code of Penal Procedure;

2. The investigator, prosecutor, and the court shall examine the evidence freely, based on their discretion;

3. Any suspicion as to whether the incontrovertibility and sufficiency of the evidence suggest commission of the crime shall be dismissed in favour of the accused, if it may not be resolved by further evidence;

4. No evidence has a pre-determined weight;

5. A guilty verdict shall be grounded in evidence that is agreed and beyond reasonable doubt.

A judge is to thoroughly analyze and assess all pieces of evidence, particularly those that underlie a judgment of conviction, to ascertain the truth. As noted above, Paragraph 3 of Article 10 of the Code of Penal Procedure requires that "a decision on launching a criminal case against the accused, an indictment, a judgment of conviction, as well as all the other procedural decisions shall be grounded only in uncontested evidence." Pursuant to Paragraph 3 of Article 496 of the Code of Penal Procedure "a court ruling is well-founded if its conclusions draw on the entirety of uncontested evidence examined during the proceedings and found sufficient to ascertain the truth. All conclusions and inferences in the judgment shall be well-founded."

Paragraph 2 of Article 503 notes that "A judgment of conviction may not be grounded in conjecture. A judgment of conviction may be rendered if the court establishes, based on uncontested evidence, that the crime was committed by the accused." There, however, are discrepancies between the tapescripts of telephone conversations and the transcripts thereof.

It is noteworthy that originally the transcripts of telephone conversations were attached to the casefile. There can be no transcript without a tapescript admitted as evidence. It was at the stage of preliminary investigation that the investigator admitted both tapescripts and transcripts of telephone conversations. The information in the latter should have been identical with that in the tapescripts.

Pursuant to Paragraph 4 of Article 110 of the Code of Penal Procedure "operative data shall only be admitted if obtained in conformity with the law. The data may prompt admitting a source, or constitute a fact (provided it is not submitted in the form of document)."
Therefore, transcripts of telephone conversations are operative data that constitute a fact.

Pursuant to Paragraph 2 of Article 440 of the Code of Penal Procedure, "the court shall obtain factual information from the original source if possible."

The original source in the case was tapescripts, submitted to the court. The tapescripts were submitted in the form of one CD, instead of two, as noted in the decision by the prosecutor. There were wide discrepancies between the CD and transcripts. Therefore, the court should have asked itself whether to draw on tapescripts or transcripts, the latter being more informative. The counsel for defence and the defendant kept repeating that the tapescripts were faked as the transcripts contained more information than the tapescripts. It is also

important that a piece of evidence should be sealed and then attached to the casefile. Had the piece (CD) been sent for expert examination, it should have been returned to the enquirer in a sealed form.

The court was presented with one CD and an unconvincing and dubious explanation by Investigator Beitrishvili, who said that he had admitted the piece as evidence without seeing it.

Mr. I. Baratashvili and Mr. Nikoleishvili, the applicant's legal representatives, petitioned the court for audio examination to test authenticity of tapescripts of three telephone conversations, viz., #11206522, #11205642 and #11211522.

The court, however, did not grant the petition, when it should have requested the expert examination. The reasoning here is clearly warranted by Paragraph 1 of Article 356, which provides: "expert examination is conducted based on the prosecutor's or investigator's request, or the court's request, if the latter is petitioned by the counsel for defence, when establishing factual circumstances of the case requires scientific, technical, arts or some other expertise. A prosecutor, an investigator or a specialist having a special knowledge does not automatically rule out the need for expert examination."

As noted in the petition, part of the first telephone conversation is blanked out, which invites a suspicion that the court was presented with a faked tape. Apart from this, there are discrepancies between the text of the conversation and that in the transcript attached to the casefile.

The counsel for defence petitioned the court to have the second conversation examined by the expert after it had been found to differ from the transcript. The applicant's "yes, but" needs to be specified. Apart from this, the conversation stops at "that". The applicant presumes that the counsel for prosecution blanked the section out.

The third conversation is between the applicant and Mr. Kvitsiani. In this conversation Mr. Kvitsiani's "to cut it short, Irakli" is followed by a beep. The applicant explained that the section which would have invalidated the indictment had been blanked out.

The State Prosecutor dissented from the petition and the court did not grant it. The counterarguments by the judge and prosecutor were identical. The court noted that "the counsel for defence could have filed the petition throughout the preliminary investigation before the court examination[24] had begun". Article 468 of the Code of Penal Procedure provides for giving a petition for conducting expert examination a consideration. The court argued that both the defendant and his lawyer had known of the evidence and petitioning the court for its examination at the stage of court examination was a delaying tactics. The

[24] A kind of judicial inquest in Georgia. –Translator

court noted that as the defence counsel did not know whether or not the court would admit the evidence, declining the petition could not be treated as a new factual circumstance[25].

Mr. Baratashvili, the applicant's legal representative, said: "Had the court granted the petition by the defence counsel for declaring the CD inadmissible, there would have been no need for the audio examination. Declaring the CD inadmissible was clearly warranted by the fact that it had not been formally admitted by the investigator as evidence and not included in the casefile, which leads us to conclude that the court wants the defence counsel to file petitions in a sequence that the prosecutor wants us to. Article 230 and Article 231 of the Code of Penal Procedure entitles the counsel for defence to file petition whenever it deems necessary to do so. No one can take that right away from us."

Article 468 of the Code of Penal Procedure details the procedure as to filing and granting petitions. The article provides:

1. "The chairperson of the proceedings asks both the counsel for prosecution and the counsel for defence if they have a petition for recusal, review of the measure of restriction in light of new findings, new evidence or documents, attaching the latter to the casefile, inviting experts, or conducting expert examination. Similar petitions should be filed simultaneously. Petitioner should indicate which circumstances he/she is requesting to be established;

2. The court should give its consideration to each petition and find out what are the approaches by the parties to the issue(s) in the petition. If circumstances that a party requests to be established are material to the case, the court grants the petition. If a petition was declined, the petitioner may file it for reconsideration during the court examination by virtue of new findings material to the case."

It is clear that the judge violated core principles and norms of the Code of Penal Procedure, viz., Articles 468, 356, 10(3), 18, 19, 132, 496(3), 503(2) inasmuch as it is impermissible for a judge to evade his/her responsibility to examine circumstances material to the case as well as incontrovertibility of the evidence by dismissing a petition to the effect as a delaying tactics without good reason. The counsel for defence could not have resorted to delaying tactics as the defendant had been sentenced to detention on remand. Apart from this, the defendant repeatedly noted that he had been imprisoned illegally, and so did his legal representatives, demanding his acquittal.

[25] Although the prosecutor formally granted the request by the defence counsel to give them access to the evidence, the defence counsel was not given access to the tapescripts. When the defendant and the defence counsel listened to the tapescripts at the proceedings, they realized that there were discrepancies between the transcripts and tapescripts. The counsel for defence said they had not known of the evidence and petitioned the court to declare the evidence inadmissible, which was declined. When asked why they had not requested access to the evidence, the counsel for defence stated that they had but had not been given the access. Then the defence counsel petitioned the court for expert examination of the evidence, described in this report in detail, which was again declined. The judge declined the petition by the defence counsel for expert examination as she held that declining the petition for declaring the evidence inadmissible was not a new factual circumstance, which would have warranted conducting expert examination. ---Translator

Paragraph 3 of Article 40 of the Constitution of Georgia has been clearly violated in relation to the applicant: "Any allegation that is not corroborated shall be dismissed in favour of the indictee." The procedural norms cited above make uncontested evidence a legal means to resolve suspicions. Incontestability of the evidence should have been established by the court through all possible procedural means (requesting expert examination, which the defence counsel duly petitioned for).

Pursuant to Article 484 of the Code of Penal Procedure: "The court, of its own motion or at the request of one of the parties, may have the documents submitted in evidence and deed of the investigation procedures attached to the casefile read by the Secretary of the proceedings. The court also examines how the evidence was obtained, its incontestability, relevance to the circumstances of the case and admissibility." Therefore, the court was to have examined incontestability of the documents submitted in evidence (including transcripts of the telephone conversations).

The court might not have requested expert examination of tapescripts of telephone conversations, had the judgment of conviction been grounded in the uncontested evidence. In other words, had the court not drawn on the evidence that was substantially contested it might as well not have had expert examination conducted.

Thus the court drew on the contested evidence, which is a gross violation of Paragraph 3 of Article 40 of the Constitution and a number of requirements of the Code of Penal Procedure.

Therefore, I believe it is inappropriate to discuss the contested evidence, which cannot convey exhaustive information on the telephone conversations between the applicant and Mr. Kvitsiani.

Having considered all the arguments by the counsel for prosecution raised during the proceedings and the evidence that the court based its judgment on, I found that:

Minutes of Mr. Kokiashvili's and Mr. Mujirishvili's examination and forensic reports show that the victims were wounded in clashes with unidentified attackers near the Village of Sakeni after they had been ordered to Kodori Gorge and Irakli Batiashvili has nothing to do with the incidents.

Based on Mr. Giorgi Gogolashvili's testimony, the court found that when the applicant called on the government to avoid bloodshed, he was at the meeting, organized by Mr. Gogolashvili and the people like-minded with him to inform the wider public of what was going on in the gorge. The meeting was attended by other political leaders as well, which testifies to the fact that the applicant's link with the uprising organized by Mr. Kvitsiani is not validated.

Briefing by the Prosecutor-General's Office

1. It is worth noting that after several hours from passing the judgment against the applicant, the Prosecutor-General's Office held a briefing to present the arguments by the counsel for prosecution against the applicant.

2. Prosecutor Irakli Kobidze confirmed that the applicant had been convicted of intellectual support for the uprising started by Mr. Kvitsiani. The prosecutor said that the counsel for defence was unable to present any evidence suggesting the applicant's innocence.
3. Pursuant to Article 40, Para 2 of the Constitution of Georgia "No one shall be obliged to prove his innocence. A burden of proof shall be on the prosecutor." Consequently, it was not the applicant that had to prove his innocence but the counsel for prosecution present evidence that would have proved the applicant's guilt beyond reasonable doubt.

Pursuant to Article 40 of the Constitution of Georgia "A judgment of conviction shall be based only on the evidence beyond reasonable doubt. Any allegation that is not corroborated shall be dismissed in favour of the indictee." Analysis into the applicant's case makes it clear that the judgment is based on the personal opinion of the judge, rather than the uncontested evidence that the Court did not take the trouble to thoroughly examine.

Article 6 of the [European] Convention for the Protection of Human Rights and Fundamental Freedoms states that: "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

Fair trial implies a thorough examination of a case by an independent and impartial tribunal and passing a fair and legitimate judgment. The foregoing analysis into the case makes it clear that the evidence examined by the court is neither sufficient, nor uncontested, and that adversarial principle and that of equality between the parties (obtaining the attendance of the witnesses, etc.) was not complied with.

Thus the judgment is ill-founded and grounded in the contested evidence, which, being a gross violation of law, indicates that the applicant's right to fair trial has been violated.

Annex 2. Prosecutor's Office of Georgia and Human Rights

The case of Jarji Jabanashvili

The Public Defender sent materials to the Prosecutor General's Office to act upon bringing persons (judges and the officials of prosecutor general's office) to criminal responsibility as a result of whose unlawful actions J. Jabanashvili was kept under illegal custody from 8 June 2003 to 22 August 2003 charged with offence under article 375 (concealment of crime) and was unlawfully found guilty under parts 1 and 2 of article 235 (Unlawful preparation, purchase, storage, carrying, haulage, transference and sale of weapons, ammunition, explosive substances or devices storage).

To be more specific, the crime of which J. Jabanashvili was accused was committed on September 26 1996. Thus, on 8 January 2003, when Jasbanashvili was arrested and charged with the crime under article 375, the statute of limitation had been expired.
For the crime under article 375 of the Criminal Procedure Code of Georgia the measure of punishment is from one to three years of imprisonment; **according to article 71, for similar category of crime (lighter crime) the statute of limitation expires in 6 years.**

J. Jabanishvili was accused of concealment of especially heavy crime committed by the persons who were found not guilty on the indictment of the Board of Criminal Cases of the Supreme Court of Georgia. On the ruling of 28 September 2005, the Chamber of Criminal Cases of the Supreme Court of Georgia left the indictment passed down on 28 January 2005 by the Board of Criminal Cases of the Supreme Court of Georgia in the above mentioned part unchanged.

On 11 October 2006, the prosecutor of investigative department of the Prosecutor General's Office of Georgia, L. Kipiani made a resolution do dismiss the prosecution and close preliminary investigation on the case of J. Jabanishvili.

On 22 August 2003, J. Jabanishvili was accused of another crime and was brought to criminal responsibility under parts 1, 2, and 3 of article 236 of the Criminal Code (unlawful obtaining of ammunition, storage, carrying, haulage, transference and sale). He committed the above crime in1996.

The measure of punishment for the crime under part 1 of article 236 is the restriction of liberty for up to 3 years, and under part 2 of the same article the commitment of the crime is punished by restriction of liberty from 3 to 5 years. In conformity with article 71 of the Criminal Code, the crime mentioned above belongs to the category of less heavy crime. Thus, charging Jabanihvili for the crime under parts 1 and 2 of article 236 on 22 August 2003 and later prosecuting him for the above charges was unlawful due to the expiry of statute of limitation (the crime was committed in 1996).

On 10 March 2004, I. Okruashvili, Prosecutor General, signed an indictment against J. Jabanishvili's on the crime prescribed under parts 1, 2 and 3 of article 336 of the Criminal Code. The case was conducted in Tbilisi district court and as for the criminal case (concealment of crime) the case was still under preliminary investigation.

On 19 July 2005, J. Jabanishvili was found guilty by the Board of Criminal Cases of Tbilisi district court under parts 2 and 3 of article 236 and article 55 of the Criminal Code of Georgia and was sentenced to 2 (two) years and 2 (two) months of restriction of liberty. The Chamber of Criminal Cases of the Supreme Court of Georgia left the indictment of Tbilisi district court unchanged.

On 10 July, the Public Defender was informed by Prosecutor's Office that on 8 July 2003, the court discussed Jabanishvili's charge, examined the legality of his arrest and considered that the requirements of criminal procedure law were observed and custodial arrest prescribed to him was legal. As for J. jabanishvili's trial under article 236, in this case too, prosecutor general points out that Tbilisi district court passed down the verdict of guilty against Jabanishvili, which the Supreme Court of Georgia left unchanged.

Pursuant to article 261, "In the event of receiving information about the commitment of a crime, investigator, prosecutor, within the scope of their competence are under the obligation to open preliminary investigation". According to clause 1 of article 263 of the same Code, "the basis of opening preliminary investigation is the information about commitment of a crime supplied to the investigator or prosecutor by a physical and/or legal person, state or self-governing or governing bodies, high ranking official…" According to article 22 of the Code, "A prosecutor or an investigator with prosecutor's consent is under an obligation to start criminal prosecution provided that there is sufficient ground for so doing". Taking the above into account, Prosecutor General neglected the requirements of the Criminal Code of Georgia and did not open preliminary investigation regarding J. jabanashvili's case on severe violations on the part of the representatives of investigative body and the judges. Such conduct has infringed Jabanishvili's rights guaranteed by the Constitution of Georgia and International agreements.

The Case of Vakhtang Kaldani

Public Defender of Georgia addressed the Prosecutor General's Office with the request to open preliminary investigation into the fact of violation of the Criminal Procedure Code requirements by the representatives of law enforcement bodies committed by them during Vakhtang Kaldani's arrest.

V. Kaldani was arrested in the town Bolnisi for robbery and illegal purchase and carrying of weapon. In the arrest record of the suspect, the time of his delivery to the police station was reported as 16:00, 6 December 2006, while actual date of detention was 22:00, 6 December 2006, i.e. the actual time of detention does not correspond to the recorded arrest time of the suspect. Namely, if Kaldani was arrested at 22:00, 6 December 2006, it excludes the possibility of his delivery to the police station at 16:00, 6 December 2006.

Regarding the time of Kaldani's arrest, it is important to note the evidence given by an aggrieved party, T. Nikuradze, who indicates that V. Kaldani was detained by the police at about 11:00 on 6 December 2006, after he had been was reported to the police. V. Kaldani was charged with guilt by the chief investigator of the criminal police of Bolnisi regional department A. Asiani with the consent of the prosecutor L. Lazareishvili of Bolnisi regional Prosecutor's Office at 19:25 on 8 December 2006 on the basis of clause "b" of part 2 and clause "b", part 3 of article 179; parts 1 and 2 of article 236.

On 3 January 2007, the Public Defender sent the relevant materials to Prosecutor General's Office regarding Kaldani's unlawful arrest. According to the reply from the Prosecutor General's Office, V. Kaldani was arrested in full compliance with procedure norms, namely: V. Kaldani followed the police officers to the police department on his own will, where they arrived at 16:00, and at 22:00, Kaldani was detained as a suspect. That is why no preliminary investigation was opened.

The defence counsel submitted additional materials proving the illegal arrest on the criminal case to the Public Defender. Namely: B. Pataraia, prosecutor, made a motion to Bolnisi regional court on 6 December 2006, on recognition of the search conducted under urgent necessity lawful (the search was conducted in V. Kaldani's flat). The motion indicates that **during the investigative action – identification line-up – N. Mgaloblishvili, an aggrieved party, and T. Nikuradze identified one of the assailants, who turned out to be V. Kaldani, residing at N 22, Gogebashvili Str., Bolnisi. After the identification, Kaldani's flat was searched** but no article that might have been significant for the case was seized. It must be noted that according to the protocol of identification parade, the aggrieved T. Nikuradze's identification line-up started at 16:50, and another aggrieved party, N. Mgaloblishvili started identification line-up at 17:50 on 6 December 2006. Proceeding from the above, **the search of V. Kaldani's flat could not have been conducted at 15:00 on 6 December, as is indicated in the motion of prosecutor B. Pataraia on recognition the search conducted under urgent necessity lawful, which the judge Gulnara Liparteliani found legal in her ruling.**

The above mentioned fact clearly indicates, that V. Kaldani, in real terms, was arrested on 6 December 2006 before **15:00**, as prosecutor's motion and the judge's ruling both indicate that **the search of the flat was conducted on 6 December at 15:00, after V. Kaldani had been identified by the aggrieved party.** Accordingly, the argument brought forth by the representative of the prosecutor's office, R. Zhgenti, that V. Kaldani was in reality arrested on 8 December 2006, at 22:00, does not correspond to the truth.

In the conclusion of technical-criminal alternative expertise on the criminal case against V. Kaldani it is indicated that there are some inconsistencies between the master copy and the copies of the materials submitted to the expertise, namely: in the original copies in certain places the beginning and finishing times of interrogation of Kaldani in the status of witness is corrected. Strong mechanical influence and double strokes can be detected in the identification protocol of T. Nikuradze and N. Mgaloblishvili. Also a double stroke was revealed in the interrogation record of the witness R. Lazareishvili.

In the interrogation record of N. Mgaloblishvili and the identification record of K. Khugoiani being identified by N. Mgaloblishvili, some phrases are added later, with the same pen. In the identification record of K. Khugoiani being identified by an aggrieved party, T. Nikuradze, it is not recorded where exactly Khugoiani was standing. Neither is it indicated in the interrogation record of L. Lazareishvili where V. Kaldani was standing at the identification lineup and what was the number of a person T. Nikuradze pointed to. Thus, according to the expertise conclusion, we may be dealing with counterfeiting of evidence.

Based on the above materials the Public Defender addressed the Prosecutor General's Office once again on 11 May, 2007, to initiate preliminary investigation against the employees of law enforcement bodies for committal of offence against the requirements of the criminal code on the criminal case of V. Kaldani.

With reference to the above, the Prosecutor General's Office of Georgia informed the Public Defender that the criminal case against V. Kaldani was transferred to the court for trial and according to article 416 of the Criminal Procedure Code of Georgia, the motion and complaint shall be lodged directly in the court.

According to article 261, "In the event of receiving information about the commitment of a crime, investigator, prosecutor, are under obligation to open preliminary investigation within the scope of their competence". According to clause 1 of article 263 of the same Code, "the basis of opening preliminary investigation is the information about commitment of a crime supplied to the investigator or prosecutor by a physical and/or legal person, state or self-governing or governing bodies, high ranking official…" According to article 22 of the Code, "A prosecutor or an investigator with prosecutor's consent is under an obligation to open criminal prosecution provided that there is sufficient ground for so doing".

Taking the above into account, Prosecutor General neglected the requirements of the Criminal Code of Georgia and did not open preliminary investigation on severe violations on the part of the representatives of investigative body and judges against V. Kaldani. Such conduct has infringed the rights guaranteed to him by the Constitution of Georgia and International agreements.

The case of Varlam Pkhakadze

On July 26 2007, on the indictment of Kutaisi City Court, I. Kapatadze was found guilty under article 114 and part 2 of article 342 of the Criminal Code of Georgia. He was charged with offence and sentenced to 3 (three) years of deprivation of liberty as per article 114. Under part 2 of article 342 he was charged with and sentenced to 2(two) years of deprivation of liberty. According to part 1 of article 59 the charges were finally aggregated and eventually I. Kupatadze was assigned to 5 (years) of imprisonment.

According to the indictment, I. Kapatadze was found culpable for the murder of a criminal by exceeding the limits of necessary measures under article 114 of the Criminal Code of Georgia. He also revealed negligent performance of his official duties, i.e. abuse of official

position, resulting in person's death (the crime provided for under part 2 of article 342 of the Criminal Code of Georgia)

The facts speaking for I. Kapatadze's action were the following: I. Kapatadze has worked as a patrol-inspector of the main department of Imereti patrol police under the Ministry of Internal Affairs since 19 January 2006. According to the Georgian law "On Police", the police official is allowed to use firearm for the purpose of suppression of crime and arrest of the culprit only under provisions determined by law.

Between 8 o'clock 06 December 2006 and 8 o'clock 7 December 2006, the member of #31patrol crew of the main department of Imereti patrol police, I. Kapatadze, together with his workmate P. Minashvili were patrolling on the adjoining territory of the market place of village Kvitiri and Z. Gamsakhurdia Avenue in a "Volkswagen" car. On 7 December 2006, at 4:30, on the information of police operator, due to the absence of patrol crew # 24 on the territory, the members of crew # 31 were tasked to arrive at the house #48, Z. Chavchavadze Street in Kutaisi, as the resident I. Mzhavanadze reported to the police about the facts of robbery in the basements of the house. When the patrol-inspector arrived at the first entrance of the house, D. Minashvili got out of the car and went on walking while I. Kapatadze stopped the patrol car in front of the 4th entrance of the same house. After getting out of the car, I. Kapatadze put the firearm of "Makarov" system #BT 0385 in firing position and with the purpose of double checking the fact of robbery went into the same entrance, at which time, unexpectedly, V. Pkhakadze who was in the basement at the moment opened the iron door and with the intention of escaping from the police dashed against the patrol inspector. The latter dropped the torch he was holding in his left hand and with the same hand he immediately caught hold of I. Pkhakadze's jacket. I. Kapatadze, aiming to capture V. Pkhakadze, could not assess the situation duly that V. Pkhahadze was attempting to escape and that he was unarmed. Meanwhile, his workmate, D. Minashvili came to help and was standing at the 4th entrance who against article 13 of the law "On police" exceeded the necessary measures during capturing the culprit, fired the "Makarov" system weapon three times towards V. Pkhadadze.

As a result of firing V. Pkhakadze was wounded heavily in the upper part of the shoulder blade. After having fired I. Kapatadze together with his workmate D. Minashvili and the members of #27 patrol crew K. Gabunia and A. Gabrichidze who came to help, did not examine the possible injuries inflicted to V. Pkhakadze's body by the firearm in order to render first aid under such necessity, thus performing their duties unduly and demonstrating negligent conduct. Contrary to the requirements of part 8 of article 13 of the law "On Police", they limited their actins to just identifying the arrested person and summoning the group of investigators. For this reason, the fact of inflicting of a heavily bleeding wound to V. Pkhakadze was discovered only a certain time after his detention upon the arrival of the group of investigators at the scene of incident, who then immediately hospitalized V. Pkhakadze. Since due to I. Kapatadze's negligent attitude and improper performance of his duties, I. Pkhakadze, who suffered a rupture of an axillary artery and vein as a result of gunshot injury was not immediately delivered to a medical institution to render timely and emergent medical aid, V. Pkhakadze died in hospital from acute anemia in 05 days after

hospitalizing – on 12 December 2006. Thus, I.Kapatadze committed the crime under article 114 and part 2 of 342 of the Criminal Code of Georgia.

According to the indictment, qualification of I. Kapatadze's action under article 114 is a contestable matter, since the method of committal of the crime as described in the indictment demonstrates the signs of intentional murder (article 118 of the Criminal Code of Georgia prescribes from seven to fifteen years of restriction of liberty). To be more specific, qualification of I. Kapatadze's crime under article 114 of the Criminal Code of Georgia would be reasonable in that case, if the patrol-inspector I. Kapatadze had fired in V. Pkhajadze's direction only once, in the given instance (V. Pkhakadze was unarmed, while in the meantime the patrol-inspector D. Minashvili was standing at the 4th entrance ready to help his workmate). But what actually happened was that I. Kapatadze fired three times in the direction of an unarmed V. Pkhakadze, which indicates his intention of inflicting injury dangerous for his life.

According to article 150 of the Criminal Code of Georgia, "**The trial against the defendant can be carried out only within the limits of the accusation, for which the defendant was brought to suit, except for the cases, when the prosecutor changed the accusation in favor of the defendant".** Consequently, the prosecutor was under an obligation to give the correct evaluation to the committed action and not to demonstrate loyalty towards the culpable policeman".

The case of G. Ghuntskidze

On 18 August 2006, Citizen G. Ghuntskidze applied to the Public Defender of Georgia about the fact of non-fulfillment of the court decision by executive officials of JSC "United Energy Distribution Company of Georgia". According to the notice, the citizens G. Ghuntskidze, L. Alania and M. Dolidze were dismissed from the office - Kvemo Kartli affiliation of JSC "United Energy Distribution Company of Georgia" on 28 October 2004. The above decision made by JSC "United Energy Distribution Company of Georgia", was appealed by the applicant in Mtatsminda-Krtsanisi district court of Tbilisi. On the decision of 12 April 2005, the judge, T. Jaliashvili fully satisfied the claimants' suit and declared the order #208 of 26 October 2004 illegal issued by the director of Kvemo Kartli affiliation of JSC "United Energy Distribution Company of Georgia" on the dismissal of G. Ghuntskidze, L. Alania and M. Dolidze from the office. On the decision of the court, G. Ghuntskidze, L. Alania and M. Dolidze had to be restored to their positions. As well as that they were to be compensated for the salaries for the period when they were forced to leave their jobs. On the ruling of the same court issued on 25 April 2005, the claims of G. Ghuntskidze, L. Alania and M. Dolidze were met concerning the part of their immediate restoration to previous positions and issued the executive act on the same day. On 12 April 2005, the defendant appealed the decision of Mtatsminda-Krtsanisi district court of Tbilisi in the Chamber of Civil Cases of the Appellate Court of Tbilisi. On the ruling of 28 February 2006, the judge, Z. Kvaratskhelia at the Chamber of Civil Cases of the Appellate Court of Tbilisi did not satisfy the appeal of the director JSC "United Energy Distribution Company of Georgia" and left the decision of 12 April 2005 of the of Mtatsminda-Krtsanisi district court of Tbilisi unchanged. After that, JSC "United Energy Distribution Company of Georgia" lodged a suit against the ruling in the

Chamber of civil, entrepreneurial and bankruptcy cases of the Supreme Court of Georgia. On the ruling passed on 28 June 2006 by the Chamber of civil, entrepreneurial and bankruptcy cases of the Supreme Court of Georgia, cassation was not considered. The decision made on 12 April 2005 by Mtatsminda-Krtsanisi district court of Tbilisi came into legal force on 26 June 2006. On 30 August 2006, Tbilisi Coty Court issued an executive act.

Despite the facts mentioned above, the court decision has never been executed by JSC "United Energy Distribution Company of Georgia".

On the ruling of 20 August 2004 of Mtatsminda-Krtsanisi district court of Tbilisi, D. White's, the general director of JSC "United Energy Distribution Company of Georgia" claim on the postponement of the term of bankruptcy proceedings was met. The term was extended by 18 months.

Pursuant to clause 4 article 7 of the law on "Bankruptcy Proceedings", "Upon filing the application on the ruling to open bankruptcy proceedings, all the measures of compulsory execution against the debtor shall be suspended and the implementation of other measures of compulsory execution shall not be admitted…" the 18 months mentioned above, during which period the application of compulsory measures were suspended for JSC "United Energy Distribution Company of Georgia" expired on 20 February 2006.

On 20 February 2006, the court executor sent the proposal to Kvemo Kartli affiliation of JSC "United Energy Distribution Company of Georgia" recommending them to comply with the court decision on their free will. On 27 February the debtor received the proposal on presenting the list of assets, which was not complied with by the latter. After that, on 1 March 2006, the proposal on fulfillment of the court decision on their free will sent to Kvemo Kartli affiliation of JSC "United Energy Distribution Company of Georgia" was transferred to the General Director of JSC "United Energy Distribution Company of Georgia", D. White. From the letter sent by D. White on 25 April 2006, the executive bureau of Kvemo Kartli affiliation of JSC "United Energy Distribution Company of Georgia" was informed about the postponement of the term of opening bankruptcy proceeding for 18 months and any compulsory measures against him were suspended temporarily.

Despite the fact that from 20 February 2006 to 7 April, clause 4 of article 7 of the law on "Opening Bankruptcy Proceedings" was not applied to JSC "United Energy Distribution Company of Georgia", G. Ghuntskidze, L. Alania and M. Dolidze were not restored to their positions, neither were they compensated on their salaries.

As a result of examination of the case, it became obvious that in the actions of executive officials of JSC "United Energy Distribution Company of Georgia" signs of crime stipulated under the Criminal Code of Georgia could be detected. The Public Defender of Georgia transferred the materials for their further response to the Prosecutor General's Office. The latter never informed the Public Defender about the decision made.

The case of Merab Lomidze

In the course of conducting the monitoring, the detainee Merab Lomidze told the representatives of the PDO that he was exposed to psychological pressure in Mtskheta-Tianeti police department. Namely, police officials forced him to admit committing robbery on the territory adjoining Jvari Monastery.

The Public Defender sent the relevant materials on the fact to the deputy head of general inspection under the Ministry of Internal Affairs of Georgia, M. Chikviladze. The latter sent the copy of the letter of Mtskheta-Tianeti district prosecutor's office back to the Public Defender, from which it turns out that the head of Mtskheta-Tianeti district prosecutor's office M. Shakhulashvili met with Merab Lomidze personally and had conversation with him to check the existence of the unlawful fact indicated in the record of the representative of PDO. Except for "conversation", he never opened preliminary investigation and consequently has not conducted any proceedings.

The Public Defender sent a letter regarding the "conversation" to the head of general inspection and the head of the department of Human Rights protection at Prosecutor General's Office in August 2007.

The only information Public Defender received was that the prosecutor's decision to refuse to open preliminary investigation was complying with law.

The case of M. Gogolashvili

According to the information on the webpage of the Ministry of Internal Affairs, on 22 April 2007, the patrol-inspectors of the main department of Samtskhe Javakheti, Shida Kartli patrol police, stopped Mamuka Gogolashvili's car for violation of traffic rules and drink driving in Gori. He was transferred to narcological dispensary. In the patrol's car Mamuka Gogolashvli suddenly took out a gun of "TT" system and with the purpose of inflicting self-injury shot in the area of face. After the incident he was taken to Gori hospital.

On 22 April 2007, the criminal investigation was opened into the above incident at the MIA Shida Kartli regional department pursuant to article 115 of the Criminal Code (driving to suicide).

On 8 May 2007, M. Gogolashvili's defence counsel, R. Revazishvili applied to Shida Kartli regional prosecutor and requested to prove him a victim. Shida Kartli district prosecutor's office did not satisfy the claim reasoning that it was impossible to carry out investigative actions into Mamuka Gogolashvili's case. Besides, the evidence gathered by that time did not establish any offensive facts committed against him. The Public Defender appealed to Shida Kartli regional prosecutor to discuss the case of proving him a victim. According to the letter from Shida Kartli regional prosecutor, evidence gathered on the criminal case is not sufficient to establish offence or unlawful action against Gogolashvili, for which reason he could not be proven a victim at that stage.

The case of G. Kutaladze

On 2 April 2007, the representatives of the Public defender were at # 5 prison of the penal department of the Ministry of Justice, where they required from inmates – Gela Kutaladze and Davit Tavadze to give explanatory notes. In Ksani prison # 7 the explanatory notes were also taken from inmates: E. Mchedliani, Gr. Gagua and V. Julakhidze who confirmed the fact of beating of the inmate G. Kutaladze.

The Public Defender sent the relevant materials to the Prosecutor General's Office to act upon the above fact.

On 14 May, we were informed by Mtskheta-Mtianeti district Prosecutor's Office that the investigation was opened on 3 April into the fact of Gela Kutaladze's beating in prison # 7. The crime fell under sub-clause "b", part 3 of article 333 of the Criminal Code (exceeding official duties) and the inmate G. Kutaladze was interrogated in the status of a **witness**.

On 23 May the Public Defender addressed Mtskheta-Mtianeti district prosecutor's office to consider G. Kutaladze's case on the issue of proving him a victim, which was satisfied.

Annnex 3. Ministry of Internal Affairs and Human Rights

The case of Al. Khositashvili

On 13 April 2007, the employees of #6 department of MIA detained Alexandre Khositashvili in village Dighomi. Despite the fact that in the process of detention Al. Khositashvili did not show any resistance, the policemen beat him up brutally. As a result, A. Khositashvili's health deteriorated (the fracture of the left shin-bone) and he was transferred from temporary detention isolator to "Al. Ghudushauri" clinic.
After discharging from the clinic Khositashvili was transferred to #6 Vake-Saburtalo police department of IA. On 14 April he was taken back to "Al. Ghudushauri" clinic. He was given the following diagnosis: varicose hemorrhage of esophagus, hemorrhagic shock. The patient also suffered from viral hepatitis type "C", with intensive bleeding. Al. Khositashvili died on 15 April.

On 16 April 2007, the Public Defender made a statement on the above fact on TV Company "Imedi". First, the PDO employees interrogated witnesses who mentioned the violence used by police against A. Khositashvili. The witnesses had not been interrogated for several days after his death. Moreover, Shota Khizanishvili, the head of the administration of MIA, ran ahead of events and publicly declared that police had no guilt in this case and that Khositashvili had had injuries before he encountered the police.
On 16 April 2007, the Public Defender made a severe statement on TV Company "Imedi" regarding the above.
On 23 April the Public Defender sent relevant materials put in writing to the Prosecutor General's Office regarding unlawful actions of police against Khositashvili prompting for information on the on going process of criminal investigation.
From Prosecutor General's Office the Public defender received the information that on 18 April 2007, the employees of Vake-Saburtalo department of IA – L. Gelbakhiani, M. Chaduneli and G. Sakhaberidze were detained as offenders. The same day, L. Gelbakhiani and M. Chaduneli were charged with the crime provided under clauses "a", "b" "e" and "g" of part 2 of article 144^1 (torture) and article 341 (prevarication). G. Sakhaberidze was charged with the crime under article 341. On April 19, the employee of Vake-saburtalo district department of IA, G. Kokolishvili was detained as a suspect. On 20 April he was charged with crime in accordance with clauses "a", "b" "e" and "g" of part 2 of article 144^1 (torture) of the Criminal Code of Georgia.
On April 19 2007, L. Gelbakhiani, M. Chaduneli and G. Sakhaberidze and on 21 April, G. Kokolishvili were adjudicated by Tbilisi City Court and sentenced to the deprivation of liberty. Currently the case is submitted to the court.

The case of Zaza Lekvtadze

On 2 May 2007, Zaza Lekvtadze, the inmate of Kutaisi temporary detention isolator presented explanatory notes to the representatives of the Public Defender. As he explained, on1 May 2007, he was together with his friend Ilya Khaindrava at his place (Tskhaltubo region, village Gvishtibi). At about 9:30, five men in police uniforms entered the house. Police officers conducted the search without presenting any search warrant and seized the explosives (the so called capsule). Z. Lekvtadze explained that after the search was over he was forced to sign the document, the content of which was unknown to him. After that Z. Lekvtadze and Ilya Khaindrava were taken to Tskhaltubo district police department of IA. On Z. Lekvtadze's explanation, after arriving at Tskhaltubo district police department, they were told that they were accused of robbery of the shop in village Gvishtibi. On his words, he was subjected to verbal and physical offence as he had not admitted committing the crime. Z. Lekvtadze described in details what kind of pressure the police used and how long it lasted.

Z. Lekvtadze pointed out that neither before the detention nor after it had he been explained of his rights. Besides, his request to seek the defence counsel was not met. The detainee also mentioned that he wrote the evidence under the dictation of the policeman, G. Tsanava.

On June 6 2007, the relevant materials on the case were sent to the Prosecutor General's Office of Georgia for further response. According to the reply, on 26 June 2007, the investigation opened in Kutaisi district prosecutor's office on the case #4107902 under clause "b" part 2 article 144^1 (torture).

The case of V. Khukhua

Koba Kvaratskhelia, the defence counsel of convicts Vakhtang Zarandia and Soso Khukhua applied to the Public Defender and pointed out that his clients had been subjected to physical and verbal offence by police officials. Besides, when the suspects were being adjudicated there were several policemen in the room who did not allow them to get familiar with the content of judgment. The defence lawyer addressed the investigator with the request to conduct the expertise; however he was never responded.

The representatives of the Public Defender interviewed the inmates of prison #4 Vakhtang Zarandia and Soso Khukhua on 14 May 2007.

In the interview, Vakhtang Zarandia pointed out that on 9 May 2007, at 22:00 he and his neighbor Soso Khukhua were driving in his car in the direction of Zugdidi-Jikhashkari when a car crashed into them and as he lost control of the steering wheel, the car moved in the opposite direction. On Zarandia's words, he was made to get out of the car under the threat of the weapon (as it turned out later, it was police) and after that he was subjected to physical violence. After he had been beaten, the police put the automatic firearm and a shell in the car. From the explanatory notes it became clear that V. Zarandia was familiarized with his (presumably, of suspect's) rights and was searched. After the search of the car they seized the firearm and a shell.

Soso Khukhua supported the same version. He explained that police officers (one of whom was called "Konchi") made him get out of the car and subjected him to physical and mental offense. He was also searched on the site. As for the car, Khukhua says that the police had put an automatic weapon and a shell in the car.

V. Zarandia and S. Khukhua were taken to Samegrelo-Zemo Svaneti district police department in different cars where they were interrogated as suspects. As the detainee indicated, he spent all night in the investigator's office. At 22:00 of the next day, D. Tsitsava, the investigator and K. Kvaratskhelia, the lawyer arrived to serve charges on him. The detainees pointed out that the police officers did not allow them to get familiar with the content of adjudication which he finally was able to do only in the court.

The detainees pointed out that at the moment of detention they both heard the following words: "Beat them up, they are Zviadists …" (the former president Zviad Gamsakhurdia's supporters)

On 11 May 2007, the accused Vakhtang Zarandia and Soso Khukhua were transferred to N1 temporary detention isolator. According to the records of external examination conducted in the isolator, Vakhtang Zarandia had a bruise on the right eye and a swelling on his left hand. Soso Khukhua had a bruise on his left eye and a scratch on his left hand. There was no indication in the records as to when or for what reason these people got the above injuries. According to the same records, V. Zarandia and S. Khukhua were suspected for the crime stipulated in article 236 of the Criminal Code of Georgia. On the ruling of Zugdidi district court, V. Zarandia and S Khukhua were assigned with a two-month imprisonment, after which they were transferred to Zugdidi prison N4.

The Public Defender sent the relevant materials to the Prosecutor General's Office of Georgia with the request to take actions. According to the response, the preliminary investigation into the case #5307858 regarding humiliating and inhuman treatment against V. Zarandia and S. Khukhua opened on 4 June in Zugdidi district prosecutor's office, into the crime under part 1 of article 144^3 of the Criminal Code of Georgia.

The case of M. Porchkhidze

On 16 May 2007, the representatives of PDO were given explanatory notes by M. Porchkhidze, the prisoner of Kutaisi N2 prison, the close confinement institution. He was accused of committing the crime stipulated in article 179 of the Criminal Code of Georgia.

On M. Porchkhidze's explanation, at about 3 o'clock a.m. on 31 March 2007, he was in front of his house together with his neighbor and a cousin (#217, Tabukashvili Str., Kutaisi). At this moment, policeman Ramaz Chkhobadze (with the nickname "Khba" –"Jaw") came up to him and asked to follow him. M. Porchkhidze was taken to N 4 police department of Kutaisi district in a white car of VAZ 2106 make. M. Porchkhidze was placed in one of the offices on the 2nd floor of the police department, where he was subjected to physical and verbal offense in order that he confessed to have committed the assault. The inmate gave a detailed description of the forms of violence inflicted on him. As he said they beat him on the ribs and stomach and except the police there was the victim's wife taking part as well. As he says they pulled a plastic bag down his head several times and as could not breathe the oxygen he lost consciousness. They sprinkled water on him to make him come to sense. Porchkhidze claims that about 8 policemen were beating and torturing him, the most brutal among them being the head of department Davit Jibladze and Ramaz Chkhobadze from the same department, but he did not know the rest of them.

The next morning, they arranged M. Porchkhidze's meeting with the victim. As the inmate explains, apart from the prosecutor, one other man who he did not know, was present at the identification. Being threatened by D. Jibladze and Ramaz Chkhobadze, M. Porchkhidze did not mention the violence used against him despite the prosecutor's question. Mirza Porchkhidze explains that despite his request, he was not allowed to contact his relatives and as for his rights, they were explained to him only the next day.

According to the records of detention, Mirza Porchkhidze was detained by the investigator of Kutaisi # 4 police department, Elguja Julakhidze on 2 April 2007, at 06:30. He was transferred to the temporary detention isolator only on 3 April at 15:30. I.e. he spent about 32 hours in the police department (most of time in an unused cell in the call center). During the examination in the temporary detention isolator, he did not mention the fact of beating out of fear of reprisal. According to external examination records Porchkhidze had a small scratch in the area of the left eye, which as he said he got at the moment of detention.

On 7 June 2007, the Public Defender sent the relevant materials to the Prosecutor General's Office. According to the reply, preliminary investigation was opened into the case of torture, (case #6907908), the crime under clauses a, b and g of part 2 of article 144^1 of the Criminal Code of Georgia.

The case of Zaal Mamasakhlisi

The representatives of PDO visited the inmate of Kutaisi prison#2 of close confinement regime, Zaal Mamasakhlisi on 28 May 2007. The latter mentioned in the conversation that on 22 May 2007, at about 1 o'clock, he was nearby the shop located at # 157, Rustaveli Avenue in Kutaisi. There were young men around who seemed to be drunk and having a loud argument with each other. As Zaal Mamasakhlisi explained, the patrol police approached him and told them to go home. Zaal Mamasakhlisi protested the request which resulted in the argument with police patrol employees. The police detained Zaal Mamasakhlisi who put up resistance to police as he was afraid of being beaten in the police department. Z. Mamasakhlisi points out that he was beaten during the detention and after he was delivered in the patrol police department as well. However, Mamasakhlisi does not give the details of physical pressure he was exposed to and does not name the people who beat him up.
Z. Mamasakhlisi informed PDO representatives verbally on the above. He strongly refused to write an explanatory note or cooperate in any form, upon which the PDO representatives drew up a report.

According to the records of detention of the suspect, on 22 May 2007, Zaal Mamasakhlisi was detained by the patrol inspector of Imereti police department, Shota Shotadze. He was suspected in committing the crime provided for under clause "b" of part 2 of article 239 of the Criminal Code of Georgia.
The detention and personal search records of the suspect contained several inconsistencies. Namely, according to the detention record the basis of detention was that he was caught red-handed. The exact time of detention indicated in the record is 03:25 of 22 May 2007. The time of his delivery to the police or other law enforcement institution is reported 03:20 of 22 May. Before he was delivered to the department he had not been under any status (i.e. he was restricted freedom from the minute he was handcuffed and put in the car). It is interesting though that the exact place of detention is indicated in the record as #157, Rustaveli Avenue, Kutaisi (the adjoining territory of the shop).
The record indicates the time and place of record filing, namely, the time of record filing is reported to be 03:30, 22 May, the place – chief department of patrol police of Imereti police department, while the same clause of the record regarding as to where the detained person was delivered, indicates Kutaisi temporary detention isolator (03:30). According to the data queries of the isolator record the detainee was received in the isolator at 06:30 on 22 May 2007. In real terms, the detainee was brought to the patrol police department where he was subjected to physical pressure. After that he was taken to the temporary detention isolator (as is indicated in the record at 06:30).
Regarding the state of the detainee at the moment of detention, the record provides the following: "Injury in the regions of face. Swelling on the right side and a bruise under the right eye, red spot). While the external inspection record of the TDI says: "along the back, as well as on both wrists are scratches, both eyes are swollen, bruises, scratch, also a scratch on the nose, on the elbow of the right arm there is a scratch under hardened skin". It is also indicated that the detainee got these injuries at the moment and after the detention although he has no claims. According to the records of Kutaisi close confinement institution and

prison # 2: “there is a reddish spot 3x2 in the regions of a forehead, blue and yellowish bruises on both eyes 3x1 and 4x2; on the back and the chest multiple yellowish hemorrhages, reddish excoriations 2x5 around the left eye”.

On May 24 on the order of Kutaiai City Court Zaal Mamasaxlisi was sentenced to arrest.

On 22 May 2007, preliminary investigation opened at the district prosecutor’s office of west Georgia into the case of the use of excessive power by patrol police employees (under clause “b” part 3 article 333 of the CC). Z. Mamasakhlisi never provided any information to the investigation about concrete persons.
Proceeding from the above, on June 6 2007, the Public Defender sent the relevant materials to the Prosecutor General’s Office of Georgia. According to the response, on may 22 the district prosecutor’s office of west Georgia started preliminary investigation into the case #8807833, regarding the use of excessive power by patrol police employees, the crime specified in clause “b” part 3 of article 333 of the CC of Georgia.

The case of Goderdzi Sanikidze

On 16 May 2007, Goderdzi Sanikidze, the inmate of close confinement institution and #2 prison of Kutaisi gave explanatory notes to the representatives of PDO. On G.Sanikidze's explanation, he was in Tbilisi on 10 May, where he called his wife from the mobile phone to tell her that he was summoned at the head department of Imereti IA regional police. G.Sanikidze appeared before the police on the same day, where he was detained. He was suspected in the crime under article 177 of CC of Georgia.

According to G. Sanikidze's words, after arriving at the police office, he was told that he was suspected of stealing a mobile phone at the funeral which he attended in village Salominao of Vani region. After G. Sanikidze denied the fact of stealing, the police officers subjected him to physical pressure. The inmate said that he was being beaten during an hour; two policemen were holding him tight and the rest beat him on the head and sides. When he was transferred to the temporary detention isolator, he reported the fact of beating but later he felt sick and it became necessary to call ambulance several times.

In the record of external inspection, it is indicated that Sanikidze had claims against the police. On his words, one of the police hit him on the head during detention, but he did not know who the policeman was, although he could identify this person.

On 7 June 2007, the Public Defender sent the relevant materials to the Prosecutor General's Office with the request to take further actions. In accordance with the reply received, on 12 May Sanikidze was given a medical expertise in the presence of the prosecutor and defence lawyers and on 18 May he was examined by neuropathologist. On the conclusion of medical expertise, G. Sanikidze was practically healthy and the facts of his beating and torture were not confirmed.

The case of Giorgi Gabidzashvili, Ivane Lordkipanidze, Omar Kikvidze and Avtandil Vachiberidze.

Seven persons were detained on 2 July 2007. According to the date of detention records, the detention took place in the regional police headquarters of the Department of Constitutional Security of west Georgia; however from stills spread by SMI, it is clearly seen that the detainees were handcuffed immediately before they left the Imereti regional administrative building and that they were handcuffed when they were handed in a special micro -bus with the handcuffs on. From the same stills we can see that they were familiarized with the charge and their rights. Operative staff's notes made on the resolution of their compulsory delivery say that they found the persons in the Imereti regional administrative building (the detainees Giorgi Gabidzashvili and Ivane Lordkipanidze indicated that they were detained in Tbilisi and then taken to Kutaisi), from where they were taken to the regional police headquarters of the Department of Constitutional Security of west Georgia. On verbal and written explanation provided by the detainees to the Public Defender, it comes to light that they reached or were brought to the place of destination by different ways and at different times. However, only O. Kikvidze and A. Vachiberidze indicate that they were actually detained by the staff of regional police headquarters of the Department of Constitutional Security of west Georgia on 2 July 2007, at around 08:30.

In accordance with **Omar Kikvidze's** explanation (vice-mayor of Kutaisi), on 2 July at about 08:30 he left home in his car. A white car blocked his road in Rustaveli Street. The person who got out of the car explained that he was the representative of Constitutional Security department and asked to follow him. From 08:30 till 13:00 O Kikvidze was in the car which was moving in different directions around the city. During this time his mobile phone was taken away. When he asked about why they were driving around the city, he was told that they were expecting the instructions from their heads. At 13:30, the persons in the car seemed to have got instructed and took O. Kikvidze to the building of a local self-governing body entering the building from the back door.

Avtandil Vachiberidze (sole entrepreneur) explained that on 30 June 2007, the investigator of regional police headquarters of the Department of Constitutional Security of west Georgia, Oleg Varlamishvili summoned him to the department on July 2. A. Vachiberidze arrived there at about 08:30 where he first met with the investigator and then he was taken to one of the rooms on the first floor. (As A. Vachiberidze indicates, he spent about 2-3 hours in the room where there were other sole entrepreneurs and one employee of the department. Later the employees of the local self-governing office were brought in too. (On A. Vachiberidze's words, none of them was told that they were detained but they were not allowed to leave the room). Later, all of them were taken to the building of the local self-governing office which they entered from the back door.

As the fact of excessive use of power by the employees of Constitutional Security department was obvious, on 11 July the Public Defender sent the relevant materials to the Prosecutor General's Office of Georgia and the general Inspection of MIA with the request to take responsive measures. According to the response from the Prosecutor General's Office, the materials sent by the Public Defender were forwarded to the district Prosecutor's Office of west Georgia for the resolution. The Public Defender has not been replied.

The case of Mildianis and Khorguani

On February 18, 2007 at 10:30 Special Operative Department (hereinafter SOD) at the Ministry of Internal Affairs of Georgia (hereinafter MIA) conducted a special operation and arrested three men in the fixed-route taxi (Vilis) in the village of Jorkvali, Mestia Region. The ground of arrest was operative information received by SOD – a well-organized criminal group is operating is the Mestia region. The criminal group members Khvicha Mildiani, Gocha Mildiani and Lasha Khorguani are criminal world representatives. According to the operative information, above-mentioned individuals were planning to travel from Mestia region to Zugdidi region on February 18; They had firearms, fighting materials and drugs.

According to the case materials, the operative information was confirmed – all three individuals – 20 year old Khvicha Mildiani, serving in the Battalion of Vaziani, his brother 23 year old Gocha Mildiani, agriculturist and 22 year old Lasha Khorguani, student of 4 course of Faculty of economy, Grigol Peradze Tbilisi University, were passengers of abovementioned car.

All three of them were under drug influence, what is confirmed by the expertise.

Khvicha Mildiani had three hand grenades in the rucksack and in the pocket 5 piles of Subotex; Gocha Mildiani and Lasha Khorguani had three piles of Subotex each. In addition, according to the testimony given by police, they did not obey and vigorously resisted the staff of MIA SOD and they tried to escape. Correspondingly, Lasha Khorguani had injuries on the face, what also was mentioned in the record while entering the Module Building.

The detained did not take a lawyer, they were provided by a state lawyer. Gocha Mildiani and Lasha Khorguani were charged with Criminal Code of Georgia, article 260, par. 2: Illicit preparation, production, purchase, keeping, shipment, transfer or sale of drugs, the analogy or precursor thereof in large quantities and arrest resistance. Khvicha Mildiani in addition was charged with transfer of fighting materials. Accordingly, offence committed by Gocha Mildiani and Lasha Khorguani foresees suppression of freedom up to 17 years in length and for Khvicha Mildiani up to 25 years in length.

Besides the criminal offence has been conducted in February 2007, therefore the Criminal Code of Georgia only foresees adding up the punishment.

On February 19, 2007 all three have been interrogated as an accused. None of them declared themselves guilty and all of them used right to silence.

On the same day, the detained underwent laboratory examination, Buprenorphine was found in the blood. On February 20, 2007 the Administrative Collegium of Tbilisi City Court found G. Mildiani, Kh. Mildiani and L. Khorguani guilty in administrative offence and imposed 5000 GEL penalty each based on article 45 of the Law on Administrative Offences.

The detainees situation was made heavier by the fact that they were the members of well organized criminal group. They did not cooperate with the investigation, did not

acknowledge from whom, in what situation and with what aim they bought drugs and fighting materials. They did not admit either, what other crimes they had committed, who were they cooperating with and what other crimes were they planning to commit.

All three of them familiarized themselves with the police officers' statement (record) of their detention and of personal search, but refused to sign the record. More, they stated that the police officers injected them with drugs.

From the all above said it was natural that Z. Beitrishvili, Investigator of exceptionally important cases of SOD with consent of K. Chomakhashvili, prosecutor addressed the Criminal Cases Collegium of the Tbilisi City Court and requested to issue a decree on imprisonment of Khvicha and Gocha Mildiani and Lasha Khorguani.

Despite the abovementioned, on the very same day imprisoned was only L. Khorguani, as the investigation changed their demand and requested to conclude the procedural agreement with Gocha and Khvicha Mildiani, what was satisfied by the court. From the criminal case materials it does not become clear based on what was procedural agreement concluded. There is no application of accused or their lawyer requesting the procedural agreement in the materials requested from the Mestia regional Court is. Only from the sentence of February 20, 2007 taken by the City Court of Tbilisi it becomes clear that, at the court hearing the accused stated that they do realize the character of that crime the commitment of which they are accused with.

Today, when Georgian criminal politics fights against organized crime and drug crimes in the first place, why both the investigation and the court showed unprecedented mercy towards members of the criminal world is beyond understanding. Despite this, the members of well-organized criminal group, who committed criminal offence, have been released with a tentative agreement and minimal punishment - 5-year conditional suppression of freedom and 3.000 GEL penalty each.

(Attention: Zaza Dolidze was sentenced to almost the same punishment - 5-year conditional suppression of freedom without penalty, for stealing a ball from the school).

If we recall, a well-organized criminal group committed the offence according to the operative information. Therefore, the above-mentioned unprecedented mercy towards members of the criminal world is beyond understanding/very strange and has no analogy.

The court was a little stricter towards Lasha Khorguani. He was sentenced to two-month pre-trial detention, but on April 11 the City Court in Mestia Region satisfied the same request of Prosecutor K. Chomakhidze and sentenced L. Khorguani to 5-year conditional suppression of freedom and 5.000 GEL penalty. Although, committed offence by L. Khorguani was minor in comparison with others – he did not have hand grenades.

The investigation did not even conduct search of the houses of the above-mentioned well-organized criminal group, in order to ascertain weather or not any illegal objects were preserved there.

* * *

The question arises: why the investigation showed unprecedented mercy towards members of the criminal world, when so many evidence existed.

The investigation interrogated only police officers as witnesses and did not interrogate any of six passengers who witnessed detention of Khorguani and Mildiani. We decided to speak to the passengers of that car. They gave us explanations. In their explanations, the witnesses stated that detainees did not show any resistance towards police officers. In the special operation 5 cars together with a special unit involved. In addition, Mildiani brothers who got into the car in village Tskhumari of the Mestia region and Khorguani, who got into the car in village Etseri were not familiar to each other and did not utter a word and speak to each other.

V. Gazdeliani, driver of "Vilis", who was interogated in MIA Division in Zugdidi, stated the same. He got informed in the police that those detainees Khvicha and Gocha Mildiani, and Lasha Khorguani had hand grenades and drugs. He did not eyewitness abovementioned. This was mentioned in his explanation given to us. He stated that the same explanation he gave to the police.

However, despite this, in the report of interrogation of February 18, 2007 it is written "Mildiani brothers and Lasha Khorguani had bombs and drugs". In the evidence, given to pre-investigation it is also written, that they did not obey and tried to resist them by waving hands and feet.

Therefore, passengers and the driver saw neither bombs nor drugs. More, they declare that Mildiani and Khorguani did not even talk with each other. The accused themselves state that they did not know each other. It is very simple to check it out with looking in the detailed statement of cell phones of Khorguani and Mildiani. It is impossible not to have called one another at least once if they were members of a well-organized criminal group. The investigation did not go this way and did not look for the statement; otherwise, truth would have been ascertained easily.

Gocha and Khvicha Mildiani in their explanations given to the Public Defender state, that on February 18, 2007 they got into the car Vilis near village Tskhumari. Near village Etseri 5 more passengers got into the car, from which none of them was familiar to them. On the way, police officers stopped the car. The police officers chose young people – G. Mildiani, Kh. Mildiani and L. Khorguani, who got into the car in village Etseri and ransacked them. They found a cell phone in G. Mildiani's pocket and asked the number. During the ransack no illegal objects were found. The ransack was witnessed by the other passengers of Vilis.

According to G. Mildiani, L. Khorguani was also asked his cell phone number. As soon as he said, one of the police officers jumped forward with the words who you were swearing at last night. After that, police officers put handcuffs on them, ransacked for the second time, and withdraw drugs from their pockets, what they never had. In addition, from the rucksack of

Kh. Mildiani they withdraw hand grenades. Other two did not have rucksacks, so they could not withdraw anything.

According to Gocha and Khvicha Mildiani, the police officers planted abovementioned hand grenades and drugs. They also stated that the police officers injected them with drugs in the car while transferring them to Tbilisi. Gocha and Khvicha Mildiani also mention that during the pre-investigation, they did not declare themselves guilty; they explained to the law enforcement officers that the hand grenades and drugs did not belong to them and police officers injected them with drugs. In addition, they did not resist the police officers.

On February 18, detainees explained to M. Mumladze, Prosecutor of Samegrelo-Zemo Svaneti District that withdrawn objects did not belong to them, following they did not sign the record.

In the resolution taken by the Administrative Collegium of Tbilisi City Court on February 20, 2007 is written, "Khvicha Mildiani does not agree with the record and explains that he has been injected with drugs in the car on the way to Tbilisi"; "Gocha Mildiani does not agree with the record and explains that he has been injected with drugs in the car on the way to Tbilisi"; "Lasha Khorguani does not agree with the record and explains that he did not take drugs";

Something different is written in the Criminal Cases Collegium of Tbilisi City Court sitting record of February 20, 2007. According to it, Gocha and Khvicha Mildiani declared that they do realize the character of that crime the commitment of which they are accused with. They are familiar with the requests/demands of the procedural agreement and agree with them.

Concerning the resistance, Samegrelo-Zemo Svaneti SOD staff, G. Gvaramia, R. Gabunia and A. Lagvilava, gave interesting evidence. On February 18, while being interrogated as witnesses they stated that, while arresting Lasha Khorguani, Khvicha and Gocha Mildiani showed resistance and tried to escape. They were swearing at the police officers and were waving hands and feet at them.

On February 20, 2007 G. Gvaramia and R. Gabunia were interrogated again, and A. Lagvilava - on February 25, 2007 (the procedural agreement has been concluded on February 20, 2007), where they stated that while arresting only Mr. Khorguani resisted and Khvicha and Gocha Mildiani did not.

Besides, A. Lagvilava mentioned during the interrogation that L. Khorguani received some injuries while resisting, namely: His nose was bleeding. In the police officers' examination record is described the injuries received by Khorguani. Nevertheless, Khorguani himself said that these injuries he had before the police officers detained him. The passengers of Vilisi describe that Khorguani was pushed against ground and he hit his face.

* * *

From the evidence given by several witnesses, it becomes clear that the SOD staff was looking for a specific cell phone number and the whole operation was conducted because of that number.

According to eyewitness J. Gvenetadze's explanation, on February 17-18, 2007 he was in village Etseri, Mestia Region. On February 17, he with several other relatives, L. Khorguani among them was at his neighbor's house. They left approximately 01:00 o'clock. One of the chaps asked L. Khorguani to lend him his mobile and called. The late night call angered the addressee and insulted the caller. The caller swore back. L. Khorguani took away his mobile and excused, but the unknown addressee swore and threatened to meet him in the privet office.

We met with the young man G. who called from Lasha's phone. According to his explanation, he called from L. Khorguani's phone to 899535341 number, although hung up after the very first buzzer. In 2-3 minutes time after his call, a woman called back from the dialed number and asked him who he was and expressed discontent regarding the late phone call. This happened on February 18, at 02:43 o'clock. The first call duration was 22 seconds what also is confirmed by a statement.

G. states that he apologized, but the woman did not change her tone and passed the phone onto the man who swore at him. He replied with swearing too. After several seconds the same man called from the same number and asked G. who he was, the later returned the same question; he answered that he was Irakli, threatened to meet him next day in the private office, and went on swearing. After that, Irakli called several times but from the other number, namely 877586363 and continued threatening. The duration of the calls lasted 4-5 minutes.

On that, night many times was called on L. Khorguani's cell phone from different numbers. Many of these calls were not answered but several were answered. We have checked a detailed statement of mobile calls.

From the eyewitnesses explanations it becomes clear that SOD staff was interested with the cell phone numbers of the passengers. We have an extract of the L. Khorguani's mobile calls. From the statement it became clear that after 02:44 am on the number 899 389709 (it belongs to Lasha Khorguani) received calls from 899535341, 877586363, 899109895, 893623465 numbers approximately during one hour.

After so many threatening at 03:01 o'clock, G. sent an insulting message to Nanuka Zhorzholiani's cell phone from L. Khorguani's number.

According to our information, abovementioned cell phones belong to next individuals:

899535341 – Nanuka Zhorzholiani, Head of Information Centre on NATO;
877586363 – Irakli Kodua, Head of SOD at the MIA;

* * *

On February 19, 2007, the relatives of Lasha Khorguani addressed us and requested help in finding L. Khorguani.

G. Giorgadze, Head of Investigation and Monitoring Department of the Public Defender's Office and T. Kemularia, trustee of the Public Defender met with L. Khorguani, Khvicha and Gocha Mildiani in the Main Division of Protection of Human Rights and Monitoring of MIA.

L. Khorguani refused to cooperate with the representatives of the Public Defender, so report has been drawn up – "L. Khorguani refuses to talk with us, only asks to let his family/relatives know that they should hire a good lawyer, as he is sure that he will be release on the basis of a procedural agreement. He does not have other grievances, although, he is nervous and restrains from further comments. On our question, who talked with him on the cell phone and whether or not everything that happened to him was linked with the cell phone, he started to cry and asked to take him back to his cell. The interview was interrupted. We had an impression that he could have gone psychological and physical pressure".

It should be noted, that all the three condemned were against making this case public. They understand what it means to have relation with Georgian law enforcement bodies and to what extent it is possible to assert the truth. The law enforcers have strictly warned Lasha Khorguani to keep the case in secret; otherwise, they threatened his family members with punishment.

Despite this, public interest towards this case is so high that I have neither moral nor juridical right to core this crime. When similar lawlessness, abusing of official authority is possible in one case, it means that none of the citizens of Georgia are safe.

The safety of G., person who was the author of the call, is not guaranteed either. If Irakli Kodua has an interest to find out who was the author of the call, he will find it out. So there exists a threat that at home or while searching G. "will also have" drugs, firearms or other illegal objects.

I understand well, that it is possible that none of the condemned would confirm the abovementioned, as they are extremely frightened and hopeless: they do not believe in fairness. However, I am sure, that investigation will similarly ascertain the truth, because there is many evidence.

Public awareness of this mentioned fact is inevitable even in future in order to securing preserve these three people. Subsequently after the Public Defender requested criminal law case materials from the court, the lawyer, retained by SOD for Lasha Khorguani began to collect information on why the Public Defender showed such an interest for this case.

* * *

Except the abovementioned fact, the Public Defender got to know unofficial sides of this case, namely:

Nanuka Zhorzholiani was among those who wrere present on digging the graveyard in village Etseri, Mestia Region concerning so-called "Aprasidze case". She left her mobile number to the villagers and asked to call her if some new facts would arise. There was G. After that, Nanuka Zhorzholiani and G. from time to time were getting in touch. Mostly they were right short messages (10-15 messages in total) to each other. The above-mentioned correspondence took place from the cell phones of G.'s family members. As much as we are informed, Nanuka Zhorzholiani even called G. once from her workplace (TV Company "Rustavi 2"). It would not be difficult for the investigation to prove this fact.

We revealed even details of Lasha Khorguani's torture. In the building of SOD he was mentally and physically insulted. Several bottles full of water were broken on his head, he was threatened to get even with his family. During the interrogation in the SOD building, they were asking to name the author of the telephone call. He did not give it out. The above noticed should be qualified as torture.

* * *

After having familiarized with the case materials, it becomes evident that there are signs of crime in the actions of administration and employees of SOD, as well as of the staff from the Prosecutors Office of Georgia. In their actions, we see signs of crime envisaged by the following articles of Criminal Code of Georgia:

Article 144[1] Torture (par. 2, subparagraphs a), b), d), e) and par. 2, subparagraph d);
Article 146 Intentionally Subjecting Innocent Person to Criminal Liability (par. 2);
Article 147. Intentional Unlawful Detention or Arrest (first part);
Article 151. Threat;
Article 158. Violation of Privacy of Conversation (par. 3, subparagraph d);
Article 159. Violation of Secrecy of Private Correspondence, Telephone or Other Communication (par. 2, subparagraph c);
Article 260. Illicit Preparation, Production, Purchase, Keeping, Shipment, Transfer or Sale of Narcotics, the Analogy or Precursor Thereof (par. 2 b), c) and par. 3, subparagraphs a) and b);
Article 332. Abuse of Official Authority (first part);
Article 371[1]. Contradictory Evidence given by Witness and Victim

From all abovementioned, I consider that safety of Lasha Khorguani, Khvicha and Gocha Mildiani and their family members and the safety of existing witnesses in this case.

The Criminal Code of Georgia

Article 146. Intentionally Subjecting Innocent Person to Criminal Liability (28.04.2006)

1. Intentionally subjecting an innocent person to criminal liability, -

shall be punishable by prison sentences for up to five years in length, or by deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years or without it.

2. The same action that results in charging with serious or grave offence, -

shall be punishable by prison sentences ranging from three to ten years on length.

Article 147. Intentional Unlawful Detention or Arrest (28.04.2006)

1. Intentional unlawful detention, -

shall be punishable by restriction of freedom for up to two years in length or by imprisonment extending from five to eight years in length, by deprivation of the right to occupy a position or pursue a particular activity for the term up to three years or without it.

Article 151. Threat (28.04.2006)

Threatening to take a life of a person away or to damage health, and/or to destroy property, whereas the person threatened has a well-founded fear that the threat will be carried out, -

shall be punishable by fine or socially useful labor extending from one hundred and twenty to one hundred and eighty hours in length or corrective labor for up to one year in length or by jail sentence for up to one year in length.

Article 158. Violation of Privacy of Conversation

1. Illegal recording or eavesdropping of private conversation by the use of technical means, -

shall be punishable by fine or by restriction of freedom for up to tow years in length or by imprisonment similar in length.

2. Illegal use or dissemination of the record of private conversation or information obtained through technical means, -

shall be punishable by fine or by restriction of freedom for the term not in excess of three months or by prison sentences ranging from one to three years in length.

3. The action referred to in Paragraphs 1 or 2 of this article:

d) committed through the abuse of an official power, -

shall be punishable by prison sentences ranging from two to five years in length, by deprivation of the right to occupy a position or pursue a particular activity for up to a three year term.

Article 159. Violation of Secrecy of Private Correspondence, Telephone or Other Communication

1. Illegal violation of secrecy of personal correspondence or parcel, communication by a telephone or other technical means and/or a message transmitted or received through a telegraph, fax, or other technical means, -

shall be punishable by fine or by socially useful labor ranging from sixty to one hundred and twenty hours or by corrective labor for up to two years in length or by imprisonment similar in length.

2. The same action:

c) committed through the abuse of an official power;

shall be punishable by fine or by imprisonment for up to three years in length, by deprivation of the right to occupy the position or pursue a particular activity for up to three years in length.

Article 260. Illicit Preparation, Production, Purchase, Keeping, Shipment, Transfer or Sale of Narcotics, the Analogy or Precursor Thereof (25.07.2006)

1. Illicit preparation, production, purchase, keeping, shipment, transfer or sale of drugs, the analogy or precursor thereof,-

shall be punishable by imprisonment for up to ten years in length.

2. The same action perpetrated:

a) in large quantities;

c) by using one's official position;

shall be punishable by imprisonment ranging from six to twelve years in length.

3. The action referred to in Paragraph 1 or 2 of this article, perpetrated:

a) in especially large quantities;

c) by an organized group,-

shall bear legal consequences of imprisonment ranging from eight to twenty years in length or life imprisonment.

Article 332. Abuse of Official Authority (25.07.2006)

Abuse of official authority by an officer or a person equal thereto in contempt of public service requirements in order to gain any profit or privilege for oneself or others that has come as a substantial prejudice to the right of a natural or legal person, legal public or state interest,-

shall be punishable by fine or by jail time up to four months in length or by imprisonment for up to three years in length, by deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years.

Article 371^1. Contradictory Evidence given by Witness or Victim

1. Intentionally contradicting to the law enforcement bodies, what is expressed by giving contradictory evidence,-

shall be punishable by fine or by imprisonment for up to three years in length.

2. The same action perpetrated with greediness or other personal motive,-

shall be punishable by imprisonment ranging from two to four years in length.

3. The action referred to in Paragraph 1 or 2 of this article committed repeatedly,- shall be punishable by imprisonment ranging from three to five years in length.

Annex 4. Human Rights in the Penitentiary System

The Case of Giorgi Gvinianidze

On 30 July 2007, PDO representatives interviewed G. Gvinianidze serving his sentence in Kutaisi prison N 2 of the strict regime establishment. According to his words, he was transferred from Geguti N 8 common and strict regime establishment to Kutaisi prison N 2 of the strict regime establishment on 15 May 2007. He was convoyed because he had some information about the corrupted relationships between the director of Geguti N 8 common and strict regime establishment and the inmates.

As G. Gvinianidze explained, due to the deterioration of his health, he insisted on seeing the doctor in Kutaisi prison N 2 and did not obey L. Mandaria's words to go back to the cell. L. Mandaria and I. Ivanishvili, being dissatisfied by the above (the latter is currently working in Geguti N 8 common and strict regime establishment) subjected G. Gvinianidze to physical and verbal offence. They were beating him in the face and stomach, spitting into his face and swearing. It lasted for about 20 minutes. The inmate asked them to stop beating him as he had undergone an operation. In response, L. Mandaria and I. Ivanishvili put a straight jacket on him.

Duty officers of Kutaisi prison N 2 of strict regime establishment M. Chogovadze and M. Samarguliani were present at the scene. As G. Gvinianidze explained, he had been lying on the floor of the police call center with a straight jacket on for three days. During this period he had not been given any food; Samarguliani gave him some water only. Besides, he had no possibility to see the doctor. Only a nurse visited him the next day and gave him some sedatives.

In the morning, L. Mandaria and D. Narsia, the employee of the strict regime establishment, came down to see him who told him that G. Gvinianidze was lying there dead and that they lit candles for him. Zhorzholiani, another employee of the establishment came up to D. Narsia to tell him he wanted a day off. D. Narsia told him to pour water down G. Gvinianidze's head, which he did and they both were laughing cheerfully.

G. Gvinianidze learned from the investigator that the preliminary investigation had been opened into the fact of disobedience. When he met with the investigator he was not wearing the straight jacket. He did not verify the evidence with his signature.

The next day the prosecutor and an expert visited him. The prosecutor asked: "Is this the madman?" The expert examined his body and filed a report but G. Gvinianidze was not given the chance to get familiar with its content.

As G. Gvinianidze said, despite the fact that he had told the prosecutor and the investigator about his beating, they never responded to the fact.

In his explanatory note, the prisoner also indicated that he had addressed the Public Defender three times about the fact of his beating; however, he did not know whether his appeal had ever been acted upon. PDO has never received Gvinianidze's letters of complaint.

Proceeding from the above, the convicts of Kutaisi prison N 2 of the strict regime establishment of the Penal Department of the Ministry of Justice pointed to the signs of crime provisioned under article 144^1 in the actions of the employees.
The Public Defender sent the relevant materials to the Prosecutor General's Office of Georgia and the chairperson of the Penal Department of MoJ requesting to take further actions.

The Case of L. Mandaria

On 30 July 2007, PDO representatives visited the convict L. Managadze in Kutaisi prison N 2 of the strict regime establishment of the Penal Department of the Ministry of Justice and interviewed him.
In the interview L. Managadze mentioned that on 4 July 2007, the employees of Kutaisi prison N 2 of the strict regime establishment Lasha Mandaria, Zurab Morchadze and Kote Cheishvili beat him in the area of the head and back.
The above persons forced him to confess his participation in the robbery that took place on 29 may 2007, otherwise they would impale him. As K. Cheishvili told him the person killed during the assault was his uncle.
After beating him up, L. Managadze was left alone in the room (probably to allow him some time to make a decision) during which time he inflicted self-injury. He was given the first aid by the physician of the establishment. L. Managadze was transferred to the cell the next morning. L. Managadze told the defence lawyer R. Khuntsaria, also E. Rukhadze and M. Managadze about the incident.
Besides, when he was being taken to the trial, L. Mandaria threatened him.
Several days later L. Managadze was interrogated by the investigator. L. Managadze noted that he did not mentioned to the investigator the fact of physical violence exerted to him and explained that he inflicted self-injuries and had nothing to claim. After the meting with the defence lawyer, the investigator and the expert visited him again and the expert made the record of the examination of his body which L. Managadze signed. (As he remembers, the document mentioned only L. Mandaria's name).
The Public Defender sent the materials to the Prosecutor General's Office of Georgia and the chairman of the MoJ with the request to take relevant actions.

The Case of Robert Makharashvili

On 21 February 2007, the Public Defender was addressed by convict Robert Makharashvili serving his sentence in Rustavi prison N 2. He indicated that during the scheduled check of the cell N 21 that took place on 18 February 2007, one of the employees of the administration insulted him verbally and afterwards he was taken to the so called library room where he was once again offended verbally and physically. R. Makharashvili became sick and he was taken back to the cell. His cellmates called the physician and he was transferred to a medical ward of the establishment. R. Makharashvili claims that despite injuries which he got as a result of beating, the administration staff Gocha Kakoishvili and a certain person called Bato (who were notorious for their brutality and cynicism) threw him

off the bed and beat him up. The convict said that the employees mentioned above were under the influence of alcohol and his cell mates could witness everything as from the window of cell N 21, the medical ward windows are clearly seen. The convicts of cell N 21 went on hunger strike and verified the above facts in writing with their signatures.

On 21 February PDO representatives visited R. Makharashvili in Rustavi prison N 2. On his words, he could move with difficulty after having been beaten, he had pains and during the examination some hemorrhages were observed on his back, arms and legs. Also there was a swelling around his right eye.

On the basis of the Public Defender's address, Investigative division of the prosecutor's office of Kvemo Kartli opened an investigation into the fact of excessive use of authority against R. Makharashvili, the offence under part 1 of article 333 of the Criminal Code of Georgia. According to the response from the Prosecutor General's Office, on 8 March, under part 1 of article 333 of the Criminal Code of Georgia, D. Shubitidze, K. Sharumashvili and D. Jighauri were brought to suit and were prescribed deprivation of liberty as a measure of restraint. On the indictment passed down on 14 May, the above persons were sentenced to 1 year of deprivation of liberty.
From the case analysis it can be seen that the article under which he was sentenced was obviously inconsistent with the committed action. The facts described in the case are classical examples of torture and consequently the investigation was to be opened into a case of torture.

The Case of Alexandre Manukian

PDO representatives met with convict A. Manukian on 6 March 2007 who said that in mid January 2007, he was transferred from Rustavi prison N2 of strict regime establishment to the medical establishment for convicts and prisoners where he could feel aggressive attitude on the part of the employees. For this reason he addressed the head and the deputy head of the establishment and despite his poor health state he requested to be transferred to another penal establishment, as he did not want to complicate the matter. The convict's request was not satisfied and A. Manukian stitched up his mouth in protest. A. Manukian was placed in the isolation locked-up ward and the next day, on 24 January he was transferred to Rustavi prison N 6 medical establishment.
On 2 March, the prison administration considered that it was not necessary to keep him in the medical establishment any longer and decided to transfer him to the cell. When Manukian asked the administrative officials where they were going to take him, they did not reply. A. Manukian says that he was then taken into one of the rooms of prison medical establishment and was beaten up by six persons that lasted for 10 minutes. The physician who heard the noise came into the room and interfered in the conflict, making the offenders leave the room, examined the patient, washed the blood off the brows, lips and other areas of the face. Some time later, the deputy head of the prison, Jaba Tavberidze came to the room to find out what had happened. A. Manukian told him everything about the incident. Fifteen minutes later after the deputy head had left, A. Manukian was transferred to the cell N 2 (quarantine ward). According to what he says, in ten minutes L. Bregvadze, the director of

the prison accompanied with the administration employees came into the cell and took him to his office. After the conversation A. Manukian was transferred to cell N 20. The convict also stated that he was able to identify each person who subjected him to verbal and physical offence. A. Manukian also noted that on 5 March, despite his insistent request, he was not taken to Kutaisi Appellate Court (when there was a hearing of his and other convicts' cases on the riot of 30 January 2007 in Rustavi prison N 1), as the injuries inflicted to him could be rather obviously seen. Other convicts were taken to the trial.

On 6 March 2007, the representatives of PDO met with A. Manukian in Rustavi N 6 prison and interviewed him. On 7 March the representatives of PDO, met with A. Manukian again and on 9 March the PDO representatives together with the president of NGO – The Center for Rehabilitation of Torture Victims – "Empathy", Mariam Jishkariani visited A. Manukian in Rustavi prison N 6, examined his health state and made records which said:
"A. Manukian displays several injuries on different parts of the body: hematoma around both eyes, excoriation on the left brow; hemorrhages on the neck, back, in left antebrachial regions, right hip, kidneys, a big protuberance on the forehead. The patient suffers from dizziness, vomiting and tympanophonia. According to provisional diagnosis A. Manuklian has a concussion of brain, excoriations in different areas of the body and hematomas".

In the opinion of Levan Labauri, the expert of the centre for the protection of Patients' Rights under PDO, A. Manukian needed surgical, psychiatric and neuropathologist's consultations. He required treatment due to the concussion of brain and an adequate regime. As well as that, it was necessary to carry out forensic medical expertise to state the nature and prescription of injuries.

During the conversation with PDO representatives, A. Manukian said that the investigator had not visited him for interrogation, neither had any expertise been carried out.

In response to the Public Defender's query, the director of the prison said that he had notified the investigative body about A. Manukian's case the same day (i.e. 2 March); however, the investigator has never visited him and neither has any expertise been carried out.

On 13 March the Public Defender sent the relevant materials on the fact of A. Manukian's torture and beating to the Deputy Prosecutor General of Georgia in compliance with clause "c" of article 21 of the law on "Public Defender". According to the reply, preliminary investigation opened in Kvemo Kartli district prosecutor's office on 16 March 2007 into the fact of excessive use of authority by Rustavi N 6 prison employees against convict A. Manukian, the crime under part 1 of article 333 of the Criminal Code of Georgia. The investigation is underway.

The Case of Abib Mekhtiev

On 8 February 2007 PDO representatives visited the prisoner A. Mekhtiev in prison N 6 of the Penal Department. The latter claimed that on 6 January of the current year in prison N 2

of penal department he was tied up and was beaten by the employee of custodial supervision unit, someone called Kizosa and one of the duty officers who was unknown to him, although he could recognize this person if he saw him.

On 12 February PDO addressed the investigative department of the Ministry of Justice requesting to examine the case. According to the response, on 19 February the preliminary investigation opened into the facts of inflicting bodily injuries to A. Mekhtiev in prison N 6. This time too, the investigation was carried out under an inadequate article. The facts described by the prisoner directly spoke for the evidence of torture and inhuman treatment.

Annex 5. Medical Service in the Penitentiary System

The Case of Romeo Margvelani

On 20 February 2007, at 14:00, prisoner Romeo Margvelani, 29, died in the medical establishment for convicts and prisoners of the Ministry of Justice.

Two days later after the death of the prisoner Romeo Margvelani the following information was published on the official web page of the Ministry of Justice of Georgia, which said: "The patient displays expansive process of brain (frontal lobe), post traumatic state of neurocranium and intracranial hypertension. On the preliminary conclusion of physicians the death of the prisoner was caused by: polyorganic insufficiency and the concurrent expansive process of brain".

The Department of Justice of PDO filed a request to the medical establishment of the penal department on the patient record of the deceased prisoner. As it turned out, the patient was transferred from Zugdidi prison N 2 on 7 February 2007. The patient record contains the report according to which when admitted to hospital the patient did not display any injuries, had 7-8 cm adhesions on upper limbs and vertex. it must be noted that the report has no numeration. As well as that, it is filed incompletely as it does not give any precise location, size, color, shape, prescription, number, etc. of adhesions. No indication is provided regarding the venue of examination, lighting, attending persons (if such). The report is signed by the physician on duty and the deputy director of the establishment. Presumably the above two persons conducted the examination.
The patient medical record is incomplete and is beneath all criticism in terms of medical professionalism. It must be noted that the patient record in this establishment is written in a different form which does not correspond to the normative approved by Ministry of Health of Georgia. The main part, the so called„Status Locus"on which basis the physician has to arrive at the initial diagnosis logically, is not filled in the record. Thus it is not clear on which basis the physician makes the preliminary diagnosis?

The record does not contain the information on patient's transportation from Zugdidi to Tbilsisi (by ambulance or convoy?), who diagnosed? On what grounds? It is only known that the patient has the following complaints: dizziness, splitting headache, general fatigue, giddiness. It is also indicated that "these symptoms lasted for 4-5 days", although the beginning of the next sentence says that "the patient has had above mentioned complaints for 6 months". It is confusing, which record should we trust? According to complaints listed it is hard to make the diagnosis which is reported in patient record. In order to come up with this diagnosis it is necessary to get professional consultation (neurologist, neurosurgeon or other) and carry out special examination. Following the documents at our disposal not a single procedure for the above purpose has been carried out (!). The fact that the patient of neurological/neurosurgical profile was placed in a therapeutic division is a gross violation too. And if the medical establishment for prisoners has no such division and neither has it a neurosurgeon, then it was necessary to transfer the patient to the corresponding clinic of the city. In any case it is not justifiable to place such patient in the therapeutic division for treatment and is the gross medical violation. The patient record contains the document filed

on 6 February signed by A. Rogava (presumably a physician). We can infer that it must have been filed by the sender. The document does not indicate the patient's name, the name of the establishment or physician's specialization/ profile. Medical data provide the records on only heart rate and vesicular respiration (normal), blood pressure and temperature. Some complaints are reported and the direct diagnosis is given (that has been copied by the medical establishment for prisoners). A. Rogava's status and connection with the patient is not clear to say nothing of the logics in how they arrived at the diagnosis! It is also unknown what measures were taken for diagnosing or treatment for the complaints the patients had had for six months.

In the medical establishment for prisoners the quality of recordkeeping is beneath all criticism. However, if we consider the fact that this establishment is not exceptional among others that conduct recordkeeping in such manner, then this fact itself must be considered "a significant achievement". As it has already been noted, the patient was placed and given treatment in the clinic of an inadequate profile. If we assume that the physician in charge of treatment of R. M. is the subject carrying out independent activities in general therapy / general practitioner/ (as he works in the therapeutic division) then it can be inferred that this physician was carrying out "illegal medical practices". if we also take into consideration that the given case ended in lethal outcome, then it is clear that it is necessary to take strictest legal measures against the physician and the medical establishment concerned! Especially when they frequently conduct similar activities and such facts are abundantly reflected in the reports of the first and the second halves of 2006.
It is also unclear why the neurosurgeon was not called for consultation to the medical establishment. If none of the physicians came up with the idea that it was necessary to get such consultation and consequently they never even raised the question, then their qualification must be assessed as being extremely poor!

The case records provide very interesting details: for example, on 9 February 2007, the physician's record reads that the patient is "not communicable". Thus it is interesting how he "answers the questions" that are recorded by the same physician in the same case record.
The fact also causes surprise that the patient who is not communicable, is prescribed the psychologist's consultation instead of providing an adequate treatment. Amazingly, the psychologist does manage to communicate with such patient and even arrives at conclusions.

On 9 February the patient was X-rayed. But there is no indication in which position the patient was during the procedure (lying, sitting, standing…) which is very important for chest X-ray. Besides, if the patient had had the trauma in the area of head and if the diagnosis is based on that indication, then why did they not make an X-ray of the head? Regarding chest X-ray the conclusion is incomplete and unclear as well and is limited to only –"Lungs-no pathology observed". On top of that, it is an interesting fact to note that in order to exclude any pathological process in lungs professionally it is necessary that the patient is placed in a vertical position when inspected and obey physician's commands. While it is hard to imagine that the patient who is not communicable can take the correct position, stand straight and hold the breath for the required period of time (!). Despite the above, in the conclusion of X-ray inspection the pathology of lung/ chest is clearly excluded.

The patient record indicates that 11-12 February were not working days, however we cannot see any signs of supervision of the nurse on duty. It also reports that "As the patient was aggressive it was impossible to give him transfusion and the procedure was postponed". If we also consider what the next line reads: "neither does the patient take medication … the patient is not communicable", then we can create a certain picture of what kind of aggression the patients can reveal who are not communicable and how they are given medication! The physician's record says as well "as others say the patient gets up at night, stumbles upon the objects in the ward, pours gruel onto the bed and then lies down on it". In the record of the following days, for example on 12 February, the physician reports that the patient is not communicable, although it is difficult to understand how such patient gets up, walks around and pours the gruel onto the bed.
The psychiatrist indicates in the record of 12 February the signs of organic injury of brain and the necessity of a repeated consultation of a neuropathologist; however it is not clear from the patient record when the first consultation took place. The diagnostic criteria on which basis the psychiatrist points to organic injury are also vague. Besides, the psychiatrist points out that it is desirable to give the patient a computerized tomography. In the end of the record the psychiatrist draws a diagnosis "Post traumatic state of brain, cerebral asthenia". It must be noted that this is not the final diagnosis. It remains unknown why nobody came up with the idea to call neurosurgeon to check the diagnosis or exclude the existing one?

It is worth mentioning that the only justifiable decision in terms of strategy to appoint neurologist's consultation (following the records) had not taken place for several days (the neurologist visited the patient only 4 days later). The neuropathologist indicates that s/he cannot identify the patient's complaints as he is inadequate and cannot fulfill the commands. Neurologist does not give any diagnosis or prescribes any different treatment either but requests the psychiatrist's consultation. After that we can again read the following words in the physician's record "as others say…", etc. It is interesting to know, why he refers to others. Where is the doctor, the nurse or any other person in charge (medical staff) at this time?

According to the record of 14 February the patient is in the state of anxiety today, is roaming around, goes to other wards, lies in others' beds, tears up things and chews paper. There was some incense on the window frame which he swallowed… on other's words he urinates in the wards and corridor, in the evening he **does not get any prescribed medication, shows resistance to doctors".** No comments! Next, the physician points out in the record "On the words of the doctor on duty, etc." Here is the question, why does not the medical staff on duty make any records? And is medical documentation available for the medical staff at all?

On 14 February the patient gets the psychiatrist's consultation. According to the physician's record the patient is not communicable; however, he answers the questions (???). From medical point of view it is rather interesting that the psychiatrist prescribes to the patient in the above state A**minazine** with Dimedrol!
On February 15 we see the following note in the record: "The patient is still in the state of anxiety, on the words of people around him, he did not sleep at night, eats newspapers, tears pictures off the wall and eats them too, then drinks water. People around develop aggression

against him as he disturbs their sleep. **After the conversation with the psychiatrist,** the patient was given 0,5-1% of haloperidol and 1,0 Diazepam. He slept for 2 hours after which he was woozy. 2 hours later the psychiatrist visited him and prescribed **0,5-1% of Haloperidol and 1,0 Diazepam".**
Next in the record follows (the date and hour is illegible, anyway nobody bothers to indicate hours) – "On the words of both physicians (which physicians???) The patient was calm until midnight. Then as his ward mates say, he wanted to get up but could not keep balance and fell down hitting his head (the left eye) the edge of the bed. In the area of the left eye the patient displays blood flow. The patient is woozy, he was given 0, 5-1% of haloperidol and 1,0 Diazepam and he fell asleep".

The next part of the record made on 16 February is impossible to read at all. The signature is like in hieroglyphs. It is difficult to identify!

17 February- "The patient is not communicable but answers the questions" (How?). From this time on there appears **rhonchus in lungs.**

On 18 February the doctor on duty reports: "I was called to visit the patient R.M.". It is interesting where they called the doctor from and why isn't s/he in the division if s/he is on duty? The latter reports: "The patient lies unconscious in bed, no pulse or blood pressure can be taken, superficial abdominal respiration can be observed. Eye pupil does not react to light or other irritation" The same record says that the patient is transferred to intensive care unit where the doctor resuscitator was called (!).
Presumably, the resuscitator makes the following record in Russian that is not a state language. Due to specific handwriting it is impossible to read the record.
According to the next piece of record, it turns out that the patient is in comatose state. He is given the intravenous transfusion with glucose, ringer and physiological solution. The question arises why it was impossible to give transfusion with physiological solution in the intensive care unit without calling the resuscitator? And generally, is the treatment given adequate to the state of the patient at all?
Further the record says "The patient fights back with arms when taking blood pressure (however, nothing is said about why does not he swing his legs???), he cannot not answer the questions but is trying to". It is also noted here that "the prescription is followed" (!).

The next passage says: "The patient's state is grave". Then the doctor goes further and writes "**The patient is unconscious**, he is in a comatose state, no reflexes, and pupils are miotic". What's important to note is that in doctor's opinion "the patient is given an intensive treatment".

The following day (19 February): "General state of the patient is still grave", he is in a comatose state, hyperreflexia and myosis… the prescription is followed on". Between 8 and 10 o'clock the state of the patient is extremely critical, areflexia and mydriasis is observed". Respiratory rate is 8-10 per minute". Multiple moist rale in both lungs can be heard (!). Muffled heart sounds, filiform, slow prolongated pulse. The intensive therapy is continued and the patient is given artificial respirator".

During the next 1 hour we come across a new record. Here it is indicated that "The patient's state has become even graver". It is not understandable why the medical staff of this establishment don't apply to the internationally recognized scales (that are used in critical cases) but rather use a different approach regarding the systematization of the gravity of the illness, which is unacceptable from medical standpoint. The same passage says: "the patient is intubated" but does not say when. At this stage Dexamethazone and Prednisolone are added to the scheme of treatment.

By 20 February the state of the patient "has not changed essentially". Hypotension is observed, blood pressure is 40/0 and the patient suffers from areflexia. In a few hours the patient's state deteriorates, he suffers from hyperreflexia and hypotension. Also mydriasis, dry sclera, fixed pupils".

By 10 o'clock in the morning the patient still remains extremely heavy. He is given an artificial respiration. Reflexes are depressed. "Medical attendance and intensive therapy is going on". By 1 o'clock pm the patient is extremely heavy. As the electricity was cut off at 10:15 on the territory of the hospital the patient was given hand operated ventilation. Peripheral pulse is not found, blood pressure cannot be taken". The most interesting fact is that for several hours blood pressure is impossible to measure, however, the record says that the patient can urinate! Although 100 ml, but still.

The last record
(The style observed)

"14:00 – Despite the above treatment the patient has cardiac standstill. Adrenaline solution is transfused intravenously. The patient is given artificial respiration. Automatic ventilating machine Ro-6. Close-chest massage is given. Intravenous transfusion of … (not legible) and Caffeine. Also intravenous transfusion of polyglucin 500, 0, Ringer 500, 0, intracardially – adrenaline + saline solution, lung ventilation and close-chest massage is continued. The above manipulations were being given several times during 40 minutes. Despite the above efforts, at 14:00 the patient died"…

It has to be noted that all the records made in the patient case are inconsistent, numeration is mixed up. There are 2 prescription pages in the patient case, a blank with the letterhead that it belongs to "Tbilisi State Medical Institute Clinic, cardiological department. Despite similar letterheads, both blanks are different. It is interesting to know how come that these sheets occurred in the patient record? In the final epicrisis the physician makes the conclusion on the cause of death – "polyorganic insufficiency developed against post traumatic carniocerebral state". It is curious that in the information published by the Ministry of Justice there appears the addition to the diagnosis - expansive process of brain. It is specified that expansive process of brain is developed in frontal lobe. Apart from the fact that we don't know where this record has come from, it is simply an exasperating fact. There is no mention who diagnosed the above in the patient record and whoever it did, what was meant (Tumor? as it often is noted?) or why the patient was not examined by a neurosurgeon, especially when carniocerebral trauma often "appears" in the case. Another interesting fact is

that the physicians revealed a great "consideration" when the cardiac massage lasted for 40 minutes. Why did not they show such consideration while the patient was alive?
The above example is in fact the dynamics of a 29-year-old young patient's "medical murder". The participants were all those persons who have signed the patient record or even those who indifferently observed the development of events. Yet the main fault lies with the establishment where the above tragedy took place. The establishment which is not subordinated to the Healthcare system of Georgia, no healthcare legislation, international agreements and conventions, enactments and principles of medical ethics apply to it. There was a big chance for R. M. to have survived the situation provided that adequate treatment had been given to him(however, it is impossible to prove it) or after all not to die in such a torturous way.

In connection with the fact of death of R. M. the data on the forensic conclusion were queried from the National Expert Bureau of the Ministry of Justice of Georgia, according to which it may be possible to shed light on the causative factors of death of the patient R.M. From the very first page it turns out that the resolution of the investigative service of Penal Department of the Ministry of Justice has not been indicated. As well as that, the autopsy was carried out in the prosectorium of the medical establishment for prisoners on 21 February 2007 from 13:30 to 15:00. The expertise was over on 15 March. The investigation poses only two questions to the forensic expert (1. When did R. M. die and what is the cause of his death? 2. is there any indication of bodily injuries, the mechanisms of inflicting such injuries, prescription, or if so which of them could have been fatal?). According to the data given in the "medical document" "vesicular respiration is observed" (9 February). "On 9 February 2007, according to N XXX chest and back X-Ray, not any pathological changes are observed in lungs. On the words of radiographer, the patient refused to make X-Ray. The patient aggressively protested against roentgenograph. It is worth noting that in some episodes the forensic expert notes that the "record is illegible" in medical documents. We will develop a clearer picture of treatment and care in medical establishment for prisoners if we read the following phrase written in the expertise conclusion – "the body and clothes are full of lice. The beard has grown on the face … the anus is smeared with a brown-yellowish fecal mass, as well as pants…". In the extract on internal examination it says: tuberculous lesions are observed that involve brain tunic, liver, intestines, abdominal fat, lymphaglands and of course lungs. ("Larynx and bronchi were covered with mucous foamy liquid … in the parenchimatus tissue were malodorous cavities with rough walls filled with yellowish-brown cheesy mass. In lower parts of both lungs there are tough, airtight regions. Bronchial lymphatic and lung glands are enlarged; the section is dirty, of brownish reddish color…"). As a result of additional examination, the patient has "tubercuolous meningitis … cardio sclerosis expressed weakly …miliary tuberculosis of lungs, caseous necrotic lesions, bronchitis, caseous pneumonia, pneumosclerosis… lymphatic gland at the bottom of lung… caseous regions… albuminus degeneration of liver hepatocytes, in intestines - multiple tuberculoma of muscle and serous tunic – caseous necrosis … chronic pyelonephritis, intra-capillary glomerulonephritis". Finally the expert conclusion says that the death of R. M was caused by polyorganic insufficiency developed as a result of heavy tuberculous intoxication…. at the external inspection the cadaver had multiple cicatrix – on the left side of forehead, around the left eye, nose, wrist and in the knee joint. The injuries had been inflicted with blunt and tough object. These are light injuries that could not have caused the

death'. Despite all, however surprising it might seem, according to the patient record the patient had no problems with heart, lungs, kidneys or liver. Moreover, no pathologies were observed on the lung X-ray. Pneumonia and bronchitis were not identified. The patient record mentions that the patient fell down and got a trauma, although all those injuries had not been described and the extent of their seriousness had not been evaluated while he was alive. The latter had to be paid special attention as the patient was under arrest. Even if the diagnosis had been proved, the treatment was obviously inadequate. The most important is that in the event of suspecting the organic damage of the brain, prescribing such medication as haloperidol or aminazin is a **counter indication**(!!!). I.e. the patient is deliberately or unconsciously injured (that can lead to a fatal end). The most surprising of all is the fact that the patient took the medication on the prescription of a neuropathologist and psychiatrist who, given their medical profile, should know what dangerous result such treatment might entail. It should also be noted that if there was tuberculous meningitis, why the neurologist could not identify the meningial symptoms, which is an elementary knowledge in neurology and there is a small likelihood that such symptoms, even if expressed weakly, could not have been identified. As well as that, the qualification of those specialists(especially that of physicians), who for a long time have been hearing vesicular respiration in lungs, while by autopsy it was established that there had been serious changes in lungs, becomes rather doubtful. Or why the radiographer could not notice these changes on the X-ray picture??? After all, the published diagnosis radically differs from the real one!

As death is a biologically irreversible process, in this case it is already impossible to do anything. In the given medical establishment, regarding the recovery and maintenance of patients' health it is important to know who is going to be the next victim. It is quite possible that the next patient will be the one who will be switched to the artificial respirating unit (Po-6) which is the only one there given to the dying patient with tuberculosis. Of course there are no grounds to suppose, not even theoretically, that there is any likelihood that the machine has been disinfected!

I have discussed the above matter in details in the Parliamentary report of 2006 and sent the relevant materials (medical documentation and the conclusion of forensic expertise) to the state medical regulatory agency of the Ministry of Labor, Healthcare and Social Protection of Georgia that is authorized to control the quality of rendered medical services in all medical establishments. The agency sent the patient's documentation to the Doctors' Association of Georgia for review where a special commission was established for the purpose of studying the above case. The commission was composed of 5 physicians –specialists. The association was also sent the conclusion made by Levan Labauri, the expert of the centre for patients' rights at PDO. According to the conclusion of the association, the question of professional responsibility of physicians participating in the patient's treatment was brought forth. Based on the above, the agency addressed the Penal Department of the Ministry of Justice to admit the agency employees to the medical establishment for prisoners in order to study the case. The letter was not replied by the department in writing, consequently, the agency suspended studying the case for months while they were waiting for the pass to be issued to them. PDO requested the answer from the Penal Department to clarify why the issuance of passes to the agency representatives was being procrastinating. The reply said that the pass has not officially been issued but they could go to the penal department any time and carry out their activities.

It is clearly seen that between two state agencies, who within the limits of their competence are responsible for the prisoners' fate and in general for their treatment according to existing standards, there is no coordination whatsoever, which in the long run harms patients' interests. It should also be noted that it is very important that the agency draws up a comprehensive conclusion, as Romeo Margvelani's case demonstrated the signs of crime in the conduct of the medical staff, and the conclusion will serve the basis for the investigation. Otherwise, if the case is not investigated timely, this will pose the danger to those patients in prison, who are being "treated" by those medical personnel who have been responsible for Romeo Margvelani's death.

Annex 6. Enforcement of Court Judgments

Londa Tsitaishvili's case

On November 2, 2006 citizen Londa Tsitaishvili applied to the Public Defender with a statement related to non-execution of the court decision made by Kutaisi Regional Court on November 2, 2004. According to the decision Londa Tsitaishvili's appeal was satisfied; decision dated October 29, 2003 of Ozurgeti Regional Court was declared bull and void and the respondent – Ozurgeti Branch-office of United State Fund of Social Security was obliged to pay the amount of 3182.24 in favor of Londa Tsitaishvili. On the basis of answers of Management of Execution Department (04/03-09, 04/03-15) it became clear, that after non execution of the court decision voluntarily, the mentioned case was sent to special group established for execution of particularly important cases and compulsory execution commenced against the debtor. It, according to the creditor's explanation, didn't bring any result.

As non-execution of the court decision occurred, which violated the creditor's rights and lawful interests, in accordance with p. "b" of the article 21 of the Organic Law of Georgia "Concerning the Public Defender", recommendation was sent for the purpose of performance by the Execution Department of the measures of compulsory execution provided by the Law of Georgia "Execution Proceedings", in order to execute the court decision in timely manner.

On the basis of the received answer the Public Defender clarified that collection order wasn't fulfilled, as the accounts of the debtor organization - United State Fund of Social Security - had changed by the given moment and the collection order wasn't followed by the execution of the court order.

Natela Goderidze's, Eleonora Bekauri's, Manana Javakhishvili's and others case

On November 2, 2006 aggrieved deposit-holders of "Anta" Ltd of "Color" Corporation - Natela **Goderidze, Eleonora Bekauri, Manana Javakhishvili and others** applied to the Public Defender with collective statement. The applicants stated, that Kakheti Execution Bureau didn't perform the execution of various court decisions made in their favor during years, besides number of execution documents were lost with their executive proceedings; they obtained new execution documents, but the court decisions weren't executed despite the circumstances that they had spent large amounts for this purpose. Some of execution documents, issued by the court, were partially executed; execution of some of them hasn't started to the present. Preliminary expenses born for some executive proceedings several time exceed the amount of sums and property collected during the compulsory execution; Mrs. Natela Goderidze presented documents proving the born expenses. According to her explanations, they reflect actually born expenses only partially and demands the calculation of the born expenses in accordance with the Law of Georgia "Concerning Executive Proceedings".

On the basis of documentation attached to the application brought to the Public Defender's Office and according to the applicants' specifications, the following execution documents are subject to execution:

1. Execution document #07/1186 dated February 4, 2004 and execution document #2/153 dated December 22, 2004 of Dedoplistskaro Court. According to these execution documents the creditors must be handed over various properties from the liquidation balance of JSC "Arkhiloskalo". These are: the whole cattle breeding complex with the exception of farm #2, two-storeyed ambulance station building, fleet, machines and equipment, building of veterinary ambulance station, crop loader, crop cleaner, crop aerator; besides, the remainder 1103 USD must be collected.
According to the applicants' explanations, the execution of the mentioned execution document hasn't been started at all. It's remarkable that the group of deposit-holders have obtainer execution documents, on the basis of various court decisions and resolution, for one and the same amount, one and the same property, for the motive that the court decisions weren't executed.

2. Execution document of May 8, 2000, related to banning of T. Khutsishvili's truck "KAMAZ (registration No RBF-329) for the purpose of satisfaction of the suit. The execution document was lost by the executors and could be found in the Execution Bureau at all. Its copy, together with the resolution, has been presented by the citizens and is attached to the documents (see annex).

3. Execution document #2/4-06 issued on August 30, 2006 on the basis of decision dated October 3, 2005 of Dedoplistskaro Regional Court. P. 1 of the execution document includes part of demands of the execution document issued on the basis of resolutions dated November 4, 1999 and April 16, 1999 of the same Court. According to the mentioned execution document, from the total amount – 57 687,98 USD the debtor – Cooperative "Kvemo Kedi" performed voluntary execution on the basis of receipt-handover dated 12-14 October, 1999, but part of property, included in the list – truck "KAMAZ" from Khutsiashvili, isolator of cattle breeding complex from Chkhobadze, was sold by the executor in favor of other creditors. On the whole, on the basis of the execution document, as explained by the representative of the deposit-holders group Natela Goderidze, 20 000 lari is subject to execution and collection from Cooperative "Kvemo Kedi".
According to p.2 of the execution document # 2/4-06 issued on August 30, 2006, the court recognized the group of above mentioned deposit-holders the assignee of "Anta" Ltd of "Color" Corporation. In order to effect property handover to the assignee, finding of the property by former managers of "Anta" Ltd and establishment of its existence or non-existence must be carries out, which will be documented by the relevant act. In any case, the court decision is subject to execution and it must be executed to the full extent.

4. Execution document # 2ბ/1966-02 issued on November 10, 2003 on the basis of the court decision dated December 4, 2002 of the Board of Civil, Entrepreneurial and Bankruptcy Cases of Tbilisi Regional Court, execution document # 2/29 issued on May 20, 2004 by Dedoplistskaro Court and execution document # 2/1-02 issued on May 12, 2006 by Dedoplistskaro Court, are subject to execution, in accordance with which movable and

immovable property, handed over from Cooperative "Kvemo Kedi" in return for an sum, for the execution of the court decision according to the act of receipt-handover dated October 12-14, 1999 must be seized and handed over to the owners of the property.

In accordance with explanation of the applicants' representative Natela Goderidze and the execution documents, the deposit-holder must be handed over the following property: the list is provided in accordance with the execution document #2/1-02 dated May 12, 2006: drug store building from N. Marauli, storehouse from E. Marauli, truck ZIL131 from N. Tsiklauri, bus from G. Natatralishvili, tractor DT-75 from G. Khutsishvili, tractor t-25 from T. Okhanashvili, truck GAZ-53 from T. Okhanashvili, tractor MTZ-80 from K. Khutsurauli, tractor t-25 from G. Dardzuli, truck KAMAZ from G. Chitoshvili, tractor MTZ-80 from N. Baindurashvili, tractor MTZ-80 from Z. Khornauli, truck ZIL-130 from Z. Kumsiashvili.
According to the execution document #07/1185 issued on May 20, 2004 on the case #2/29: wheat and sunflower seeding-machine from P. Tokhishvili, pig farm from G. Kavtaradze, tractor MTZ-80, sunflower seeding machine and carriage platform from T. Burduli, brick factory from N. Papiashvili, plough from G. Khutsisvhili.

According to the applicants' explanation, they were handed over the farms and storehouse by the act drawn up by the court executor, but those have been again occupied by initial owners and again are in unlawful ownership. After that the deposit-holders had the court prescribe execution document dated May 12, 2006 and the mentioned case, in the part of handover of the mentioned property, was returned for execution.

5. Subject to immediate execution is the Resolution of Dedoplistskaro Court on securing of suit, in regard to which execution document #2/91 was issued on April 28, 2006 against Cooperative "Kvemo Kedi" A. Kharkhelauri, T. Kuretishili, Dardzuli, Chitoshvili and others, on banning of their immovable and movable property within the limits of 500 000 lari.

6. Execution document #51 dated September 29, 2006 issued by Dedoplistskaro Court, in accordance with which, movable and immovable property of JSC "Mshvidoba" was banned in favor of group of deposit-holders of "Color" Corporation. According to the presented documentation, court decisions dated July 31, 2000 and January 16, 2001 of Dedoplistskaro Court in regard to the case #51 were also subject to execution. The executor G. Mchedlishvili informed the creditors that the decision was executed and the property of JSC "Mshvidoba" was banned, but according to N. Goderidze's explanations, in accordance with the letter of the Public Register, ban turned out not to be imposed and the executive proceeding was lost. So the deposit-holders and their representative had to apply to the court repeatedly and have the new execution document issued.

According to the explanation of the deposit-holders, evaluation of three tractors made over from JSC "Arkhiloskalo" to "Color", arrangement of auction and ensuring of execution of the court decision, which, according to the letter of the executor G. Mchedlishvili, were banned and their realization by means of auction was necessary. According to Goderidze's explanation, it hasn't been determined whom was this property handed for storage and where is it today.

The copies of applications with the demand of compulsory execution, submitted to the Execution Bureau in regard to the above mentioned execution documents, have been presented to the Public Defender's Office.

In accordance with the Law of Georgia "Concerning Executive Proceedings", in the case of transfer of property the court executor acts in within the authorities granted by the virtue of the article 17 and, in accordance with the established rules, according to p.4, in the case of compulsory execution the court executor is authorized to perform:
"b) Seizure from the debtor of subjects, which must be handed over to the creditor on the basis of the court decision;
c) Other measures specified in the court decision in accordance with the Law."

When the case is related to the payment of money or property, the court executor, together with handing the proposal on voluntary execution to the debtor, begins seizure and banning of the debtor's property, compulsory sale of which (immovable as well as movable property) must be carried out in accordance with the rule established by the Law. If the debtor doesn't allow the court executor to perform authorities granted to him by the Law, the court executor can call execution police.

On the basis of examination of materials of the case, received by the Office it becomes clear that the requirements of the article 17 of the Law of Georgia "Concerning the Executive Proceedings" aren't fulfilled; neglected is the article 25 of the same Law, in accordance with which execution starts on the basis of execution document. In the above mentioned specific cases the execution documents were issued repeatedly in various forms for execution of one and the same demand, but, despite this circumstance, execution of some execution documents hasn't started and the creditors' lawful demands haven't been executed during the years. All the above mentioned result into the infringement of the creditors' rights, as, the court executor, with exception of the cases provided by the articles 33, 34 and 35 of the Law of Georgia Concerning Executive Proceedings", can't stop or terminate executive actions, return execution documents to the creditor, postpone the performance of executive actions for later time, exclude the banned property from the list of seizure. The court executor can perform such actions on the basis of the court resolution.

In addition to non-execution of the court decisions, the applicants demand full compilation of executive calculations and calculation of expenses born for execution of the court decisions since the year 1997 up to present and collection of those from the debtors on the basis of the articles 10 and 38 of the Law of Georgia "Concerning Executive Proceedings", which is absolutely lawful.

On the basis of the all above stated, in accordance with p. "b" of the article 21 of the Organic Law of Georgia "Concerning the Public Defender", the Public Defender of Georgia applied with recommendation to the Execution Department of the Ministry of Justice to apply, in accordance with the article 17 of the Law of Georgia "Concerning Executive Proceedings", all lawful measures for timely and real execution of the court decision, explain to the parties

their lawful rights and obligations and also, help them with protection of their rights and lawful interests.

In the letter presented by the Execution Department in answer to the recommendation of the Public Defender of Georgia it is stated that only certain part of cases is executed and the execution of the rest is in progress at present. The applicants, at certain extent, don't agree with the information provided in regard to execution of decisions and mention that the facts of handing over of the property to creditors are incorrect and infringed.

Amiran Diakonidze case

On November 2, 2006 citizen **Amiran Diakonidze** applied to the Public Defender with a statement. On December 23, 2005 Tbilisi Regional Court made decision in accordance with which Amiran Diakonidze's suit was satisfied and the respondent – Ministry of Internal Affairs of Georgia – was obliged to pay the lump sum compensation – salary for 4 years - in the amount of 6633 lari 60 tetri in favor of Amiran Diakonidze. The court decision entered into force on February 28, 2008 and on April 26, 2006 execution document #3/2615-05 was issued, which was presented to the Execution Department.

On the basis of answers (04/03-19d, 04/03-30d) of administration of the Execution Department it becomes clear that following to non-execution of the court decision by the debtor – Ministry of Internal Affairs and Ministry of Finance – on voluntary basis, the mentioned case was sent for proceeding to the Special Group established for execution of particularly important cases and compulsory execution was commenced against the debtor, which, according to the creditor's explanation, wasn't followed by the execution of the decision either.

In accordance with p.15 of the article 42 of the Law of Georgia "Concerning the State Budget of 2007", in budget assignations allocated to the Ministry of Finance sums, destined for the execution of the court decisions related to payment obligations emerged in previous years, were foreseen. Besides, in accordance with p.2 of the article 82 of the Constitution of Georgia, "Acts of courts shall be obligatory for all state bodies and persons throughout the whole territory of the country" and non-execution of the court decision violates the creditor's rights and lawful interests.

Following the above stated, in accordance with p. "b" of the article 21 of the Organic Law of Georgia "Concerning the Public Defender", the Public Defender applied with recommendation to the Execution Department of the Ministry of Justice to apply all lawful measures for timely and real execution of the court decision. After receiving the answer (where nothing specific was stated about the execution of the decision) the Public Defender's Office clarified, that the court decision in the creditor's benefit was executed and Amiran Dolidze received, as compensation, salary for 4 years – 6640 lari.

Kakha Iobashvili case

On February 20, 2006 citizen Kakha Iobashvili applied to the Public Defender with a statement related to the execution of the court decision. On the basis of documentation presented to the Public Defender's Office and the court decision is becomes clear that the Chamber of Control of Georgia, were the applicant worked during years, has debt towards Kakha Iobashvili. On the mentioned issue the citizen applied to Tbilisi Isani-Samgori Regional Court, which made decision on October 24, 2004 according to which it satisfied Kakha Iobashvili's claim and the respondent – Chamber of Control of Georgia – was obliged to pay to Kakha Iobashvili the salary indebtedness 573 lari and travel allowances – 2961.52 lari. The mentioned court decision entered into legal force after its appeal in the Supreme Court in accordance with the rule of appeal and on November 10, 2005 execution document # 3/362 was issued, for the purpose of compulsory execution of which, it was presented to the Execution Department the same day.

On the basis of the answers (04/03-18i dated 31.10.2006, 04/03-29i dated 29.11.06) it becomes clear that after non-execution of the court decision by the debtor on voluntary basis the mentioned case was sent for proceeding to the Special Group established for execution of particularly important cases and compulsory execution was commenced against the debtor. Besides, Special Group of the Execution Department was instructed to ensure the timely execution of the court decision and act in accordance with the rules established by the Law of Georgia "Concerning Executive Proceedings". Despite this circumstance, as the citizen Kakha Iobashvili explains, the court decision isn't executed up to the present, and his health condition has significantly worsened and required treatment with expensive medicaments (see annex, extract from the patient's in-patient and out-patient medical cards).

In accordance with p.2 of the article 82 of the Constitution of Georgia, "Acts of courts shall be obligatory for all state bodies and persons throughout the whole territory of the country" and non-execution of the court decision violates the creditor's rights and lawful interests. On the stage of compulsory execution the court executor acts in accordance with the article 17 of the Law of Georgia "Concerning Executive Proceedings". In accordance with sub-point a.c of p.4 of the article 17, in the case of compulsory execution the court executor is authorized to perform it "from the debtor's existing monetary funds and property; also, from the debtor's bank accounts on the basis of collection orders."

In accordance with p.15 of the article 42 of the Law of Georgia "Concerning the State Budget of 2007", in budget assignations allocated to the Ministry of Finance sums, destined for the execution of the court decisions related to payment obligations emerged in previous years, were foreseen; those included amount payable for execution of the court decisions, which should be taken into account in the process of execution of the court decision made by Tbilisi Isani-Samgori Court on October 27, 2005.

Following the above stated, in accordance with p. "b" of the article 21 of the Organic Law of Georgia "Concerning the Public Defender", the Public Defender applied with recommendation to the Execution Department of the Ministry of Justice to apply all lawful measures for timely and real execution of the court decision. After receiving the answer

(where nothing specific was stated about the execution of the decision), during the telephone conversation with the creditor it was clarified that salary indebtedness 573 lari and travel expenses 2961.52 lari were paid in favor of the creditor.

Maia Muradidi's case

On June 4, 2007 citizen **Maia Muradidi** applied to the Public Defender with a statement (0479-07/1). On the basis of her explanations and the presented documents it became clear that after divorce Nadzaladevi District Court (case #5, 1997) obliged her former husband Avtandil Sulkhanishvili to pay alimony in favor of their minor child Mercia Sulkhanishvili, born on February 24, 1992 in the amount of 25% (1/4) of his salary and other income.

In regard to the court decision execution document was issued on September 19, 1997, which was presented by the citizen to the Execution Department on August 16, 2005 for the purpose of compulsory execution. Initially the execution was commissioned to the Court Executor M. Khaulashvili, then to B. Gulishvili. In the statement it's mentioned that the Court Executors did nothing for execution of the court decision and the applicant hadn't received alimony amount at all. After the above mentioned she terminated the execution by application herself. According to Maia Muradidi's explanation, this action was based on the indication of the Court Executor that specific alimony amount wasn't specified in the execution document. In the execution document #5 issued on September 19, 1997 the amount of alimony sum is specified and makes ? i.e. 25% of the salary and other incomes of the debtor Avtandil Sulkhanishvili.

Maia Muradidi requested the renewal of executive actions on April 27, 2007. The execution document was passed over for execution to the court executor V. Gegechkori. According to the creditor's explanation, the requirements of the execution document aren't fulfilled at this time either and the debtor Avtandil Sulkhanishvili avoids the fulfillment of the imposed obligations.

In accordance with p.2 of the Article 82 of the Constitution of Georgia, "Court's acts are obligatory for all state authorities and individuals throughout the territory of the country" and non-execution of the court decisions violates creditor's rights and lawful interests. On the stage of compulsory execution the court executor acts in accordance with the article 17 of the Law of Georgia "Concerning Executive Proceedings". In accordance with p.4 of the article 17, in the case of compulsory execution the court executor is authorized to perform it:
a.a) by banning or sale of the debtor's property, and if the case relates the state property, by informing a local authority of state property management;
a.b) from debtor's salary, pension, scholarship and other incomes;
a.c) from the debtor's existing monetary funds and property; also, from the debtor's bank accounts on the basis of collection orders."

In accordance with the article 30 of the Law of Georgia "Concerning Executive Proceedings", in the case of compulsory payment of alimony, when the debtor's location isn't known, or when he intentionally avoids fulfillment of obligations, it's possible to declare the debtor's searching through police.

On the basis of the above mentioned, in accordance with p. "b" of the article 21 of the Organic Law of Georgia "Concerning the Public Defender", the Public Defender applied with recommendation to the Execution Department of the Ministry of Justice to take all lawful measures for timely and actual execution of the court decision.

In accordance with the answer received from the Execution Department, on June 12 the court executor and debtor voluntarily gave 50 lari to the debtor. After the above mentioned no alimony amount was paid, as, according to the executor's explanation, salary and other incomes of the debtor aren't determined up to present; the relevant measures are being taken for this purpose.

Ledi Saghinadze's case

Citizen Ledi Saghinadze applied to the Public Defender's Office of Georgia with an application on behalf of the employees of Tbilisi Students' Sanatorium in regard to delay of execution of the court decision.

On the basis of the presented materials it became clear that execution document (#3b-1105-03) was issued on June 30, 2003 by Tbilisi Regional Court concerning immediate execution of the decision dated June 17, 2003, in accordance with which the respondent – United State Fund of Social Security was imposed obligation to pay 20 703 lari in favor Tbilisi Students' Sanatorium.

In connection with the above mentioned, the specified organization repeatedly applied to the Execution Department, on the basis of which Tbilisi Execution Bureau (Executor G. Gogishvili), by the letter dated July 17, 2003, warned the management of the United State Fund of Social Security to fulfill the above mentioned court decision during three months voluntarily, otherwise the execution will be compulsory and in accordance with the articles 10 and 113 prime of the Law of Georgia "Concerning Executive Proceedings" will be imposed with payment of additional execution fee. Also, the letter #04/03 567 dated December 16, 2004 of the Execution Department is attached to the case; in the letter it's specified that the Court Executor was instructed to eliminate the existing shortcoming in the nearest future and apply measures provided by the Law for the purpose of compulsory execution of the court decision. But up to present the execution didn't take place, which infringes the rights of the members of the organization.

In regard to the above mentioned, the Public Defender applied with recommendation to the Execution Department of the Ministry of Justice of Georgia, which informed us that the case is managed by the Special Group established for execution of particularly important cases, which was given the relevant instruction for the purpose of ensuring the execution of the court decision and timely implementation of the execution order. Later the Execution Department informed us that the Public Defender's recommendation has been fulfilled and the citizens received due amounts. The applicants, represented by Ledi Saghinadze, also confirmed it.

Annex 7. Freedom of Speech and Expression

The Case of Ilia Chachibaia

On December 5, 2006, Ilia Chachibaia, the chief editor of Zugdidi regional newspaper "Gia Boklomi", addressed the representatives of Samegrelo-Zemo Svaneti Office of Public Defender. In his statement, the journalist claimed that, the employees of the trustee's office physically and morally insulted him. This fact took place in the office of the president's trustee in Samegrelo-Zemo Svaneti region.

Ilia Chachibaia told the representatives of PDO, that on December 4, he visited Lali Gelenava. The latter one happens to be the head of press office of the President's trustee in the Samegrelo-Zemo Svaneti region. The purpose of the very visit was to get confirmation about the newly received information. After a very short period of time, Dima Markoidze, the Head Security of the governor Zaza Gorozia contacted with journalist by telephone and asked him to meet. The journalist was falsely taken into the Gelenava's car, then into the governor's office room. There he was locked about 4-5 hours and was forced to name the source of the information he had. Otherwise, they were threatening the journalist to block and close his newspaper, and were threatening him personally to liquidize him physically. They took his cell phone and then destroyed the Dictaphone. Based on evidence, Lali Gelenava, the press speaker, of the governor hit him, but the head security, Dima Markoidze, caught him in his neck and threatened to choke him down". Nana Pajava, in her evidence given to the representatives of the PDO, said that she asked a question- did Zaza Gorozia (who was absent at that moment, he was physically not in Zugdidi), know about the events that took place in his office room. The head security answered that the governor knew everything.

It is noteworthy, that Chacibaia is a minor, under the legislation, this fact of being a minor, increases the legal responsibility for the pressing executed on a minor, and it happens to be immoral.

Representatives of PDO took evidence from Ilia Chachibaia, from Ioseb Khoperia, the executive director of "Gia Boklomi", from Nana Pajava, the reporter of Radio "Imedi" and from the journalists – Nato Berulava and Marine Damenia. The employees of the governors refused to talk with the PDO representatives.

Public Defender sent all the materials to the Deputy of General Prosecutor's, Giorgi Latsabidze and Archil Giorgadze, the head of the Human Rights Department in the General Prosecutor's Office.

After the Public Defender's recommendation, on December 30, 2006 in Zugdidi Internal Division of Ministry of Internal Affairs started investigation about the fact of journalists insult. Let me remind you that, Ilia Chachibaia, editor of the newspaper "Gia Boklomi" has been deprived of his freedom and unlawfully prevented from professional work.

The Case of Tsaulina Malazonia

Journalist Tsaulina Malazonia appealed to the Public Defender on 3 April 2007. In her words, for the reason of confrontation with Lela Inasaridze, the editor and Paata Veshapidze, donor-invited expert, and constant violation of her rights she was forced to quit the newspaper "Samkhretis Karibche" ("Southern Gate"). According to Malazonia, the confrontation within the newspaper was caused by the absence of written employment agreements, neither the budget of the newspaper was available, nor the grant money was spent appropriately.

The applicant was explained that responding to the issues related to the access to the budget and the appropriateness of expenditures of granted money exceeds authority of the Public Defender.

On 30 June current year, the Public Defender's representative met with the editor of newspaper "24 Hours" Paata Veshapidze for clarifying the situation. He explained that Tsaulina Malazonia worked as well as the editor of Tbilisi State University Akhaltsikhe Branch newspaper which caused conflict of interests. According to Veshapidze, at the board session he suggested Malazonia to choose between the two outlets. As far as the written employment agreement is concerned, P. Veshapidze stated that considering strict donor requirements it was hardly possible to work without signing appropriate agreements.

On 13 July current year the Public Defender's representative visited Akhaltsikhe and met with Lela Inasaridze. According to her explanations until 30 October 2006, the newspaper was financed from the European Union and Finish Government through the Institute for War and Peace Reporting (IWPR). The documents provided by Inasaridze show that Malazonia was receiving honorariums during this period. For example, in November 2006 Malazonia was paid honorarium in amount of GEL650 (gross). After deductions she received GEL572. There was no written employment agreement signed for this period and she was receiving not salaries but honorariums. Therefore the employment interaction between Malazonia and Newspaper "Samkhretis Karibche" was regulated by agreement for work which according to legislation, could have a verbal form. Therefore Malazonia's complaints against the newspaper are groundless.

As for the period of 1 September - 31 December 2006, the newspaper was funded from the grant allocated by the "Press Now". Salary for journalists was foreseen in the newspaper "Samkhretis Karibche" budget. An employment agreement was signed between Malazonia and the newspaper. Article 3, paragraph 1 of the agreement defined monthly salary of the journalist in amount of GEL300. If the number of articles written by journalist exceeded 6 in total, the journalist according to the same Article, paragraph 4 would be paid GEL15-40 per article. According to the payroll #34/13, Tsaulina Malazonia was paid GEL300 gross in October 2006. After deductions, she received GEL264. As for honorarium, she was given GEL52.80.

According to the editor of the newspaper "Samkhretis Karibche" Lela Inasaridze, from 1 January 2007 journalists and other staff agreed with the management that written agreements will be signed after the newspaper concludes a contract with the donor. The journalists were working in the normal regime. The newspaper received salary transfers only in May. Malazonia was supposed to be paid GEL90 in January, GEL225.3 in February, GEL180.24 in March and GEL135.18 in April. It is difficult to see from the payroll was that a salary or honorarium. If we take into consideration that Malazonia received remuneration it means that she and the newspaper had legal employment relations. The "Press Now" grant also foresees the existence of written employment agreements. Even though Article 6, paragraph 1 of the Labor code of Georgia recognizes employment agreements executed in writing as well as verbal, in this case written employment agreements should have been executed, as it was agreed by the sides and any kind of amendments to the agreement should also been made only upon sides' agreement. According to Lela Inasaridze, she planned to conclude the employment agreement with Tsaulina Malazonia. However, concluding an agreement should precede the obligations generated on the basis of the agreement. The payroll documents prove that the newspaper had been having payment obligations towards Malazonia from January 2007. Therefore there were no grounds to postpone execution of the written employment agreement until May 2007, for the moment of concluding the contract between the newspaper and the donor and depositing donor funds to the newspapers' bank account respectively. According to the payroll documentation, the employment agreement for Malazonia should have been executed not later than January 2007, since the journalist received the salary for this month.

The Case of Nino Chibchiuri

On July 20, 2007 the journalist of TV Company "Trialeti" Nino Chibchiuri applied to the Public Defender with the application. According to the explanations of the applicant, on May 25 Khashuri District Court in Kareli Disctrict satisfied her and her colleague's – journalist Maia Kharaishvili's suit against Kareli Municipality Council. In the decision it is stated that the journalists of TV – radio Company "Trialeti" requested to be admitted to the building of Municipality Council. Despite of the circumstance that the Municipality Council hadn't adopted any act prohibiting their entry into the building, the personnel of security and respondent didn't admit them into the building twice.

On the main hearing of the Court the representative of the respondent explained that he wasn't against the admission of the journalists onto the meeting of the Council in accordance with the established rule. The Council has its press-service and public servant responsible for the availability of the public information.

In spite of the Court decision, Chibchiuri and Kharaishvili weren't admitted to the Municipality anyway. On June 15, 2007 Chibchiuri applied to the Head (Gamgebeli) of Kareli Municipality Giorgi Zarandia, who, on June 25 informed the journalist in written, that the admission of journalists in the building of the Council is carried out only according to the rule, established by the Law. Besides, he stressed that the Council had the specialist, who ensures the organization of issue of public information and like other TV Companues, information should be obtained through this specialist and not by the way of gross violation of the rules, as it was done by the journalists of TV Company "Trialeti".

* In the video materials presented by the journalist Nino Chibchiuri it's clearly seen, how the applicant presented to the security guard the letter of the Head (Gamgebeli) of Kareli Municipality fated June 25 and requested the admission to the building. The journalist's request was followed by the locking of the entrance door.

The Public Defender obtained explanations from the Public Relations Specialist of Kareli Council Tea Paikashvili, who stated that in future she wouldn't cooperate with the TV and Radio Company "Trialeti" as it provided biased coverage of the activities of Kareli Municipality Council. The Administration of Kareli Municipality considers that no information should be provided to the journalists of TV and Radio Company "Trialeti", as their stories are permanently one-sided. It violates the interests of Kareli Munisipality Council and local community.

Statement that the Company "Trialeti" provides biased coverage of the information communicated by Municipality Council and consequently it could be refused to obtain public information, contradicts European Convention on Human Rights and Fundamental Freedoms and national legislation of Georgia.

The Head (Gamgebeli) of Kareli Municipality, who represents the public entity, has the obligation of endurance towards critical remark expressed in his regard, the more so that the

stories prepared by the journalist Nino Chibchiuri related to his, as Gamgebeli's activities, which is the issue of public interest.

At the same time, Gamgebeli has never had a court dispute concerning the calumny from the side of "Trialeti". Consequently, any indication to the unethical or unfair actions of the journalists of the TV and Radio Company "Trialeti" is groundless. The mentioned circumstance could in no case release Kareli Municipality Council from the obligation of availability of public information for the journalists of TV Company "Trialeti"; the more so that the existence of such obligation is confirmed by the Court Decision. Non-conformity with the Court Decision is being punished in accordance with the Article 381 of the Criminal Code of Georgia.

The explanations provided by the Public Relations Specialist of Kareli Municipality Council, prove the existence of discriminating practice in Kareli Municipality. With such approach Kareli Municipality, absolutely groundlessly, puts other media companies in advantaged position in comparison to "Trialeti".

In accordance with sub-paragraphs "b" and "d" of the Article 21 of the Organic Law "Concerning the Public Defender", the Public Defender applied to the acting Gamgebeli of Kareli Municipality Tamax Dalakishvili with the recommendation and proposal:

1. To become available for the journalists of TV and Tadio Company "Trialeti";
2. To fulfill, in the shortest possible time, the Court Decision in the part of availability of public information for "Trialeti"; at the same time, creation of normal working condition for the TV and Radio Company "Trialeti", equal to those for other media companies, must be ensured. If required, directly or through the Public Relations Specialist, public information must be provided to the journalists of the TV and Radio Company in timely manner in acceptable form.
3. The fact of discriminating treatment of the journalists of the TV and Radio Company "Trialeti" by the Public Relations Specialist of the Office of Kareli Municipality Council to be examined and if required, measures of disciplinary liability, provided for by the Law of Georgia "Concerning Public Service" to be applied.

Acting Gamgebeli of Kareli Municipality informed the Public Defender, that the recommendations and proposals of the Public Defender have been observed, Public Relations Specialist of the Council Office Tea Paikashvili has been strictly warned and in the case of repeated occurrence of analogous fact the issue of her official responsibility will be raised.

* * *

There occurs the violation by Kareli Municipality Council of the Article 14 of European Convention in regard to the Article 10 of the same Convention.

The Article 14 of European Convention of Human Rights states: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on

any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

In accordance with the Article 10 of European Convention of Human Rights:

1. Everyone has the right to freedom of expression. this right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

* European Court of Human Rights, in the case "Lingens Versus Austria" stated that public servants must be more patient towards the criticism, than individuals. In the case "Oberschlik Versus Austria" the Court stated: "the limits of admissible criticism towards politicians are wider than in regard to individuals, public persons place themselves in the centre of attention of the society and journalists deliberately and purposefully. Consequently, they must display the higher level of endurance". Following to the practice of European Court, only judges from the circle of public servants are released from the obligation of enduring groundless attacks from the side of media.

* In the case "Guera Versus Italy" the European Court stated, that "the right to obtain information – includes independent right of the interested society to read or listen to the information or idea, disseminated by other persons. It implies journalists' obligation to communicate information to the society related to the public information, kept in governmental institutions, which requires access to such documents, protocols and property of public institution".

"Press has the obligation to disseminate information and opinions on political, as well as other issued of public interest. Besides, not only the press has the task of dissemination of such information and opinions, but the society has the right to receive those as well" (the case "Lingens Versus Austria").

As for the dissemination by the press of biased information, even calumny, the European Court of Human Rights, in the case "Torgaisson Versus Iceland", stated that putting on journalists of obligation of proving the truth on the issues of public importance is unreasonable and impossible, the press won't be able to publish anything if the publication of only proved facts is required. In the case "Handiside Vervuv UK" the European Court stated

that the freedom of speech includes not only the kind of information or idea which is met kindly or which is neutral, but also the information, which is offensive, shocking or exciting.

Badri Nanetashvili vs. Marlen Nadiradze

On January 11, 2007 the establisher of TV and Radio Company "Trialeti Badri Nanetashvili applied to the Public Defender with statement. According to his explanation, pressure is applied from the side of the President's State Plenipotentiary in Shida Kartli Region Mikheil Kareli and Chairman of Gori Municipality Council Marlen Nadiradze. In confirmation to the mentioned circumstance, B. Nanetashvili presented detailed extract issued by "Magti" Ltd from January 3, 2007 to January 4 of the same year. At 16:50 on January 3 and 16:47 on January 4 incoming call was fixed in Badri Nanetashvili mobile phone from number 877 75 77 22, which, according to the applicant's explanation, belongs to Marlen Nadiradze. The statement makes clear that Marlen Nadiradze, on behalf of ex-Minister of Defense of Georgia Irakli Okruashvili and the President's State Plenipotentiary in Shida Kartli Mikheil Kareli, threatened Badri Nanetashvili to kill him. According to the latter's explanation, the threat was related to the TV-story, broadcasted through TV Company Trialeti, the author of which – journalist Nino Chipchiuri blamed Mikheil Kareli and Marlen Nadiradze in attempt of getting control over the TV Company.

On January 23 and February 15, 2007 the Public Defender applied in written to the Chairman of Gori Municipality Council Marlen Nadiradze and requested information in regard to issues raised in Badri Nanetashvili's statement. Marlen Nadiradze didn't present answer to either application of the Public Defender within 15 days established by the Law.

On April 3, 2007 protocol of administrative offence was drawn up towards Marlen Nadiradze. The basis of the proceeding as the failure to comply with the lawful demand of the Public Defender - an offence, provided by the article 173^4 of the Code of Administrative Offences. On April 23, this year Gori Regional Court, according to the decision of the judge Gogita Tatosashvili, recognized Marlen Nadiradze guilty and imposed fine in the amount of 2000 lari as the measure of administrative punishment.

In April 2007 the materials existing at the Public Defender's disposal were sent, together with his letter, to the Investigation Department of the Prosecutor General's Office of Georgia for further response.

On May 23, 2007 written answer of the Deputy Regional Prosecutor of Shida Kartli G. Kavsadze was received by the Public Defender's Office, stating that on May 11 preliminary investigation commenced in Shida Kartli Regional Prosecutor's Office on criminal case #8207842, in regard to the fact of threatening committed towards Badri Nanetashvili. At present investigation is in progress.

Annex 8. Freedom of information

The case of the Center for Strategic Research and Development

On June 19, 2007 Lia Todua - Coordinator of the Environmental Protection Program of the Center for Strategic Research and Development appealed to the Public Defender. According to the case materials, she has requested public information from Municipal Transport Service of Tbilisi City Hall on May 28, 2007 (#1-365). Specifically, she was asking for the full versions of Annexes #2, #6 and #7 of the agreement of February 16, 2006 between Tbilisi city authorities and the "Municipal Auto-transport Enterprise LTD" on Public Transport Service; Public Transport Service Plan designed in accordance with Annex 1 of the agreement by "Municipal Auto-transport Enterprise LTD" and coordinated with Tbilisi City Hall before November 1, 2006 for the purpose of implementation Article 4, Paragraph 2 of the above-mentioned agreement; materials proving holding conferences foreseen by Article 4, paragraph 3; annual report on passengers complaints foreseen by Article 8, paragraph 4; traffic scale plan that should have been submitted by the company before November 1, 2006 and approved by the city authorities foreseen by Article 9, part 2; an effective and appropriate form of extraction of passenger services payments presented by the company and foreseen by Article 10, paragraph 1, implementation of which should be ensured by the company within the period of six months in 2007; a copy of loan agreement foreseen by Article 14, paragraph 2, a copy of business plan and a copy of 2006 annual report foreseen by Article 20, a copy of audit report on income and number of passengers foreseen by Article 21, and names, positions and contact details of the members of agreement managerial committee foreseen by Article 19.

On 21 May 2007, Director of the same organization Eka Urushadze appealed to the Public Defender. According to the case materials on May 16 of the current year, the Center for Strategic Research and Development appealed to the Municipal Transport Service of Tbilisi City Hall and "Municipal Auto-transport Enterprise LTD" (#1-357 and #1-358) asking for the following information: the list of acting ground public transport (bus, tram, mini-bus) routes in Tbilisi and their descriptions. Specifically:

Type (bus, trolley bus, tram, minibus) and number;
Verbal description of route with the list of streets (avenues, squares);
Date of launching the routes;
The length of routes (one-way, full - in case of circular route);
Number of stops;
Names of route operators;
The type of the vehicle serving the route and its capacity;
Average number of passengers on a route (separately for working days and holidays), fluctuations in numbers on separate sections of routes, as well as during the day and seasonal fluctuations;
Average length of passenger carriage on a route and fluctuations on separate sections of routes, as well as during the day and seasonal fluctuations;

A copy of the agreement with all annexes, based on which "Municipal Auto Transport Enterprise LTD" was operating the Tbilisi public transport.

Also, the list of routes for buses and minibuses operated by "Municipal Auto Transport Enterprise LTD" and the following information:

The date when the Enterprise started operating the route;
The type of bus on route (if changed since when) and their full capacity;
Exact location of control stations;
Number of buses serving the route during the day (separately for working days and holidays);
The time of departure of buses from control stations;
The average length of bus routes between control stations;
Average number of passengers on a route (separately for working days and holidays) fluctuations in numbers on separate sections of routes, as well as during the day and seasonal fluctuations;
Average length of passenger carriage on a route and fluctuations on separate sections of routes, as well as during the day and seasonal fluctuations;
Average daily income from a route (separately for working days and holidays) and seasonal fluctuations in daily income.

The Director of the Center for Strategic Research and Development Eka Urushadze was not given an answer with the deadlines set by law. As for Lia Todua, she received information of July 12, incomplete though. Specifically, the information about the audit report on income and number of passengers as well as performance analysis report of 2006 foreseen by Article 21, as well as names, positions and contact details of the members of agreement managerial committee foreseen by Article 19 were missing. The response with regard to Annexes #2 and #7 of the agreement of February 16, 2006 between Tbilisi authorities and "Municipal Auto-transport Enterprise LTD" on Public Transport Service was also incomplete. Instead of Annex #2, which covers detailed information about route, only one section of this Annex was attached to the documentation sent to the Center for Strategic Research and Development. Annex #7 was totally missing.

The Constitution of Georgia and the General Administrative Code of Georgia guarantee freedom of public Information. According to Article 41 of the Constitution of Georgia: "Every citizen has the right according to the law to know about official records existing in state institutions, as long as they do not contain state, professional or commercial secrets." Article 45 of the Constitution of Georgia "The main rights and freedoms embedded in the Constitution apply to legal persons as well as individuals".

According to Article 2, subparagraph "l" of the General Administrative Code of Georgia, public information is "an official document, (including model, sketch, plan, scheme, photo, electronic information, video or audio recordings) including those kept by a public agency, and those received, processed, created, or sent by a public agency or public servant within its official authority." Based on this Article, Information requested by the Center for Strategic Research and Development was public information and according to Articles 37 and 40 of

the General Administrative Code of Georgia "Everyone may claim public information irrespective of its physical form or the condition of storage. Everyone may choose the form of receiving public information, if there are various forms of its receiving; also acquire information immediately or not later than in 10 days if responding to the claim for public information requires:

(a) the acquisition of information from its subdivision that operates in another area, or from another public agency, or processing of such information,
(b) the acquisition and processing of separate and large documents that are not interrelated, or
(c) consultation with its subdivision that operates in another area, or with another public agency, if those are interested in the decision-making on the matter."

If 10 days are necessary for providing information to the applicant, a public agency must immediately inform the applicant accordingly.

According to Article 38 of the above-mentioned Code, "A public agency shall provide access to the copy of public information. No fees shall be charged for issuing public information except for copying costs."

Therefore the norms set by law regarding the issuance of public information were violated, thus causing violation of the rights of the Center for Strategic Research and Development.

Based on Article 21, paragraphs "b" and "d" of the Organic Law "On Public Defender", the Public defender addressed Tbilisi City Hall with a recommendation to immediately issue full information to the Center for Strategic Research and Development based on the Articles 38 and 40 of the General Administrative Code of Georgia; as well as according to Articles 78 and 79 of the Georgian Law "On Public Service" and Article 166 of the Presidential Decree #466, discuss the issue of raising a disciplinary responsibility of persons failed to provide applicants requesting public information with necessary documentation in a timely manner.

In the answer received from Tbilisi City Hall it was pointed out that the Center for Strategic Research and Development was given all the requested information available at the administration of Tbilisi City Hall and Municipality Transport Service, as well as at "Tbilisi Bus LTD", which was confirmed by the latter accordingly.

George Mkurnalidze's case

On March 14, 2007 a citizen George Mkurnalidze addressed the Public defender. According to his application, on February 6, 2007 George Mkurnalidze appealed to the Head of the Presidential Administration of Georgia requesting a public information on whether New Year greeting cards or other type of greeting cards with State Symbols, President's name or photo were printed with a specific edition during 2003, 2004, 2005, 2006 and 2007. However, he did not get any response.

The Public Defender of Georgia sent a recommendation to the head of the Presidential Administration of Georgia, Mrs. Eka Sharashidze to ensure the immediate issuance of public information to the citizen based on Articles 37 and 40 of the General Administrative Code of Georgia.

In response to the recommendation an explanation was given that George Mkurnalidze was provided with the following information: within the period 2003-2007 from the allocations approved by the presidential administration's budget, the New Year greetings or any other greeting cards with State Symbols, or President's name and photo have not been printed.

In his letter dated 14 March 2007 George Mkurnalidze was pointing out that he addressed the Ministry for Economic Development of Georgia on 27 February 2007 (#2/90, 2/91, 2/92) for the public information. The applicant was requesting information about 50 organizations and names of 82 citizens who handed over their private property without warrant to the State since 2003 till now. He also requested information about the companies participating in privatization process since 2003 until now; which establishments or property did they buy and how much did they pay; which companies have violated the terms of agreements and what kind of sanctions were carried out against them. According to the Letter 2/92 he was asking for the following public information: which companies participated in the Georgian Airport Privatization Process, which company won the tender and what kind of criteria were used for selecting the winner; How well the airport construction works were conducted and what are the sanctions against the winner company in case if it fails to adhere to the construction norms and regulations. As the applicant was claiming he did not receive the requested information within the deadlines set by law.

Information requested by G. Mkurnalidze was released only after the Public Defender's recommendation.

Irakli Kandashvili's Case

On 19 February 2007, a lawyer of the law firm "Andronikashvili, Sachsen-Altenburg, Murat and partners" Irakli Kandashvili addressed the Public Defender. According to his letter, on 11 November 2006 he appealed to the City Halls of Zugdidi, Poti and Batumi for the public information concerning the full volume of already finished and ongoing road construction works (asphalt works, etc.), costs associated with these activities, names of the streets and places under construction, and by streets – names of companies undertaking these activities in each city for the period of 2005-2006. According to the applicant he did not receive requested information within the timeframes set by law.

Based on the above-mentioned appeal, the Public Defender sent recommendation to Zugdidi Mayor Mr. Levan Kobalia, Poti Mayor Mr. Ivane Saghilashvili and Batumi Mayor Mr. Irakli Tavartkiladze to release requested public information to the applicant.

According to the responses received from above-mentioned City Halls, based on the recommendation of the Public Defender, all the three have satisfied application of the lawyer of the firm "Andronikashvili, Sachsen-Altenburg, Murat and partners" Irakli Kandashvili and sent him requested information.

Annex 9. Freedom of Assembly and Manifestation

David Dalakishvili v. Ministry of Internal Affairs

On 29 May 2007 the Public Defender was addressed by the member of "Equality Institute" David Dalakishvii. According to him and two eye-witnesses Nikoloz Shekiladze and Akaki Chakvetadze, on 26 May 2007 at about 1p.m., the members of "Equality Institute" was organizing a demonstration at the territory adjacent to Kashveti church, parallel to the military parade dedicated to the Independence Day of Georgia. The action participants held banners: "No to Violence", "Your Health is under Threat", "Murderers should be Punished". According to the participants of the protest action, law-enforcers did not allow them to set up their banners. In Dalakishvili's words, representatives of the Interior Ministry representatives took away banners and psychically insulted him – they hit Dalakishvili in the back with foot, so he fell down. Before falling down, Dalakishvili felt punches in the area of head and back. As reports the victim, he was also injured by a sharp object. According to eye-witnesses, representatives of the Interior Ministry continued beating Dalakishvili after he fell down. The evidence confirms as well that Nikoloz Shekiladze was also physically abused. According to David Dalakishvili, he was moved to Javakhishvili clinical hospital when he was diagnosed with having cuts on 3 fingers of the left hand.

The findings indicated above constitute ample grounds for the Office of the Prosecutor General to open investigation on the case by the facts of the inflicting psychical abuse and violating the right to assembly and manifestation.

On 30 April this year the Public Defender submitted materials on David Dalakishvili's case to the Office of the Prosecutor General for further response.

On 15 August this year the Human Rights Department of the Office of the Prosecutor General of Georgia responded the Public Defender by the letter # G 13.08.2007/84, confirming that a preliminary investigation started in Dzveli Tbilisi regional Prosecutor's office on 26 May 2007. David Dalakishvili was identified as victim and questioned. Police officers executing their official duties on 26 May on Rustaveli Avenue were questioned as witnesses. Forensic medical expertise and a complex phono- and habitoscopic examination of the tape recorded by TV Company Rustavi 2 were held.

The case on administrative offence of the members of "Equality institute"

On 12 June 2007 R. Topchishvili, judge of the Board of Administrative Cases of Tbilisi City Court decided upon sentencing 3 members of non-governmental organization "Equality Institute" David Dalakishvili, Levan Gogichaishvili and Jaba Jishkariani to 25 days administrative arrest.

On 18 June this year the Public Defender addressed Tbilisi City Court Administrative Cases Board with the letter requesting copies of the court ruling, court hearing minutes and the protocol on administrative offence regarding the case #4/1001-07.

On 21 June 2007 the chancellery of the Tbilisi City Court Administrative Cases Board sent materials on the requested case, which read:

On 12 June patrol-inspector Gocha Glurjidze drew up a protocol on administrative offence #BB 008380 against Levan Gogichaishvili. The following is described as L. Gogichaishvili's behavior: "In Tbilisi, in front of the Office of the Prosecutor General [they] were disturbing a public order. Despite our repeated calls, they managed to block the entrance, and were insulting us".

On 12 June B. Tabukashvili, a patrol-inspector of Tbilisi Mtatsminda-Krtsanisi 4th unit drew up a protocol on administrative offence #BB 008379 against Jaba Jishkariani. The following is described as L. Gogichaishvili's behavior: "In Tbilisi, in front of the Office of the Prosecutor General [he] was blocking the main gate. Despite repeated calls of police officers to stop said activity, he continued to do so, and was insulting us".

The same day Kakha Gogrichiani, a patrol-inspector of Tbilisi Mtatsminda-Krtsanisi 4th unit drew up a protocol on administrative offence indicating that on 12 June 2007 on 2:20p.m. in Tbilisi, on Gorgasali St., in front of the Office of the Prosecutor General of Georgia, David Dalakishvili was writing on the asphalt pavement with paints. He did not comply with the patrol police officers' demand to stop mentioned activities and therefore, was detained according to the administrative rule.

In all 3 protocols on administrative offence the legal grounds for responsibility are stipulated in accordance with Article 173 of the Code of Administrative Offences. According to the said rule: **"An open noncompliance with the lawful demand of the representative of the law-enforcing bodies or military servants shall involve the imposition of an administrative fine in the amount of ten minimum wages or corrective labor for the period of one to six months, with 20% deduction from salary; if according to the specific circumstances concerning the case and the personality of offender these measures are deemed insufficient – an administrative arrest for a period of up to 30 days."**

In court hearing minutes it's mentioned that on judge's question, whether patrol police prevented participants from holding manifestation before arriving to the Office of the Prosecutor General, Amiran Kerulashvili is saying that that they did not interfere with the activities of the participants of the protest action, they just called them to hold the latter

according to the rules stipulated by law. On judge's question, what the author of the protocol on administrative offence considers as an offence, the patrol-inspector Besik Tabukashvili answers: "disturbing public order, whistling, painting on facades, blocking and disobedience". On the question of Jaba Jishkariani's representative, whether the all above-mentioned acts are violations, the patrol-inspector Besik Tabukashvili answered: "Blocking the Prosecutor's office is a violation." Judge asked the patrol-inspector Kakha Gogrichiani, who detained David Dalakishvili: "Was the blocking of the building the main reason for detaining Dalakishvili? The patrol-inspector Kakha Gogrichiani answers: "Each activity expressed blocking". So from the answers of the authors of the protocol on administrative offence it's clear that the demand, which offenders did not obey aimed at stopping to block the Prosecutor's office, but not necessarily stopping the protest action altogether. The evidence given by patrol-inspectors does not include any information that they objected to hold a protest action in front of the Prosecutor's office. The only demand of police officers was not to allow blocking the entrance of the Office of the Prosecutor General. Then the judge asked patrol-inspectors the following leading question: "For how long you'd been calling action participants **to break up?**" The patrol-inspectors answered: "for 5-10 minutes". The judge's question is surprising, since neither in the protocol on administrative offence nor in the explanation given to the court is mentioned anything about patrol-inspectors calling the action participants for breaking up.

Proceeding from the explanations given by the offenders and police officers, as well as from the evidence of witnesses the court established the following:

"On 12 June Jaba Jishkarinai, Levan Gogichaishvili and David Dalakishvili were standing at about 10 meters from the central gate of the Office of the Prosecutor General of Georgia and together with other participants of the protest action were creating **a real threat of blocking** the entrance gate. Despite demands of police officers, they did not stop said activities."

According to Article 9, part 1 of the Law of Georgia "On Assembly and Manifestation", the entire blocking of the entrance of the Office of the Prosecutor General of Georgia is prohibited. A standard of assertion "entire blocking" obliges a low-enforcer to confirm that despite considerable efforts, a citizen failed to enter the building. If blocking the building puts obstacles on the way, but does not exclude altogether the possibility to enter the building, we can not talk about its entire blocking. In this case the judge Topchishvili concluded that the building of the Office of the Prosecutor General was not blocked, but as the judge points out, it was a real threat of blocking. Consequently, police officers' demand to stop blocking the building would not be deemed legal until the moment, when the Office of the Prosecutor General's personnel and ordinary citizens would be entirely prevented from entering the building. Police officers failed to present one individual, who was prevented from entering the building. When giving explanations, patrol-inspectors limited themselves only to the general phrases and failed to point out a specific case, when a person had problems while entering the building.

In the court ruling on imposing an administrative penalty it's stated: "According to the first part of Article 9 of the Law of Georgia "On Assembly and Manifestation", the assembly and manifestation shall not be held in the building of Parliament of Georgia, residence of the

President of Georgia, buildings of the Constitutional Court and Supreme Court, courts, Prosecutor's Office, police, penitentiary institutions, military units and facilities, railway stations, airports, hospitals, diplomatic missions and **within a 20-meter radius of their territory,** as well as in the buildings of governmental agencies, local self-governance bodies and companies, institutions and organizations working in the special regime of labor safety or having armed guards. Entrances of these objects shall not be fully blocked. It's identified and Jaba Jishkariani, David Dalakishvili and Levan Gogichaishvili do not deny that they were holding a protest action within a 10-meter radius from the Office of Prosecutor General."

Article 9, part 1 states about a 20-meter radius from the building, while witnesses point out about observing a 10-meter radius from the gate. The distance from the building of the Prosecutor General to the gate exceeds 20 meters. No legal act is mentioned in the court ruling indicating that a territory up to the gate of the Office of the Prosecutor General belongs to the building of said institution.

The protocols on administrative offence and explanations of patrol-inspectors do not indicate that law-enforcers demanded from action participants to stop the manifestation held within a 20-meter radius from the Office of the Prosecutor General (or even from the gate), and that the action participants did not obey this demand. The protocols indicate instead that Jaba Jishkariani and Levan Gogichaishvili "behaved aggressively and did not obey" the demand of the law-officers to stop blocking the building of the Office of the Prosecutor General, and David Dalakishvili did not stop painting slogans on the territory adjacent to the said Office. These demands are not lawful in terms of serving the purpose of Article 173 of the Code of Administrative Offences and thus have not been deemed lawful by the court too. The demand to stop the action within a 20-meter radius is not indicated in the protocol on administrative offence and imposing an administrative penalty on these grounds is unlawful.

In accordance with Article 8 of the Code of Administrative Offences: "An administrative penalty for committing an administrative offence shall be imposed in accordance with the rules established by law. The cases of administrative offences shall be proceeded with the strict compliance with the law." Pursuant to Article 240, part 1 of the Code of Administrative Offences, in the protocol on administrative offence the essence of the offence is indicated, while according to Article 260, part 2, upon preparing the case for hearing, court decides on whether the protocol is drawn up correctly. If court finds that the activities indicated in the protocol on administrative offence do not exist, according to Article 267, part 1 of the Code of Administrative Offences, it will rule for closing the case.

Therefore, a content of the administrative offence stipulated by Article 173 of the Code of Administrative Offences does not exist, so the Tbilisi city court decision #4/100001-07 of 12 June 2007 is groundless.

According to Article 271, part 2 of the Code of Administrative Offences, "Regional (city) court ruling on imposing an administrative penalty is final and is not subject to appeal according to the rule envisaged by the legal proceedings on administrative offence". The penalty imposed by the court decision is to be executed; consequently, decision has already been taken into force. According to Article 14, part 1 of the Organic Law of Georgia "On

Public Defender": "The Public Defender will consider an application and appeal only in case the applicant questions a legally enforced judgment issued by superior body, administrative body or court"; while according to Article 279, part 1 of the Code of Administrative Offences, a ruling of the administrative court (judge) on administrative offences may be nullified or replaced by Prosecutor's protest by the administrative court (judge) itself; or by a judge of the higher court, irregardless of the Prosecutor's protest".

According to Article 6 of the European Convention on Hunan Rights, "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law." On hearing the case *Engel and others v. Netherlands*, the European Court ruled that the term "criminal charges" for the purposes of Article 6 does not depend on the domestic classification of this term. In order to apply Article 6 of the European Convention it's necessary that punishment envisaged by the charges should be strict enough. In this case it does not matter which - the Criminal Code or the Code of Administrative Offences envisages this punishment; an important point is that the punishment should involve a deprivation of liberty in a strict form. Thus Article 6 is applied in cases of the administrative offences, when the deprivation of liberty may well be expected.

When proceeding cases on administrative offences, the body drawing up a protocol on administrative offence is accountable for reliability of evidence given therein. The court is considering the case within the limits of circumstances described in the protocol; it's not authorized to overstep the protocol and give an independent qualification to the offence. If upon considering the relevant evidence the action described in the report is not confirmed, the protocol on administrative offence is nullified and legal proceedings end; which does not exclude to call the offender for responsibility for another offence.

In given case, sentencing "Equality Institute" members for 25-day imprisonment for the action, not constituting the grounds for raising their administrative responsibility, is a violation of Article 6, part 1 of European Convention on Human Rights.

Paata Zakareishvili v. Tornike Kilanava

On 24 July this year the Public Defender was addressed by Paata Zakareishvili. The applicant explains that he was going to meet IDPs in Zugdidi. Tornike Kilanava and Anatoly Jologua, heads of Gali direction of the Autonomous Republic of Abkhazia tried to obstruct the meeting. P. Zakareishvili asks for protection of his constitutional rights and also states that instead of condemning Kilanava and Jologua's unconstitutional activities, the direct head of Gali direction B. Buleskiria supported aggression, showed against applicant. As reported Buleskiria: "The member of Republican party Paata Zakareishvili, financed by several marginal local non-governmental and international organizations and being unacceptable for the absolute majority of IDPs as well as for students and young people, arrived in Zugdidi. This meeting did not take place since Paata Zakareishvili in known as the author of incorrect statements on Georgian-Abkhaz conflict that are humiliating for IDP population and unacceptable for Georgian state. Trying to mislead the population displaced from Abkhazia, Zakareishvili is creating the wing of supporters among IDPs."

As states Tornike Kilanava, the head of Gali department of the Autonomous Republic of Abkhazia, he did not insult verbally Paata Zakareishviil but told him while disputing that Zakareishvili's activities do not contribute to conflict resolution.

TV Company Rustavi 2 made coverage on Paata Zakareishvili's visit to Zugdidi. The video file of the coverage is posted on the Rustavi 2 official website: http://rustavi2.com/news/news_textg.php?id_news=21749&im=main&ct=25 Presenter Manana Manjgaladze reports: "IDPs did not welcome Paata Zakareishvili in Zugdidi; shouting "Abkhaz and Russian spy", they in fact evicted him from a diagnostic center. **IDPs did not give him a chance to hold a Republican Party conference**. Population accuses him of trading in corpses of soldiers died in Abkhazia. Despite **failure of planned conference**, Zakareishvili expresses his content over learning the opinion of local population. Levan Berdzenishvili and Tina Khidasheli [leaders of Republican Party] were expected today in Zugdidi, but **the conference would have been ruined anyway because the Republican Party was not given a building for holding event**." Then the tape shows Tornike Kilanava turning to Paata Zakareishvili: "It's enough to eat money! Time will come when you'll be questioned for all this! Go away! Go away from here immediately!" Then he comes close to Zakareishvili and says: "If I see you again in Zugdidi, you'll be treated even worse..."

For the purpose of thwarting the planned meeting, Tornike Kilanava, when speaking with Zakareishvili and demanding from him to leave Zugdidi, used a rude jargon language, improper for civil servant. Thus Tornike Kilanava was pressing Paata Zakareishvili in order to push him to change his mind on holding and participating in a conference of Republican Party at Zugdidi diagnostics center.

According to Article 25, paragraph 1 of the Constitution of Georgia: "Everyone except for personnel of the Armed Forces and Ministry of Internal Affairs has the right to unarmed public assembly either indoors or outdoors, without prior permission." According to Article 174^2 of the Code of Administrative Offences of Georgia: "Obstructing the exercise of the

right to assembly or manifestation, or participation therein, shall entail the imposition of an administrative fine in the amount of fifty to hundred minimum wages".

According to Article 239, paragraph 24 of the Code of Administrative Offences, a protocol on administrative offence envisaged by Article 174^2 is drawn up by the representatives of the Ministry of Interior of Georgia having relevant authorities.

The Public Defender requested drawing up a protocol on administrative offence on Fridon Kilanava.

On 5 September this year the head of Interior Ministry Zugdidi regional department addressed the Public Defender by the letter, considering request of drawing up a protocol on administrative offence groundless. Despite video material broadcasted by TV channel Rustavi 2, Interior Ministry Department's response indicates that meeting with IDPs was thwarted by reasons having nothing to do with the head of Gali direction Fridon Kilanava. At the same time, Fridon Kilanava's behavior was not deemed as misusing his official duties.

Annex 10. Social and Economic Rights of Internally Displaced People

The case of IDPs from 34, Kazbegi Ave in Tbilisi

In conformity with sub-point "b" of the Article 21 of the Organic Law of Georgia "Concerning Public Defender", Public Defender allied the relevant services of the Ministry of Foreign Affairs and Prosecutor General's Office and demanded to stop the process of eviction of IDPs (internally displaced persons).

Public Defender states that eviction of IDPs from 34, Kazbegi Ave in Tbilisi contradicts the Law and represents gross violation of the rights of IDPs.

An the places of settlement IDPs are registered by the Ministry of Refugees and Resettlement of Georgia and consequently, have legal right to live in the buildings. In spite of it, they are being evicted in accordance with p. 3 of the Article 172 of the Civil Code of Georgia. **If any violation of the ownership of immovable or other interference occurs, the owner can… demand the suppression of such action without court's decision, from the relevant law enforcement authority, by means of presentation of the document, certifying the ownership, established by the law…**

In Public Defender's opinion, the spreading of the mentioned norm on IDPs, settled by the State in various buildings is illegitimate and contradicts law and order existing in Georgia. Civil Code regulates only general cases, and in the process of examination of IDPs' cases it is expedient to apply the legislation related directly to IDPs. Consequently, priority should be given to the Law of Georgia "Concerning Internally Displaced Persons – Refugees", which regulates the issue of housing disputes of IDPs in different way. In accordance with p. 4 of the Article 5 of this Law,"**disputes related to the housing disputes of IDPs will be settled by court, at the same time, until the restoration of Georgian jurisdiction on the relevant territories of Georgia, IDPs won't be evicted from the buildings of their dense settlement".** The given formulation of the norm clearly shows that the law recognizes the only– judicial - way of the dispute settlement.

Besides, the law enforcement authority is obliged to observe the number of norms in administrative proceedings related to the participation of the party, examination of the circumstances of the case, investigation of proofs, familiarization of the party with the materials of administrative proceedings. So, the hasty performance of the process of IDPs' eviction is the evidence of incompetence and negligent attitude towards the protection of human rights from the side of the relevant services.

Nino Gabisonia`s case

On May 21 Public Defender applied to the Head of III Division of Tbilisi Gldani-Nadzaladevi Department of Internal Affairs with the recommendation to stop the eviction of IDPs from temporary residence.

* * *

Nino Gabisonia, temporarily living in Tbilisi, Mukhiani Settlement, applied to Public Defender for help. Nino Gabisonia, with her family of seven, was settled in her present flat by the government, and this address is also indicated in IDP certificate issued by the Ministry of Refugees and Settlement of Georgia.

On May 6, 2007, Koba Gvalia - District Inspector of III Division of Tbilisi Gldani-Nadzaladevi Department of Internal Affairs warned Nino Gabisonia in written to leave the residence in 5 days period and take out her belongings. The flat where Nino Gabisonia and her family live, belongs to some Malkhaz Dolenjashvili. Though, it should be mentioned that at present the dispute related to this flat, between Gabisonia and Dolenjashvili, is under the court's consideration. It means that the Court hasn't yet established the actual owner of the flat and the rights of other persons on this flat.

From the legal point of view, Public Defender considers it inadmissible to apply p.3 of the Article 172 of the Civil Code of Georgia towards IDPs. *** If there occur violation of the ownership of immovable property or any other interference, the owner can… demand the termination of such action without the court decision… by means of presentation of document, proving the ownership, established by the Law…**

But, while considering IDPs' issues, priority must be given to the Law of Georgia "Concerning IDPs – Refugees", in accordance with p.4 of the Article 5 of which, **"disputes related to the IDPs flat disputes are being solved by the court, at the same time, up to the restoration of Georgian jurisdiction, IDPs mustn't be evicted from the compact settlements of IDPs."** According to the formulation of the norm it's clear that the Law recognizes only one way of solution of dispute – through the court.

On the stage of court examination, when the examining court hasn't yet determined the real owner of the flat anf the rights of other persons on the flat, police's interference and application of authorities, provided on the basis of p.3 of the Article 172 is inadmissible.

After the examination of the issue, Public Defender applied to the Head of III Division of Tbilisi Gldani-Nadzaladevi Department of Internal Affairs Giorgi Gadelia with recommendation and demanded the immediate termination of the procedure of eviction of Nino Gabisonia and her family members.

From the III Division of Tbilisi Gldani-Nadzaladevi Department of Internal Affairs Public Defender has been informed that the eviction of Nino Gabisonia and her family members has been terminated.

Telavi, **Hotel "Kakheti" `case**

On July 12, 2007 the IDP-s compactly settled in the hotel Kakheti, Tekavi, applied to the Public Defender with collective application. The IDP-s occupy the above mentioned building with complete observance of the law. They are registered and addressed to the above mentioned building by the Ministry of Refugees and Re-settlement; it is proved by the record made in the column of temporary address in their IDP cards and the letters of the Deputy Minister of Refugees and Re-settlement presented by them.

According to the explanations of the IDP-s, on August &, 2007 they have received warning from Telavi Regional Department of Internal Affairs addressed to the Director of JSC "Kakheti" Nino Jijeishvili concerning the commencement of the process of their eviction.

On August 10 the representatives of the Public Defender were in Telavi; they met with and talked to the IDP-s and the Head of Telavi Regional Department of Internal Affairs Baadur Guliashvili. The representatives of the Public Defender familiarized with the application of N. Jijeishvili and the attached documentation.

The Article 3 of the Order #747 of the Minister of Internal Affairs of Georgia "Concerning the Approval of the Rule of Infringement upon or other Interference with the Immovable Property Existing in Ownership" defined the complete list of the documents, which must be attached to the application. In the case with IDP-s certificate-information issued by the Ministry of Refugees and Re-settlement concerning the refugees or IDP-s living in the object is required. Such document wasn't attached to N. Jijeishvili's application. It should also be noted that the application was received by the Department on August 7, 2007, and despite the lack of the attached documentation, the written warning is made on the same date. In accordance with the Article 4 of the Order #747 of the Minister of Internal Affairs of Georgia, the authorized person verifies the conformity of the application with the requirements during 10 days and in the case of discrepancy informs the applicant in written. Implementation of measures against the infringement of other interference with the immovable property existing in the ownership is possible only in the case if the application meets the requirements, established by the Order. It's obvious that in this case the requirement of the Order was violated.

In accordance with p.1 of the Article 4 of the Order #747 of the Minister of Internal Affairs of Georgia "Concerning the Approval of the Rule of Infringement upon or other Interference with the Immovable Property Existing in Ownership": **"in each specific case measures against the infringement of other interference with the immovable property existing in the ownership in regard to refugees or IDP-s must be implemented in agreement with the Ministry of Refugees and Re-settlement of Georgia. The implementation of measures against the infringement of other interference with the immovable property existing in the ownership must be stopped until the receipt of the written form of the agreement."** According to the explanation of the Head of Telavi Regional Department of Internal Affairs, they didn't have such agreement; they have requested it from the Ministry and were waiting for the answer, consequently, the eviction of the IDP-s from the hotel "Kakheti" wasn't being implemented until the receipt of such agreement.

On August 15, 2007 the IDP-s living in the hotel "Kakheti" in Telavi contacted the Public Defender and informed him that the process of eviction was in progress, performed by the representatives of Telavi Regional Department of Internal Affairs. The representatives of the Public Defender tried to contact the Head of Telavi Regional Department of Internal Affairs B. Guliashvili. He confirmed the mentioned information and stated that they already had the written agreement of the Ministry of Refugees and Re-settlement. With the purpose of verification of the mentioned information, the Public Defender's Office contacted the Deputy Minister of Refugees and Re-settlement Irakli Gorgadze, who denied the existence of the written agreement of the Ministry on eviction on the IDP-s living in the hotel "Kakheti".

In this case we have to deal with gross violation of the requirements and procedures established by Georgian legislation. In particular, despite the lack of documentation, Telavi Regional Department of Internal Affairs had issued the written warning, there occurred attempt of eviction of the IDP-s without written agreement of the Ministry of Refugees and Re-settlement, which represent the violation of the Order of the Minister of Internal Affairs, Law of Georgia "Concerning Refugees-IDP-s", Article 9 of the Law of Georgia "Concerning Police", and Article 172 of the Civil Code of Georgia. Consequently, the Public Defender considers that the action of the representatives of Telavi Regional Department of Internal Affairs contain the signs of crime provided by the Article 333 of the Criminal Code of Georgia (abuse of official power).

In accordance with the Organic Law of Georgia "On Public Defender", the Public Defender sent the existing documentation to the Prosecutor General's Office of Georgia for further response.

Dali Khelaia`s case

On January 17, 2007 Dali Khelaia, the advocate of Vakhtang Fifia, Eduard Khajomia, Simon Darakhvelidze and Liana Gabunia the IDPs fro Abkhazia, addressed the Public Defender of Georgia.

From the submitted documents in becomes clear, that the abovementioned persons for 10-12 years live in Tbilisi, thirteen kilometer of Kakheti Highway in Military City of Boarder Police of the Ministry of Internal Affairs and are registered on the same address by the Ministry of Refugees and Re-settlement. There are 93 Refugees living in the Military City.

According to the declarant, on December 26, 2006 the abovementioned people received written notice that they had to leave the dwelling space in 7 days period.

On January 12, 2007 Irakli Gorgadze, the Deputy Minister of Refugees and Re-settlement addressed the Border Police of the Ministry of Internal Affairs in writing and confirmed that in the Military City densely residing IDPs occupy the above mentioned building with complete observance of the law. Despite this fact the IDPs received repeated warning about leaving the territory.

- The Law of Georgia "Concerning Internally Displaced People- Refugees" states that "up to the restorations of Georgian jurisdiction, IDPs must not be evicted from the compact settlements of IDPs".

The exceptions can be made only, if:

a) There exists a written agreement with an IDP;
b) A special dwelling space is apportioned for them and it should not worsen the living conditions;
c) Natural calamity or other occurrences occur, that foresees fixed compensations and is regulated by common rule;
d) The IDP has willfully taken the space, and broke the law

Article 9 of the Law of Georgia "Concerning Police" has been also violated.

- In the IDP cases observance of the law (that a person legally holds immovable property) is proved by the record made in the column of temporary address in the IDP cards.

On February 15, 2007 the Public Defender of Georgia addressed Badri Bitsadze, Head of the Boarder Police of the Ministry of Internal Affairs with a recommendation to secure the requests envisaged by the Law of Georgia "Concerning Internally Displaced People-Refugees".

On March 23, 2007 the Boarder Police of the Ministry of Internal Affairs informed the Public Defender of Georgia that according to the Public Defender's recommendation, the Boarder Police requested the list of IDPs that live in the building situated on thirteen Kilometer of Kakheti Higway from the Ministry of Refugees and Re-settlement. It was ascertained that Vakhtang Fifia, Eduard Khajomia, Simon Darakhvelidze and Liana Gabunia obtain the status of IDPs. Accordingly, they profit all the privileges that are ascertained by the Georgian legislation.

The Public Defender Applied to the President of Georgia with the Request to Study the IDP-s' Status

The Public Defender made use of the authority, granted to the Public Defender by sub-point "I" of the Article 21 of the Organic Law "Concerning the Public Defender" and applied in written to the President of Georgia concerning the careless and irresponsible attitude of the former Minister of Refugees and Re-settlement Giorgi Kheviashvili towards his duties.

The Public Defender mentioned in his letter that he has exhausted all available means in his relations with Kheviashvili and application to the President is the only thing that helps to maintain the hope to help the refugees and IDP-s.

The activities of the Ministry of Refugees and Re-settlement don't improve the rights of the IDP-s and simple statistics prove it. The disproportion between the number of incoming and outgoing documentation in the Ministry is easily noticeable (incoming – 23961, outgoing – 8964). It makes clear that the Ministry regards the letters, applications and claims of the IDP-s in irresponsible manner.

The Ministry has repeatedly violated the "Common Administrative Code", Organic Law of Georgia "Concerning the Public Defender" and left the Public Defender's recommendation without consideration and documenting, has repeatedly infringed lime limits in the cases of request of information.

* * *

The status of protection of human rights in conflict zones is systematically reviewed in the Public Defender's Parliamentary reports. The Public Defender considers that respect and protection of human rights is the best means for conflict regulation. Exemplary protection of Gali region population will be a good example for the whole Abkhazian population to feel confidence towards Georgian line of policy and values. In the circumstances, when spontaneously returned IDP-s in Gali region actually have to live in their own houses on their own risk, when the State still regards them as IDP-s due to that risk, non-usage of legal guarantees existing towards them and the level of indifference demonstrated by the Ministry is unjustified and shameful.

* * *

On May 14, 2007 the Public Defender applied to the Minister of Refugees and Re-settlement in regard to registration of old and diseased persons living in Gali region. The Public Defender received absolutely inadequate answer after 4 months – on September 13. In the answer it was said that the IDP-s who will not come to the commissions of the relevant regions (towns) will not obtain registration and consequently, certificates of new model will not be issued to them.

Paragraph 12 of the Resolution #17 dates February 22, 2002 states: "*if the IDP. Due to objective reasons (old age, serious illness) can't appear to the Commission, issuing certificates, the Commission is obliged to clarify the circumstances by going to the place of residence and make decision concerning the issue of the IDP's certificate*". Thus, the Ministry and its regional departments were violating the Minister's Resolutions.

* It should be stressed that the issue was not granting of the status of IDP (they already had such statuses), by the restoration of the status of IDP-s.

Besides, in the answer it was stated that as those specific persons at present live in Gali region permanently, granting status to them will involve the discredit of the rule of granting IDP-s status established by Georgian legislation and international norms.

Resolution #47 dated February 2, 2007 of the Government of Georgia "Concerning the Approval of the State Strategy towards IDP-s" states: "*Special case is Abkhazia, where thousands of IDP-s have spontaneously returned to their houses or live by seasons (for performance of agricultural works). Due to their vulnerability and indefinite future, they maintain the statues of IDP-s".*

About 60 thousand IDP-s have returned to Gali region, who maintain the status of IDP-s. This is our Governmental policy and for the purpose of realization of this police the Public Defender demanded to restore the status of IDP-s for specific persons. It's not clear why the Ministry of Refugees and Re-settlement doesn't meet its own obligations towards IDP-s – due to some kind of private interests, individual indifference or lack of competence?

The Public Defender considers that the Ministry has to re-consider and re-develop the mechanisms required for perfect implementation of the Law concerning the registration of IDP-s.

* * *

Political conflicts create serious problems for Georgia in implementation of obligations related to human rights in conflict regions. Abkhazian and Ossetian territories are beyond the effective control. * In the opinion of European Court on Human Rights, countries in such situation have certain obligations in regard to de-facto territories.

Giorgi Kheviashvili states in his letter that "Russian Federation and Abkhazian de-facto Government work jointly for the purpose of revelation of at least one fact of granting the Government of Georgia of the status of IDP to the citizen living on Abkhazian territory (even temporarily), in order to use the mentioned for discredit Georgian on international arena, allegedly Georgia violates the norm and principles of international law existing in regard to IDP-s, as is grants IDP status to the citizens of Georgia living in Gali region… rising the issue of granting the status of IDP of the citizens living in Gali region turn the Public Defender into blind instrument against the interests of Georgia".

In the Resolution #47 of the Government of Georgia on February 2, 2007 it is directly indicated that persons, living in Abkhazia and Tskhinvali region "maintain the status of IDP due to vulnerability and unclear future".

Besides, the Resolution specifies that "*Governmental departments work purposefully to ensure the security of IDP who spontaneously returned to the conflict zones. For this purpose they use direct negotiations with the parties of the conflict as well as the assistance of international associations in order to monitor the situation in the field of human rights and security".*

Thus, granting of the status of IDP-s to those returned to Gali region and maximum ensuring of their rights is not the caprice or malicious intent of the Public Defender, but the key interest of purposeful State policy developed in regard to IDP-s.

In his activities the Public Defender follows international standards existing in the field of IDP-s' rights and legal acts existing in internal law, including the strategy developed by the Government of Georgia. The statement of Giorgi Kheviashvili concerning "discretion of Georgia on international arena" is not clear.

Long-lasting and difficult, it could be said that unpleasant relations with the Ministry of Refugees and Re-settlement made clear to the Public Defender that the activities of Kheviashvili and his department by no meant comply with the purposes of governmental policy.

* * *

In accordance to the Organic Law of the Ministry of Refugees and Re-settlement", "the Ministry provides social assistance to the most vulnerable category of IDP-s", including the issue of one-time allowances. But the mechanisms related to the rule, basis and purposefulness of issue haven't been developed. Also, the persons authorized to receive them are not defined by any normative act, and it creates the risk of willfulness from the side of administrative authority.

According to Giorgi Kheviashvili's statement half million Lari, allocated in the State Budget of the year 2006 for social benefits to IDP-s have been paid in full to 5000 IDP-s in extremely difficult social conditions". It's not clear – on the basis of what criteria the Ministry determines the fact of existence of "extremely difficult social conditions". Actually this part of activities of the Ministry is covered with mist, raising the doubt of selective treatment.

In October, 2007 the group of IDP-s applied to the Public Defender applied verbally. According to their explanations, the representative of the Ministry of Refugees and Re-settlement left form to be filled in by them, which turned out to be the act of receipt – handing over. The acts should confirm the fact of handing over the fire-wood. The columns of the "received" fire-wood and registration numbers of trucks which "distributed the fire-wood" was empty.

* * *

Up to present, "Action Plan for Implementation of the State Strategy towards IDP-s in Georgia", which was to be developed by the Governmental Commission under Giorgi Kheviashvili's direction, hasn't been presented.

On the basis of thorough study of the issue the Public Defender categorically states that the process of registration of IDP-s is being performed without legal basis.

Clear proof to this is the **Resolution 127 of the Minister** of Refugees and Re-settlement, according to which the registration of IDP-s should be carried out between August 15 and December 15, 2006. The mentioned Resolution entered into force only on October 9, but its validity was calculated from August 15.

* It's interesting - how Mr. Minister imagines the issue of new certificates since August 15 on the basis of the Resolution which entered in force on October 9. This specific fact is the classical example of improper, non-competent and irresponsible management.

It should be stressed that if IDP-s don't undergo registration within the pre-established time limits, their status of IDP will be terminated; consequently, they will be unable to received benefits established for them.

Alongside to the lack of legal accuracy, the procedure of registration of IDP-s was carried out with problems. For example, one IDP, according to the data of the previous registration, was addressed to the building which afterwards was subject to privatization. But he/she hasn't received any compensation provided by the law. The Ministry indicated in the IDP's certificate "Saburtalo" (?!) as the place of residence.

In the certificate of one IDP Hotel "Iveria" was indicated as temporary place of residence. (This person hadn't received any compensation and at the moment he/she is homeless).Evidently, only in the Ministry of Refugees and Re-settlement in Georgia they don't know that today nobody lives in the Hotel "Iveria" and it's under reconstruction.

A lot of analogous facts were encountered in the process of registration of IDP-s during 2007 and examples aren't limited with the above mentioned.

It mustn't be disputable that registration record should contain exact address and not obscure and general geographical indications. Otherwise, registration data will not be able to achieve the legal purpose expressed in the identification of temporary residences of the IDP-s. In the business correspondence with the Public Defender's Office the Ministry of Refugees and Re-settlement doesn't hide that it often doesn't have detailed information concerning the centers of compact settlement.

* * *

On October 3, 2007 the Public Defender requested information from the Ministry of Refugees and Resettlement concerning the expenses born by the Government for production of 1 unit of IDP Certificate, which company performed the order and how many IDP Certificated were made, as well as the copies of agreements concluded with the relevant legal entities and calculation of expenses. On October 19 the Ministry sent absolutely irrelevant answer. The letter provided the list of laws and resolutions, on the basis of which registration of IDP-s and issue the IDP Certificates to them was carried out.

* * *

The Public Defender has reasonable basis to suppose that the Ministry of Refugees and Re-settlement often delays the registration of IDP-s at their actual places of residence. In most cases it concerns the objects which still are in the state ownership.

IDP from Abkhazia Ivane Kokchiani with his wife 3 young children was settled by Kareli local governmental authority temporarily in abandoned, half-ruined building in 1993. In June 2005 Kokchians surrender the building to its legal owner, Ossetian family returned to Georgia – Margiev family (Margievs left their house during South Ossetian conflict). The President of Georgia mentioned this fact in his speech in July 11, 2005, on the International Conference held in Batumi – "Initiative of the Government of Georgia in Regard to Peaceful Regulation of South Ossetian Conflict". The President of Georgia issues special Decree to help Kokchians.
* As the Public Defender learned, the text of Resolution isn't filed with the Administration of the President of Georgia.

Unfortunately the family with good intentions is still under the shelter of relatives. The Ministry of Refugees and Re-settlement never took interest in its condition.

Kokchiani himself found free space in Tbilisi registered on the balance of the Ministry of Economy and requested to register it. The Ministry of Economy agreed to register the IDP in the building, but the Ministry of Refugees and Re-settlement refused to register them in Tbilisi.

It's obvious that the Ministry of Refugees and Re-settlement neglects its obligation – to provide the IDP with temporary home together with executive authorities and the relevant authorities of local self-government.

The ministry of Refugees and Re-settlement of Georgia "*must provide census of the objects of compact settlement of IDP-s together with the owner of the object and the person having the relevant authorities; compilation of the list of IDP-s and fair distribution of space and settlement of IDP-s on the basis of agreement of with the owner of the object or the person having the relevant authorities".* It is according to the legislation. And actually the Public Defender has a lot of facts proving that the Ministry doesn't perform its obligations.

* * *

Giorgi Kheviashvili states that "the report of the Public Defender, his attitude, TV appearances etc. serve to the maintenance of the so-called black P.R. campaign against the Ministry and Minister of Refugees and Re-settlement of Georgia".

The self-purpose of activities of the Public Defender has never been the groundless criticism of any department. In this case, the basis of speaking about mass violation of human rights of IDP-s is formed by a lot of obtained materials, proofs and legal analysis, as well as their assessment. In regard to each issue the Public Defender, primarily, applied to the Ministry of Refugees and Re-settlement and called for restoration of violated rights of IDP-s. In spite of clearness and strength of arguments, Minister didn't share any recommendation.

The negative answers, by their contents, are dry and cynic and stand far from legal reasonability. Due to ineffectiveness of the Ministry's activities the Public Defender utilized to the end all existing legal means and asked the President of Georgia to respond to the facts of mass violation of human rights and interests of IDP-s, as the authority, which, primarily, should defend the interests of IDP-s doesn't express even a slight desire for showing professional, competent, or even human attitude.

The Public Defender is deeply convinced that the proper protection of human rights of each citizen of Georgia, or any person on its territory and revelation of the facts of mass violation of these rights is within the state interests (regardless Giorgi Kheviashvili's attitude).

The Public Defender is ready to cooperate with the Ministry of Refugees and Re-settlement of Georgia at maximum level, as well as with any governmental authority in order to ensure positive shifts in the improvement of social conditions of IDP-s. This is the only and well-grounded reason and there is no other interest, or antipathy towards Giorgi Kheviashvili.

Nino Chibchiuri against Mikhail Kareli and Marlen Nadiradze

On February 20, 2007 Nino Chibchiuri, journalist of tele-radio company "Trialeti" addressed the Public Defender of Georgia. According to her explanation, on the evening of February 18, somebody called her mother and threatened – if your daughter will not stop investigations, Marlen and Misha will kill her.

The journalist thinks that abovementioned is connected with materials she published about activities by Mikhail Kareli and Marlen Nadiradze, Gori Sakrebulo Chairman.

On February 27, 2007 the Public Defender addressed Giorgi Latsabidze, Deputy Prosecutor General with a recommendation and requested to investigate the aforementioned case.

On March 16, according to the response from the Prosecutor General's Office, investigation regarding the fact of threatening the journalist started according to Criminal Code of Georgia, article 151.

CCG, article 151 (threat) runs, that threatening a person to take his/her life away or to damage health, and/or to destroy property, whereas the person threatened has a well-founded fear that the threat will be carried out, - shall be punishable by fine or socially useful labour extending from one hundred and twenty to one hundred and eighty hours in length or corrective labour for up to one year in length or by jail sentence for up to one-year in length.

Emzar Diasamidze and Newspaper "Batumelebi" v. authorities of the Autonomous Republic of Adjara

On 24 July this year, the TV Company "Imedi" aired comment made by Mzia Amaghlobeli, the editor of the Newspaper "Batumelebi" and Emzar Diasamidze, the journalist of the same newspaper. In their words, "Batumelebi" journalists were not allowed to the session of the government of the Autonomous Republic of Adjara under the pretext of not having accreditation. In January 2007 a newspaper applied for the accreditation to the Adjara government's apparatus. The head of the apparatus in his written response stated that in case of need respective persons will assist the journalists of the newspaper "Batumelebi".

According to Diasamidze, he heard about the governmental session from colleagues by accident. The permit to attend the session was issued to Diasamidze's name; however, the head of the media relations of the Media Relations and Protocol unit of the government's apparatus Irakli Cheishvili refused to allow newspaper "Batumelebi" at the session, again, due to absence of the accreditation. Emzar Diasamidze tried to record on the tape the explanations given by Irakli Cheishvili, but, as a result he was ousted from the building by a security guard.

This is not for the first time when absence of accreditation becomes the reason of interference with professional activities of journalists of the newspaper "Batumelebi". Likewise, the journalist and photographer of this particular newspaper only were not allowed to attend the opening of Batumi international airport.

The Public Defender's office addressed the apparatus of the government of the Autonomous Republic of Adjara with a letter asking for producing a statutory act regulating accreditation and, also, asked for explanations why the newspaper "Batumelebi" has not been accredited to that governmental session on the basis of the letter #05-11/27 of the head of government's apparatus.

On 14 September same year, the Public Defender's office received a response from the head of the apparatus. In the letter it was stated that the issue of accreditation to the Emzar Diasamidze has been positively resolved; however, no statutory act regulating media accreditation was mentioned in the letter.

Annex . 11 On the Rights of Refugees

Raphael Paez Sanchez `s case

On February 16, 2007, citizen Tengiz Bochorishvili, employee of the 1st Division of Old Tbilisi Police of Tbilisi applied to the Public Defender with statement. According to the applicant's explanation, in his police office former citizen of Cuba Rafael Sanchez Paez often appeared, who hasn't refugee's status in Georgia, place of residence and he is socially vulnerable. As the mentioned person explained to the police representatives, he is on Georgian territory for 2 years already. According Sanches Paez's statement, he applied to the Ministry of Refugees and Resettlement of Georgia many times.

On February 21, 2007 the Public Defender applied to the Deputy Minister of Refugees and Resettlement of Georgia I. Gorgadze and requested information related to the mentioned person and measures taken by the Ministry.

On April 2, 2007 we received the answer of the Head of Migration, Repatriation and Refugees' Issues Department of the Ministry of Refugees and Resettlement of Georgia Z. Imedadze, who informed us that the citizen of Cuba Rafael Paez Sanchez applied to the Ministry of Refugees and Resettlement with application on granting the refugee's status on February 3, 2005. On the basis of the existing materials the Department of Refugees and Shelter Seekers of the Ministry prepared decision in regard to granting the status of refugee to Rafael Paez Sanchez. On June 3, 2005 the Commission for Examination of the Issues of Refugees and Shalter Seekers of the Ministry of Refugees and Resettlement considered the issue of granting the status of refugee to Rafael Paez Sanchez and decided that granting the refugee's status to him was inexpedient.

The Public Defender continued the examination of the case. In accordance with explanations and documentation provided by Rafael Paez Sanchez, he left Cuba and went to Moscow in February 2000 having 90-days permission. Sanchez had to return to Cuba before August 2, 2001, his passport was valid till April, 2001, and after prolongation of validity – till April 29, 2005. Rafael Sanchez had the right of residence in Russian Federation till April 9, 2003, and on April 29, 2003 the citizen of Russian Federation Gruzikova Galina gave him the right and applied to the Visa and Registration Division of Moscow Department of Internal Affairs, to register Rafael Paez Sanchez in the flaw owned by her, but the citizen of Cuba wasn't granted that right. Consequently, his being in Russian Federation was illegal and in the case of deportation he would face the risk of punishment in accordance with the Code of Administrative Offences of Russian Federation – monetary fine or deportation to the country of his origin – Cuba.

In accordance with Cuba Socialist regime, Rafael Sanchez, due to his political views, was subject to punishment. As he told the Public Defender, he doesn't want to live in Dictator's State.

In conformity with the "Convention on Refugees' Status" and "Protocol on Refugees' Status", the notion "refugee" relates to any person, who can become the victim of persecution due to "political belief" and "who hasn't definite citizenship and, being beyond the borders of his former country of residence due to similar events, can't return or doesn't want to return there due to such fear".

In accordance with p.1 of the Article 4 of the Law of Georgia which was in force on February 3, 2003, "the decision concerning the recognition of a person a refugee will be taken by the Commission established in the Ministry during 4 months from the day of registration of his/her application".

The decision concerning the refusal to Rafael Paez Sanchez on refugee's status was made by the Commission for Examination of Issues of Refugees and Shelter Seekers on its meeting on June 2, 2005, though the Commission by that time wasn't authorized any more due to amendments introduced into the Law. Besides, the document issued by the Minister of Refugees and Resettlement to Rafael Paez Sanchez on June 2, 2005 doesn't conform to imperative properties, provided by the article 52 of the "Common Administrative Code of Georgia", in particular, it doesn't have the form of individual administrative-legal act – doesn't contain the heading, signature of the authorized person, the authority isn't specified where the act can be appealed, its, address and time limits for presentation of appeal. Also, Georgian State Emblem isn't depicted on the act; besides, the basis, indicated in the document doesn't comply with the requirements of the Common Administrative Code of Georgia.

It should be mentioned that Rafael Paez Sanchez crossed Georgian border illegally – through Psou border crossing check-point, which is not controlled by the central Government. Though, after crossing Abkhazian-Samegrelo border he applied to the Government of Georgia with the request of shelter, so the note given at the end of the article 344 (Illegal Crossing of the State Border of Georgia) of the Criminal Code of Georgia – "this article doesn't apply to the foreing citizen or a person without citizenship, who, in accordance with the Constitution of Georgia, requests the Government to provide shelter, it his/her actions doesn't contain the signs of other crime".

Besides, while entering Georgia, Rafael Paez Sanchez's passport was valid till April 29, 2005 , i.e. at the moment when the Ministry considered his application; and in the result of groundless refusal on granting refugee's status, Rafael Paez Sanchez turned out to be on the territory of Georgia without legal documents.

Besides, it's impossible to deport Rafael Paez Sanchez – he doesn't have any documents identifying his person, the country from which he entered is undetermined, and in the country of his origin he will be under threat. In accordance with Georgian legislation, a persons can't be sent to another state if there exists supposition that his life or freedom will by threatened.

Following the above stated, Rafael Paez Sanchez is on the territory of Georia without any legal status, and at the time his proscription is impossible. In such circumstances the State's

interests demand to define his legal status in the maximum acceptable form. The same result represents Rafael Paez Sanchez's private interest.

In accordance with the article 33 of the Law of Georgia "Concerning the Structure, Authority and Rule of Activities of the Government of Georgia", "act or action of an official can be recognized null and valid for the motive of inexpedience, if the act or action definitely doesn't conform with the Governmental program and the State policy, which is following the requirements of the Law and is implemented by the President of Georgia, Government of Minister, or result into inefficient utilization of the state property and budget allocations, other damages the state interests in other way".

Following all the above specifies, in accordance with the Constitution of Georgia, "Convention on Refugees' Status" and "Protocol on Refugees' Status", Law of Georgia "Concerning Refugees", "Common Administrative Code of Georgia", Law of Georgia "Concerning the Structure, Authority and Rule of Activities of the Government of Georgia" and sub-point "b" of the article 21 of the Organic Law of Georgia "Concerning the Public Defender", the Public Defender applied to the Minister of Refugees and Resettlement Giorgi Kheviashvili with recommendation on April 18, 2007 and demanded to recognize the received individual administrative-legal act null and void and examination of application concerning granting of refugee's status to Rafael Paez Sanchez.

On May 12, 2007 we were informed by the letter of the Ministry of Refugees and Resettlement that during interviews, provided by the Ministry at various times, Rafael Paez Sanchez provided contradictory evidences. Besides, on the basis of information received from the Ministry of Internal Affairs and unconvincing biographical information provided by Rafael Paez Sanches the Ministry ascertained that Convention of 1951 Concerning the Refugees' Status and Protocol of 1967 Concerning the Refugees' Status don't apply to this person; besides the protocol of meeting of the Commission examining the issues of refugees and shelter seekers clarifies that the Head of Department of Refugees and Shelter Seeking Persons Zurab Mshvidobadze "presented the conclusion of the Department and the relevant documentation concerning the case of the citizen of Republic of Cuba Rafael Paez Sanchez. Following the conclusion, "the Department, guided by the Law of Georgia "Concerning Refugees", considered it expedient not to grant the status of refugee to the mentioned person on the basis of p.1 of the article 1 of the mentioned Law".

On July 6, 2007 the Public Defender applied to the Minister of Refugees and Resettlement of Georgia Giorgi Kheviashvili and in accordance with the Organic Law of Georgia "Concerning the Public Defender" requested the following information:
contradictory evidences provided by Rafael Paez Sanchez to the Ministry;
information received from the Ministry of Internal Affairs in regard to this person;
conclusion of the Department of Refugees and Shelter Seekers;
which biographical data, provided by Rafael Paez Sanched was considered by the Ministry to be unconvincing and how was its suspiciousness expressed;
why doesn't Protocol of 1967 "Concerning the Refugees' Status" apply to Rafael Paez Sanchez and which specific articles of the mentioned International legal document provides the basis for such statement;

which specific circumstance mentioned in p.1 of the article 1 of the Law of Georgia "Concerning Refugees" wasn't confirmed in regard to Rafael Paez Sanchez's case.

On August 6, 2007 we received from the Ministry of Refugees and Resettlement of Georgia the following answer: "Rafael Paez Sanchez was in Russian Federation since 2000. His wife is the citizen of Russian Federation and during 5 years Paez could legalize his presence in Russian Federation without problems. Rafael Paez Sanchez had to apply for shelter to Russian Government, which he didn't do. In his application addressed to the Ministry at different times, Rafael Paez Sanchez isn't asking for the refugee's status in Georgia. Nor he requested refugee's status during questioning provided by the relevant Department of the Ministry. Also, the reason of raising of this issue today is not clear, as Rafael Paez Sanchez didn't use the right of appeal provided by the Law in due time. As for provision of information, received from the Ministry of Internal Affairs, such correspondences are performed under the secrecy label and for obtaining this information please apply to the Ministry of Internal Affairs."

On September 6, 2007 the Public Defender applied to the Deputy Minister of Refugees and Resettlement of Georgia I. Giorgadze and reminded him of p.1 of the article 20 of the Organic Law of Georgia "Concerning the Public Defender", in accordance with which "information, containing Governmental, commercial or other secret protected by the Law will be communicated to the Public Defender according to the rule established by the Law". In accordance with the mentioned Law the Public Defender repeatedly requested information related to Rafael Paez Sanchez from the Ministry of Internal Affairs.
The proceeding is in progress.

Annex 12 Situation in Terms of Protection of Freedom of Religion

Violence and discrimination on the grounds of religion

Iamze Gnolidze's case

On 15 May 2007 the lawyer Manuchar Tsimintia appealed to the Public Defender. According to him, Jehovah's witnesses Iamze Gnolidze and Natia Milashvili became victims of physical abuse due to their religious beliefs. The case was re-submitted for further response to the Interior Ministry Tbilisi Gldani-Nadzaladevi department. M. Tsimintia stated that investigator called victims without lawyer, produced expert conclusion and asked them to read and sign the paper. Then the investigator requested them to write a denial of their pretences, which would enable him to close the case. The investigator tried to convince victims that the case would yield no results as far as the inflicted injuries were minor.

On 18 May 2007 we requested information from Tbilisi Gldani-Nadzaladevi regional Prosecutor's Office about quality of injuries inflicted to Iamze Gnolidze and Natia Milashvili.

On 12 June 2007 we received a letter from Tbilisi Gldani-Nadzaladevi Interior Department's 1st unit that in case of Natia Milashvili, no forensic medical examination was called because she had no signs of physical injuries; as to Iamze Gnolidze, she was diagnosed as having "head soft tissue lesions". There were no signs of physical injuries on the body, which, according to investigator Jimshitashvili, constituted the basis for closing the case.

On 18 June 2007 we addressed Tbilisi Gldani-Nadzaladevi regional Prosecutor's Office with a question why the investigator concluded that the victim had no objective signs of injuries while, according to the expertise, I. Gnolidze was diagnosed as having the lesions of her head soft tissue. By this letter we requested investigation to establish whether the grounds of religious intolerance existed. In case of positive answer, Article 142 of Criminal Code should have been enforced; in case of negative one – Article 120.
On 13 July 2007 we received a letter from the Office of the Prosecutor General of Georgia that on 23 March 2007 an investigation on the criminal case #1071566 - on the fact of identifying deliberately less heavy injuries inflicted to Iamze Gnolidze - started in Tbilisi Gldani-Nadzaladevi Interior Department's 1st unit. (Criminal offence stipulated by Article 118, part 1 of Criminal Code of Georgia). On 7 July 2007 Yuri Okujava's was called for responsibility according to the first part of Article 155, part 1 of Criminal Code of Georgia. On 9 July 2007 the criminal case was submitted to the Tbilisi city court for detailed consideration.

T. Jikurashvili, B. Tabatadze, B. Khachapuridze's case

On 16 April 2007 at about 8p.m. eight people attacked three representatives of Jehovah's witnesses' community Tengiz Jikurashvili, Beqa Tabatadze and Bagrat Khachapuridze. Firstly attackers insulted young men verbally (they used abusive language towards their religious beliefs), and then abused them physically, by using force. Victims tried to run away,

attackers started throwing stones at them. Two victims - Jikurashvili and Khachapuridze were injured. Patrol police officers arrived to the scene only after 15 minutes when called. In Jikurashvili's words, they said they did not have the right to find attackers and therefore called an investigator, who, according to witness's information, arrived to the scene only after 20 minutes. The investigator took Tengiz Jikurashvili to the "royal hall" for questioning, where a stone was thrown soon after these two went in. According to victim Beqa Tabatadze, the investigator released the person, who threw stone, after several questions. Criminal persecution is underway on the case.

David Elizbarashvili and Sophiko Michelashvili's case

On 6 March 2007 Jehovah's witnesses David Elizbarashvili and Sophiko Michelashvili were preaching their religious beliefs in Gldanula settlement, 6th block. Ronis Lataria, living in this block, having learnt that these two represented Jehovah's witnesses, abused them verbally. David Elizbarashvili and Sophiko Michelasvhili stopped talking with him and continued talking with other resident living in the same building. Ronis Lataria rushed from his apartment, and parallel to verbal abuse, abused them physically - he hit David Elizbarashvili with hand and Sopho Michelashvili with foot.

On 21 March Tbilisi Gldani-Nadzaladevi regional prosecutor A. Potskhverashvili sent the victims' complaint to Gldani-Nadzaladevi Internal Affairs' Department and demanded to start preliminary investigation according to Article 151, part 1 of the Criminal Code ("threat").

It should be noted that in this last case the preliminary investigation did not start on the basis of Article 142, envisaging criminal responsibility for breaching the principle of equal treatment of people irregardless race, color of the skin, language, sex, religious beliefs, political or other convictions. The case similar to above-mentioned had already been in practice and the offence was classified applying combination of Articles 142 and 151 of Criminal Code. Namely, on 1 March 2007 the Isani-Samgori Interior Department's 2nd police unit chief investigator K. Papava addressed the Public Defender's office by the letter, notifying that on 21 September a preliminary investigation started regarding the criminal case #04065406 against George Otiashvili and Sarkis Sharoyan, on the fact of the threat and breaching the principle of equal rights of human beings.

The following was established in result of investigation: On 21 September 2006, the political party "National Movement" Isani regional coordinator Marina Gadilia was conducting a pre-election campaigning and was spreading information booklets. Having learnt that Marina Gadilia was the "national movement" member, George Otiashvili and Sargis Sharoyan insulted her verbally and prohibited to spread booklets. Sargis Sharoyan followed Gadilia with spade (used for building works) so she had to leave the territory.

Difference between these two cases is that in the first case the principle of equality of human beings was violated on the grounds of religious beliefs, in second case - on the grounds of political convictions. Also, in comparison to Gadilia's case, in Jehovah's witnesses' case, along

with verbal abuse, victims were abused physically. In both cases victims were deprived the opportunity to pursue activities according to their convictions. Law-enforcers applied Article 142 of the Criminal Code only in case of breaching equality principle based on political convictions. In case of violating equality principle based on religious beliefs, no similar classification of the criminal offence was made; while Article 142 safeguards citizens' equally against breaching their political as well as religious rights.

The Public Defender addressed the Interior Minister and the Prosecutor General with recommendation to change classification of the criminal deeds and establish religious grounds in the behavior of the individual, accused of committing crime.

On 13 July this year the Prosecutor General's Human Rights Department informed us that the fact of physical abuse of Jehovah's witnesses Sophiko Michelashvili and David Elizbarashvili by citizen Ronis Lataria was re-classified from Article 151 ("threat") of Criminal Code to Article 155 ("persecution"). On 7 July 2007 Ronis Lataria was called for responsibility.

George Golijashvili's case

George Golijashvili, member of Jehovah's witnesses' religious grouping addressed the Public Defender on 3 July 2007. According to his words, on 1 July 2007, at about 5.30p.m. he was going to religious meeting to be held at 24 Moret St., when he met some people in the street. One of them, around 25 years old, with beard, asked George Golijashvili for cigarettes. On having negative answer, he insulted Golijasvhili verbally and physically – kicked him in the face and hit him with his head, in result of which he injured himself – he broke his nose. George Golijashvili ran away. In his words, verbal and physical abuse based on religious grounds for the last two years had become frequent at this territory in Gldani.

This is the second incident of this kind that happened to George Golijasvhili. According to his words, on 11 May 2007, when he was going to the religious meeting to the same address (24 Moret St.) he met three young men, who asked him whether he was going to the "royal hall". On getting positive answer, unknown people abused him physically. This time Jehovah's witnesses' community member Nukri N. who was driving along, helped Golijashvili to escape from attackers. When coming back from the meeting by Nukri N.'s car, other Jehovah's believers noticed those attackers at the Gldani 2nd m/region territory and one of them, G.E. called patrol police. Though for the moment patrol police came, attackers left the scene. G.E. returned to the "royal hall" and having noticed one of the attackers behind the building, called police again. Patrol police detained the person, mentioned by G.E., which was identified by George Golijashvili. However, when the patrol police officer learnt that the building was the place of religious meetings of Jehovah's witnesses and the incident occurred on the grounds of religion, the situation changed. Residents of Gldani 2nd m/region gathered at the place. Policemen told them that in case of Jehovah's witnesses' agreement, they would release detained person. In G.E. words, patrol police officer by such deeds fuelled aggression of the people towards this person. After carrying out investigation, attacker was released.

On 11 May 2007 Tbilisi and Mtskheta-Mtianeti patrol police chief department opened investigation regarding the criminal case #08071939, on the fact of physical insult of underage George Golijashvili by Gogita Kobesauri (criminal offence envisaged by Article 118, part 1 of Criminal Code of Georgia).

On 23 July 2007 mentioned application and materials obtained by us were submitted to the Tbilisi Gldani-Nadzaladevi Prosecutor's Office for further response. On 3 August this year we were responded that the criminal case #010734 regarding the fact of beating underage George Golijashvili (crime envisaged by Article 118, part 1 of Criminal Code of Georgia) was submitted for further response to the Interior Ministry Tbilisi Central Department. On 10 October 2007 we requested information from the Central Department about the current status on investigation and its final results.

Otar Mikava's case

On 6 June 2007 lawyer Manuchar Tsimintia submitted to the Public Defender's office an application on behalf of his client Otar Mikava, who is a member of the Jehovah's witnesses' religious grouping. According to his words, 15 people attacked Mikava near the bridge connecting 7th and 8th Gldani micro regions and insulted him verbally and psychically. Patrol police failed to detain perpetrators at place. In Tsimintia's words, Mikava identified names and addresses of two alleged attackers; Gldani-Nadzaladevi Internal Affairs Department's inspector-investigator G. Kolotauri, being in charge of the case was notified accordingly. Two attackers identified by the victim were released the same day. On 13 June 2007 Manuchar Tsimintia's application was re-submitted by the Public Defender's letter #1805/05-2/0931-07 for further response to the Office of the Prosecutor General. On 6 July 2007 we received a letter from the Prosecutor General # G 05-072007/118 that on 27 March 2007 an investigation opened at the Gldani-Nadzaladevi Interior Ministry 2nd unit regarding the criminal case #01071657 on the fact of hooliganism towards Otar Mikava, with signs of criminal offence, envisaged by Article 239, part 1 of Criminal Code of Georgia. Concerning above-mentioned, L. Gogiashvili was identified as suspect, whose offence was classified according to Article 142, part 1 of Criminal Code of Georgia.

Ana Jikurashvili's case

On 14 July 2007 Ana Jikurashvili, member of the Jehovah's witnesses religious grouping appealed to the Public Defender's office. In her words, 7 unknown persons attacked her on 13 July, at about 8.30p.m., after a religious meeting at 24 Moret St. had ended. They threw stones at her; one stone hit her to the head, causing injury. An ambulance moved her to the medical facility, patrol police came 1 hour later.

On 27 June 2007 the Public Defender submitted a letter #2004/05-2.0979-07 to Gldani-Nadzaladevi regional Prosecutor's Office, describing circumstances around Jikurahshvili's case; with a request for further response. On 18 July 2007 we received a letter from the Prosecutor General that on 13 July 2007 an investigation opened at the Gldani-Nadzaladevi Interior Ministry 1st unit regarding the criminal case #01073167 on the fact of inflicting injuries to A. Jikurashvili according to Article 118, Part 1 of Criminal Code of Georgia (body

injuries). On 12 July 2007 the criminal offence was re-classified and investigation continued according to Article 142 of Criminal Code of Georgia.

Roman Mikava and Ia Gamakharia` s case

On July 3, 2007 Roman Mikava and Ia Gamakharia applied to the Public Defender with an application. According to their explanation, they are the members of religious organization "Jehovah's Witnesses". On April 27, 2007 in Zugdidi, Chargazia Street they were talking to the interested persons on religious topics. One of the citizens, on learning about their religious belief, put a gun to the applicant's forehead and caused verbal and physical offense.

Roman Mikava and Ia Gamakharia were forced to leave the territory in haste, but the offender pursued them and threatened with physical assassination. Later the applicants found out that the assailant – resident of Zugdidi was the employee of Samegrelo-Zemo Svaneti Regional Division of the Constitutional Department of the Ministry of Internal Affairs Vakhtang Gabelia.

On July 16, 2007 the mentioned application was sent to Inspectorate General of the Ministry of Internal Affairs and Deputy Prosecutor General Giorgi Latsabidze for examination and further response.

On July 25 the Public Defender received written information from the Prosecutor General's Office that the Deputy Head of Investigation Division of the Prosecutor General's Office Valeri Grigalashvili sent the case to Samegrelo-Zemo Svaneti District Prosecutor Roland Akhalaia for examination.

In the letter, sent by Grigalashvili it's said: "as it is stated in the application, on April 27, 2007 in Zugdidi, Chargazia Street, R. Mikava and I. Gamakharia called citizens passing by to change the religious belief – reject Orthodox Christianity and join to the "Jehovah's Witnesses". Vakhtang Gabelia – the member of the staff of Samegrelo-Zemo Svaneti Regional Division of the Constitutional Security Department of the Ministry of Internal Affairs – witnessed this fact and forced "Jehovah's Witnesses" to stop the subversive activities for protection of his and other's faith".

In the Public Defender's opinion, the mentioned letter actually contains preliminary evaluation and decision on the case, which hasn't been examined yet, is unacceptable and discriminating.

The action of the employee of the Ministry of Internal Affairs, which supposedly contains the signs of crime provided for by the **Article 155 of the Criminal Code of Georgia,** *illegal interference with the performance of divine service or other religious rite or custom by means of violence or threat of violence, or, if it is accompanied by the abuse of religious feeling of the believer or God's Servant,* is evaluated as protection of safety of other's faith and termination of activity subversive for Orthodox Christianity, and it represents the encouragement of criminal action and pressure on investigation. In accordance with the **Article 14 of the Constitution of Georgia,** *"all people by birth is free and equal in from of the*

law irrespective of the race, color, language, sex, religion, political and other views, national, ethnic and social belonging, origination, property or title status, place of residence".

The Article 5 of the Code of Ethics of the Prosecutor's Office's Employees defined that:

1. The member of the staff of Prosecutor's Office must understand that he/she must respect and protect human rights and freedoms, recognized by Georgian Constitution, legislation and international agreements. The universal principle of respect of personal dignity if obligatory for all employees og the Prosecutor's Office.

2. The member of the staff of Prosecutor's Office is obliged to facilitate the elimination of discrimination of any kind. And in accordance with the **Article 7 of the same Code,** *"obvious expression by the employee of the Prosecutor's Office of his/her religious views is inadmissible, if it abuses others' rights.*

The violation of the requirements of this Code is considered as action, inappropriate for the employee of the Prosecutor's Office, which will involve disciplinary responsibility specified by the Organic Law of Georgia "Concerning Prosecutor's Office".

The Public Defender states that Valeri Grigalashvili doesn't conform to his position places under suspicion one of the priority directions of activities of the Prosecutor General's Office – examination of the issues of persecution of persons on religious basis.

Lia Bestavashvili and Manana Gaprindashvili's case

On 3 July 2007 the members of the Jehovah's witnesses religious grouping Lia Bestavashvili and Manana Gaprindashvili lodged a complaint to the Public Defender. In their words, on 20 June this year, 12 am, they entered apartment # 1 of Rustavi 8th micro region for preaching their religious beliefs. They noticed a middle-age man at the entrance, who was looking at them with interest and was coming up the stairs slowly. Lia Bestavashvili and Manana Gaprindashvili talked with the woman at 8th floor, who silenced them and urged to leave saying that would be better "if that man won't hear you". This time the man, whom they saw when entering building, headed towards them aggressively, holding knife and using abusive language. Scared women left the building. Despite threats, they repeatedly entered the same building at 6pm the same day, but having noticed the same man at 3rd floor, immediately left the building again.

On 6 July 2007 the above-mentioned claim was submitted for further response to the Georgian Interior Ministry Rustavi city department; the copy was sent to the Office of the Prosecutor General's Human Rights Department. On 27 July 2007 we received a letter from Office of the Prosecutor General that on 20 July 2007 an investigation started at the investigative unit of the Georgian Interior Ministry Rustavi city department regarding the criminal case #012070593, according to Article 155, Part 1 of Criminal Code of Georgia.

Nino Tsiklauri and Rusudan Kirkitadze's case

On 2 February 2007 the members of the "Jehovah's witnesses" religious grouping Nino Tsiklauri and Rusudan Kirkitadze addressed the Public Defender with complaint. In their words, on 31 January 2007 they were having conversations with people in Temka settlement, 2nd block, flat # 33a. On 6th floor of the 3rd entrance they started to talk with a woman, who said she was busy and closed the door. According to the women, these doors re-opened soon and a man of age 55-60 came out. He was on aggressive mood. He asked women whether they were Jehovah's witnesses. When getting positive answer, he started insulting them physically and chased them down for three floors. N. Tsiklauri and R. Kirkitadze had to stop religious activities and leave the territory. According to the victims, above-mentioned person had verbally and physically insulted Jehovah's witnesses as well before, and among them, Tina Berelashvili.

On 13 April 2007 Nino Tsiklauri informed the Public Defender representatives. In her words, investigation is carried out by Gldani-Nadzaladevi police department's 7th unit, investigator V. Berelashvili is in charge.

On 18 April 2007 the Public Defender addressed Tbilisi Gldani-Nadzaladevi regional police department's 7th unit chief David Daraselia and, in accordance with Articles 18 and 23 of the Organic Law of Georgia "On Public Defender" requested information about the status of the investigation of above-mentioned criminal case.

On 4 May 2007 we received a letter from A. Giorgadze, Head of the Human Rights Department of the Office of the Prosecutor General of Georgia, informing that on 1 March 2007, on the basis of N. Tsiklauri and R. Kirkitadze's claim, Gldani-Nadzaladevi regional police department's 7th unit opened an investigation regarding the criminal case #01071090, according to Article 142, part 1 of Criminal Code. N. Tsiklauri and R. Kirkitadze were identified as victims and were questioned on 4 March 2007. They confirmed the facts indicated in the claim; namely, that on 31 January 2007 in Temka settlement an unknown man abused them physically on the grounds of religious beliefs. An investigation established that this person was Marat Abuladze.

On 26 March 2007 M. Abuladze was identified as a suspect, accused of committing criminal offence, specified by Article 142, part 1 of Criminal Code of Georgia. Above-mentioned criminal offence was classified in accordance with Article 155, part 1 of Criminal Coe of Georgia the same day, upon circumstances, established by investigation on 26 March 2007. Investigation is in-progress for the moment.

Criminal offences occurred in Gori

On 14 June 2007, at 9.30a.m. unknown persons threw stones at the building located at the address: 2 Javakhishvili St. in Gori, which is used for religious meetings of Jehovah's witnesses. Alexander Maisuradze is the owner of the building. The attack re-occurred at 9.30

pm. Patrol police came to the scene but was limited only by speaking with attackers. On 15 June 2007 at 10p.m. a 16-year young man, someone Nodar threw stones at the building. On 16 June 2007, at 10p.m., Vano Dvalishvili did the same. Four attacks, conducted within a short period of time, bore a similar character that creates grounds to suggest that all four incidents served a single purpose and given situation may be considered according to the combination of Articles 156 and 187 of the Criminal Code ("persecution").

Regarding this fact, on 20 June 2007 Alexander Maisuradze's lawyer Manuchar Tsimintia addressed the Public Defender. He specified that not a single perpetrator was called for responsibility. On 28 June 2007 Public Defender sent a letter to Gori regional Prosecutor's Office, where it's pointed out that the case should be studied according to the combination of Articles 156 and Article 187 of Criminal Code ("persecution").

On 18 July 2007 the Prosecutor General of the Georgia addressed the Public Defender by the letter #2021/05-02/0931-07/1, informing that on 5 July 2007 Georgian Interior Ministry Gori regional department opened an investigation regarding the criminal case #11070582, in accordance with Article 187, part 1 of Criminal Code of Georgia. On 14 July this year the criminal offence was also classified according to the Article 156 of Criminal Code of Georgia.

Public Defender of Georgia
Council of National Minorities

POLICY RECOMMENDATIONS

on the Implementation of the Council of Europe "Framework Convention for the Protection of National Minorities" in Georgia

(As of the year 2006)

*The Recommendations were developed by the Council of National Minorities under the auspices of the Public Defender of Georgia, with expert facilitation by the European Centre for Minority Issues (**ECMI**).*

Preamble

Georgia has ages-old traditions of coexistence and respect between its ethnic communities. New historical circumstances, however, pose new challenges before our society. The transitional phase in the development of the Georgian nation and the intensification of social processes has brought to the forefront the need for balanced minority policies. Until recently national minority issues have been highly sensitive and politically risky topics in the Georgian political context.

Positive tendencies began to take shape after the Rose Revolution. The parliament ratified the Framework Convention for the Protection of National Minorities (FCNM). The country also joined the European Convention for Transfrontier Cooperation, the European Charter for Local Self-Governance and other international conventions and treaties.

The country actively cooperates with international organizations and welcomes monitoring groups which is proved by the frequency of meetings and consultations between various local minority NGOs and international monitoring groups.

The proposed recommendations have been elaborated by the working groups of the Council of National Minorities (CNM) under the auspices of the Public Defender of Georgia (PD) to support the process of the FCNM implementation in Georgia. Active participants of the process were representatives of Georgia's minority communities, the Office of the Public Defender of Georgia and the European Centre for Minority Issues (**ECMI).** A significant contribution to the drafting and refining process of the recommendations was also made by representatives of various government structures and civil society organizations.

The proposed recommendations represent one of the manifestations of the civil society participation in shaping policies for the minority protection and civil integration which is expected to entrench the internationally accepted governance standards in Georgia. The document will also help ensure transparency and publicity of the FCNM implementation monitoring process as well as the fulfillment of all other obligations under this convention.

FCNM Article 4

1 *The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.*

2 The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.

3 The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.

Problem 4.1

1. The lack of clear, efficient, consistent, supported with adequate resources, unified policies and legal framework in minority issues.

Background:

Despite the obligations assumed before the Council of Europe (CoE) there is no consistent legal framework to promote the protection of language and culture of minorities, as well as the process of their social and civil integration. There are several versions of the "Concept State Policy for the Protection and Integration of the National Minorities" and "Law on National Minorities" none of which, however, has been approved so far.

Recommendations:

4.1.1. The Parliament of Georgia is recommended to adopt the "Concept State Policy for the Protection and Integration of the National Minorities" and to the extent possible accelerate the adoption of the "Law on National Minorities" or effect amendments to the existing legal framework to ensure the enhancement of the minority protection and integration processes.

4.1.2. The Parliament of Georgia is recommended to ensure that national minority representatives both form regional and central levels (including CNM members) as well as local and international experts take active part in the drafting process as well as parliamentary sittings concerning both documents.

4.1.3. The Georgian government in recommended to develop long and short term civic integration action plan to include priority programming for civic integration, respective integration mechanisms and resources.

4.1.4. The Georgian government is recommended to establish a state foundation for civil integration to fund grant programs promoting civil integration and protection of national minorities. It is further recommended to allocate adequate funds from the state budget to ensure effective functioning of the mentioned foundation.

Problem 4.2

Frequent cases of inadequate translation of legal documents during investigative and court proceedings involving minority representatives.

Background:

Although the Georgian legislation formally guarantees equality of national minorities before the law frequent violations of their rights are still observed in practice. Poor command of the Georgian language by minorities on one hand and lack of qualified translation during court or investigative procedures on the other cause frequent violations of judicial procedures. Starting from the moment of detention through the announcement of a court verdict there is high probability that minority representatives fail to have clear understanding of the case details. The shortage of interpreters or their low qualification creates conditions where they can be manipulated in the interests of either side. Such cases cause frequent violations of minorities' civil rights as well as they promote distrust towards the Georgian law-enforcement and judiciary system, which, in turn, has a negative impact on the integration process.

Recommendations:

4.2.1. The Georgian government is recommended to develop a separate training program for court and investigation translators/interpreters. Translators must be specialized in minority languages.

4.2.2. It is further recommended to introduce mandatory certification/licensing tests of court and investigation translators;

FCNM Article 5

1 *The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.*

2 *Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.*

Problem 5.1

Inadequate government support to the preservation, maintenance and development of the languages, culture and identity of national minorities.

Background:

There are no government programs for the preservation and development of languages, traditions and cultural heritage of national minorities. Ongoing disputes between different ethnic and religious groups around their share in the "historical heritage" of Georgia and ethnic/religious affiliation of historical buildings/monuments sometimes acquire aggravated political tensions along with significant conflict potential. Unfortunately, it is often neglected that the disputed objects represent a part of the entire county's cultural wealth rather than that of its separate ethnic groups.

Recommendations:

5.1.1. The Ministry of Culture, Monuments Protection and Sports is recommended to design and implement a respective state program for the preservation and development of the traditions and cultural heritage of the national minorities.

5.1.2. The indicated program should be developed in close cooperation between the state agencies, experts working in the field of national minority issues and representatives of the CNM.

5.1.3. The Georgian government is recommended to establish a state foundation for civil integration to fund grant programs promoting civil integration and protection of national minorities. It is further recommended to allocate adequate funds from the state budget to ensure effective functioning of the mentioned foundation.

5.1.4. The Ministry of Culture, Monuments Protection and Sports is recommended to develop and maintain equal/unified approach to the protection of all cultural monuments within the territory of Georgia irrespective of their religious or ethnic affiliation.

FCNM Article 6

1 The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.

2 The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.

Problem 6.1

1. The lack of unified, consistent and effective state policies for ensuring adequate access to information for the representatives of national minorities.
2. Deficiency of information provided by Georgian media in the languages understandable for national minorities in the regions of their compact settlements.

Background:

1. National minorities, especially in the regions of their compact settlements, have inadequate access to information in understandable languages. In the regions the distribution of print media in minority languages is either delayed or non-existent.
2. The Georgian Public Broadcasting (GPB) has neither adequate amount of human resources nor technical equipment to ensure sufficient and effective provision of information to the audiences in minority regions.
3. The duration (time limit) allocated by the GPB for programs in minority languages is insufficient for the provision of adequate access to information for national minorities.
4. Analytical, educational and ethnological programs/shows produced by the GPB and other national level electronic media companies are not translated into the languages understandable for minorities.

Recommendations:

6.1.1. The State Council for Integration and Tolerance is recommended to devise main trends and strategy of the state policy for providing adequate access to information for national minorities and include them the State concept for the protection and integration of National Minorities. It is further recommended that the council cooperates with minority representatives in the process.

6.1.2. The Government of Georgia is recommended to devise and launch a state grant program to support coverage of important minority related issues by Georgian media.

6.1.3. The Georgian government is recommended to allocate sufficient resources for the provision of access for minority regions to the radio and TV programs, broadcasted by Georgian media companies, properly translated/interpreted into languages understandable for minorities.

6.1.4. The Government of Georgia is recommended to allocate adequate state budgetary resources for the improvement of the broadcasting quality and coverage area of the Georgian national level electronic media in the minority populated regions.

6.1.5. The GPB is recommended to ensure that expectations, opinions and recommendations of regional minority communities are taken into account while developing company's editorial policies, programmatic priorities and preparing TV or radio programs about ethnic/religious minorities. To achieve these objectives GPB it is further recommended to accelerate the formation of GPB regional councils.

Problem 6.2

Frequent cases of displayed xenophobic attitudes and ethnic intolerance in some of the Georgian media outlets.

Background:

While the traditions of tolerance in Georgia have been based on the simple principles of coexistence of its ethnic communities, in the current phase the need for new development trends promoting the formation of cultural diversity institutions is becoming more evident. Clearly, this is a painful and controversial process, which is proven by the facts of explicit intolerance towards non-traditional religions and cultures demonstrated in the Georgian media and even political circles. Such facts must become the issues of concern not only for minorities but the title ethnic group in the first place. Although both civil and criminal laws in Georgia envisage punishment for racial discrimination and instigation of ethnic enmity the mechanisms for implementation are still undeveloped.

Recommendations:

6.2.1. The Council for Media Ethics, Office of the Public Defender, Parliamentary Committee for Human Rights and Civil Integration, and the Office of the State Minister on Civil Integration are recommended to establish closer monitoring of the print and electronic media publications in order to disclose abusive language usage, as well as insulting and xenophobic statements/expressions used in relation to national minorities. It is further recommended to the above institutions to publicly provide comments on the disclosed cases.

6.2.2. Editorial offices of print and electronic media outlets are recommended to establish internal organizational monitoring in order to disclose and prevent the facts of explicit ethnic intolerance, abusive language usage, as well as the facts of using insulting and xenophobic statements/expressions in relation to national minorities.

6.2.3. The Ministry of Education and Science (MoES) is recommended to mobilize adequate resources and design a course /manual/ on "Cultural Diversity and Coverage of Minority Issues" for the journalism students and active journalists which would provide information on international documents, existing practices and Georgian legislation in this field.

6.2.4. Respective higher education institutions are recommended to introduce (upon its preparation) the above mentioned course into the regular academic curriculum.

6.2.5. The Georgian government is recommended to allocate adequate resources for training events and seminars for journalists on minority issues reporting and cultural diversity.

6.2.6. The Georgian government, CNM and the office of the Public Defender of Georgia are recommended to form an interagency workgroup that would seek possible alternative solutions to the above-mentioned issue.

FCNM Article 9

1. *The Parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers. The Parties shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media.*

2. *Paragraph 1 shall not prevent Parties from requiring the licensing, without discrimination and based on objective criteria, of sound radio and television broadcasting, or cinema enterprises.*

3. *The Parties shall not hinder the creation and the use of printed media by persons belonging to national minorities. In the legal framework of sound radio and television broadcasting, they shall ensure, as far as possible, and taking into account the provisions of paragraph 1, that persons belonging to national minorities are granted the possibility of creating and using their own media.*

4. *In the framework of their legal systems, the Parties shall adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities and in order to promote tolerance and permit cultural pluralism.*

Problem 9.1

1. Observed insufficiency of information in Georgian media, familiarizing country's population with culture and history of national minorities residing in Georgia, their positive input into the Georgian history, their achievements and problems.
2. Insufficiency of projects in the Georgian electronic media promoting national minority issues and inter-ethnic dialogue.

Background:

The deficiency of the mentioned information promotes disintegration between various ethnic groups of Georgian citizens, as well as it creates favourable conditions for increasing ethnic intolerance and enmity, has a negative impact on civil, social and cultural integration of the Georgian citizens.

Recommendations:

9.1.1 The Georgian Government is recommended to mobilize adequate resources for the implementation of state grant programs for the promotion of the history, culture and problems of national minorities in print and electronic media, as well as their positive input into the Georgian history. It is further recommended that such programs promote dialogue on minority related issues, enhance civil, social and cultural integration.

9.1.2 The GPB is recommended to support shows and programs enhancing civil, social and cultural integration and ensure regular production and broadcasting of TV and radio programs raising awareness and increasing familiarity of Georgian citizens with the history and culture of the ethnic minorities residing in Georgia, as well as their input and contribution to the development of the Georgian state.

FCNM Article 10

1 *The Parties undertake to recognise that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing.*

2 *In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities.*

3 *The Parties undertake to guarantee the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter.*

Problem 10.1

Minority languages are widely used for communication between administrative authorities and minority populations in compact minority settlements. Although the existing practice corresponds to the real need there are no regulations to legalize the existing practices and ensure their consistency with the national legislation and FCNM provisions.

Background:

1. In the areas of dispersive minority settlements public officials sometimes require that persons belonging to national minorities submit written applications and communicate with public officials in the Georgian language, which is rather problematic for many citizens of non-Georgian ethnic origin. Such cases either delay or limit the acces of national minority representatives to needed public cervices.

2. In the compact minority settlements, where public officials come from the same ethnic communities, the language used both in verbal communication and written documentation is either the language of these minorities or Russian. The current Georgian legislation does not envisage such rights for the minorities leaving the existing practices in contradiction with the law.

Recommendations:

10.1.1. The Parliament of Georgia is recommended to consider adoption of respective amendments to the current national legislation ensuring the possibility for persons belonging to national minorities to use (along with Georgian language) languages understandable for those persons in their relations with the administrative authorities.

10.1.2. Keeping in mind anticipated delays in the adoption process due to the complexity and sensitivity of the issue the government of Georgia is recommended to implement the following interim measures prior to the parliamentary decision:

a) in cooperation with the Ministry of Education and Science of Georgia develop education programs and open training courses for translators specializing in

public administration terminology in both state and minority languages. Such courses could be opened either at the Z. Zhvania School of Public Administration in Kutaisi or any other relevant higher education institution.

b) Conduct certification of the mentioned translators on a competitive basis.

c) Fund positions of certified translators at the public administration and state agencies as needed in the minority regions to ensure qualified translation of the documentation and correspondence into the state language.

FCNM Article 11

3 *In areas traditionally inhabited by substantial numbers of persons belonging to a national minority, the Parties shall endeavour, in the framework of their legal system, including, where appropriate, agreements with other States, and taking into account their specific conditions, to display traditional local names, street names and other topographical indications intended for the public also in the minority language when there is a sufficient demand for such indications.*

Lack of legislation securing the right of the compactly settled national minorities to display traditional local names, street names and other topographical indications in their own languages.

Background:

Despite existing demand within the regions of compact minority settlements there are no legal norms to regulate display/usage of geographic place-names and toponymic indicators in native languages of minorities. In some districts of Georgia minority language, along with the state language, is used in geographic place-name and toponymic indicators, however in the absence of respective legal framework this can be viewed as violation of current legislation.

Recommendations:

11.1.1 The Parliament of Georgia is recommended to draft and adopt legislation clearly specifying rules for the usage of toponymy in minority languages along with the state language in minority regions.

FCNM Article 12

1 The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.

2 In this context the Parties shall inter alia provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities.

3 The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.

Problem 12.1

Despite the ongoing state programs for teaching the state language to national minorities, significant part of national minorities have inadequate or no Georgian language skills, especially in the regions of their compact settlements.

Background:

Lack of knowledge of the state language impedes the social and cultural integration of minority representatives, as well as their effective participation in county's social, political and economic life.

Recommendations:

12.1.1. The Georgian parliament, MoES, regional and local authorities, Public defender of Georgia are recommended to establish an inter-ministerial workgroup affiliated with the CNM which would evaluate the effectiveness of the existing state programme for teaching the Georgian language to national minorities and elaborate recommendation on its improvement as needed;

12.1.2. The Georgian government is recommended to effect amendments to the ongoing programs based on the above mentioned recommendations;

12.1.3. The Georgian government is recommended to increase support to the state language teaching programmes in the regions compactly populated by national minorities (where there is sufficient demand and necessity)

Problem 12.2

Insufficient knowledge of the Georgian language among national minorities living in Georgia limits their access to higher education.

Background:

The quality of Georgian language instruction in public schools of minority regions fails to ensure adequate level in Georgian language skills among minority school-leavers. As a result majority of the ethnically non-Georgian school-leavers from the minority regions fail to enter Georgian universities. In many cases they seek higher education alternatives in other

countries, which, in turn promotes and increases out-migration rates among national minorities.

Recommendations:

12.2.1 The Georgian government is recommended to additionally fund pre-entrance training courses in Georgian language for school-leavers from public schools with non-Georgian instruction language.

Problem 12.3

Poor quality of Georgian language instruction in public schools of minority populated regions and deficiency of qualified Georgian language teachers in these schools.

Background:

The recently approved "Program for Teaching the State Language" fails to ensure adequate level of Georgian language skills among ethnically non-Georgian students in the public secondary schools of minority populated remote Georgian regions, which leads to their socio-political and cultural isolation.

Recommendations:

12.3.1. The Ministry of Education and Science of Georgia is recommended to create additional incentives/resources (stipends, scholarships etc.) for the students wishing to work in educational sector in minority regions after graduation.

12.3.2. Local self-governance units in minority regions of Georgia are recommended to introduce the system of funding the education of Georgian language instructors and other needed specialists for public schools in the respective administrative units.

Problem 12.4

The deficiency of inter-cultural exchange between ethnic groups of Georgia. Deficiency of programs/events/projects familiarizing Georgian population with culture, language, history and traditions of the ethnics groups residing in Georgia.

Background:

The said deficit creates favourable conditions for ethnic alienation and xenophobic tendencies.

Recommendations:

12.4.1. The government of Georgia is recommended to develop and implement a governmental grant program for the regular support to cultural, educational and media projects, raising awareness and increasing familiarity of Georgian citizens with history and culture of the ethnic minorities residing in Georgia, as well as their input and contribution to the development of the Georgian society.

12.4.2. The GPB is recommended to ensure preparation and airing of the programs promoting the history and culture of the ethnic minorities residing in Georgia, as well as their input and contribution to the development of the Georgian state.

Problem 12.5

Georgian educational institutions provide inadequate access to the information on culture, traditions, history, religion and other important elements of different ethnic groups residing in Georgia.

Background:

The above problem creates favourable conditions for forming negative, biased and stereotyped relationships between various ethnic groups, which, in turn, impedes civic integration and promotes ethnic intolerance in a significant part of the Georgian population.

Recommendations:

12.5.1. The Georgian government and MoES are recommended to ensure that the textbooks utilized in Georgian public schools for teaching history, geography and civic education courses include information about culture, traditions, history, religion of various ethnic groups residing in Georgia as well as information about their input and contribution to the development of the Georgian state. The textbooks should promote the cultural diversity, tolerance and inter-cultural dialogue. The engagement of national minorities in the process of preparation of such textbooks is highly recommended.

FCNM Article 14

1 The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language.

2 In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.

3 Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching in this language.

Problem 14.1

Certain part of ethnic minorities in Georgia lacks the opportunity to study their languages in public schools.

Background:

Certain part of Georgian national minorities has not been offered programs and opportunities to study their native languages within public school curriculums. Especially vulnerable in this respect are small ethnic groups of national minorities such as Curds, Assyrians, Udins, Lezgins, Greeks etc. The lack of opportunities for smaller minority groups to study their languages leads to gradual loss of these languages and cultures and irreparable damage to the ethnic and cultural diversity of the country.

Recommendations:

14.1.1. The Georgian parliament is recommended to effect amendments to the "Law of Georgia on General Education" and Curricular Plan approved by the MoES to ensure

the allocation of sufficient state funding for the instruction of minority languages in those Georgian public schools, where there is sufficient demand for such classes.

FCNM Article 15

The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.

Problem 15.1

Inadequate/insufficient level of cultural, social and economic participation of the national minorities as well as their inadequate involvement in the decision-making process.

Background:

Inadequate level of participation of national minority representatives during both preparatory and decision-making processes in the Georgian legislative (parliamentary committees) and executive structures. In frequent cases minority structures are neither properly informed nor consulted during preparatory or decision-making stages.

Recommendations:

15.2.1. The Parliament of Georgia is recommended to provide minority representatives, their organizations and communities with access to drafts of legislative documents prepared for parliamentary adoption.

15.2.2. The Georgian Parliament is recommended to invite national minority representatives (including regional representatives) to attend parliamentary committee sessions and discussions on legislative documents and other issues of importance

15.2.3. The Georgian government, ministries and state departments are recommended to ensure the presence of national minority representatives (including regional representatives) at open meetings/sessions of the ministries and other state agencies;

15.2.4. Hold consultations with national minority representatives (including regional representatives) on legislative or administrative initiatives directly connected to minority issues;

15.2.5. Ensure participation of national minority representatives in devising, implementation and monitoring processes of national or regional level development strategies or plans that may have impact on minorities.

Problem 15.3

Inadequate awareness among national minorities of their civil and other rights.

Background:

National minority representatives are inadequately provided with information in accessible languages on the Georgian legislation and international legal instruments on minorities. There are no state programmes to effectively solve this issue.

Recommendations:

15.3.1. The Cabinet of Ministers of Georgia is recommended to provide sufficient funding for translation and dissemination of relevant Georgian legislation in the languages understandable for national minorities.

15.3.2. Until such needs persist the government of Georgia is recommended to facilitate the opening of legal consulting centres in the regions of compact minority settlements. It is recommendable that such centers function at municipal administration and mayoral offices.

Problem 15.4

Significant level of minority participation in the public administration sector is mainly observed within the cities, districts and regions of their compact settlements. Their representation is insignificant at the regional and central levels of state structures. Thre are only exceptional cases of their employment as high-ranking state officials.

Background:

a) The mentioned problem limits participation of the national minorities in the decision making on the issues related to ethnic minority issues and impedes the accomodation of their constructive opinions and recommendations.

b) The issue of the adequate employment of national minorities in state institutions can only be resolved on one hand with sufficient political will on the side of the Georgian government, and on the other hand with availability of professionals with adequate qualification among national minorities.

Recommendations:

15.4.1. The Parliament of Georgia is recommended to envisage the issue of minority participation in public administration sector in the "Concept State Policy for the Protection and Integration of National Minorities".

15.4.2. The Georgian government is recommended to allocate budgetary funds for the expansion of the programming and facilities of the Z. Zhvania Public Administration School in Kutaisi (or establish alternative training facility/program) to improve qualifications/re-train minority representatives to ensure their capacitation for the employment in the state institutions including court and law enforcement institutions, ministries and other state agencies.

Problem 15.5

Inadequate participation of recipient and resettled communities in the planning and implementation of the state programs for the resettlement of displaced persons and ecological migrants.

Background:

Property disputes in the Georgian regions, populated in different years by ecological migrants from the mountaneous regions, in numerous cases acquired the character of ethnic

confrontation. The resettlement programs were implemented without consultations with either host communities or resettled groups, and in frequent cases were perceived by minority communities as attempts to forcibly alter the demographic balance between ethnic groups in the regions of compact minority settlements.

Recommendations:

15.5.1. The Georgian government and Ministry of Refugees and Accomodation of Georgia are recommended to ensure the participation of host communities' and resettled groups in the development and implementation of the state resettlement programs implemented in minority regions.

15.5.2. The Ministry of Refugees and Accomodation of Georgia is recommended to ensure preliminary public consultations with host communities prior to the implementation of any future resettlement programs. Host communities must be informed on the reasons, goals, implementation schedules of the programs, as well as they must be familiarized with cultural background and traditions of the resettled groups. Similar briefings must be held among resettling populations.

Annex 14. Social and Economic Rights

Tsitsino Bochorishvili's case

On 23 April of the current year, citizen Tsitsino Bochorishvili appealed to the Public Defender. She is the owner of a land plot at Rike. In her application she complained at the possible demolition of a building privately owned by her.

According to materials provided by the citizen, we found out that Tsitsino Bochorishviil owns a land plot with installments located at Rike #2 (737 sq. meters). This ownership is attested by the civil registry's certificate. The case also includes the act of exploitation #123 of the finished construction object, which attests the legality of the construction.
The Journalists Association was stationed in the building owned by Tsitsino Bochorishvili. According to the application, representatives of Tbilisi City Hall Municipal Surveillance Service were paying daily visits to T. Bochorishvili with the request to vacate the building, since the demolition works should have started soon.

Tsitino Bochorishvili informed us that the dismantling process started on April 24 and part of the building was destroyed together with other objects situated in the building.

The owner does not have the legal basis to sue in the court in case of the verbal address.

We would like to remind you that the right to property is one of the strictly protected and guaranteed rights. Pursuant to article 21 of the Constitution of Georgia:

"The right to own and inherit property is recognized and guaranteed. The abrogation of the universal right to property, its acquisition, alienation and inheritance is inadmissible."

Restrictions of the rights mentioned in part 1 of this Article are possible only due to social necessity in cases determined by law and shall be carried out in accordance with the established rule.

Confiscation of property due to social necessity is permissible in circumstances directly determined by law, by court ruling or in case of urgent necessity stipulated by organic law but only upon paying appropriate compensation."

Even in cases when the appropriate agency claims that the law was violated during the construction works, the agency must act in accordance to the rules established by law, since the dismantling procedures are strictly defined by the Georgian Legislation. Particularly, pursuant to Article 4^1 of the Law of Georgia, the State Surveillance Service on Architecture and Construction Activities has to send a written notification to the infringer and sets the reasonable dates for implementing the requirements of the written notification. After the expiration of the deadline the State Surveillance Service on Architecture and Construction Activities checks infringer and draws up a statement of inspection. This statement consists of the information on the actual state of the construction object in accordance with the written

notification previously sent to the infringer. If the statement reveals a violation, the State Surveillance Service on Architecture and Construction Activities issues a resolution on:

1. Imposing a penalty on infringer;
2. Penalizing the infringer and suspending the illegal construction works and illegal dismantling;
3. Penalizing the infringer and fully or partially dismantling illegally constructed buildings, fully or partially suspending and dismantling buildings under construction.

If the violation has been corrected and there is no basis for adopting resolution according to the paragraph 4 of same Article, the State Surveillance Service on Architectural and Construction Activities decides upon the closing the case on the offence regarding architecture and construction activities.

Before issuing a resolution, the State Surveillance Service on Architecture and Construction Activities must inform the infringer on the place, date and time, and the name of the authorized person examining the case on architecture and construction offence.

Resolution of the Surveillance Service is an administrative-legal act, which should be well-grounded and together with all necessary requisites established for administrative-legal acts, include the information about the agency, where it is possible to appeal the administrative-legal act, address of said agency and deadlines for appeal.

The resolution of the State Surveillance Service on Architecture and Construction Activities must be conveyed to the party mentioned in the resolution within 24 hours from the moment of its issuance.

If it is impossible to inform the party directly by handing over the letter, testing certificate, notification or resolution, it will be acceptable to inform the party indirectly about the letter, testing certificate, notification or resolution through placing the latter at the high visibility place of the facility indicated in the Paper. Such place may be the following:

1. Billboard;
2. Special temporary construction building on the construction territory;
3. Security fence around construction works.

The resolution (administrative-legal act) adopted by the State Surveillance Service on Architecture and Construction Activities may be appealed within 15 days from the date of informing. The execution of the resolution adopted by the State Surveillance Service on Architecture and Construction Activities is not suspended due to the appeal only with regards to suspending construction or dismantling.

The resolution adopted by the State Surveillance Service on Architecture and Construction Activities is an administrative-legislative act hence it falls under the rules established by Article 184 of the General Administrative Code of Georgia. According to this Article:

1. Unless otherwise prescribed by law or relevant normative act, the act that is subject to complaint shall be deemed suspended upon the registration of an administrative complaint. The administrative agency issues an individual administrative act in this regard.

2. An administrative-legal act may not be suspended if:
(a) The suspension will result in an increase of expenses of the state or local self-government or local government agencies;
(b) It is the administrative-legal act of police that was adopted to maintain public order;
(c) It was issued during the state of emergency or martial law on the basis of applicable law, or
(d) The postponement of the enforcement will result in substantial material damages or will substantially undermine public order or security."

None of the above-mentioned stipulations apply to the given case. Neither did the surveillance service identify any violations during construction works. Thus, dismantling of Tsitsino Bochorishvili's property by the State Surveillance Service on Architecture and Construction Activities means destruction of other's private property, which is criminal offence and falls under the Criminal Code.

According to the Civil Code of Georgia the owner has a full right to own, use and manage his/her private property and not to allow encroaching upon the latter. Hence the Public Defender addressed a recommendation to the Tbilisi City Hall and underlined the fact that Tsitsino Bochorishvili's property was illegally dismantled and this action violated her legal rights. The Public Defender requested for a due response and also, to start negotiations with Tsitsino Bochorishvili regarding offering appropriate compensation or a property of the same value.

In response we were informed that the recommendation would be taken into account. A negotiation process is ongoing at present with the citizen regarding the compensation payment. However there are no tangible results yet.

Dismantling of Trading Facility near Metro Station Delisi is Unlawful

On January 29 this year owners of one more trading center located near metro station Delisi applied to the Public Defender with application concerning its expected dismantling.

The Public Defender examined the materials presented by the applicants, according to which he understood that territory with building, adjacent to metro station "Victor Gotsiridze" is in joint ownership of several natural persons and legal entity "Maritimes" Ltd, which is proved by the extract from Public Register. The owners obtained the permission on construction in 2002 from Tbilisi "Arcmsheninspectsia" and Architecture Service, and the design was agreed with Chief Architect of Tbilisi. The document of setting the facility into operation also exists.

According to the applicants' explanation, the employees of Supervision City Service orally warned the owners about the expected dismantling. They also orally demanded to clear out the trading facilities. Thus, the owners don't have any legal basis to apply to the court for protection of their rights.

The right of ownership is one of the more firmly protected and guaranteed rights.

- In accordance with the article 21 of the Constitution of Georgia: "*ownership and the right of succession are recognized and secured. The abolition of the universal right of ownership, its acquisition, alienation or receipt hereditably is inadmissible".*
- *Seizure of ownership due to public necessity is admissible only in the cases directly established by the law by the court decision or in the case of urgent necessity established by organic law and only in return for the relevant compensation".*

Even in the case, where the relevant service establishes that the requirements of the law were infringed, the service must follow the established rules, as according to Georgian legislation the rule of dismantling is not accurately defined.

In accordance with the article 7 of the Law of Georgia "Concerning the Performance of State Supervision over Architectural-building Activities":
* Concerning the total or partial dismantling of buildings-constructions, built with the infringement of legislation, the state supervision authorities will take the decision,
* which must be well-grounded and together with the properties established for administrative-legal acts, contain the indication to the authority, where this administrative-legal act can be appealed, address of the mentioned authority and time limits for appeal, as well as the norm of the normative act, which was infringed by the building.
* The decision must be made familiar to the party indicated in the decision within the 24 hours from the moment of issue.
* The party has the right to appeal the decision of the State Supervising Authorities within 15 days from the date of familiarization according to the rule established by Georgian legislation.
* During the appeal procedure the execution of decision will be terminated.

Thus, if a party, in accordance with the established Law, appeals the administrative-normative act of the relevant authority, the final decision concerning dismantling of the building must be made by the court.

As we have already mentioned, Supervision City Service warned the owners orally, in the result of which they were deprived of the right of applying to the court for protection of their rights.

The Civil Code of Georgia establishes that the owner has the right to freely own, use and dispose a property existing in the ownership, without letting encroachment upon this property by other persons.

On the basis of the above stated, the Public Defender considers that dismantling of the facility adjacent to the metro station "Victor Gotsiridze" is done with the violation of the requirements of the Law, thus infringing the owners' lawful interests. On January 29 Sozar Subari applied to Lord Mayor of Tbilisi Gigi Ugulava with the recommendation of examination and providing the relevant response on the issue. Also, he requested to discuss the issue of disciplinary responsibility of the persons acting with violation of the requirements of the law.

TV and Radio Company "Trialety" `s case

Public Defender of Georgia examined the issue of dismantling of metal fence installed on the territory adjacent to the territory of TV and Radio Company "Trialety". Sozar Subari considers, that unlawful destruction of property, legally owned by B. Nanetashvili has occurred, which is inadmissible and the persons who made it must be punished.

The process of dismantling is captured on video, where it can be clearly seen that the employee of the Council of Gori Municipality was leading this process.

On the basis of sub-points "b" and "d" of the Article 21 of the Organic Law of Georgia "Concerning Public Defender", Public Defender applied with recommendation to the Council of Gori Municipality to consider the issue of responsibility of the persons, who committed the mentioned action and ensure the compensation of damage, caused to J. Nanetashvili by unlawful destruction; he also sent the materials of the case of the Prosecutor's Office for the relevant response.

* * *

On May 21, 2007, General Director of TV and Radio Company "Trialety" Jondi Nanetashvili applied to Public Defender of Georgia with application.

In the result of examination of the application and attached materials it became clear that TV and Radio Company "Trialety" owns the land plot belonging to JSC "Kartuli Filmi" since 2005 on the basis of the Rent Agreement. Period of validity of the Agreement – 10 years, till May 1, 2015. It also became obvious that on May 18, 2007 J. Nanetashvili had received a notification sent on the basis of the Order 475 dated May 17, 2007 of Gori Municipality, according to which the dismantling of the metal fence installed on the territory adjacent to the land plot owned by TV and Radio Company "Trialety" was demanded. The notification didn't state the basis of demand of the mentioned dismantling.

It should be noted that according to sub-point "q" of the Article 2 of the Resolution 140 dated August 11, 2005, of the Government of Georgia "Concerning the Rule of Issue of Building License and Licensing Conditions", the following are considered as "buildings":

*** Linear, two-dimensional or spatial over ground or underground construction system, built for the purposes of strengthening, supporting, protection, delimitation; industrial, goods and passenger transportation, as well as public gathering purposes, destined for short-term presence of people in/on them, as well as conditioned by the maintenance of the building or other special purposes".**

And sub-point "k" of p.1 of the Article 3 of the above mentioned Law defines constructions, which don't require licensing or for which licenses are being issued by simplified ruse or in the form of exceptions; the following are considered as those:

*** Construction of fences of maximum 2,2 m height, enclosing land plots, delimiting neighbors' borders, and along streets, including fences from natural and artificial stones;**

construction of open terraces, supporting, protecting walls and walls for the purpose of land improvement".

As the height of this fence exceeded 2,2 m, established by the Law, project documentation of the metal fence existing on the territory adjacent to TV and Radio Company "Trialety" was presented in the attached documentation; the documents were approved by the Chief Architect of Gori G. Sosanidze and agreed with the Gamgebeli of Gori Region Sh. Koshadze. The mentioned prove the lawfulness of construction of the fence.

No irregularities occurred in the process of construction from the side of the party, as they presented project documentation, proving that the construction of the fence was lawful and it wasn't subject to dismantling.

Gela Bezhashvili's case

On 2 May 2007 citizen Gela Bezhashvili appealed to the Public Defender regarding the agreement forcedly concluded with the State. The citizen declared that he was forced to transfer his property to the latter. Hadn't he been forced to, he wouldn't hand over his property.

According to the explanations of the appellant and based on the case materials, until 14 December 2006 Gela Bezhashvili had owned a land plot in Sighnaghi, 1[a] Erekle II street (720 sq. meters total) where a Sighnaghi market was located. The records from the civil registry confirm the ownership. On 14 December 2006 a deed of gift was signed between Gela Bezhashvili ("Acho" ltd.) and the state (Sighnaghi State Property Registration and Privatization Department). According to this agreement Gela Bezhashvili handed over his property - the market, located in Sighnaghi 1a Erekle II Street to the State freely, without any compensation.

It should be noted that during this exact time TV Companies were covering facts of infringement upon the right to property in Sighnaghi. Several persons were forced to sign Deeds of Gift. On this occasion the representative of the Public Defender visited Sighnaghi on 27 December 2006 and interviewed Tinatin Pkhovelishvili, the head of the non-governmental organization "Lawyers Development Center" and one of the owners Gela Bezhashvili. The latter abstained from giving details on that interview. However, he mentioned that he did not convey the market to the State at his will. T. Pkhovelishvili explained that several owners, Gela Bezhashvili among them, were taken to the Sighnaghi Tax Inspection Agency. Representatives of financial police and the Office of the Prosecutor General were waiting for them and by threatening forced these people to sigh the papers letting the property. According to T. Pkhovelishvili, owners themselves informed her about the incident. On 27 December 2006 the Act was drawn up and signed by the head of NGO "Lawyers Development Center" Tinatin Pkhovelishvili and the representative of the Public Defender Salome Vardiashvili. In the act it was foreseen that the information shouldn't have been made public unless agreed thereof with the source of information.

According to the petition of 2 May 2007 as well as in the explanatory note of G. Bezhashvili, based on which the act was drawn up, on 13 December 2006 approximately at 9 p.m., Sighnaghi Tax Inspection representatives came to his place with a car and took him to their office. Number of people unknown to Bezhashvili (about 20-30 persons) was waiting for him. He assumed they were from the financial police and the Office of the Prosecutor General. Two strangers approached Gela Bezhashvili and took him into a separate room. They started to threaten him by terrorizing his family unless he granted Sighnaghi market to the State. Particularly they threatened him by putting stealthily drugs to his son and arrest him for "carrying drugs" later. Gela Bezhashvili said he was scared and decided to sign the deed of gift.

Taking into consideration above-mentioned facts and pursuant to the Articles 54, 85, 87 of the Civil Code of Georgia, I believe the deed of gift of 14 December 2006 concluded between Gela Bezhashvili ("Acho" ltd.) and the State (Sighnaghi State Property Registration and Privatization Department) is void due to the following reasons:

It is confirmed and is without a doubt that Gela Bezhashvili indeed was the owner of the land plot in Sighnaghi, 1ª Erekle II street (720 sq. meters total). This ownership is confirmed by the civil registry certificate and the notary act of 14 December 2006. Pursuant to the Article 312, paragraph 1 of the Civil Code of Georgia "The presumption of reliability and completeness is applicable to data of the public register, i.e. the register records are deemed to be accurate unless their inaccuracy is proved." George Lomashvili, the notary officer confirms in the above-mentioned notary act that nobody had submitted any documents proving inaccuracy of the civil registry entries. Therefore, according to the data of 14 December 2006, a land plot in Sighnaghi, 1ª Erekle II str. (of 720 sq. meters total) together with the market situated on this territory indeed was Gela Bezhashvili's property.

Pursuant to Article 50 of the Civil Code of Georgia: "Transaction is a unilateral, bilateral or multilateral expression of the will directed towards establishment, alteration or termination of legal relations." Whilst interpreting transaction, a lawmaker bases his argument on the theory of expression of will and points out that a transaction is an expression of the personal will. It is possible that an internal will not coincide with expressed will, which is a basis for invalidating an expression of will. When there is a conflict between internal and declared will, the correspondence of these two becomes the subject of interest. In case of Gela Bezhashvili his declared will totally contradicted with his internal one, since he is claiming he was forced to express his will.

Pursuant to Article 54 of the same Code a contract may become null and void only in case it breaches the rules and prohibitions established by law, encroaches upon public order or contradicts the principles of morality. The deed of gift between Gela Bezhashvili ("Acho" ltd.) and the State (Sighnaghi State Property Registration and Privatization Department) is void for the reason of breaching rules and prohibitions determined by law. This statement is accurate because there was not a true declaration of will. Therefore, this Article applies to only to those transactions that can be invalidated by a general rule established by law, but also to the transactions that are invalidated on special grounds. In case of Gela Bezhashvili all those special grounds are present which are characteristic to forcedly made transactions.

Pursuant to Article 85 of the Civil Code of Georgia: "Using force (violence or threat) against a person for the purpose of concluding a transaction shall entitle the person to claim invalidity of the transaction even where the compulsion was effected by a third person." Therefore applying compulsion to the person is a clear interference with an expression of will for the purpose of making a transaction. In given case, interference with Gela Bezhashvili's expression of will is obvious for the purpose of handing over the property to the state freely, through signing a deed of gift. We indicate once more that this was not Gela Bezhashvili's free will. He was taken, threatened and forced to express the will to convey the property. The Civil Code also defines forms and types of compulsion, which can be expressed by violence or threatening. The first one takes place when a person physically, by using force

is forced to sign a transaction agreement, or he is forced to do this through physical torture, or upon being under a hypnotic lethargy. In case of threatening, a person has no other choice but to express his will in accordance with the will of those who threaten him because of the fear that the threats will come true in future. The latter was the case with Gela Bezhashvili. He was threatened by terrorizing his family and imprisoning his son. Such circumstances are also regulated by Article 87 of the aforementioned Code, which reads: "Compulsion constitutes the grounds for declaring a transaction void also if it is directed at the spouse, other family members or close relations of one of the parties to the transaction."

Whilst assessing whether a transaction is valid or void, considering the type of compulsion is also very important. According to Article 86 of the Civil Code:

"1. A transaction becomes void by such compulsion which, owing to its nature, may affect a person and make him think about the real danger threatening his personality or property.
2. In assessing the nature of compulsion, the age, sex, and living circumstances of person are taken into account."

Therefore, compulsion should be real, it should be taken into account from whom does this compulsion come and whom does it target. In given case Gela Bezhashvili is a citizen involved in small-scale business, has wife and two children. The other side of the transaction is the State with its huge and strong apparatus. All law-enforcement agencies are under its subordination. Contributing to the development of private entrepreneurship depends on a state. In short words, on one side there is a strong party with absolute power to undertake any kind of action that adversely can affect the other party; i.e. to execute its threats. As Gela Bezhashvili explains, he had a good reason to believe that police and the representatives of the Office of the Prosecutor General could put drugs stealthily to his son and arrest him as a result. The place, time and situation in which the compulsion was applied are also worth mentioning. Gela Bezhashvili was intentionally taken for the secret meeting during evening hours, since the factor of fear is more intense at that time; he met with many strangers at the state agency which could be even more shocking for anyone. After visualizing this picture, there should be no doubt that Gela Bezhashvili perceived the threat to be real and next day signed the deed of gift against the will.

Based on above-mentioned, I believe that a range of rules and regulations stipulated by different by laws are violated including the principal Law of a state - the Constitution, according to which the right to property is guaranteed and well protected. In above-mentioned case the right to expression of will safeguarded by the Civil Code has also been ignored, which confirms that the Bezhashvili's rights were violated. Therefore, I believe that a deed of gift concluded of December 14, 2006 between Gela Bezhashvili ("Acho" ltd.) and the State (Sighnaghi State Property Registration and Privatization Department) must be deemed void; the land plot forcedly alienated by Gela Bezhashvili must be returned to owner and the damage inflicted to the latter as a result of dismantling the market located at that same territory must be fully reimbursed, or, upon negotiation, Gela Bezhashvili shall be paid compensation adequate to the value of his property.

Jemal Tsiklauri`s case

The Public Defender studied the application of the citizen Jemal Tsiklauri. In the result of examination of the documentation presented by the applicant and obtained by the Public Defender the following circumstances were found out:

In 1996 the citizen Jemal Tsiklauri purchased Gori Agrarian Market according to the contect rule and established private enterprise "Liakhvi".

The citizen performed entrepreneurial activities in Gori, 5, Guramishvili street and the owned the functioning Giro Market, the land plot together with buildings and constructions existing on it.

On January 12, 2004 the representatives of enforcement authorities inspected the market. The present Governor of Shida Kartli Mikheil Kareli was among them. At the same time the salesperson trading in the market deceived the citizen Aluda Jokhadze and made him pay 2 lari 75 tetri. Mikheil Kareli publicly blamed the establisher of the private enterprise "Liakhvi" Jemal Tsiklauri for this fact and called him "corrupt" without any explanations and demanded to initiate criminal proceedings against him. The above mentioned incident was widely covered by media.

After that, Gori Tax Inspection performed extraordinary documentary revision, in the result of which the protocol was drawn up, in accordance to which penalty was imposed on the private enterprise "Liakhvi", which, together with fines made 287 000 lari.

On February 23, 2004 Gori Regional Department of Investigation of the Ministry of Internal Affairs initiated criminal proceedings on the basis of application of the citizen Aluda Jokhadze. A. Jokhadze specified in his application dated January 21, 2004 that as he was deceived by the salesman, it logically implied that Jema Tsiklauri was hiding tazes from the State.

Jemal Tsiklauri was accused on the basis of sub-point "b" of p.2 of the Article 218 of the Criminal Code of Georgia (avoiding the payment of extremely large amounts of taxes).

As a measure of restraint, the accused was sentenced to pre-trail imprisonment. In the process of investigation the Centre of Expertise and Special Investigations of the Ministry of Justice performed financial expertise and established that the indebtedness of the private enterprise "Liakhvi" was 37 000 Lari instead of 287 000 Lari. The applicant specifies that in the conditions of pre-trail imprisonment, before completion of the financial expertise he had already paid 58 886 Lari. Jemal Tsiklauri states that in this period Mikheil Kareli was appointed on the position of Governor of Shida Kartli and he visited the accused twice in the room of the Head of penitentiary establishment (see explanation provided by Jemal Tsiklauri).

The applicant states that during the visits and telephone conversations M.Kareli, in the case of failure to meet his demand, threatened him physical extermination and imprisonment of

his faily members; and the demand implied the transfer of the trade facility owned by J. Tsiklauri into the state ownership.

According to the applicant's explanation, in the result of psychological pressure he was forced to enter into agreement concerning the transfer of his own property to the state without any compensation.

On June 24, 2004 Jemal Tsiklauri made his property (trade facility, land plot and buildings and construction existing on it, priced at 228 726 Lari) over to Gori Regional Coincil (Gamgeoba). The agreement was registered by the notary at the place of imprisonment of J. Tsiklauri.

The confirmed facts: preliminary investigation proved that Jemal Tsiklauri had committed a crime and the truest proof of this fact was the convict's confession.

On September 13, 2004 the Prosecutor and the accused achieved procedural agreement on punishment. The basis of the procedural agreement was the fact that Jemal Tsiklauri paid 58 886 Lari in favor of the budget and at the same time he made his property (existing in his ownership, priced at 228 726 Lari) over to Gori Gamgeoba) without any compensation.

It can be stated with certainty that the procedural agreement dated September 13, 2004 represents the sample of mass and confusion of not only legal norms but also the fields of law. The civil legal bargain (agreement) can't serve as the basis for procedural agreement, as it is specified in the mentioned document. The Article 50 of the "Civil Code of Georgia" states that **"A transaction is a unilateral, bilateral or multilateral expression of the will directed towards the establishment, alteration, or termination of legal relations"**. But it relates to civil legal relations, which represent **private property, family or personal relation based on the equality of persons.**

Besides the citizen doesn't have any possibility of civil legal defense as he couldn't pay the state legal expenses, in the result of which the Court refused to receive the suit into proceeding, and the time limit of a transaction concluded forcedly is defined as one year.

It should be stated that the citizen's explanation proves the fact of forcing with high rate of probability. Otherwise the logical chain among the fact would be broken – what else could explain the circumstance that Jemal Tsiklauri, being in pre-trail imprisonment, suddenly felt respect towards local self-governance authorities, made all his property over to it and than he tried to return in with the help of the Court?

In the result of journalistic investigation performed by the studio "Monitor", the criminal action committed by the organized group is confirmed with high rate of probability. The authenticity of the Agreement dated June 23, 2004 was confirmed by the Notary Malkhaz Makharashvili, whereas he himself indicated to the agreement of the Prosecutor and the convict; that Jemal Tsiklauri disposed his property just in return for freedom and several officials stood behind this transaction, among which are the Governor of Shida Kartli Mikheil Kareli, Prosecutor Terashvili and Deputy Prosecutor Sosiashvili.

The Public Defender considers that the Notary Malkhaz Makharashvili had violated the requirements of the existing Law of Georgia "Concerning Notaries", as well as the core norms (articles 4, 5, 7 and 11) and principles (those of independence, autonomy, professional impartiality, drawing up documentation in conformity with the requirements of the legislation) of the Decree #231 dated August 29, 2001 (Concerning the Approval of Instructions about the Rule of Performance of Notarial Actions) of the Minister of Justice of Georgia, which was in force during that period.

Against the background of the mentioned violations, due to serious consequences for the applicant, the signs of crimes reveal, committed by the Notary and other officials – provided by the Article 333 (exceeding of official authority) of the Criminal Code of Georgia, and by the Prosecutor and his former Deputy – provided by the Article 332 (abuse of official power).

"Dwellings' case"

On 30 May 2007 Tbilisi City Hall adopted a resolution #07.01.205, which invalidated Tbilisi Municipality Cabinet resolution of 26 October 1998 and other resolutions that were granting dwelling spaces in ownership to the citizens living in Tbilisi.

Pursuant to 30 March 2007 resolution the basis for invalidating older resolutions is the following: according to Article 115, paragraph 2 of the General Administrative Code of Georgia, when issuing an individual administrative act regarding disposal of state or municipal property the administrative proceedings should be applied stemming from the importance of the issue and a high level of publicity. The new resolution points out that this imperative requirement was entirely violated when preparing and issuing the resolutions mentioned above. So we face a substantial violation of the proceedings set by law for preparation and issuance of an administrative act.

Resolution of 30 March 2007 states that in case the public administrative proceedings and the rules set by Tbilisi Sakrebulo (city administration) resolutions 20.12.00 #15-5 and 09.09.03 #12-7 had been observed, upon announcing and joint reviewing of received applications, Tbilisi city government would have been able to identify socially vulnerable families suffering from the heaviest household conditions and provide them with residential space. Although in this case the imperative requirement of the law was absolutely neglected with regards to the form of proceedings.

Tbilisi government also explained that while issuing disputed administrative legal acts, an imperative request stipulated by Article 53, paragraph 3 of the General Administrative Code of Georgia was neglected. According to this Article an administrative legal act should include reference to the applicable legal or statutory act, or the relevant legal norm which constitutes the ground for its issuance. It is mentioned that none of the disputed administrative acts included the reference to the applicable legal or statutory act that makes impossible to establish and verify the legal grounds of these acts.

The Public Defender pointed out the following: it is obvious that applicable statutory act of Tbilisi Sakrebulo should have served the grounds for transferring dwellings to citizens. The Law of Georgia "On Capital of Georgia - Tbilisi" directly points to this aspect. Tbilisi government is correct to state there were no Sakrebulo's decisions until 20 December 2000 that would regulate the disposal of housing fund in Tbilisi. It is also mentioned there that pursuant to Article 2, paragraph 4 of the Law of Georgia "On Normative Acts": "An individual act has a one-time effect and it should correspond to the relevant statutory act. An individual legal act shall be adopted only based on a statutory act and within the scope of the competence set by the latter."

Pursuant to the Article 218 of the General Administrative Code of Georgia: "No empowering administrative act that was issued before the enforcement of this Code shall be nullified or invalidated if a person performed any action of legal nature based on this act, except for cases prescribed by subparagraph (b) of paragraph 1 of Article 60 and subparagraphs (a), (b) and (c)

of paragraph 2 of Article 61 of this Code." New resolution refers to this as well. It is clear that the ground for invalidating resolutions issued before 20 December 2000 is the Article 60, paragraph 1, subparagraph 'b' of the General Administrative Code of Georgia. These resolutions had been issued by a non-authorized agency; hence an administrative agency was obliged to invalidate mentioned resolutions. Article 60, paragraph 2 directly states: "Deadlines set by this Code for appealing administrative acts do not apply to nullified acts. The agency issuing an administrative legal act must nullify the administrative act by its initiative or upon request of an interested party."

It is necessary to mention that citizens had performed the actions of legal importance based on the resolutions applicable before 20 December 2000. Particularly, they registered right to ownership in the civil registry, spent resources for taking care and improving their dwellings, etc. Pursuant to Article 60^1, paragraph 6 of the General Administrative Code of Georgia: "If an empowering administrative legal act violating the state, public or other party's rights or lawful interests was declared null and void, under circumstances stipulated in Paragraph 5 of this Article all material damage inflicted to the interested party as a result of the nullification of the administrative legal act shall be reimbursed on the basis of the counter-evaluating of private and public interests." Tbilisi government resolution of 30 March 2007 directly points to the above-mentioned and Tbilisi Government enjoys discretional authority to duly deliberate and decide upon this issue.

As for the resolutions adopted after 20 December 2000, it is clear that the Tbilisi government, when distributing residential spaces, should have used Sakrebulo's decision as guidance. As a result of new administrative proceedings, resolution of Tbilisi government states that Tbilisi government has examined all the important factual materials on the issue, listened to the explanations of interested parties, analyzed the documents submitted by them during the administrative proceedings and concluded that number of resolutions must be nullified fully or partially.

Article 11, paragraph 2 of the General Administrative Code of Georgia constitutes the ground for annulling older resolutions. This article states: "Individual administrative legal acts regarding disposal of state or municipal property, licensing, issuing environmental and construction permits, standardization and telecommunication frequency distribution shall be issued according to the procedures prescribed by this Chapter." (i.e. public administrative proceedings). The resolution of Tbilisi government of 30 March 2007 was stating that dwellings must have been distributed in accordance with the public administrative proceedings. According to new resolution, non-compliance with this norm resulted in illegal decisions on the case so the citizens not having preferential rights to get apartments, actually received them. As a result, rights and lawful interests of socially vulnerable families living in the heaviest household conditions have been violated.

Considering above-said, Tbilisi city government had a full right by applying public administrative proceedings to examine fairness of each citizen with regard to the distribution of dwelling spaces, research whether Tbilisi government was acting in accordance to the Tbilisi Sakrebulo resolution requirements and then invalidate those resolutions that unlawfully granted dwelling spaces to the citizens and thus violated others' rights.

According to the resolution of Tbilisi government, during the administrative proceedings it was revealed that number of citizens could not have trust towards the administrative agency, some of them had certain level of confidence; however, since the administrative acts resulted in violation of other persons' rights and lawful interests it was impossible to prolong old resolutions.

As it was mentioned, the addressees of resolutions adopted after 20 December 2000 were divided into two groups: the citizens - beneficiaries of the acts drawn up in compliance with the criteria defined by the resolution of Tbilisi Sakrebulo and citizens, whose documentation did not comply with the requirements set by the resolution of Tbilisi Sakrebulo.

Pursuant to Article 14 of the Tbilisi Sakrebulo resolution #15-5 of 20 December 2000: "Citizens living in heavy household conditions and having at least 5 years record of living in Tbilisi shall be entitled to residential spaces"; while Article 15 of the same resolution defined that "When allocating residential spaces, priority shall be given to those living in extremely heavy conditions: a) Families whose apartments became unsuitable for living due to force majeure; 2. War veterans and families of those dead, missing and disabled as a result of fighting for the territorial integrity of Georgia; 3. Families with many (3 and more) children".

Tbilisi Sakrebulo resolution #12-7 of 9 September 2003 re-defined the criteria for distributing dwelling spaces. Pursuant to Article 12 of this resolution, citizens entitled to dwellings should have had heavy living conditions and at least 10 years of living record in Tbilisi. Pursuant to Article 13 of the same resolution, Article 15 of the resolution of 20 December 2000 was amended and following criteria was added: the priority was given to those who had done great service to the Country's culture, science, technological development and public life.

The Public Defender did not have opportunity to discuss the facts of violation of rights of every citizens participating in the administrative proceedings. However, based on submitted documents we can argue that Tbilisi Sakrebulo resolution #07.01.205 of 30 March 2007 violates one of the fundamental rights of one concrete group of people - right to property.

It should be mentioned that Administrative law is a law regulating contradictions between public and private interests; General Administrative Code of Georgia regulates and balances the concrete manifestations of those interests. Pursuant to Article 1, paragraph 2: "The purpose of this Code is to ensure the protection of human rights and freedoms, public interests, and the rule of law by administrative agencies."

The obligation of an administrative agency to make decisions by balancing public and private interests is revealed in general principles of Administrative law as well as the special norm of the Code.

Pursuant to Article 7, paragraph 2 of the General Administrative Code "The measures prescribed by the administrative Decree that was issued within discretionary power may not result in unreasonable restriction of a person's lawful rights and interests."

It was within discretional power of Tbilisi government to annul the old resolutions and issue a new resolution for the purpose to regulate legal relations. Whilst executing this power, however, it should have been constrained by human rights, as an acting law. The attention should be paid to the fact that the right is not considered as such unless it is lawful. Whilst establishing the lawfulness of a right, Tbilisi Government should have been guided by the Georgian Law on "Capital of Georgia - Tbilisi" and respective resolution of Tbilisi Sakrebulo. After detailed inquiry, Tbilisi Government should have established whether this or that citizen meets requirements set by resolutions and then annul, or prolong part of resolutions. Otherwise if would have been a violation of Article 7, paragraph 1 of the General Administrative Code of Georgia:" While exercising discretionary power, an administrative agency may not issue any administrative decree, if the harm inflicted by the latter upon the lawful rights and interests of a person substantially exceeds the benefits of the decree."
Article 60^1, paragraph 4 of the Code, also refers to this: "An empowering administrative act may not be nullified if an interested party shows reasonable reliance upon the administrative Decree, except when the Decree substantially undermines the lawful rights or interests of the State, public or any person." New resolution does prove and could not prove the fact that in case Tbilisi Government deliberated differently on this issue (in accordance to the administrative proceedings) it would adopt a different resolution.

Therefore, the Public Defender considers it unacceptable for Tbilisi Government to appeal to the violations of public proceedings and to annul any resolution based on this argument. In case a citizen meets the requirements set by Tbilisi Sakrebulo and at the same time was confident with regard to Tbilisi Government, granting this person a dwelling space wouldn't undermine other person's rights, neither would it violate the state interests.

On 13 April 2007 citizen Nino Gventsadze appealed to the Public Defender. After examining application materials, it was found out that the appellant was meeting requirements set by Tbilisi Sakrebulo Resolution of 20 December 2000. Nino Gventsadze is the wife of the ex-head of Interior Ministry Tbilisi Main Division Korneli Chaladze who died on official duty and got Vakhtang Gorgasali Second Degree Decorations after his death. They have a family with many children. N. Gventsadze, together with her husband was raising three children and one orphan of her husband's sister. After K.Chaladze's death the family was left in old, windowless and damp apartment with two rooms (Chubinashvili str. 59). As a result of living in this apartment, N. Gventsadze became ill and disabled (II group disability). Her elder son lost sight in one of his eye due to a trauma. This family became larger and living conditions worsened. For these reasons she appealed to president of that time and City Mayor asking for dwelling space.

Tbilisi Government resolution #12.17.241 of 8 August 2007 granted N. Gventsadze an apartment (three rooms) located at the corner of Kutaisi and Agladze streets, on the 9^{th} floor, in the house built by "Sadzirkveli" ltd. Tbilisi Government resolution of 30 March 2007 annulled the previous resolution and the apartment was confiscated from N. Gventsadze.

Nino Gventsadze's family fully complies with several requirements specified by the Tbilisi Sakrebulo resolution of 20 December 2000. Particularly, she:

1. Suffers from intolerable dwelling conditions (35.5 square meters, 8 persons living there);
2. Has an apartment which is damaged as a result of a earthquake and has assigned second category;
3. Has many children.

Resolution of 30 March 2007 does not provide any counterarguments (lack of reasonable trust, unlawful actions from the citizen's side, a superior public interest) that would prove the necessity and lawfulness of invalidating the resolution regarding the appellant.

When processing the case at the Public Defender's Office it was found out that the families of Anzor Abralava, Jemal Khutsishvili, Gulnara Qsovreli (Gzirishvili), Jemal Sepiashvili, Irakli Chiabrishvili and Zaza Kolelishvili enjoyed superior rights stipulated by Article 15 of Tbilisi Sakrebulo resolution of 20 December 2000 in separate aspects regarding receiving dwellings.

Based on the applications, the Public Defender concludes that the applicants legally obtained the right to dwelling spaces based on reasonable trust, which was harshly infringed by Tbilisi government.

Right to property is recognized by Constitution of Georgia and other international agreements. Pursuant to Article 21 of the Constitution: "The right to own and inherit property is recognized and guaranteed. The abrogation of the universal right to property, its acquisition, alienation and inheritance is inadmissible. The restriction of the rights referred to in the first paragraph shall be permissible for the purpose of the urgent social need in the cases determined by law and in accordance with a procedure established by law. Deprivation of property for the purpose of the urgent social need shall be permissible in the circumstances as expressly determined by law, under a court decision or in the case of the urgent necessity determined by the Organic Law and only with appropriate compensation."

Pursuant to Article 1 of the first Protocol of the European Convention on Human Rights: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

Based on above-said and pursuant to Article 2, subparagraph 'b' of the Georgian Organic Law "On Public Defender" the Public defender addressed a recommendation to the Tbilisi Mayor to examine the lawfulness of resolution #07.01.205 of 30 March 2007 with regard to every citizen and thoroughly examine lawfulness of resolution with regard to other citizens in same situation; pursuant to Article 60^1 paragraphs 1, 2, 3 and Article 62 partially annul the resolution as unlawful and inform about this decision within the deadlines set by law.

The recommendation was rejected based on groundless arguments. The aspect of lawful trust was emphasized in the response. Tbilisi Mayor pointed out that the appellants did not have a reasonable trust with regard to the annulled resolution, since the appellants have not conducted any action of legal nature and they have not registered their right to property at

the civil registry. It is interesting, based on what legal act does the City Hall claim that registering property in the civil registry is the only action of legal nature.

The Public Defender does not have any mechanism to enforce the recommendation therefore unable is to react further on this issue. Nevertheless, there were numerous reasons provided in the recommendation why the administrative act should have been annulled and it was not limited only to the one-sided explanation of the reasonable trust presented by the City Hall. The recommendation clearly emphasized the fact that if Tbilisi Government did not come up with a different decision regarding the issue in case there is no violation of law, the City Hall did not have any authority to invalidate an administrative decree.

Dodo Giorgadze's case

On 5 March this year, citizen Dodo Giorgadze appealed to the Public Defender.

Following her application the Public Defender addressed a letter to Gori administration and requested official information regarding the grounds for invalidating resolution #57 by Mtskheta district administration. This resolution was granting the applicant title to a land plot.

According to the documents provided by Administration and explanatory note from the applicant following circumstances were found out: In 2003, employees of State Agrarian University of Georgia sent a request to Mtskheta district administration asking permission for leasing 10.73 hectares of agrarian land. Consent from State Department of Land Management of Georgia and session notes of Permanent Agrarian Land Commission of Mtskheta District was submitted.

Based on these documents, on 30 April 2003 Mtskheta district administration adopted a resolution #57. This resolution granted in lease 10.72 hectares of arable land to the State Agrarian University's (SAU) administration (list of 109 natural persons was provided by the letter) for 49 years. Every agreement made had a written form and all of them were registered in the civil registry.

On 7 July 2005 the Parliament of Georgia adopted a Law "On Privatization of State Owned Agrarian land." As a result of this Law, those who leased agrarian land became authorized to actually privatize it.

As a result, majority of those who had leased the above-mentioned agrarian land - privatized the latter. They registered themselves as owners in accordance with the Law, and created necessary papers.

However, the land privatization process was suspended due to the case running in Mtskheta-Mtianeti District Prosecutor's office; that was done for the investigation interests. Particularly, during processing the case it was discovered that the list provided by Administration of State Agrarian University did not correspond to the reality. The resolution of 30 April of Mtskheta Administration was unlawful, in a part, which leased the land to those who did not have any working relations with the State Agrarian University of Georgia.

On 31 October 206 Mtskheta-Mtianeti District Prosecutor's office gave Mtskheta district administration the information received though investigation and list of those individuals who were leased a land in a lawful manner. The prosecutor's office requested to amend resolution #57 of 30 April 2003 of Mtskheta district administration.

On 1 November 2006 Mtskheta district administration adopted resolution # 447 and completely annulled the resolution #57 of 30 April 2003.

The letter of 31 October from Mtskheta-Mtianeti District Prosecutor's office, the Chamber of Control of Georgia's Decree of 5 May 2006, State Audit of Georgia's Presidium Resolution of 21 September 2006, Articles 60^1 and 180 of the General Administrative Code of Georgia, Articles 50 and 51 of the Georgian Law "On Statutory Acts" and Article 38 of the Presidential Resolution #702 on "District Administration Statute" were used as legal grounds.

After thoroughly studying the materials, the Public Defender emphasized that the right to property of those people who legally acquired this right to the leased lands, was severely violated. The Public Defender also believes that Mtskheta District resolution #447 should be invalidated for following reasons: The letter from Mtskheta-Mtianeti District Prosecutor's Office referred to offence. Mtskheta district administration was empowered to discuss the issue of annulling resolution partially, only towards those people who were not connected with the Agrarian University via work. At the same time, partial invalidation of the resolution should have been made in accordance to the applicable law.

Pursuant to Article 34 of the General Administrative Code of Georgia: "A corporate public agency shall publicly announce about forthcoming session, including its place and agenda a week ahead. If the agency decides to close the session, it shall make appropriate announcement. If the place, time or agenda of the session was changed, the agency shall immediately announce the changes. The agency shall publicize the results of the ballot regarding closing of a session and the protocol of decision." According to the applicant, Mtskheta district administration did not fulfill this latter. If this claim is proved, this fact will become one of the explicit grounds for annulling the administrative act (new resolution).

The applicant also claims that Mtskheta district administration has violated Article 13 of the General Administrative Code of Georgia. According to this Article:
"1. 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.
2. The person specified in Paragraph 1 of this Article shall be notified of administrative proceeding and his participation in the case shall be ensured."

As it was mentioned, the legal basis from Mtskheta district administration resolution #447 was the Chamber of Control of Georgia's Decree of 5 May 2006 and Chamber of Control Presidium resolution of 21 September 2006.

According to the case materials, the Chamber of Control of Georgia addressed a latter to the Mtskheta district administration requiring eradicating the gaps revealed during subject inspection within the period of 1 August 1998 - 1 January 2006, of lawfulness of disposal of state-owned agrarian land. Pursuant to Article 50 of the Georgian Law "On Chamber of Control of Georgia" this request has a binding power.

After verification, the Chamber of Control of Georgia established that on the basis of Mtskheta district administration resolution # 57 of 30 April 2003, 10.72 hectares of land was given in 49-year lease to 102 employees of State Agrarian University of Georgia without publicizing this information or announcing bidding. As a result, the requirements specified

by Article 5, paragraph 1, subparagraph 'a' and Article 8 of the Presidential Decree #446 of 1998 on "Rules of Leasing State-owned Agrarian Land" were violated. The Chamber of Control also established that district administration violated Article 9, paragraph 3 of the provision approved by the above-mentioned decree, which prohibits leasing a land through any kind of division of the land.

Article 5, paragraph 1, subparagraph 'a' of the Presidential Decree #446 of 1998 on "Rule of Leasing State-owned Agrarian Land" regulates activities of Permanent Land-Management Commission and obliges the commission to ensure publicizing the information about leasing lands plots. Article 8 of the same Decree sets rules for announcing biddings and conducting them. However, Article 3, paragraph 3 of the same Decree "in case if only one person claims a land in lease, there shall be no bidding. Natural and legal persons shall be granted a land in lease only through bidding." In this case, the employees of State Agrarian University of Georgia have not leased a land for common use. Each employer separately requested from the commission a right to lease the land, therefore the Commission was not obliged to hold biddings in each individual case.

Pursuant to Article 9, paragraph 3 of the Presidential Decree: "It is forbidden to divide a land while leasing if it hinders rational utilization of mechanization and effective implementation of agro-technical activities." This norm is a cumulative rule; therefore it restricts an action only in case when the action hinders rational utilization of mechanization and effective implementation of agro-technical activities. According to the applicant the size of a land was not enough to affect any mechanization at all. Thus it is irrational to refer to rational utilization of mechanization with regard to this land plot.

Based on above-mentioned it is possible to say that facts stated in the Chamber of Control resolution of 5 May 2006 was not founded on a thorough and comprehensive examination on the case. Therefore the request of the Chamber of Control of 5 May 2006 is groundless. It is worth mentioning that Mtskheta district administration has not lodged an appeal regarding 5 May 2006 resolution. Administration did not even try to prove otherwise. As a result, based on the request of the Chamber of Control of Georgia of 17 October 2006 Mtskheta district administration was tasked to eradicate identified flaws.

The Chamber of Commerce did not point to the concrete ways to fill the gaps however. Mtskheta district administration decided to annul resolution of 30 April 2003 in order to solve the issue. Mtskheta district administration resolution #447 would have been unlawful even if the violations stated in the Chamber of Control's act had been proved. Pursuant to article 60^{1}:
"1.An administrative decree shall be nullified, if it contravenes law, or if the statutory procedures of its preparation or promulgation were substantially violated.
2. The substantial violation of the procedures for the preparation and promulgation of an administrative Decree means issuance of administrative Decree on a session that was held in violation of Articles 32 or 34 of this Code or a violation of administrative proceedings prescribed by law or the violation of law, lack of which would result in a different decision."

According to this article, only violation of law can be counted as a ground for invalidating an administrative decree. Article 5 of the Georgian Law "On Normative acts" says that the Presidential Decree is not a law, but a statutory by-law. Besides, while annulling administrative decree, together with adhering to numerous procedural requirements, it should be explained and well proved, why a absence of violation of law would result in a different decision.

Resolution #447 does not have and could not have this kind of reasonable arguments, since leasing of a land to the employees of State Agrarian University and then privatization of those lands was in accordance to the rules and regulations set by law.
The applicant and other employees of State Agrarian University lawfully obtained right to those land plots. The have undertaken numerous activities of legal nature based on the Mtskheta district administration resolution #57. First they have singed lease agreements; in accordance to the procedures set by law, registered their right to lease in the Civil Registry. They have bought the leased land via rules and regulations set by law and registered their right to property in the civil registry. After that, some of them even alienated tier land plots.

Right to property of the applicant is violated. Right to property is acknowledged and guaranteed by the Constitution of Georgia, the Civil Code of Georgia and other international agreements, that Georgia is a part.

Pursuant to the Article 21, paragraph 'b' of the Georgian Organic law "On Public Defender" the Public Defender addressed a recommendation to the head of Mtskheta district administration. This recommendation was requesting to annul Mtskheta district administration resolution #447 as an unlawful act based on Article 60^1 of the General Administrative Code of Georgia. At the same time the recommendation was requesting to issue a new administrative act through full, comprehensive and objective inquiry of the case and taking into consideration the applicant's and other peoples (affected by Resolution #57) rights and lawful interests.

In response to the recommendation, we were informed that Mtskheta Regional Court tried Dodo Giorgadze's appeal regarding invalidating respective administrative act and ruled against. Mtskheta district administration informed the Public Defender that this decision has not been enforced yet, although Administration will act in accordance to the final Court ruling.

The Public Defender's recommendations mostly are written during the case being tried in a court (during legal proceedings). In this case, when the violation of human rights are so apparent the administrative body is authorized to use procedural mechanism to acknowledge the appeal and taking into consideration the Public Defender's recommendation, avoid court's rulings issued through case trials, which would be quite lawful. Unfortunately, this precedent has not taken place yet.

Soso Sutiashvili's case

On 22 January 2007 citizen Soso Sutiashvili appealed to the Public Defender (application #0072-07). He said he is an inhabitant of village Dighomi and lives as a separate household. From 1992 Agricultural Land Reform was ongoing in Georgia. Pursuant to the respective resolutions of the government (Cabinet of Ministers' Decree #48 of 18 January 1998, Decree #128 of the February 8 and Decree # 290 of 10 March) those permanently living in villages were entitled on the first place to receive lands during the reform. Distribution of land from common land plots fund started in village Digomi. The head of the Land Reform commission of the village Dighomi of Mtskheta District Nodar Lasurashvili did not distribute land plots as it was prescribed by law. As a result, Soso Sutiashvili was not given a land plot. This became a ground for pressing criminal charges against Lasurashvili. On 7 September 2006 Mtskheta District Court he was tried and sentenced to 11 years imprisonment. Soso Sutiashvili and others affected by the above-mentioned illegal activities are recognized as aggrieved parties. Different resolutions that were issued regarding the Land Reform expressively were stating the State's obligation towards its citizens to provide them with decent conditions for normal live and development. Despite the Court's ruling and undertaken obligations to provide Soso Sutiashvili and others with land under the Land Reform, he is still remain deprived of the land which lawfully belonged to him.

The territory of village Dighomi falls under Vake-Saburtalo territorial boundaries and therefore the citizens could not find the legal successor who would be competent in positively resolving their issue. Thus, the Public Defender addressed a recommendation (#874/04-3/0072-07) to the head of Vake-Saburtalo District David Ioseliani asking for explanations whether it was possible or not to distribute requested land plots to these aggrieved persons. The applicants point out that after the merge of village Dighomi to the Capital, there was a meeting with the representatives of Vake-Saburtalo district administration including David Ioseliani. The aggrieved persons were promised to be given land lots that lawfully belonged to them. However, in the official response sent to the Public Defender, district administration claims that it is not within the authority of Administration to allocate land plots and that this issue should be discussed by the Department of Land Utilization and Management of Tbilisi City Hall.

In view of the fact that issue was so urgent, the Public Defender sent a letter (#0072-07) to the Department of Land Utilization and Management of Tbilisi City Hall. The Public Defender was asking whether the issue would be decided positively with regard to Soso Sutiashvili and other victims and would they receive land plots lawfully belonging to them. This department forwarded the Public Defender's letter to the Vake-Saburtalo district administration. The Administration responded that despite inclination, Administration does not have legal basis for satisfying request of Soso Sutiashvili and other victims. As a result, the problem is still unresolved and the citizens could not receive the land plots, lawfully belonging to them.

Pursuant to Article 38, paragraph 2, subparagraph 'h' of the Georgian Law "On Capital of Georgia – Tbilisi", producing and implementing cadastral map of land plots in Tbilisi, together with issues related to property management and utilization falls under the authority

of Tbilisi Local self-government executive agency - Tbilisi City Hall. The Constitution of Georgia clearly defines State's obligations towards its citizens, however together with these obligations there are some more international obligations as well. As it is known, Georgia is a part of International Covenant on Economic, Social and Cultural Rights. Pursuant to Article 11, paragraph 1 of this article: "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living from himself and his family, including adequate food, clothing and housing." Pursuant to Article 25 of Universal Declaration of Human Rights, the term adequate standard of living means: ""a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services."
It is worth mentioning that some of the village Dighomi inhabitants have actually received land plots under the Land Reform. This means that the reform had a discriminative character with regard to the other inhabitants of the village, since their interests were not taken into consideration and they were not put into same conditions even after the Court recognizing them as aggrieved parties.

The Public Defender concluded that if the State fails to give the 365 inhabitants of village Dighomi recognized by court as aggrieved parties the land plots that legally belong to them, it will be a violation of rights universally recognized by both international and national norms. Unlike state agencies' behavior of engaging in a long fruitless correspondence and putting blame on each other, the Public Defender addressed a recommendation to Tbilisi Mayor with the request to examine and research the case materials thoroughly and comprehensively and make appropriate decision.

Despite numerous reminders, the Public Defender has not got any response yet.

The issue of registering right to property in the civil registry

On 12 February 2007 citizen Mariam Todadze, living in Tbilisi, 7 Tsereteli Ave., apartment #19 appealed to the Public Defender. Her complaint applied to the privatizing her apartment and registering her right to own said apartment in the civil registry. Mariam Todadze lives in heavy social conditions; she is registered at the database of extremely vulnerable households and is unable to move freely due to state of health. According to the legal representative of M. Todadze, she addressed a request to the National Civil Registry Tbilisi Registration Service and provided all necessary papers for registration. On 4 December 2006 the civil registry issued an administrative act #0113-032968, which rejected the right of the citizen to register her apartment in the civil registry; at the same time, the agency refused to reimburse the undertaken service costs and send submitted documentation back. The Civil Registry National Agency adopted the similar act pursuant to order #01/11-43/T-39 of 10 January 2007. Following the amendment made based on the order #84 of 6 March issued by the head of the agency, M. Todadze was repeatedly rejected the right to register her apartment as a private property.

According to the case materials submitted to the Public Defender, on 2 October 2006 Didube-Chughureti district government issued an Order #359 on privatization of the apartment located on Tsereteli Ave., registered in the district residential fund. On November 16, an agreement was made and certified by notary between the representative of district administration Nino Sakhvadze and Levan Gigashvili, the legal representative of Mariam Todadze on transferring the apartment into private ownership, without any compensation. According to Levan Gigashvili, on 22 November an agreement on privatization together with GEL37 and other necessary documents was submitted to Tbilisi registration service and accordingly, the citizen was given an acceptance note informing that the registration service would issue the document verifying the registration of the private property after five working days, on November 29.

According to Article 7, paragraph 1, subparagraph 'f' of the Organic Law "On Local Governance and Self-governance" it is a local governance agency's exclusive authority to establish and manage local self-government's dwelling fund. Hence, paragraph 6 of the above-mentioned administrative order (#01/11-43/T-39) states that on 2 October 2006 the local administration issued an order on privatization and the act of privatization was implemented by authorized agency that fully complies with the requirements set by law. From 19 October, the day when the results of the local government elections of 2006 were officially announced, the Organic Law of Georgia "On Local Governance and Self-governance" was invalidated and a new Organic Law of Georgia "On Local Self-governance" was enforced. Article 16 of this Law defines exclusive authorities of self-governing body, which pursuant to paragraph 2, subparagraph 'a', include "managing and handling the property belonging to self-governing body".

Later, on 29 December 2006, the Law was amended and Article 65^2 was added, which defined transitional authorities of local self-governing bodies: "Executive bodies of local self-government in accordance with the procedures prescribed by Georgian legislation shall carry

out the transfer of non-privatized residential or nonresidential (isolated or not isolated) spaces to their lawful users without compensation."

According to provided documents, all this time Mariam Todadze had been sending official letters to civil registry service regarding the registration of her apartment (see the Annex, receipts issued by the Civil Registry National Agency, incoming letters #t-39(18.12.2006), t-43 (26.12.2006), 345/(12.02.2007)), payment receipts of the JSC Bank of Georgia 17.11.2006, 21.11.2006, etc.) However, she was receiving denials in response to her letters. The basis of the civil registry agency's refusal and issuing above-mentioned administrative order #01/11-43/T-39 has become the claim that the agreement was made by an unauthorized representative of district administration.
The last sentence of the paragraph 7 of the mentioned order states: "The privatization agreement was made on 16 November 2006. For that time, representative of Didube-Chughureti district administration was not authorized to act on behalf of district administration as party to privatization agreement." The privatization agreement states the opposite. According to the agreement, Nino Sakhvadze is a representative of Didube-Chughureti district administration and acts on its behalf based on the power of attorney issued by Didube-Chughureti district administration (n 03.02.2006 #gas 18-05).

Article 24 of the Law of Georgia "On Registering the Ownership Rights on Immovable Property" clearly defines the grounds for rejecting registration. In case of existence of any of the circumstances listed in this article the decision should be well-grounded and satisfy the legal requirements. In given case no sound arguments are provided why Nino Sakhvadze was not authorized to make an agreement and therefore the circumstance that became the basis for issuing the administrative order is not justified.

Pursuant to Article 53, paragraph 5 and Article 96 of the General Administrative Code of Georgia, an administrative agency shall not base its decision on circumstances, facts, evidence or arguments that were not examined during administrative proceedings. Whilst these proceedings, the administrative agency should study all the case-important circumstances and make a decision based on evaluating and confronting these facts. It is inadmissible for an administrative agency to substantiate the issuance of an individual administrative-legal act by the facts or circumstances that have not been examined according to procedures prescribed by law.

An administrative-legal act is invalid if it contradicts the law or is prepared or issued through violating procedures prescribed by law. An administrative-legal act should be annulled if other conditions identified by Article 60^1, section 2 of the General Administrative Code of Georgia exist.

Order #84 of 6 March 2007 issued by the head of the Civil Registry National Agency can not be counted as a correction of the technical or calculation errors made in #01/11-43/T-39 administrative-legal act. Order #84 changed the administrative legal act (#01/11-43/T-39) of the Civil Registry National Agency and the applicant was refused the registration of her apartment, while the original decision was granting her this right. The substantial correction of an administrative act, according to Article 59, section 2 of the General Administrative

Code of Georgia means the issuance of a new administrative act; hence, we cannot agree with the stipulation stated by the Order #01/11-1242/T-39/345/T of March 7, 2007: **"When considering letters and complaints of citizens, the Civil Registry National Agency is acting within the limits of the Georgian legislation which does not always allows to exercise justice and show mercy."**

The Public Defender addressed the civil registry service a recommendation on invalidating the administrative-legal act #01/11-43/T-39 of 10 January 2007 and other decisions made on the issue, and to issue a new administrative-legal act drafted and adopted in accordance with law.

The Civil Registry National Agency responded to this recommendation, however did not take the latter into consideration and again failed to explain why the representative of Didube-Chughureti district demonstration Nino Sakhvadze was not authorized to act on behalf of the administration and make an agreement of 16 November 2006.

Land plot legalization issues

On 8 February current year, citizen **Apolon Gadelia** appealed to the Public Defender with a request regarding legalization of the land plot. Apolon Gadelia is the Colonel of Police, Veteran of Armed forces of Georgia and was awarded an order of honor (see Annex). Presidential order #273 of 13 March 2003 by a rule of private use gave a right to Apolon Gadelia to buy a land plot (220 sq. meters) located nearby the garage owned by him on 38/6 Engineer str., in between #6 auto-school and an apartment building locating on 8 Virsaladze str. for utilization. The second part of the presidential order obliged Tbilisi City Hall (I. Zodelava) to draw up a document attesting the purchase of the land plot within a month after actual purchasing the land and submitting necessary documents by A. Gadelia.

On 20 February 2004 the citizen paid the costs for the land plot in an amount of GEL2244.50 (see Annex, page 5, TbilBusinessBank cashier receipt #001, 0402008). This amount was defined according to the tariff assigned by Tbilisi self-government council. Tbilisi municipal service of urban projects prepared a plan of the land plot that was approved by the city chief architect.

As for registering the land plot in the civil registry, in order to attain the right to immovable property according to law and pursuant to the Civil Code of Georgia, the citizen failed to attain this right notwithstanding numerous applications and letters addressed to the respective municipal services with the request to prepare necessary papers.

Tbilisi City Hall is an administrative agency and pursuant to Article 12 of the General Administrative Code of Georgia: "Any person may apply to an administrative agency to solve the matters that fall within the area of responsibility of the agency and directly affect the applicant's rights and legal interests." Also: "An administrative agency shall review the application pertaining to the matter that falls within the area of its responsibility and render an appropriate decision, unless otherwise prescribed by law." According to Article 100 of the same Code, an administrative agency must inform the applicant regarding the decision within the timeframes and according to the procedures prescribed by Law."

Administrative agency is required to provide an interested party with the information regarding rights and obligations of the latter; request submission of additional documents and set the dates for submitting them; inform the applicant on the rules of reviewing the matter, type of review and dates; also the requirements that the application or appeal should be in accordance with, and refer to errors if any exits.

Pursuant to Article 15, paragraph 2, subparagraph 'a' of the Law of Georgia "On Management and Alienation of State-Owned Non-Agricultural Land", the land-using natural and legal persons must draw up a land-use confirming documents within four years from the day of adopting this Law. In case of failure to adhere to above-mentioned requirements the land-using persons have to pay a fine in an amount of the annual tax on the land on their disposal. Apolon Gadelia is right in claiming that refusal on legalization of the land plot or denial of this process will entail a material damage.

Regarding delays in the in above-mentioned case, we would like to point out that adherence to the presidential decrees is obligatory for every agency and this obligation extends to the while territory of Georgia. We would also like to add that pursuant to the presidential Decree #273 of 13 March, 2007 Tbilisi City Hall was given a month to draw up the papers for attesting the purchase of the land plot.

Based on above-mentioned the Public Defender concluded that A. Gadelia's rights have been violated. Therefore according to Article 21, paragraph 'b' of the Organic Law of Georgia "On Public Defender", the Public Defender addressed the recommendation to the Tbilisi City Hall, requesting to review the given case in accordance to the procedures prescribed by law.

Tbilisi City Hall responded on 20 March current year, pointing out that no agreements has yet been concluded with the winners of the auctions and tenders held regarding the non-agricultural land plots, neither with the citizens who have been granted the land plots by the presidential decree. According to the Municipal Commission on Management and Alienation of Land Plots, they do not have information why the presidential Decree was not enforced in a month period in order to make purchase agreement and draw up documents certifying the purchase of a land plot.

The same commission pointed out that the application with supplementary documents was transferred for further response to the City Hall General Inspection of Law Observance.

Irina Gogoladze's case

On January 5 of the current year, Citizen Irina Gogoladze appealed to the Public Defender (application #0004-07).

Based on the explanations of the applicant and documentations on the case, the following circumstances were discovered: for seven years the applicant has been working as a chief accountant at the Presidential Plenipotentiary Office. She was on a maternity leave since 1 December 2004. The request for a 3-year maternity leave was written and submitted by Lena Gogoladze – Irina Gogoladze's legal representative. There is a notary act in the case, which shows that Lena Gogoladze was authorized as Irina Gogoladze's legal representative.

Taking into account above-mentioned requests and based on the Presidential Plenipotentiary Decree #47 of 1 December 2004, also pursuant to Article 161 of the Labor Code of Georgia of that time the applicant was given additional unpaid leave for taking care of her child from 1 December 2004 until 25 July 2006. Article 161 of said Code stated that apart from leave days allocated due to pregnancy, maternity and child-care, women and other persons specified in Article 159, part 3, according to their request shall be given additional unpaid leave to take care of child before the latter reaches the age of three. The job place of the person (official position) shall be secured during this period (23.05.91).
2. This leave can be used all at once or partly at any time before the child turns 3 years old."

As we can see the law directly states that the leave can be used all at once of partly at any time. This means that the right to choose was on the side of a person requesting the leave and not the side of employer. According to this norm, if an employee asks for a leave, the employer is obliged to satisfy employee in this regard. Therefore, Irina Gogoladze's request should have been satisfied fully and not partially.

On 20 December 2006 Presidential Plenipotentiary issued order #140. In accordance to Articles 5 and 60^1 of the General Administrative Code of Georgia, order #140 invalidated Order #47 of 1 December 2004.

According to this order, the fact that the leave request was written by another person and not by I. Gogoladze became the legal basis for annulling order #47. The leave request did not mention address of the applicant. Therefore according to Article 83 of the General Administrative Code of Georgia the administrative agency was authorized to ignore the application.

First of all, it should be pointed out that both the Private and the Public law recognize the institution of the legal representative. Every action undertaken by the latter is regarded as an expression of full-fledged will of a person (s)he represents.

Pursuant to Article 86, paragraph 1 of the General administrative Code of Georgia: "Everyone may interact with an administrative agency through a legal representative a and enjoy the assistance of a lawyer." It's also worth mentioning that the interaction was documented and a written agreement was certified by a notary. According to the first

paragraph of the agreement on legal representative: "The legal representative is protecting property and non-property interests of a person represented by him/her. For this purpose the latter represents the person at all Instances of Georgian Court, with natural or legal persons, with governmental agencies and carries out respective administrative and civil cases." Therefore I. Gogoladze's legal representative legally undertook the authority given to her. Thus absence of I. Gogoladze's signature could not be regarded as a legal basis for annulling the order.

As for home address, Article 78 of the General Administrative Code of Georgia defines all the requisites of an application. However the only reason why the address is mentioned there is to avoid any hindrances to the administrative proceedings. According to Article 83, Paragraph 5 of the General Administrative Code of Georgia the administrative body may and not must ignore the application in case if the applicants fails to provide additional documentation or required information.

Despite the fact that there was not a reference to the applicants address in the application, it did not become an obstacle for an administrative body to issue respective resolution. Therefore, arguments for annulling Order #47 are groundless.

Even in case the Order #47 of the Presidential Plenipotentiary were to be unlawful, taking into consideration the case issues, still there were no grounds for annulling it. Pursuant to Article 60^1 of the General administrative Code of Georgia: "An empowering administrative act may not be nullified if an interested party shows reasonable reliance upon the administrative Decree, except when the Decree substantially undermines the lawful rights or interests of the State, public or any person."

The reasonable trust of an interested party may be invoked if he performed an action of legal importance on the basis of the administrative decree, and if the nullification of the decree will inflict substantial harm upon him. Reasonable trust can not be invoked if it is based upon illegal activities of an interested party."

Therefore, based on above said, the Public Defender believes that the right to work of the applicant is violated. Order #140 of 2006 is illegal and groundless.

Pursuant to Article 60^1, paragraph 1 of the General Administrative Code of Georgia: "An administrative Decree shall be nullified, if it contravenes law, or if the statutory procedures of its preparation or promulgation were substantially violated." Paragraph 2 of the same article states: "The substantial violation of the procedures for the preparation and promulgation of an administrative Decree means issuance of administrative Decree on a session that was held in violation of articles 32 or 34 of this code or a violation of administrative proceedings prescribed by law or the violation of law, lack of which would result in a different decision."

A recommendation was sent to the Presidential Plenipotentiary in accordance with Article 21, subparagraph 'b' of the Georgian Organic Law "On Public Defender". The

recommendation was requesting nullification of Order #140 as unlawful act and to recover I. Gogoladze's violated right to work.

The Case was tried by a court, while the Public Defender was also working on it. The Court ruled for I. Gogoladze and nullified referred administrative act. However, the Presidential Plenipotentiary's administration with the same groundless arguments refused to recognize that I. Gogoladze's right was violated. The Presidential Plenipotentiary's administration used its right to appeal and at the present time the case is tried at a court of higher instance.

George Giorgadze's case

On 28 March present year, citizen George Giorgadze appealed to the Public Defender. Based on the case documents and explanations of the applicant the following circumstances were found out: based on Articles 46 and 49 of the Georgian Organic Law "On General Courts" of 8 July 1999, the applicant was appointed as a judge for 10-year term in the Supreme Court of the Autonomous Republic (AR) of Abkhazia. On 31 October 2005 he was assigned to undertake the position of a judge of the Supreme Court of Appeal of AR of Abkhazia, again by the same term.

Since the Supreme Court of Appeal of the AR of Abkhazia was dismissed, the Supreme Council of Justice of Georgia made a nomination on 29 December2005. The President Issued a Decree #45 based on this nomination and assigned G. Giorgadze to a position of a judge in Lentekhi district court at a10-year term; however, G. Giorgadze has not given a written consent to this appointment.

The nomination and the Decree were preceded by a resolution of the Supreme Council of Justice of Georgia of 27 December 2006. This resolution identified the list of Judges who could be appointed to different courts as judges in case there was a written consent available from their side. If there was no a written consent, a nomination should have been sent to the President of Georgia requesting for admitting judges into reserve. Member of the Supreme Council of Justice Otar Sitchinava (presently a judge of the constitutional court) was appointed as a person in charge of executing the resolution.

In contradiction to above-mentioned resolution and Article 54^1, paragraph 1 of the Georgian Organic Law "On General Courts" (This article requires the written consent of a judge before assignation to a position) Secretary of the Supreme Council of Justice Valeri Tsertsvadze presented Giorgadze's candidacy for appointment.

On 6 March 2006 G. Giorgadze appealed to the President of Georgia with regard to this violation and requesting nullification of Decree #45 and performing necessary arrangements in accordance to the law. The applicant claims that he has not received any answer yet.

Later, based on the Supreme Council of Justice of Georgia's nomination of 30 October 2006 and Presidential Decree # 752 of 18 December 2006 G. Giorgadze was discharged from the position of a Judge in Lentekhi district Court as it is prescribed by Article 54, paragraph 1, subparagraph "b" of the Organic law "On General Courts" (neglecting to carry out given authority for six and more months). At the moment court tries the case of Giorgadze (applications for nullification of Decrees #45 and #752).

The Public Defender regarded decrees #45 and #752 unlawful and should be nullified as individual administrative legal acts, since pursuant to Article 73, paragraph 1, subparagraph "f" while appointing of releasing judges, the President of Georgia is guided by the Constitution and rules set by the organic Law. Pursuant to article 54^1, paragraph 1 of the Georgian Organic law "On General Courts": "In case of eliminating court due to changes in judiciary, also in case of cutting down on number of judge positions, a judge can be assigned to perform his judicial authorities within his tenure, to the same or lower instance courts, via

preliminary written consent and in accordance to the rules established by Law." Giorgadze, as a judge of eliminated court was appointed to the position of judge in Lentekhi district court in violation of the rule specified by above-mentioned Organic Law, since there was no written consent from his side.

Accordingly, discharging Giorgadze from the position of Judge of Lentekhi District court had illegal grounds – not carrying out authorities of a judge for six or more months. Pursuant to Article 30, paragraph 1 of the Constitution of Georgia, "Labor is free". Pursuant to Article 4(2) of the European Convention on Human Rights: "No one shall be required to perform forced or compulsory labor." And moreover, these requirements could have never been addressed to Giorgadze since he was appointed in violation to the law. Pursuant to Article 6(1) of the same Convention neither would be any case tried by him regarded as a case tried by "court established in accordance with law".

As you may well know, one of the basic requirements of Article 6 of the "European Convention on Human rights and Fundamental Freedoms" is a right to be tried by a court established by law, which means the composition of the members should be lawful too. Only the verdict of such court shall be counted as lawful and binding. Above-mentioned provision is reflected in Article 394 of the Civil Procedure Code of Georgia and Article 563 of the Criminal Procedure Code of Georgia.

Pursuant to Article 394, subparagraph 'a': the verdict will be counted as adopted through violation of law, if a case is tried a court with unlawful composition."

Pursuant to Article 563, paragraph 2, subparagraph "k": "the verdict shall be voided in every case when it is returned by a court with unlawful composition."

Therefore, George Giorgadze's right to work is violated. Particularly he lost the right to work as a judge, within the initial tenure and appropriate remuneration, through the rules set by Article 54^1 of the Organic Law of Georgia "On General Court". Also he was deprived of the opportunity to receive compensations in accordance to Article 82 of the same Law and in accordance to the rules set by the law "On State Compensations and State Academic Stipends".

According to Article 4, paragraph 1, subparagraph 'i' of the Georgian law "On Normative Acts", the Decree of the President of Georgia is a normative act. Article 12 of the same law states that: "exceptions are decrees for appointing or realizing member of government (within his competence) and Judge of the General Court, granting, obtaining, suspending or renewing Citizenship of Georgia, also about appointing a member of the Constitutional Court."

Article 2, paragraph 1, subparagraph "d" of the General Administrative Code of Georgia defines the term "individual administrative legal act", which means "an act issued by an administrative agency pursuant to Administrative Law, which establishes, modifies, terminates or affirms rights and duties of a person or a limited group of persons. A decision made by an administrative body to refuse to satisfy applicant's request within its competence

can also be regarded as administrative act. A documents issued or certified by an administrative agency that may be followed by legal outcomes also may be regarded as an administrative act."

The Public Defender believes that in the particular case the administrative act issued by the President (Decree #45) shall fall under the jurisdiction of the General Administrative Code of Georgia. Requirements and limitations set by this code shall be taken into account while adopting or suspending this Decree. The applicant would otherwise lose the opportunity to apply the legal assistance (which is guaranteed by Article 42, paragraph 1 of the constitution of Georgia and Article 6 of the European Convention on Human Rights). It is worth mentioning that Tbilisi city Court Administrative Cases Board regards above-mentioned decree as an administrative legal act in its Resolution of 21 February 2007; and this approach is absolutely legal.

Pursuant to Article 60^1, paragraph 1 of the General Administrative Code of Georgia "An administrative decree shall be nullified, if it contravenes law, or if the statutory procedures of its preparation or promulgation were substantially violated." According to paragraph 2 of this Code, an administrative act will be nullified in every case if there was no violation of law the decision would have been different.

It is clear that if the law had not been violated, given case would have followed an absolutely different direction. Particularly, pursuant to Article 54^1 of the Georgian Organic law "On General Court", in this particular case, the discretional power of the president constituted in the following: to request the Supreme Council of Justice of Georgia to study the issue of Giorgadze's consent, or admit Gioragdze into reserve; i.e. the President of Georgia was obliged to adhere to the Organic Law and in accordance with the relevant requirements set by the latter, exert his discretional authority to transfer Giorgadze to reserve or to another position., which was not fulfilled.

Article 60^1, paragraph 4 of the General Administrative Code of Georgia: "An empowering administrative act may not be nullified if an interested party shows reasonable reliance upon the administrative Decree, except when the Decree substantially undermines the lawful rights or interests of the State, public or any person." In a given case, despite the decree #45 is an empowering administrative act, as it was mentioned earlier, G.Giorgadze did not have reasonable trust regarding this legal act and what's more, by carrying out duties based on this decree, Giorgadze would breach rights and interests of those persons. As a result, State and Public interests would have been violated.

Therefore, in the given case, based on groundless nomination from the Supreme Council of Justice, Presidential Decree (administrative act) is adopted in violation of Article 54^1, paragraph 1 of the Georgian Organic Law "On General Court". This action violated rights and lawful interests of the applicant.

Based on above-said and in accordance with the Georgian Organic Law "On Public Defender", the Public Defender addressed to the President of Georgia requesting detailed examination of the case and renewing applicant's right to work.

According to the answer from the Deputy Head of Presidential Administration the issue raised by the Public Defender is at the same time tried at Court. The president of Georgia will act in accordance with the court ruling.

Darejan Meparishvili's case

On 7 March 2007 Citizen **Darejan Meparishvili** appealed to the Public Defender. In her application (#0368-07) she was claiming that she has been denied access to the premises of Penitentiary Department. Thus she was unable to carry on with her working job duties.

Darejan Meparishvili is Lieutenant of Justice and from 2002 was working as a senior specialist at press center of Penitentiary Department of the Ministry of Justice of Georgia. Pursuant to Article 159 and Article 161, paragraph 1 of the "Georgian Labor Code" from 2 March 2004 Darejan Meparishvili took a maternity leave for three years (pregnancy, maternity, childcare). An additional unpaid leave for mothers is stipulated by law, whose children are under 3 years old.

On 2 March current year, her maternity leave expired. She sent a request to the management of the department, since her job relations were suspended. According to the Head of Penitentiary department's Order #413 p/s of 2 March 2007, Lieutenant of Justice Darejan Meparishvili's maternity leave was suspended and she started to carry out her duties again. The Penitentiary Department Staff was informed about this Order.

Despite the existence of an appropriate order, Darejan Meparishvili was not given opportunity to carry out her duties. Moreover, she was denied free access to the premises of her work place. As she had explained she did not have ID card of the Penitentiary Department employee (she submitted her ID card before taking maternity leave, since her ID card had been expired). Human Resources Unit of the Department did not issue any documents, like temporary permit, that would enable her to enter the work place and carry out her duties.

According to Article 4 and Article 11 of the Georgian Law "On Imprisonment", Penitentiary Department is functioning under Ministry of Justice of Georgia as a state subordinate agency and an its employee is a civil servant. Pursuant to the Georgian Law "On Civil Service" and Article 15, subparagraph 'd' of the provision on penitentiary department that was approved by the Minister of Justice's Decree #712 of September, 2006 the Human Resources (HR) unit of said agency is obliged to ensure job performance and settle all other relevant organizational issues. Within its competence the head of the HR unit have to provide issuance of service ID cards in accordance to approved sample ID to the employees of Penitentiary Department and its subordinate bodies."

HR staff together with the other units of the Penitentiary Department and entire personnel is subordinate to decrees and orders of the Head of Penitentiary Department and are accountable to the latter (see the Provision). At the same time, Article 132, subparagraph 'c' of the Georgian law "On Civil Service" states that HR unit of he state agency "holds consultations with the employees regarding their legal status, restrictions and job performance".

It is well known that in order to get into the premises of Penitentiary Department it is necessary to produce an ID card to security. Darejan Meparishvili did not have an

appropriate ID card which became an obstacle for her to perform assigned duties during one month period, from the day she returned to her work, till she was fired on 3 April. While the events were unfolding, the case had already been studied by the Public Defender. Several requests were sent to the Penitentiary Department. First one was sent of 14 March, 2007 #797/04-4/0368-07 that was followed by a reminder #1123/04-4/0368-07 on 13 April. The second request was hand delivered on 23 April #1215/04-4/0368-07 (see the Annex). The requests were asking for the explanations of the legal grounds why Darejan Meparishvili was restricted enter the premises of the Department to perform her duties, and also, whether she was dismissed from her position by that time. The first information from the Penitentiary Department came on 19 April current year, after the applicant was dismissed from her job. According to the provided documents Darejan Meparishvili was at her job only three times during a month. On 2, 22 and 23 March she was given temporary permits to enter the premises. Those permits enabled her to meet with the HR unit only. On 2 March she spent no more than an hour in the Department. However it is impossible to see the time on the copy of a permit. On 22 March Darejan Meparishvili spent 18 minutes in the Department. She entered premises at 4.07 and left at 4.25 p.m. On 23 March she spent only 15 minutes there - entered at 2.30 and left at 2.45p.m. (See the Annex). Therefore the temporary permit given to her can not be counted as the ID card of an employer. Neither spending such a little time at work can be counted as performing her duties. These facts once again prove that Darejan Meparishvili was hindered from performing her job-related activities. On 23 April 2007 Darejan Meparishvili appealed to the Public Defender second time (appl. #0368-07/1). She claimed that she had appealed to the Penitentiary Department four times but to no avail. Based on above-mentioned circumstances, it is clear that until her dismissal, the HR unit of the Penitentiary Department intentionally created obstacles for her in order to put her aside from the job.

Article 51 of the Georgian Law "On Civil Service" defines rights and guarantees of an employee. Pursuant to paragraph 1, subparagraph 'b' a civil servant has the right to receive: "all the organizational-technical assistance and terms that are necessary for performing job-related duties."

The Penitentiary Department of the Ministry of Justice of Georgia enjoys civil legal authorities and is a state subordinate agency. Its activities are affected by the General Administrative Code of Georgia, excluding those falling under Article 3, paragraph 4, subparagraph 'c' of this Code "the enforcement of a valid judgment rendered by a court". Article 4, paragraph 2 of the same Code sets the principle for equality before law. According to this Article: "The restriction of or interference with the enjoyment of lawful rights, freedoms, and interests of any party to an administrative proceeding and preferential treatment or discrimination of any party in violation of law shall be prohibited."

The international legal acts that Georgia is part, which represent the acting law, highlight inadmissibility of any kind discrimination related to work. Pursuant to Article 6 of the Georgian Constitution and Article 19 of the Georgian Law "On Normative Acts", these international legal instruments enjoy supreme jurisdiction with regard to domestic normative acts. Pursuant to Article 1(b) of the Convention concerning Discrimination in respect of Employment and Occupation, the term 'discrimination' implies: "Such other

distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organizations, where such exist, and with other appropriate bodies."

"Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof." (Article 2).

Based on abovementioned Conventions, Georgian legislation denounces any form of discrimination that might arise during labor relations, including violation of rights and freedoms of employed persons. Article 2 of the Labor Code of Georgia comprehensively defines the term 'discrimination'. According to Paragraph 4 of this Article: "Direct or indirect oppression of a person, aimed at or causing creation of harassing, hostile, humiliating, dignity harming or insulting environment, or creation of such conditions which directly or indirectly impair his/her state compared with other persons being in the analogous conditions shall be construed as discrimination." In case of Darejan Meparishvili, the actions described in this article did take place. According to her, she was denied an access to working premises and was forced to wait for a long time at the entrance. This kind action from the management of the Penitentiary Department was humiliating and insulting for Meparishvili as she has huge experience working as a journalist.

According to the information provided by the Penitentiary Department, reorganization of the Department started based on Order #12, par 1 of the Minister of Justice of Georgia of 23 January 2007. The position of senior specialist in press center was liquidated based on the 12 March 2007, Order # 1889 of the head of the Department on "the List of Staff of the Central Apparatus of the Penitentiary Department of the Ministry of Justice of Georgia" (see Annex, protocol 23.03.2007). Her position was annulled when Darejan Meparishvili was not at work, between the period of March 2-22. The decision made during this period had a direct impact on her right to work. The adopted administrative act resulted in legal outcomes Meparishvili should have been notified about in accordance to the rules established by law. This has not happened. And finally, based on the head of Penitentiary Department's Order #1141 of 3 April 2007 she was dismissed from her position.

The lay off on the staff due to reorganization in the Department, Article 11, paragraph 2^1 of the Georgian law "On Imprisonment", Article 97 paragraphs 1 and 3, Article 108 and Article 109, paragraph 1 of the Georgian Law "On Civil Service", as well as 12 March 2007 Order # 1889 of the head of the Department on "the List of Staff of the Central Apparatus of the Penitentiary Department of the Ministry of Justice of Georgia" were used as a legal ground for dismissing Meparishvili from her position.

Pursuant to Article 96, paragraph 2 of the Georgian Law "On Civil Service": "Reorganization of an agency can not become a basis from dismissing the employee. If the reorganization is followed by discharging staff, the civil servant can be dismissed by invoking article 97 of this Law." According to Darejan Meparishvili, dismissing staff was only a pretext for the

management of penitentiary department and there have been no real dismissal. This claim requires further examination.

According to Article 108, paragraph 1 of the Law "On Civil Service" requires informing a servant regarding the possible dismissal from his position. For this reason the HR unit of the Penitentiary Department presented a protocol dated 2 March, informing Darejan Meparishvili regarding the ongoing reorganization. Darejan Meparishvili claims the opposite and states that she has spent little time in the building of the Department that day (this can be check by a permit) and nobody gave her a protocol to inform her. The protocol has an error while referring to the date suspending maternity leave and instead to March 2, is says 3 March. During the writing up the protocol nobody could now about a decision that was coming of 3 March. 4 employees of HR who signed the protocol and authorized it did not correct this error. As a result the applicant suspects the authenticity of the protocol and the fact that she was informed about it. Other protocols were also attached to the case. The protocol dated 22 March reads that Darejan Meparishvili was offered an alternative position as a specialist in the department for reforms and strategic planning. The HR unit believes that this position was equivalent (officer). The senior specialist at the press center was a position of Officer. (See Annex #0/5/8-5708 17.04.2007). It is worth mentioning that Article 69 of the Georgian law "On Civil Service" defines the grading system of civil servant positions: junior civil servant, senior civil servant, leading civil servant, main civil servant. (The grade increases through the list). The lieutenant is an officer's rank and not a position.

The Penitentiary Department has not even conducted a final financial calculation with regard to Darejan Meparishvili. According to Meparishvili she has not received a salary for March and a compensation foreseen in Article 109 of the Georgian Law "On Civil Service", which would have been 2 months of her salary. Order # 1141 of 3 April 2007 claims that the dismissal of Darejan Meparishvili has been carried out in accordance with Article 109, paragraph 1.

Based on above-said the Public Defender considered Darejan Meparishvili's right to work and other rights were severely violated after she returned from maternity leave. This was caused by discrimination activities of the Penitentiary Department's management and HR Unit Staff. Pursuant to Article 2, paragraph 6 of the Labor Code of Georgia in the course of employment relations the parties should adhere to basic human rights and freedoms as defined by Georgian legislation. Therefore, based on Article 21, subparagraph 'b' of the Georgian Law "On Public Defender" a recommendation was sent to the Ministry of Justice of Georgia asking for nullification of the head of Penitentiary Department's Order #1141 of 3 April 2007 regarding dismissing Darejan Meparishvili from her position on the grounds of unlawfulness of the order; taking into consideration Darejan Meparishvili's rights and according to the rules established by law, issue a new order, a new administrative act and reappoint Darejan Meparishvili to her previous position. According to Article 21, subparagraph 'd' a suggestion was sent to call to disciplinal or administrative account with regard to those employees who possibly were acting on behalf of some authorities and through not performing their own duties appropriately, created obstacles for Darejan Meparishvili to perform her job, thus severely violated her rights.

On 20 August current year, we received a response from the Ministry of Justice. The response was stating that the case materials for further examination and appropriate reaction were transferred to the General Inspection of the Ministry. Upon learning that the case was submitted to the court, the General Inspection suspended examination on the latter.

As a result the Ministry of Justice believes it is not appropriate to continue the examination the case whether the rights of the employee were violated by an arguable administrative act, until the court renders a valid judgment.

On 20 June 2007 the General Inspection of the Ministry of Justice of Georgia sent a response to the Public Defender's recommendation regarding Darejan Meparishvili case (#01/23/16-5990, 13.07.07). The response states that according to article 182 of the Administrative Code of Georgia an administrative agency will not review an administrative complaint if "the case regarding the same claim, involving the same parties, and based on the same ground is in a court".

Based on the judicial hierarchy set for the normative acts of Georgia, Georgian Constitution and Organic law "On Public Defender" are superior to other Georgian laws. In the essence the recommendation of the Public Defender is not an administrative complaint and it aims at recovering violated rights of human beings in the country. The Georgian Constitution recognizes and guarantees that the basic humane values are unalienable and supreme. While performing the governance, the people and the state are constrained by those rights and freedoms.

Unfortunately, when cases are ongoing in the court, the administrative bodies do not comprehend the legal nature of the Public Defender's recommendations appropriately. Thus the Public Defender receives rejection letters that are groundless and is done on unlawful basis. Administrative bodies refer to Article 182 of the General Administrative Code of Georgia, according to which "an administrative body may not review an administrative complaint on the case regarding the same claim, involving the same parties, and based on the same ground, processed in a court." Administrative complaint according to Article 2, paragraph 1, subparagraph 'i' is: "Administrative complaint" means a written request submitted by an interested party to a competent administrative agency pursuant to this Code for the purpose of seeking redress through invalidation or modification of an administrative act issued by that agency or its subordinate body, or through issuance of a new administrative act."

There is a huge difference between administrative complaint and the Public Defender's recommendation from material-legal standpoint. In the case the Public Defender cannot be counted as an ordinary interested party, whose interests directly are affected by administrative act or actions of administrative agency. Therefore it is not permissible to consider it identical to the administrative complaint.

Shakro Kobaidze`s case

On January 30, 2007, on the basis of sub-point "b" of the Article 21 of the Organic Law of Georgia "Concerning Public Defender", Public Defender applied to the Chief of Border Police of the Ministry of Internal Affairs of Georgia Badri Bitsadze to repeatedly study the issue of employment of Shakro Kobaidze in Border Police, and, in accordance with p. 1 and sub-point "f" of the Article 98 of the Law of Georgia "Concerning Public Service", argue the responsibility of officials, who had provided improper definition of the Law.

* * *

According to the answer of Personnel Department of the Border Police, the citizen Shakro Kobaidze was refused to be employed because of his former conviction, which violated his rights recognized by the law and international norms, and limited his possibility of full integration into society after serving his sentence.

In his recommendation Public Defender stated that the term of punishment of Shakro Kobaidze expired on August 14, 2000 and in accordance the p.2 of the Article 79 of the Criminal Code of Georgia, "the person, released from the punishment is considered to have a clean record. At the same time, in accordance with sub-point "c" of p. 3 of the same Article, conviction will be cleared "three years after serving the sentence by the convicted punished with imprisonment for less serious crime".

On April 13, 2007, in the letter received in answer to the Recommendation, signed by the Head of Department of International Relation and Legal Provision of the Border Police K. Khandolishvili, it's mentioned that they don't agree "with the definition of former conviction established by the Article 79 of the Criminal Code" and state, that they used the Article 7 of the "Rule of service in the border police system of Georgia – state institution within the jurisdiction of the Ministry of Internal Affairs of Georgia" as guidance. It should be noted that this regulation is a subordinate normative act and in accordance with the Law of Georgia "Concerning Normative Acts", Criminal Code and the Law "Concerning Public Service" prevail over this act and hierarchically the regulation can't be placed higher. Besides, reference to the p.6 of the Article 79 of the Criminal Code, which states that "Extinguished or cancelled conviction shall not be taken into account at the time of decision upon criminal responsibility, qualification of crime and measure of criminal influence, it will not have any connection with acceptance of a citizen for employment, nor it has any other legal loading".

The answer also states: **"it should be necessary to consider how properly we act when we use the term "former conviction" in accordance with the definition provided in the Criminal Code, in other legal relationships; e.g. in the process of taking decision related to the employment it should be taken into account that the word "former convicted" is defined in the "Explanatory Dictionary of Georgian Language" (publishing house of the Academy of Sciences of Georgian SSR, Tbilisi – 1958) as "a person who has been convicted, being in brought to justice" (p. 1365), because just the term "previously convicted person" is used in**

the Article 7 of the "Rule of Service in the System of the Ministry of Internal Affairs of Georgia".

Public Defender considers that in this case the rightfulness and legal power of this document – regulation – is placed under doubt, as in legal literature, neither in Georgia nor on international area, there exist no precedent, when any book or composition - even explanatory dictionary of the country - was placed higher than the law. In Public Defender's opinion such logic contradicts fundamental principles of law.

It's stated in the answer that the information concerning the former conviction of the citizen Shakro Kobaidze was provided to the Border Police by the Informational Centre of the Ministry of Internal Affairs, though in the certificate, issued by the same service on April 10, 2007, presented by the citizen to the Ombudsman's Office, nothing is said concerning his former conviction.

As for the selection of the candidates of the basis of competition, Public Defender shares the opinion that the assessment of competitors must be performed by competent commission and candidature, better than Shakro Kobaidze, may be revealed in such competition. In the given Case Sozar Subari considers that the refusal to employment was unlawful and discriminating, as former conviction of the citizen was pointed as the grounds for the refusal.

Nino Okrojanashvili, Nanuli Markoishvili, Ketevan Gegeshidze, Gulsunda Tsotadze and Medea Azarashvili's Case

On 19 February 2007 former employees of the Monitoring and Forecasting Center (a legal person of public law) of the Ministry of Environment Protection and Natural Resources of Georgia Nino Okrojanashvili, Nanuli Markoishvili, Ketevan Gegeshidze, Gulsunda Tsotadze and Medea Azarashvili appealed to the Public Defender. They assessed the selection contest results held in above-mentioned center on 15 January 2007 as unjust and requested recovering their legal and lawful rights. According to the case materials and applicants explanations the following was found out: "Center for Monitoring and Forecasting" advertised job-opening contest in a full adherence to the law. However, during the selection process lots of violations were found out.

According to Article 2 (aims and goals), paragraph 2, subparagraph 'a' of the Selection Commissions Agenda approved by Order #7 of 15 January 2007 of the Head of the Center for Monitoring and Forecasting, the aim of the commission is "to carry out procedural assessment of professionalism, qualifications, abilities and personality of an applicant." The applicants should have had higher education, no more than 5 and no less than 3 years of working experience in a respective field, knowledge of Georgian language, computer, ability to interact with others and sense of responsibility. In the protocols created by the commission members did not reflect these qualifications of applicants. Therefore it is impossible to understand which requirements did the applicants meet and which ones they failed to meet.

Administration of the Center for Monitoring and Forecasting approved 7 members of selection commission based on the Order #7 of 15 January 2007. Later two additional members were included in the commission on 30 December 2007 without any official order – contestants Ramaz Tchitanava and Emil Tsereteli. They underwent the contest on 29 January for the position of the head of hydro meteorological department and the head of the office of engineer-geological and geo-ecological research of natural recourses. They were assigned on 1 February 2007 By Order #46/j. These persons were supposed to participate in the job contest as officials; however unauthorized individuals participated in the activities of the commission who were not entitled to make decisions on the contestants participating in the job selection contest as individuals enlisted in their departments and units.

Accordingly, the voting results could not have been objective, just and unbiased, since according to Article 8, paragraphs 1 and 2 of the General Administrative Code of Georgia: "1. An administrative agency shall exercise its authority impartially. 2. No public official shall participate in administrative proceeding, if he has any private interest or there is any other circumstance that may affect decision-making process." It is clear that requirements of this law were violated with regard to contestants, proportionality of public and private interests and principles of unbiased resolution of an issue.

According to the case materials, on 31 January 2007 the selection commission was fully represented (9 persons). However, the copy of protocol #3 submitted by applicants to the Public Defender, which has a stamp and signature proving authenticity, is singed only by 6

members of the commission. After the request to send the necessary documents the Center for Monitoring and Forecasting sent the copy of protocol together with other documents. The Protocol #3 had a signature of all 9 members. Therefore the authenticity of a protocol #3 is under suspicion. This should become the issue for further consideration.

Based on above-said and since the contest held on 15 January 2007 by the Center for Monitoring and Forecasting (legal person of public law) had so many violations during its implementation that resulted in violation of the rights of the contestants, the Public Defender based on Article 21 of the Georgian Law "On Public Defender" addressed a recommendation to the Ministry of Environmental Protection and Natural Resources. The recommendation was requesting from the minister to use the authority given to him by Article 8, paragraph 3 of the Statute of the Center and look at the result of the contests and make valid decision. According to this article "the Minister of Environment Protection and Natural Resources as the authority to suspend or cancel a decision of the head of Center via the rule of job supervising, also with the motivation of appropriateness."

The recommendation was not satisfied. In response, the Ministry wrote: "No any violations of law or other regulations were detected when holding a contest. Therefore there are neither legal grounds, nor the reason for expediency of canceling the contest results."

Maia Sidamonidze's case

On 10 July 2007 Citizen Maia Sidamonidze appealed to the Public Defender. According to the applicant she was participating in the public school's director's selection contest. She has passed 20% barrier and according to the paragraph 1 of the instruction on "Distribution of Possible Candidates Nominated to the Public School Board of Trustees" got a right to choose the public school within the contest territorial unit. Maia Sidamonidze decided to choose Gurdjaani municipality village Akhasheni Public School, were she has worked for 14 years as a teacher. Based on Order# 438 of 18 June 2007 of the Minister of Education and Science, Maia Sidamonidze's candidacy together with others was presented to the Akhasheni Public School Board of Trustees. On 7 July at the elections, the school Board of Trustees failed to elect a director of the school, due to not having enough number of votes.

According to the case materials, the election campaign for electing school director at Gurjaani Municipality village Akhasheni public school had lots of flaws that violated Maia Sidamonidze's labor rights. In Particular, in the guidance published by the Ministry of Education and Science for the Board of Trustees for the elections of a school director clearly states that the Board of Trustees should have held a presentation of candidacy's agendas on the fifteenth day after the Minister presented the candidates.

Members of Boards of Trustees had a right to ask questions during presentations, or make notes and ask those questions later, during the interview. The assessment result of the program should have been reflected at a meeting protocol. This protocol should also include the main points of the programs presented by candidates, questions asked by members of Boards of Trustees and candidate's answers to those questions
According to the procedures, the presentation should have been held on 2 July in Akhasheni public school. However, according to the protocol #7 of 7 July 2007, the board of trustees made presentations of candidate's programs, conducted interviews and then elections on the same day, July 7. This is a violation of procedures. Tina Iliashvili participated in the activities of the Board of Trustees (seven members). She is 3rd-step parent (11 grade), and her authorities had expired on 16 June 2007 from the moment when the 11th grade pupils graduated. According to article 39, subparagraph 'g' of the regulation on "Election, Suspension of Authorities and Registration of the Members of Public Schools Boards of Trustees" suspension of authorities before the expiration of tenure happens in cases if the student whom the person represents is admitted/excluded from school or if Teachers Council's Members employment relations with the school suspended."

According to Article 40, paragraph 2 of the same regulation: "Board of Trustees shall inform the Ministry immediately on the issue of arising grounds for canceling a registration of a member of Board of Trustees." Akhasheni Public School board of Trustees acted otherwise and on July 7, let an unauthorized person participate in the election process. Member of self-government, Mariam Mindiashvili (10th grade pupil) did not participate in elections. Board of Trustees ignored her totally when in the protocol #7 under the box "number of electorate before election day" put 6 instead of 7. This was also a procedural violation.

The process of interviewing with the candidates was also held with violations. The guidance included no procedures how to conduct an interview. According to this guidance, members of the Board had a full right to ask any question concerning development of the school and would specify the ways, means and hindering factors to how to achieve goals set in candidate's program. The candidates should have had comfortable working environment during the interview. Members of Board of Trustees should have abstained from arguing with the candidate and should not have claimed and try to prove a different idea, should not ask private questions.

According to the protocol presented in the case it is easy to see that the contestants were under huge pressure. The protocol is created in a way that a question is followed by a candidate's answer and then followed by comments from the members of Board of Trustees. Those comments reveal unfriendly attitude and in some cases insulting and offensive moments with regard to the candidate. For example the question: "What kind of leader does a 21st century school need and do you have these skills?" the candidate is answering: "the century leader must be objective, communicative and committed to his job." The members of Board of Trustees comment on this answer in front of the candidate: "Theoretically the candidate explains the issue, however, practically, during working here, never showed this skill. Nobody remembers her giving a good personal example to anybody."

The question: "what kind of methods do you think of, with regard to increased juvenile crime in the country?" the Candidate answers: "I believe in order to overcome these problematic pupils it is necessary to put them in sport. Inviting prominent persons and having meetings and discussions with them." The comment of Board of Trustees: "the Border of Trustees believes that not only sports activities should have been used of pupils' psychological orientation, but also creating patriotic camps, which would have been financed from school's budget, where the upper-grade pupils would have a better chance to get known to Georgia's nature."

The Protocol is based on this kind of question-answer-comment style that has nothing to do with the actual program. It's also not difficult to feel unfriendly attitude of the Board members towards candidates. The accents are not made appropriately in protocols. For example: the candidate "lacked the rhetoric skills", "based on trustworthy source they found out why a candidate wanted to become director", etc. This reveals an inappropriate attitude towards the issue from the side of Board of Trustees.

One of the members of the Board of Trustees N. Kachiuri wanted to express his attitude towards Maia Sidamonidze in an annex and attach this to protocol. According to the regulation, he had this right. Citizen Gela Mtivlishvili attended the interview as an observer. This is also violation of procedures. The interview should have been held by the members of Board of Trustees and it was unacceptable to let any other person attend the session, as an observer or in any other status.

The observer enjoyed a legal status to be at elections, had defined rights and responsibilities and was forbidden from interfering into activities of Board of Trustees neither directly, nor indirectly. The observer was rejected to have any influence on an electorate during elections

(guidance, p 18, paragraph 2, subparagraphs 'a' and 'b'). The observer, however, not only participated in an interview process, but also made comments of N. Kachiuri's (member of the board) statements. This was absolutely unlawful. The comment in protocol #7: "Candidate Sidamonidze does not have ability to look deeply into problems, her statements have no points, she is indifferent, ungrateful, not collegial, looks feeble. Her candidacy is not good enough for school" clearly shows the excessive use of authority and insulting attitude from of the Board of Trustees's side. The Board of Trustees should have held the elections around the programs of the candidates. They should have made decisions based on candidates programs and taking into consideration school's needs. However, elections in Public School of Gurjaani Municipality village Akhasheni were held in ignorance of the procedures, which resulted in a violation of a principle of free and equal choice.

Based on above said, and in accordance to Article 21 of the Georgian Law "On Public Defender", the Public Defender addressed a recommendation to the Ministry of Education and Science. The recommendation was requesting to review results of elections held by Akhasheni public School Board of Trustees on 7 July 2007 according to Article 11, paragraph 3 of the Georgian law "On Legal Person of Public Law"; and Pursuant to Article 60^1 of the General Administrative Code of Georgia annul the results of elections.

The Recommendation was not satisfied. The response of the ministry states that there have been no substantial violations of procedures during the election process of director in Gurjaani municipality, Village Akhasheni Public School and therefore results of the elections can not be nullified. The letter, however, mentioned that since Guarani municipality, village Akhasheni Public School Board of Trustees did not complete assigned tasks envisaged in Article 49, paragraph 6 of the law "On General Education", the Akhasheni public school was given a warning.

Teimuraz Silagadze`s case

On April 16 2007 former member of staff of the Ministry of Defense Teimuraz Silagadze applied to Public Defender. According to his application, he retired in July 2003, but he didn't receive one-time compensation – 10 months salary and material compensation – 660 Lari, as it was specified by the Law for the employees of power structures.

Silagadze applied to the court; Tbilisi Appeal Court fulfilled his claim to the full by decision dated January 9, 2006, but in spite of Silagadze's multiple application to the Executive Bureau, the decision wasn't executed.

After the examination of the issue, on April 24, 2007 Public Defender applied with recommendation to the Executive Bureau of the Ministry of Justice of Georgia and demanded the fulfillment of Silagadze's request.

On July 3, 2007, in the result of Public Defender's recommendation the court decision was executed and Silagadze received the due compensations – salary indebtedness and material compensation in the amount of 1524 Lari.

* * *

Teimuraz Silagadze applied to Public Defender and the members of the Office staff with the letter of appreciation for their attention and tenderness.

Ina Komakhidze` case

On January 4, 2007 the Public Defender applied in written to Lado Chipashvili, requesting to inform whether his Department examined the application of the Citizen Ina Komakhidze.

* Ina Komakhidze, who lives in the corner of Machabeli Street in a small carton cabin, arranged by her, applied to the Ministry of Labor, Health and Social Protection on August 8, 2005 for receipt of benefits and aid provided by the :State Program of Overcoming the Poverty".

On February 5 the Public Defender was informed by official letter that "the citizen Ina Komakhidze can't participate into the State Program of identification, assessment of social-economic situation and formation of unified data base of families beyond the poverty line as ***she doesn't have permanent residence***". As a proof to his argument, the Minister quoted sub-point 1 of p.1 of the article 2 of the Resolution 51 dated March 17, 2005 of the Government of Georgia, where the notion of family is defined as ***"circle of persons, whether or not relatives, permanently living on separate residential space, jointly performing intraeconomic activities".***

The Public Defender doesn't agree with the opinion of the Minister of Labor, Health and Social Protection, as in the article 2 of the same Resolution it is highlighted that "**a family can also be a person permanently living on a living space"** and that "**a family may consist of one member."**

The Public Defender considers that Ina Komakhidze fully meets this requirement of the Resolution. She is lonely and lives on specific territory for three years.

In accordance with the Resolution, "while filling in the application, the following persons will not be considered in the quantity of seekers:

a) person, kept at penitentiary establishment;
b) person, sent for compulsory treatment;
c) person in fixed-time military service;
d) person who is abroad;
e) person, who is announced by court as lost or diseased.

Nothing is told about the limitation, that homeless (or, as the Minister refers, person without the place of residence) can't be included in the quantity of seekers. Thus, Ina Komakhidze has full right to be enlisted in the category of seekers of assistance.

The article 3 of the Resolution states that the formation of the data base is a uniform legal process, which covers "Assessment of social-economic situation of the seeker" and "Granting of rating score". In Ina Komakhidze's case The Agency of Social Aid and Employment didn't perform its function – neither assessed her social-economic situation nor granted rating score.

The Resolution states, that filling in the application by the seeker and handing it in to the communication office confirms, that he/she agrees:

a) to enable the authority granting social aid to obtain, from any source, any information, related to his/her identification and determination of social-economic situation;
b) to provide the obtained information to other institutions and organizations granting social aid, which will be directed towards the improvement of his/her social-economic situation.

In regard to Ina Komakhidze the State Agency of Social Aid and Employment didn't perform this function either. Otherwise she would receive at least subsistence wage in Accordance with the Law "Concerning Social Aid" (the Law covers "persons in need of special care, poor families and homeless people, living in Georgia on legal basis").

As separate norms established by the state Resolution were infringed in Ina Komakhidze's case - * she wasn't granted the status of seeker; * her social-economic situation wasn't examined; * she wasn't recognized a one-member family' * her rating score wasn't determined – she wasn't included in the category of recipients of benefits and assistance provided by the State Program of Overcoming of Poverty, and thus her rights to social provision were violated. It should be mentioned that the assistance has vital importance for Ina Komakhidze.

The Public Defender applied with recommendation to the Minister of Labor, Health and Social Protection Lado Chipashvili and demanded to repeatedly consider Ina Komakhidze's application and grant her the status of a seeker of assistance in order to receive assistance provided by the Law.

Photos of Ina Komakhidze and her place of residence – see in another file.

Annex 15. The Rights of the Child

N.L.'s case

The Public Defender's Center for Children's' Rights was addressed by a resident of the village Akhalsopeli of Kvareli region, 15-year old N.L. In the explanation given by the minor, the several cases are described that point to the facts of violence committed against her by father R.L. Namely, on 9 April 2007, as N.L. remembers, father started shouting at her, because she went to the yard - and beat her severely – hit her twice in the head by fist and in the back by iron poker. Generally the situation in the family is tense - father provokes conflicts quite often. N.L. has a 17-year old brother G. and 10-year old sister M. Also, 15-year old N. says that at about one month ago she was suddenly awaked in midnight when she felt touching in intimate places and saw it was her father. The child tried to resist and started screaming to wake her brother and sister. A 10-year old M. was awaked on screaming and R.L. left the room. However, he tried to do the same later that night, but this time the elder brother was awaked.

In order to carry out an alternative expertise, The Public Defender's office applied to the NGO "Empathy", where the child was examined by a neuropathologist and diagnosed with light brain concussion. A thorough examination should have been conducted the next day; but that day children returned back to the village.
The Public Defender submitted the case for further response to the Office of the General Prosecutor of Georgia and to the Ministry of Education and Science. The Office of the Prosecutor General responded that an investigation was opened on the criminal offence according to Article 126, paragraph 'd' of the Criminal Code of Georgia. On questioning by a preliminary investigation lawyer and teacher, the child refused the facts of violence committed against her. The Ministry of Education and Science, after the Public Defender's address, sent the materials on the case to the social worker involved in the "Prevention and De-institutionalization of Orphans and Children Lacking Parental Care" Telavi subprogram for examining and making conclusion. While talking with social worker, N.L. confirmed the acts of violence committed by her father. At present, children live with grandmother. The social service started working on finding a foster family for children.

U.A.'s case

Mrs. Ketevan Kobaladze, director general of the Tbilisi Center Social Adaptation of Children addressed the Public Defender. On 26 June 2007, patrol police brought to the center a minor U.A., born on 2 September 2000. The child was examined by doctor, who detected multiple injuries on his body and face. The child said that these injuries were inflicted by his mother and aunt, who beat him regularly and force him to beg in the street and bring home money. The child did not want to get back home, but the next day, despite his resistance, the mother, I.K. forcedly took him from the Center of Social Adaptation of Children.

On analyzing the above-mentioned case it can be concluded that signs of the criminal offence stipulated by Articles 126 and 171 of the Criminal Code are apparent; respectively, the Public Defender sent the case for further response to the Ministry of Education and Science, resource center according to the place of residence of the minor and the Office of the Prosecutor General.

In result, Gldani-Nadzaladevi regional educational resource center, with the help of social workers of the Ministry of Education managed to transfer the child to the Tskneti children's boarding house; while the Office of the Prosecutor General instituted a criminal case and opened an investigation according to the criminal offence stipulated by Article 171 of the Criminal Code of Georgia.

Kh.T.'s case

On 29 May 2007 the Public Defender received a letter of Mrs. Ketevan Kobaladze, director general of the Tbilisi Center Social Adaptation of Children, where she asked the Public Defender to study a case of 8-year old minor Kh.T.

On 25 May 2007 the child became a victim of the sexual violence of her stepfather. The representative of the Public Defender's Center of Children's Rights together with the representatives of the resource center of Didube-Chughureti regional department of the Ministry of Education and Science studied the case on the ground. At present, an investigation is underway and the stepfather is under detention.

The Public Defender's Center of Children's Rights applied to the Didube-Chughureti regional resource center requesting help in timely issuing a birth certificate to Kh.T. and providing medical and psychological assistance. However, helping child turned to be impossible since after the visit of the resource center's representative, both mother and child disappeared and they have not been found until present. As the head of Didube-Chughureti resource center informed, they continue searching for the child. It's noteworthy although that the resource center did not turned to police.

V.E.'s case

On April 19, 2007 a resident of the village Didi Chailuri informed the Public Defender of Georgia that on April 12 the law enforcement officers arrested her neighbor Mrs. M.V. Mrs. M.V. has four children who are 8,6 and 4 years old, an eight-month-baby and 75-year-old mother at home. The grandmother is not able to take care of the children because of her health condition.

The representatives of the Child's Rights Centre at the Public Defender's Office went to the village of Didi Chailuri and with representatives of the Resource Centre of Sagaredjo Region, District Inspector and Director of the village school visited the family of arrested M.V.

The representatives of the Public Defender studied the conditions of children, talked with mother of arrested, neighbors and local government representatives.

The family live in a horrible poverty. There is neither gas nor electricity in the house. The children are starving which is dangerous to their health and life. The smallest, eight month old baby is fed only with maize-bread meal dissolved in water. All this hinders the development of the child, and its weight is very poor. The dehydration process started and if not taking care of it, the result may be fatal.

According to the information given by the district inspector and neighbors, M.V. was often taking children to Tbilisi in order to get some piece of bread and was begging with them.

The Public Defender addressed the Ministry of Education and Science with a motion, in order to transfer the residents of Didi Chailuri to the State Orphanage.

On the basis of the motion, the Ministry of Education and Science approved the transfer of the children. The representatives of the Public Defender went to the village, and transferred children to the Orphanage for babies.

E.E.'s case

The Public Defender learnt about the case of physical abuse of 7-grade school pupil E.E. by the teacher, Annaman Minasyan, occurred in Akhaltsikhe public school # 3 and covered by mass media. According to E.E., the teacher hit the pupil in the head several times.

For the purpose of examining the case and obtaining additional information, the representatives of the Public Defender's Center of Children's Rights visited Akhaltsikhe public school and met with the school director R. Muradyan, Annaman Minasyan, E.E. and the parents of the latter.

Concerning above-mentioned fact, the school director R. Muradyan confirmed that the fact of psychical abuse of 7-grade pupil E.E. by teacher Annaman Minasyan did occur, followed by submitting the materials on the case to the school's Board of Trustees. As the board resolved, A. Minasyan was banned to work with the E.E. class, got a severe reprimand and deprived of 1-month wage. The school director informed as well that the meeting of the board of trustees was attended by parents of the school pupil, who did not protest against the board's decision. However, at the meeting with the Public Defender's representatives, the E.E.'s parents stated a different position and demanded A. Minasyan's dismissal. The child's father R.E mentions as well that he does not want to submit the case to the Prosecutor's Office or to the court.

The case was re-submitted for further response to the General Inspection of the Ministry of Education and Science, which required relevant information from the school director over the above-mentioned fact. In the explanatory note, provided by the school principal, the measures are described which the latter implemented as a follow-up on the fact of psychical abuse of the school pupil. The General Inspection deemed the steps taken as sufficient so that no any further measures followed.

Upper Bodbe Boarding House

On 27 June, 4 July and 6 July 2007 the representatives of the Public Defender's Center of Children's Rights visited Upper Bodbe Boarding House for monitoring purposes. They met with the school director T. Balarjishvili, other representatives of the management and examined the kitchen and dining departments, bedrooms and common rooms.

In result of the monitoring of the Boarding House the following problems have been identified:

A medical cabinet and documentation were checked, which revealed a number of gaps in provision of the Boarding House with necessary medication and processing relevant paperwork. The representatives of the Public Defender's Center of Children's Rights studied the medical documentation together with the senior expert of the Public Defender's Center of Protection of Patients' Rights Irma Manjavidze.

The individual medical cards are provided by the NGO "Genesis." They conduct a complex medical examination of the inmates of the Boarding House and in case of need, an inpatient examination are carried out in Tbilisi hospital #2 where a medical program for vulnerable children is being implemented.

The boarding house is provided with medication on monthly basis, according to the request filed by the doctor and a nurse. Medication is purchased by the administration of the Boarding House, also one in a month, on the basis of the accountant's order, at the price of GEL100 average. As far as the boarding house serves preferentially the children with psychomotor retardation, needed a long-term treatment under neuropatologist's observation (using pantogam, nootropil, and other special medication), this medication is provided in kind of humanitarian aid.

The Boarding House periodically receives different medication from various non-governmental organizations (the last donation was made by the NGO "Pesvebi", the head of the NGO Nana Khelashvili); but all medicines are accompanied with English titles and sometimes no abstract is provided at all that makes using the medicine according to doctor's prescription impossible.

It should be noted that usually the same medication is ordered by the Boarding House, as indicated in the medication journal; however, no any medical card examined by the Public Defender's representatives showed that the child needed any treatment. A 8-year old L.K. was admitted to the Bodbe Boarding House on 17.10.2003 (date of birth not indicated). The medication requested for the child for March 2007 are as follows: galazolin (1 piece), citramon (10 pills), analgin (6 pills) and coldrex (10 pieces) while no doctor's record exist why the nurse had to buy these particular medicines.

Also, M.G. born in 11.03.1999, was diagnosed with smallpox, as the record indicates. No other records are made, however, according to the medical journal, the nurse ordered ketotiphen, coldrex, valerian, no-shpa and citramon for the child without any prescription.

The cases have been detected as well when the ordered medication did not correspond doctor's prescription. An inmate M.Kh., born in 11.01.1997 was examined by doctor (23.04.07), diagnosed with acute respiratory disease and prescribed ampicilin, mapap, vit C, and bromhexine. The medication ordered by the nurse in April included bromhexine (15 pills), paracetamol (12 pills), ampiox (15 pills), allochol (15 pills), festal (6 pills). The doctor prescribed ampicilin, but ampiox is ordered instead, and other non-prescribed medication is ordered additionally. It's unclear who used an unperceived medication.

So the medication is ordered arbitrarily, without any logic and grounds whatsoever. There are also cases when a prescription exists, but no relevant records are made in the name of relevant patient. An inmate V.B., born in 25.09.1999 was examined on 26.04.07 and according to the diagnosis (acute respiratory disease) was prescribed paracetamol and mucaltin. No relevant order has been recorded in journal.

Patient Sh.I., 10-year old was admitted to the House, examined by doctor on 30.03.07 and diagnosed with acute bronchitis; was prescribed amoxacilin 500mg, lazolvan and ketotiphen. This prescription was not reflected in the relevant order.

There were cases registered when a medication, analogue to the ordered one had already been donated by humanitarian aid. An inmate, born on 08.01.1995 was examined by pediatrician on 16.04.07, diagnosed with acute respiratory disease and prescribed mapap (paracetamol). Two days after, on the basis of the bronchitis this time, it was prescribed the following: amoxacilin, suprastin, no-shpa, lazolvan and streptocid. To what extent the treatment corresponds the diagnosis is the competence of the assessment of the quality of the medical service. It's interesting that, for this patient, the nurse ordered: festal (10 pills), amoxacilin (15 pills), paracetamol (12 pills) and bromhexine (15 pills). Why was the paracetamol ordered when mapap had been already provided through humanitarian aid? Also, it's unclear why the ordered medication deviated from a prescribed list. Such discrepancies cast doubts on the issues of Bodbe Boarding Houses inmates' access to the medication and quality medical care.

It can be concluded that the issues of medical care and provision of relevant medication in Bodbe Children's Boarding House need to be addressed and the relevant recommendations made. Therefore, in order to improve the quality of medical service in Bodbe Boarding House it's necessary to renew and train the personnel, parallel to the introducing the mechanisms of control.

For examining said question, the Public Defender applied to the Ministry of Education and Science and the Medical Activities State Regulation Agency of the Ministry of Labor, Health and Social Affairs.

The State Regulation Agency explored that the doctor of the Children's Boarding House of the village of Upper Bodbe of Sighnaghi region is certified in "internal diseases" and has an illegal practice in "pediatric service". Concerning above-mentioned, a protocol on administrative offence was drawn up and sent to the Sighnaghi court; also, an issue of

doctor's responsibility was raised before the Council issuing State Certificates according to the Law of Georgia "On Medical Activities". According to the court ruling, an administrative fine was imposed on the doctor in amount of GEL1000. The charged doctor is on maternity leave; no decision has been made on applying a different measure against her.

The State Regulation Agency confirmed as well the fact of issuing medication by nurse without prescription. The issue of disciplinary responsibility of the nurse was raised before the director of Upper Bodbe Boarding House; as a result, the nurse got a severe reprimand.

Etseri Shelter for Orphans and Children Lacking Parental Care

On 16 June, 2007 the representatives of the Public Defender's Center of Children's Rights visited Etseri Shelter for Orphans and Children Lacking Parental Care in Samtredia region for monitoring purposes. They met with the school principal, Karlo Gotoshia, other representatives of the management; examined the kitchen and dining departments, bedrooms and common rooms.

In result of the monitoring of the boarding house the following problems have been identified:

The institution is envisaged for 100 inmates. According to the last year data, 50 inmates were in the shelter total in 2006; at present there are 18 children – 9 boys and 8 girls, also one inmate, who doesn't fit the shelter criteria by age, but is there, since he's got nowhere to go.

5 tutors and 2 nurses work in the Boarding House. As results of the questioning showed, stuff members have not undergone any special course in the relevant field. They mentioned that the facts of violence have occurred more than once however they do not know what rehabilitation measures should be applied in such cases.

The issue of the therapy room is noteworthy. During monitoring, the nurse's room, where the urgent medicines are placed, was locked. Despite our request, opening the nurse's room was not possible. On the question what the tutors would do if the child gets an accidental injury or high temperature, they answered they would call ambulance. If this is true, then the need of the room for keeping medicines is to be questioned.

During the monitoring, a so-called "Fantasy room" attracted our attention where children's toys are placed. The room has a glassed veranda and the visitor can see toys placed there from outside. The room itself is locked and is inaccessible for children, which, as tutors explained, is substantiated by the fact that children destroy them in no time.

Above-mentioned facts indicate different violations of children's rights. Namely, Article 24 of the Convention on the Rights of the Child stipulates the right of the child to have access to the primary medical and sanitary care; also, Article 31 of the Convention envisages the right to leisure and the right to participate in games and entertaining events according to the age.

Concerning problems related to the Etseri shelter, the Public Defender applied to the Ministry of Education and Science with recommendation. The letter the Ministry sent in response, mentions that the Ministry is duly informed about the problems hampering creation of an adequate environment for inmates for development. Considering present realities, the Ministry has decided, within the framework of the healthcare reform, to reorganize the institution and transform the latter into the day care center, which will start functioning from January 2008.

Annex 16 Rights of People with Disabilities

Kakhaber G. case

Kakhaber G. appealed to the Public Defender's office. According to his information, his sister, Tamar B. had a car accident on April 4 with severe body injuries; namely, her right upper extremity was amputated at the shoulder joint. Tamar B. was a pianist so the car accident caused not only her physical malformation but also, she had to quit her professional activities.

In Kakhaber G.'s words, Tamar B. needs a "muscle-implanted" prosthesis with myoelectric control.

On the basis of this application the Public Defender of Georgia submitted a letter to the director of the State Agency for Social Aid Mr. Levan Peradze (letter # 2358/04-1/1139-07) with a request to help Ms. Tamar Beroshvili to buy a "muscle-implanted" prosthesis with myoelectric control in order to support her full participation in social life so that she wouldn't feel isolated and abandoned by state due to disability.

On 27 August 2007 the State Agency for Social Aid responded by the letter (#01/06-3632) informing that our request was submitted to the State Agency for Health and Social Programs. Said agency studied the letter and notified that Ms. Tamar Beroshvili is eligible for the aid covered by the State Program for Social Rehabilitation of Persons with disabilities, elderly and children lacking parental care / component of providing persons with disabilities with prostheses and orthopedic appliances; and consequently, Ms. Beroshvili should address the institution involved in the implementation of this state program - Social Rehabilitation Center for Persons with Disabilities (7 Kedia St, Tbilisi).

Annex 17. Human Rights Monitoring in Elderly Homes and Boarding Houses

Monitoring results

Tbilisi Boarding House for Elderly

The Boarding House has been functioning since 1978. It carries out an institutional patronage for elderly, providing them with care, food, primary medical care and rehabilitation. Lonely, economically insecure and internally displaced persons as well as persons with disabilities are placed in this institution at the moment. The property status of the institution is unclear.

Living conditions

The Boarding House's yard is in good order. Interior of the building is adequate. Sanitary norms are observed and infrastructure is functioning normally. Inmates live separately (one inmate per room), except for the cases when spouses chose to live together. Rooms are furnished; there are wash sinks and toilets. Hot water is not supplied to the rooms; though inmates can regularly use a bathroom. Those questioned say that they will need air conditioners for summertime. Hygienic means are provided. 85% of questioned inmates say that their privacy is observed. Food is enough and adequate. There is a special room provided for inmates to rest.

Quality of care

100% of questioned inmates say that the personnel treat them with respect and care. 25% of questioned say that in case of need they can hire a nurse, 35% say they cannot afford one. The monitoring group met several patients, who need a nurse but do not have one. Hygienic procedures are carried out behind the screen. Several of those questioned say that duty personnel is not enough at night time, considering that inmates live alone – in possible crisis situation no one would come to help them since alarm systems were not installed in all rooms. According to the majority of inmates questioned, they are not subject to any kind of discrimination.

Medical service

Inmate have access to medical care, the boarding house provides regular examination and in case of need, the necessary treatment. 85% of those questioned say that they have access to medication. Small number of questioned say they do need a specialized medical care but due to economic reasons, cannot afford the latter. Inmates have access to the psychologist's service.

Contacts with outside world and right to information

Inmates are allowed to enjoy walking on the fresh air in the yard. Time for meeting visitors is not restricted. According to internal regulations, inmates are allowed to leave the house upon completing the relevant procedure. They have access to the TV, radio, magazines and newspapers. According to 80% of those questioned, inmates hadn't been taken anywhere for recreation last year. 78% of questioned do not know what the state financing amounts to and what these funds are spent on. Only 30% of questioned are familiar with internal regulations. Inmates do not have access to telephone, as they say, there's only one telephone for all three floors.

Forced labor

80% of questioned say that they do not work for the benefit of the House; 15% do some light work at their will, like, for example, cleaning own room.

Freedom of speech and religion

According to questioned inmates, they enjoy the right to perform their religious rituals.

The question: "Do you have the right to say anything you want whoever and whenever?" was answered: 80% "yes", 20% "no".
Right to complain

70% of those questioned say that in case of pretences they can appeal the administration or other institutions with complaint.

Right to participate in elections

80% of those questioned did not participate in elections, though many inmates say that elections have not yet been held since their being in the House. 20% abstained from answering the question, 55% did not have ID documents with them.

Elderly Home "Beteli"

"Beteli" is the elderly home for 22 inmates, which is functioning on charity donations and provides care, food, primary medical care and rehabilitation to elderly. Lonely, economically insecure, internally displaced persons and persons with disabilities are placed in this institution.

Living conditions

The building of "Beteli" is new. Interior is comfortable. Sanitary norms are observed and infrastructure is sound. One inmate lives in one room (two - in case of spouses). Rooms are furnished; there are wash sinks and toilets. Hygienic means are provided. 85% of questioned inmates say that their privacy is observed; food is enough and is of good quality. Dining room is clean and comfortable. There is a special room provided for inmates for entertainment and rest.

Quality of care

Majority of questioned inmates say that the personnel treat them with respect and care. 90% of questioned say that in case of need they can hire a nurse. The monitoring group met several patients, who have personal nurses. According to the majority of inmates questioned, they are not subject to any kind of discrimination.

Medical service

Inmates have access to healthcare and medication; however, in case of need for specialized, expensive medical care, the house cannot finance the latter fully. Several inmates need ophthalmologist's consultancy and treatment.

Contacts with outside world and right to information

Inmates are allowed to enjoy walking on the fresh air in the yard. Time for meeting visitors is specified by internal regulations. Inmates are allowed to leave the house. They have access to TV, radio, magazines and newspapers. Majority of those questioned say that they hadn't been taken anywhere for recreation last year. Almost all of those questioned know what portion of pension is spent on what. 85% of inmates are familiar with internal regulations, which is a positively high rate. Inmates have access to telephone.

Forced labor

Inmates questioned do not work for the benefit of the House; however they say that in case they wish they could do some work.

Freedom of speech and religion

According to questioned inmates, they enjoy the right to perform their religious rituals.

The question: "Do you have the right to say anything you want whoever and whenever?" was answered: 75% "yes", 25% "no".

Right to complain

80% of those questioned say that in case of pretences they can appeal to the administration or other institutions with complaint.

Right to participate in elections

40% of those questioned said that they did participate in elections, the rest of inmates say elections have not yet been held since their being in the House. All of those questioned had ID documents with them.

Charity House "Katarzisi"

"Katarzisi" is an elderly home for 15-20 inmates, which is functioning on charity donations and provides care, food, primary medical care and rehabilitation to elderly. Lonely, economically insecure and internally displaced persons are placed in this institution. Bank accounts of "Katarzisi" are sealed for the moment.

Living conditions

The building of "Katarzisi" is under repairing; however, due to sealed banking accounts, repair works are suspended. Up to 15 inmates live in two rooms, equipped by minimum necessary furniture. Repairing works of toilets and bathrooms are also suspended. All of those inmates questioned say that food is enough and is of good quality. Sanitary norms are observed.

Human Rights Monitoring in Elderly Homes and Boarding Houses

Recommendations:

Recommendations to the Ministry of Labor, Health and Social Affairs of Georgia:

- To exercise regular and objective control on homes and boarding houses, considering that beneficiaries of these institutions are mixed and very often there are no resources available to cover the needs of all inmates (E.g., elderly with restricted capabilities);
- To improve access to medical care for inmates of institutions for elderly;
- To meet the existing demand for elderly homes / boarding houses by creating new, up-to-date institutions specialized on providing care for different groups of beneficiaries.

Recommendations to the Ministry of Economic Development of Georgia:

- The Legal Entity of Public Law "Tbilisi Boarding House for Elderly" is a legal successor of "Savane Ltd". However, the property registered on the balance of Savane Ltd. has not been transferred to the balance of the Boarding House. Despite repeated appeals to the administration of the House and the Ministry of Labor, Health and Social Affairs of Georgia, decision has still not been made, that hampers development processes. The issue is recommended to be solved immediately.

Recommendations to the Ministry of Finances of Georgia:

- Financing allocated for elderly does not cover needs for their care, food, primary medical care and rehabilitation. Financing should increase and competitive model of financing elaborated with equal approach to all institutions.

Recommendations to the Tbilisi Boarding House for Elderly:

- Safety system should be installed. As the results of monitoring show, inmates complain that their safety is not ensured and ask for installing the special alarm system that will enable them to contact personnel urgently in crisis situations.

Recommendations to the Dzevri Boarding House for people with restricted capabilities:

- Electricity system should be improved, safety norms observed. Living conditions improved.
- Stricter control should be set on the facts of physical and verbal abuse of inmates and exploitation of their labor.

Recommendations to the Kutaisi Boarding House for Elderly:

- There are no conditions for normal accommodation of people with restricted capabilities. Necessary measures should be carried out for creating adequate conditions for their living;
- Inmates' right to the freedom of speech should be observed.

Recommendations to the Elderly Home "Satnoeba":

- Safety norms should be observed in the rooms. Inmates should be assisted in getting pensions and restoring their ID documents.

Annex 18. State of Human Rights in Psychiatric Institutions first half of 2007

Human Rights Monitoring in M. Asatiani Scientific Research Institute of Psychiatry

- May, 2007

Summary Report

M. Asatiani Scientific Research Institute of Psychiatry is the leading psychiatric institute in Georgia, as highly qualified specialists work here, departments of Medical Institute function and internship programs are implemented. The Institute is located in the central district of Tbilisi (Saburtalo), occupies 3 ha verdured territory. At present 280 patients are under treatment in the hospital. Medical personnel - 39 doctors, 60 nurses.

The monitoring showed that increase of financing during the last years has positively effected the quality of food and medicaments supply. There are 4 meals daily, menu is relatively diversified. Meat is served almost every day. The departments are provided with medicaments without any problems.

General renewal of the building wasn't carried out. Despite the fact that some redecoration has been carried out, mechanical (sanitary) cores need serious repairs, walls are wet, many sinks are out of use, toilets are out of order, there are no shower rooms, and water is heated by electric heaters. Bathhouse is provided once a week. There are no means of personal hygiene in the hospital like toilet paper, tooth paste, brush, hygienic packages, and towels. The mentioned articles are brought by patients' relatives. Bedclothes are changed in accordance with bathing.

During the monitoring days cleanliness was observed, but the unprepared departments, old furniture, worn mattresses and blankets and poorly dressed patients make pitiful impression.

Medical personnel complain of difficult working conditions and low salaries. Average salary of a doctor is 140 lari, nurse - 110 lari. Also, the insufficient availability of special medical examinations was stresses. The new literature and internet resources are scarcely available for nurses. It's remarkable that nurses, for the first time during the last 20 years, were provided training in psychiatrics and implementation of forced measures. Trainings were conducted by Georgian and foreign trainers.

Basically, the hospital is provided with psychiatric medicaments. If required, patients are provided with the advices of doctors of another specialties and get the relevant medication, but transfer to other hospital is problematic, some hospitals even refuse to receive patients, especially is the patient is unable to pay, so the psychiatric hospital has to cover the treatment expense. The Hospital doesn't have a dentist (she is in maternity leave), so the patients don's receive dentist's service.

In addition to pharmacotherapy the patients undergo the rehabilitation course in the Centre of Psycho-Social Rehabilitation existing on the territory of the Hospital, where they receive

psychotherapy, art therapy, ergo-therapy, learn the skills of living independently. The department of art-therapy functions in the Hospital, where comfortable environment is created for the patients; they are involved in art therapy, computer courses and learn handicrafts.

On the day of monitoring, the 12-years old boy was brought to the Hospital, who was placed in women's department, as children's psychiatric departments don't exist in Georgia. Placement of a child under 14 in adults' department contradicts the law.

The interviewing showed that despite the circumstance that the most of patients undergo treatment voluntarily; their possibility of free movement on the territory of the hospital is limited.

The Hospital has internal regulations. There is no informational board in the Hospital where the patients would be able to familiarize with the routines, or the law concerning psychiatric care or their rights and obligations. The interviewing showed that the patients know nothing about their rights (walking, having a leave, using a telephone, receiving information, discharging, etc.)

The monitoring revealed that among the methods of physical restraint, patients' fixation is often used, but the medical personnel don't know the exact instructions. The answers on questions - how log the fixation lasts, who appoints and who cancels it, whether toilet can be used during the fixation - are different.

"Voluntary labor" of patients for the needs of the department is widely practiced. Instead of remuneration the patients are rewarded with a cigarette or good disposition. Medical personnel consider that this kind of labor is useful for patients.

The interviewing showed that between patients and medical personnel there are good relations. Most of patients are satisfied with the level of skills of the personnel and provided services. Patients sometimes encounter rudeness and offense from the side of nurses. The mechanism of internal claims isn't developed in the Hospital, and consequently the administration is not well informed about the problems existing between the medical personnel and patients.

The recommendation of the monitoring group is that the administration of the Hospital should take measures for the improvement of patients' living conditions, apply stricter control over the behaviors of nurses and implementation of patients' labor, develop the internal regulations and claim placing mechanism, provide the medical personnel with relevant instructions, ensure every day walk for the patients and supply of information to patients and their relatives about their rights.

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The purpose of creating the civil monitoring council of human rights was to monitor human rights violations in the closed institutions and to put efforts aimed at creating more humane mental health service for mentally ill and intellectually disabled persons.
The monitoring council during 2006 year monitored all psychiatric institutions in Georgia and reported about violations of human rights in them. Monitoring made evident that after the hardest 90-es there are some positive changes towards patient care and improvement of conditions of life i.e. food has been improved in all institutions what was marked by the patients too. Generally, patients were in hard sanitary and life conditions, hospitals did not have enough resources to provide effective treatment for persons with mental disorder, patients' rights about receiving information, connection with out world, appeal, as well as about the right of protection from inhuman treatment and forced labor. This group of people, because of their mental status present the group whose rights were most violated in our society. The recommendations made by the council to different parties for wider realization of human rights in psychiatric institutions were addressed to improve the current situation.
In 2007 the 2nd cycle of monitoring has been started. Civil monitoring council of human rights monitored Bediani Psycho-Neurological Hospital.

Overview of the situation

Bediani Psycho-Neurological Hospital is situated in the east of Georgia. 103 patients are using psychiatric care at the Bediani Psycho-Neurological Hospital currently, involuntarily placed and penalized patients among them.
The lack of financial resources is a reason of low wages of employees. The campuses of the hospital are under the poor conditions, the management of the hospital is not able to put efforts in rehabilitation of infrastructure and improvement of living condition for the patients hospitalizes.
The hospital is far from Rayon center and has the communication problems with it.
The internal regulation documents are not published in the departments of the centre and the boxes for internal complaints are not installed. The law "On psychiatric care" is not published also. The rights of patients are not available in the departments.
The alternative methods of psychiatric care are not established.

Monitoring Results

The law "On Psychiatric care" and the internal regulations are not published in the departments, the monitoring results indicate that patients are not informed about their rights.

The patients' right to have information about their illness, diagnosis and treatment is violated. The monitoring results show that none of them are informed about diagnosis, illness and treatment issues by the personnel. The monitoring made evident that patients do not participate in their treatment process and rather the paternalistic approach is used while treating the patients. The access to the medical documentation is limited also.

The most of interviewed patients, those who are being treated voluntarily indicate that their right to refuse the treatment and to leave the institution is violated. The administration of the hospital argues that because of the most of patients experience social problems – have not minimal conditions to leave outside the hospital – they do not discharge such patients from the hospital. Though the monitoring results indicate that about 85% of interviewed patients know where to live after discharged from the hospital. By the way the institution has no social consultants, who can manage the social problems of the patients regarding their trustees; those are responsible to take care about the patients while discharged from the hospital. Because of delaying to discharge the health status of the hospitalized patients is worsening, because of limited access to the rehabilitation services. The monitoring made evident that the patients loose their working and social skills while being treated in the hospital that impedes their reintegration in the society after discharging from the hospital.

The identity documentation issues of the patients are not in order but still monitoring made evident that the patients participate in the elections. It is important that the citizens of Georgia are not allowed to vote without identity documentations.

The interviewed patients complain about inhuman treatment by the personnel, about limited access to the non-psychiatric medical service. Monitoring group saw the patient, who got a heavy injury of the leg and was not consulted by the surgeon for four months. Other interviewed patients say that they extract teeth to each other while needed.

The monitoring identified that patients work for the needs of the institution and they do not get just revenue for this.

Because of low financing, long distance from urban areas and limited communication the hospital does not provide humane environment for the treatment of the patients. The patients stay for the long time at the hospital that doesn't help them to achieve sustainable remission, to maintain their working and social skills and leave the hospital ready to enjoy usual lifestyle.

Bediani Psycho-Neurological Hospital does not provide adequate treatment to the patients, but serve to worsen patient's health and social involvement status.

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The monitoring council during 2006 year monitored all psychiatric institutions in Georgia and reported about violations of human rights in them. Monitoring made evident that after the hardest 90-es there are some positive changes towards patient care and improvement of conditions of life i.e. food has been improved in all institutions what was marked by the patients too. Generally, patients were in hard sanitary and life conditions, hospitals did not have enough resources to provide effective treatment for persons with mental disorder, patients' rights about receiving information, connection with out world, appeal, as well as about the right of protection from inhuman treatment and forced labor. This group of people, because of their mental status present the group whose rights were most violated in our society. The recommendations made by the council to different parties for wider realization of human rights in psychiatric institutions were addressed to improve the current situation.
In 2007 the 2P^{ndP} cycle of monitoring has been started. Representatives of Public Defender Office of Georgia, Global Initiative on Psychiatry (GIP) – Tbilisi, Georgian Association for Mental Health (GAMH), Georgian Psycho-Social and Medical Rehabilitation Center of Torture Victims and Human Rights Information and Documentation Centre (HRIDC) took part in the monitoring visit and Qutiri mental Health Center was monitored this time.

Overview of the situation

Qutiri Mental Health Center is a one of the biggest psychiatric service providers in Georgia. 439 patients are using psychiatric care at the Qutiri Mental Health Center currently, involuntarily placed patients among them.
The head of the mental health centre implements modern attitudes in the management of the institution. The wages of employees has been increased. Rehabilitation of the campuses has been started.
The principle of placing patients in the different departments and wards are planned to be changed. Currently patients are not placed based on their diagnosis and mental disorder status but by their origin.

The internal regulation documents are published in the departments of the centre and the boxes for internal complaints are installed. The law "On psychiatric care" is published also.
The alternative method ("cultural therapy") of psychiatric care is established and well accepted by the patients.

Monitoring Results

Though the law "On Psychiatric care" and the internal regulations are published in the departments, the monitoring results indicate that patients are not informed about their rights, it seems that they does not get the information from the wallpapers and nobody consulted them about their rights when hospitalized.
The patients' right to have information about their illness, diagnosis and treatment is violated. The monitoring results show that none of them are informed about diagnosis, illness and treatment issues. The monitoring made evident that patients do not participate in their treatment process and rather the paternalistic approach is used while treating the patients. The access to the medical documentation is limited also.
The most of interviewed patients, those who are being treated voluntarily indicate that their right to refuse the treatment and to leave the institution is violated. The administration of the hospital argue that because of the most of patients experience social problems – have not minimal conditions to leave outside the hospital – they do not discharge such patients from the hospital. Though the monitoring results indicate that about 80% of interviewed patients know where to live after discharged from the hospital. By the way the institution has no social consultants, who can manage the social problems of the patients regarding their trustees; those are responsible to take care about the patients while discharged from the hospital. Because of delaying to discharge the patients, the hospital has no available beds for those patients waiting for getting psychiatric care in the Qutiri Mental Health Center.
The identity documentation issues of the patients are not in order. For this reason they are not able to participate in the elections and to get pensions. That is another problem, why the social consultant is important to be hired for the hospital.
The monitoring made evident that the patients loose their working and social skills while being treated in the hospital that impedes their reintegration in the society after discharging from the hospital. For this reason the hospital management is to create special programs to help the patients in maintaining their qualities and skills and to apply new skills also.

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The monitoring council during 2006 year monitored all psychiatric institutions in Georgia and reported about violations of human rights in them. Monitoring made evident that after the hardest 90-es there are some positive changes towards patient care and improvement of conditions of life i.e. food has been improved in all institutions what was marked by the patients too. Generally, patients were in hard sanitary and life conditions, hospitals did not have enough resources to provide effective treatment for persons with mental disorder, patients' rights about receiving information, connection with out world, appeal, as well as about the right of protection from inhuman treatment and forced labor. This group of people, because of their mental status present the group whose rights were most violated in our society. The recommendations made by the council to different parties for wider realization of human rights in psychiatric institutions were addressed to improve the current situation.
In 2007 the 2nd cycle of monitoring has been started. Civil monitoring council of human rights monitored Tbilisi City Psychiatric Hospital.

Overview of the situation

Tbilisi City Psychiatric Hospital first time was monitored in 2005. Because of outdated infrastructure the hospital was closed.
The hospital started to function in a new building later. The renewal process will be finished in October, 2007.
Three departments work and 97 patients receive psychiatric aid at the hospital currently.
As the monitoring results indicate living conditions has been much more improved comparing with 2005.
Patients are satisfied with personnel and psychiatric care they receive at the hospital. Both conservative and alternative treatment methods are used to treat patients.
Still Tbilisi City Psychiatric Hospital as a Large closed mental care facility reflect the tradition of social exclusion and paternalism and are incompliant with modern healthcare and social policy based on the principle of an individual's autonomy, authority granting and the right to live in the least restrictive environment. The vast majority of the patients hospitalized is homeless and with limited access to the community based services.

Monitoring Results

The Right to Information

Individuals are not hindered from seeking and obtaining information but in some cases, the treatment consent form is formally signed - staff members fail to ensure that the patient understands the contents of the documents to be signed. Comparing with other psychiatric hospitals patients are more informed about their diagnosis, treatment and rights.

The Right to Privacy

The hospitals do not restrict the patients' right to privacy. This right is not violated by breaching a patient's right to personal data protection, by providing no conditions for private hygienic procedures and telephone calls, by not meeting the requirements of patients' number in a ward and not allowing the patient solitude when required. Specialists have their own offices. Patients may have confidential conversations with relatives visiting them.

Patients have opportunity to use lavatory or bathing facilities alone. Telephone calls are limited and patients express their frustration toward this issue.

Discrimination

Certain patients are given privileges in the hospital. The patients working for the institution receive encouragement like as additional food, cigarettes and sweets.

Torture and Inhuman Treatment

The hospital has standard procedures for imposing physical exclusion, physical or chemical restrictions and the revocation of these. The hospital has official rules regulating these procedures.

Some patients say that they are treated with aggression while refusing medication.

The Right to Free Movement

The right to free movement is violated since the principle of the least restrictive environment is not applied, but the administration explain that this rights is automatically violated because of homeless patients can not leave the institution. The same opinion was expressed by the patients. They do not want to be discharged because of poverty and indigence.

The Right to Property

The patients' right to property is restricted. The hospital has no social worker who can arrange issues related with patients' identity documentation, property and trustees.

Some patients attended interviews with their things and sweets – because of frequent thieving.

Treatment and Psychosocial Rehabilitation

Treatment with medications prevails in the hospital but alternative methods of treatment are accessible for the patients also. The patients know what medicines they are taking.

The cases of long-term hospitalization (from 120 days to 20 years) prevail in the hospital.

Conclusive notes

The monitoring in psychiatric institutions in Georgia has shown that residential care facilities are harmful, too expensive and that only a minority of secluded patients are indeed incapable of living in society. Large residential institutions, designed for isolating "defective"

members of society, cannot properly safeguard basic human rights such as the right to privacy, information, the least restrictive environment, free movement and other fundamental human rights.

This leads to a vicious circle: the more the human rights of mentally ill patients are violated, the more they are crippled socially by furthering their absolute dependence upon the care provided to them, which leads to higher costs for the government for their sustenance.

The government should put its efforts to create a competitive environment, to develop an attractive, alternative structure of community-based services instead of giving the patient's package to a residential facility.

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In 2007 the 2nd cycle of monitoring has been started. Civil monitoring council of human rights monitored Batumi Psycho Neurological Hospital.

Overview of the situation
Batumi Psycho Neurological Hospital first time was monitored in 2006.
Two departments work and 110 patients receive psychiatric aid at the hospital currently.
Patients are satisfied with personnel and psychiatric care they receive at the hospital. Both conservative and alternative treatment methods are used to treat patients.
Batumi Psycho Neurological Hospital as a large closed mental care facility reflect the tradition of social exclusion and paternalism and are incompliant with modern healthcare and social policy based on the principle of an individual's autonomy, authority granting and the right to live in the least restrictive environment. The vast majority of the patients hospitalized is homeless and with limited access to the community based services.

Monitoring Results
The Right to Information
Individuals are not hindered from seeking and obtaining information but in some cases, the treatment consent form is formally signed - staff members fail to ensure that the patient

understands the contents of the documents to be signed. Comparing with other psychiatric hospitals patients are more informed about their diagnosis, treatment and rights.

The Right to Privacy

The hospitals do not restrict the patients' right to privacy. This right is not violated by breaching a patient's right to personal data protection, by providing no conditions for private hygienic procedures and telephone calls, by not meeting the requirements of patients' number in a ward and not allowing the patient solitude when required. Specialists have their own offices.

Patients have opportunity to use lavatory or bathing facilities alone. Telephone calls are limited and patients express their frustration toward this issue.

Discrimination

The patients working for the institution receive encouragement like as additional food, cigarettes and sweets.

Torture and Inhuman Treatment

The hospital has standard procedures for imposing physical exclusion, physical or chemical restrictions and the revocation of these. The hospital has official rules regulating these procedures.

Some patients say that they are treated with aggression while refusing medication and have long time to endure isolation wards.

The Right to Free Movement

The right to free movement is violated since the principle of the least restrictive environment is not applied, but the administration explain that this rights is automatically violated because of homeless patients can not leave the institution. The same opinion was expressed by the patients. They do not want to be discharged because of poverty and indigence. Some patients are not allowed to walk in the yard of the hospital when others are.

The Right to Property

The hospital has a social worker who arranges issues related with patients' identity documentation, property and trustees.

Treatment and Psychosocial Rehabilitation

Treatment with medications prevails in the hospital but alternative methods of treatment are accessible for the patients also. The patients know what medicines they are taking.

The cases of long-term hospitalization (from 120 days to 20 years) reduced in the hospital, since first monitoring was conducted.

Conclusive notes

The monitoring in psychiatric institutions in Georgia has shown that residential care facilities are harmful, too expensive and that only a minority of secluded patients are indeed incapable of living in society. Large residential institutions, designed for isolating "defective" members of society, cannot properly safeguard basic human rights such as the right to privacy, information, the least restrictive environment, free movement and other fundamental human rights.

This leads to a vicious circle: the more the human rights of mentally ill patients are violated, the more they are crippled socially by furthering their absolute dependence upon the care provided to them, which leads to higher costs for the government for their sustenance.

The government should put its efforts to create a competitive environment, to develop an attractive, alternative structure of community-based services instead of giving the patient's package to a residential facility.