Report on conditions of Human Rights in Georgia in 2004

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Contents

1. INTRODUCTION: REVIEW 9

2. PERSONAL IMMUNITY, PROHIBITION OF TORTURE AND PRESSURE 15

3. JUDICIAL SYSTEM AND ISSUES OF JUSTICE 23

4. THE SITUATION IN THE PENITENTIARY SYSTEM OF GEORGIA 29

5. RECORDING INJURIES OF DETAINEES 33

6. THE SITUATION RELATED TO FREEDOM OF RELIGION 35

7. THE RIGHTS OF NATIONAL MINORITIES 43

8. FREEDOM OF SPEECH AND EXPRESSION 46

9. FREEDOM OF INFORMATION 52

10. FREEDOM OF MOVEMENT 56

11. FREEDOM OF ASSEMBLY AND ASSOCIATION 58

12. SOCIAL-ECONOMIC RIGHTS 60

13. REVIEW OF THE CONDITIONS OF INTERNALLY DISPLACED PEOPLE AND REFUGEES IN GEORGIA 66

14. PROTECTION OF CHILDREN'S RIGHTS 74

15. THE CONDITIONS OF PERSONS WITH DISABILITIES 82

16. SITUATION REGARDING THE PROTECTION OF WOMEN'S RIGHTS 91

17. CONCEPT FOR THE REFORM OF THE PUBLIC DEFENDER'S OFFICE 96

18. STRUCTURE OF OFFICE OF PUBLIC DEFENDER 101

19. DRAFT LAW ON COMPULSORY CIVIL SERVICE 106

20. APPENDIX: INDIVIDUAL CASES OF FREEDOM OF SPEECH AND PRESS 109

Introduce

The following report reflects the state of human rights and freedoms in Georgia in 2004. Furthermore, in order to better analyze developing trends in the country, we find it helpful to discuss events that occurred at the beginning of 2005 as well.

In regards to the positive trends, the practice of abduction for extorting money has disappeared outside the conflict regions. In previous years, there were dozens such cases and the number of abducted people averaged to 50-60 per year.

At the same time, still there are often facts of illegal detentions by the police – apprehending a person by planting weapons or drugs – as well as violent acts, beating and torture.

Not a single case was filed against a policeman using the article of torture. In such cases the Prosecutor's Office generally charges with abuse of power, exceeding one's authorities, beating or other.

In addition, jailed individuals who are ill do not receive adequate treatment. Medical intervention is often delayed, as is transportation to hospitals. As a result, some of the cases of delayed treatment have had fatal consequences.

In regards to beating of prisoners, at the beginning of last August, Director of Prison # 1, Gela Kikilashvili, beat three prisoners: Khvicha Shotashvili, Zviad Jangebashvili, and Deniam Aliev. Independent medical examinations showed that all three were beaten, though Gela Kikilashvili was not punished and in fact was transferred from his post to that of Director of Prison #7.

In general, however, illegal detentions and the beating and torture of detainees have dramatically decreased at the end of last year and at the beginning of this one. There are several possible explanations for this. First is that the facts of beating and torture by police received international focus, so that the relevant authorities made a political decision to eliminate such facts. Second is that the Public Defender's Office together with non-governmental organizations launched large-scale monitoring of police stations and pre-trial cells, particularly beginning early this year. As a result, not only has beating and torture dropped dramatically, but procedural violations, including violations of detention terms, have dropped as well. However, a new trend has emerged: most

2004

of injuries inflicted on detainees occur when they are first apprehended. Whether the detainee had resisted arrest or whether the police used excessive force is difficult to verify. Yet according to the large number of injuries and the claims of the detainees, it seems that the police are, in fact, using excess force.

Large-scale monitoring of the police calls for large funds and human resources and the Public Defender's Office is unable to support it. That is why it is important to expedite the ratification of the Optional Protocol to the 2002 UN Convention against Torture that calls for the creation of an independent body monitoring human rights at places of imprisonment.

Two particular cases deserve mention:

1. On May 22, 2004, the Gldani-Nadzaladevi police apprehended Khvicha Kvirikashvili who died the day following his return home. Traces of torture were obvious. A criminal charge was filed, but two of the policemen involved, Jemal Sanaia and Pavle Tatunashvili, were only reprimand, and the third employee, Roland Minaze, was imprisoned for 6 months and later released.

2. On November 23 2004, patrol policeman Grigol Vashaleishvili shot a citizen, A. Robakidze, in the Didube region of Tbilisi. Robakidze was driving with five friends when his car was stopped by the patrol police. According to police information, Robakidze and his friends had a machine gun that Robakidze fired twice in Vasheleishvili's direction. Vashaleishvili fired in return.

All five people who were with Robakidze deny carrying a gun. They claim that they had given themselves up to the police without incident and exited the car with their hands in the air. They claim that the police officers were drunk and that Vashaleishvili fired by accident.

The police version of the story is suspicious, as the accounts of the police officers are contradictory and the results of the medical examination deviate from the official version of the investigation.

Following from this account, it would seem that the Ministry of Internal Affairs wanted to conceal Vashaleishvili's guilt, particularly as the incident coincided with a period in which the Georgian population began to develop trust towards fhs patrol police, and the authorities did not want to undermine this process. As a result, rather than punish Vashaleishvili, a charge was filed against Robakidze's companions, of which two remain in pre-trial detention.

One of the most significant changes to the Criminal Procedure Code is the abolishment of the institute of attendants. Last year the illegal use of attendants, more precisely those of fake aor so-called "professional attendants", became the basis for numerous cases of human rights violations. The police use such professional attendants when a person is apprehended as a result of drugs or carrying a weapon. The Tbilisi and Kutaisi Offices of the Public Defender revealed more than one case of use of such fake attendants. We arranged press conferences on this subject several times and sent relevant information to the Prosecutor's Office and courts. Particularly, we demanded from the Prosecutor's Office to look into cases uncovered by us and to file criminal charges in this regard. We supplied the courts with information and asked them to take it into consideration, which unfortunately they did not.

The lack of independence of court authorities is one of the most pressing problems of the last year. The courts have been carrying out the prosecution's will, which is especially obvious in the field of applying the pretrial detention measures. In 2004 there were 1540 petitions from the Prosecutor's Office to all five district courts of Tbilisi demanding imprisonment as a measure of restrain, of which 1280 were satisfied. In the Tbilisi primary court, only 68 cases were appealed out of 931 cases.

Freedom of speech in 2004 is difficult to assess in a single direction. On one hand, one of Europe's most liberal legislation on the protection of freedom of expression and speech was adopted last year, print media was granted substantial tax concessions, and the law on public broadcasting was passed – all undeniably positive steps forward. The decriminalization of libel was especially welcome, considering the 2003 attempt by Shevardnadze's government to increase the sentence for libel to 10 years. Parliament at that time had adopted the requisite amendments for its adoption in the Criminal Code on their first reading.

On the other hand, media political debates, particularly in the electronic media, have decreased, and the media has become notably more lenient and less critical towards the government. The press avoided coverage of a number of topics, and both a lack of independence and pressure on media owners in their development of programming were obvious. Owners of leading television companies are either in the government themselves, or are involved in much larger-scale businesses and remain uncritical towards the government, as it is more profitable to do so for their businesses. Such circumstances certainly have an impact on the information these TV companies chose to cover. However, from the end of last year televised political debates regained their previous sharpness and diversity. Nonetheless, there is a lack of journalistic investigation that can be explained by censorship originating from company management. At this stage, we will refrain from reporting concrete information, as we have not been authorized by the journalists who themselves talk a lot about the censorship in the informal conversations to disclose them.

There were several obvious cases last year of restrictions on freedom of press, as well as several trials aiming at the restriction of freedom of speech. A notable case of restriction on freedom of expression was the detention of the editor of local newspaper "Khalkhis Gazeti" (People's Newspaper) Revaz Okruashvili on August 2, 2004. Revaz Okruashvili had sharply criticized the local government, especially the law enforcement bodies. On August 2, the police stopped Revaz Okruashvili in the street and conducted a personal search, during which they allegedly recovered drug substances. Afterwards the police searched his car, flat, and office where drugs were also allegedly found. The police did not have a court warrant to apprehend Okruashvili or to search him, and no independent witnesses were brought to the office search. Following an NGO-initiated campaign, Revaz Okruashvili was released, although prior to his release a bargain deal with admittance of the guilt was made.

In another example of the restriction on the freedom of press, on July 14, 2004, the financial police entered the office of the newspaper "The Georgian Times." The Police entered the newspaper without a court warrant and took all the financial documentation. Both journalists and editors link the entry of the financial police to then-Tbilisi Prosecutor, Valeri Grigalashvili, on whom the newspaper published a series of articles. The financial police finished their examination of the financial documentation of "The Georgian Times" at the end of September, finding no violations except for arrears of 911 GEL for current taxes.

One of the most vociferous fights against censorship occurred on March 3, 2005, when journalists at Adjara TV went on strike and declared that they had been experiencing pressure from television management. The Public Defender personally went went to Adjara to look into the matter. The incident ended with the journalists' victory and reassignment of the management

In 2004, freedom of assembly was seriously violated. On January 11, 2004, the police raided meetings in Terjola and Rustavi, using excessive force. In Terjola, citizens blocked the highway, giving a legal basis to the police to open the highway, even more so as the highway was illegally blocked, i.e. blocked without any preliminary notice. Still, the severity that was used by the Police was absolutely excessive, especially as the demonstrators did not resist the police. After opening the highway, the police chased citizens on to country roads and fields and brutally kicked them and beat them with batons and fists. The right of

assembly was infringed even further by the detention of seven people by law enforcement bodies, who charged them with participation in the meeting. The ruling for the seven people, issued by Kutaisi and Tkibuli District Courts, varied from six months to two years imprisonment, based on article 226 of the Criminal Code of Georgia, organizing group action violating public order. One of the participants was fined 4000 Lari.

On June 1, 2004, the special unit of the police severely raided a peaceful meeting organized by people who had suffered from an earthquake. Some of the participants of the meeting were seriously injured by the raid but nobody has been punished for this illegal action, not the policemen themselves or the person who ordered the raid. Temur Mgebrishvili, head of the special unit, personally participated in the raid, and Irakli Kldiashvili, former head of Tbilisi Police Department, justified the action of the special unit.

As the report covers this past year, we cannot but mention the extreme severity and brutality demonstrated by Aslan Abashidze's regime when raiding meetings and demonstrations. Yet, as the regime has since ended, there is no need to focus too heavily on it. At the same time, it is important to note tendencies that have continued from the previous year. We consider as a serious violation of the right to assembly an earlier event in Akhaltsikhe.

On February 19, 2005, the students of Akhaltsikhe University blocked a road, demanding the release of Merab Beridze, the Rector of the University. The Police did not attempt to open the road but instead arrested about ten students in their homes the next day. After the Public Defender's interference, the students were released, though further administrative penalties were used against them. Eleven students were fined amounts of 15 Lari each. Based on the judgment of our office, the students were acting within a legal framework as well by as the norms established by the Constitution on Assembly. We consider the police action and the subsequent court decision as a serious precedent on infringement of the right to assembly.

Infringement of the rights of religious minorities, and more precisely, a notable lack of rights for religious minorities, has embarrassed Georgia in front of the world. Permanent raids against minorities that were broadcast, destruction of religious minorities' property, abuse and humiliation, discriminating legislation and practices, court sessions during which members of minority groups and their lawyers were beaten in the court hall, all occurring without any reaction from law enforcement bodies – this was the state of freedom of religion in Georgia before the Rose Revolution. After the revolution, similar things have stayed in the past and important step in this direction was the arrest of Basil Mkalavishvili and his followers. However, the problems still remain and most of them are not paid attention by the authority.

One of the most significant improvements introduced by Georgian Parliament are the changes made to the article 159 of the Civil Code of Georgia – enabling religious organizations to register as Legal Entities of Private Law. This is not necessarily the best solution to the problem, as some religious groups, namely the Apostolic Church of Armenia, the Catholic Church, and several others, state that they do not want to be registered as the Legal Entities of Private Law. Yet the existing possibilities for organizational registration, such as associations and funds, are not able to fully reflect the specific nature of religious associations.

After the structural reorganization of our office and the creation of the Freedom and Equality Department, which studies issues relating to the rights of ethnic minorities, the Public Defender's Office has become especially interested in this matter.

The first and most common problem in all the regions is lack of knowledge of the state language, Georgian, which hinders ethnic minorities from becoming fully integrated into Georgian society. Lack of knowledge of Georgian is a major impediment to taking key positions in the government. In addition, resolution

of issues related to land ownership is especially important for Azeris in Kvemo Kartli and Kakhetia, and Ossetians in Kakheti,as they are sometimes victims of discriminatory conditions in comparison with the Georgian population.

Among the problems that the Greek residing in Tsalka have, two main problems can be identified: high crime rates and lack of property protection. A high rate of crime in the region is not only the problem of ethnic Greeks. But looking at statistics, we see that since they are the most vulnerable group, they tend to suffer from crime the most. In terms of property protection, unlawful break into and seizing the Greeks' houses are frequent enough to warrant the state's attention. Finally, I would like to point out that there is enough proof to link the situation in Tsalka to the negligence and even criminal actions of the Tsalka head of police, Zurab Keshelashvili.

In Javakheti, the problems can be divided into several parts. First is the lack of knowledge of the state language, which is a common problem for the majority of ethnic minorities. Second are economic problems as well as problems of integration with the rest of Georgia, requiring serious attention and significant investments from the government (road construction and so on). The third major problem is that of poor administration.

Our office is currently working on a draft law on restitution of property and the rehabilitation of rights that were violated on the basis of nationality in the early 1990s.

Compared to the previous period, certain positive changes are noticeable in the protection of the rights of military servants. In particular, increase in the appropriations for defense has improved the economic conditions of military service, and their access to food, clothing, and basic living conditions. Furthermore, the attitude toward the military service has changed. Before the revolution, only the most vulnerable segment of the population served in the army, which is no longer the case.

On the other hand, old problems persist, such as Georgian version of so called "bulling" – "tough guys" oppressing the weak, regional animosity and repression of subordinates by the officers are widespread. We have had cases when we returned runaway soldiers to the army, and on the basis of our petition no disciplinary action was implemented against them. For example, in December 2004 we returned to the Mukhrovani division 10 soldiers who had fled from their division, the only reason for which was their desire to serve either in Poti or close to the Poti area. We could not have assisted them in fulfilling their wish, but they did return to their division and on the basis of our petition no disciplinary action was executed.

We also want to make note an incident in December 2004, when 71 soldiers fled from Mukhrovani brigade, a case that received major publicity that continues to be the subject of attention.

The soldiers who had fled from the Mukhrovani brigade organized a demonstration at the State Chancellery. Our employee brought them to our office. Personal position of the Public Defender was that pursuant of article 25 of the Georgian Constitution, representatives of military forces have no right to public assembly without prior permission. As we would not encourage an infringement of the Constitution, the soldiers had to go back to their site of dislocation, where we would protect them from any kind of pressure, and would examine their appeals and react adequately. Two representatives from our office, Valerian Dzvelaia, who had served in the Mukhrovani division for years himself, and Rezo Charbadze, both stayed with the soldiers for several days to protect them from pressure and examine their complaints.

The soldiers' main demand was to serve either in or close to their own region, particularly in Western Georgia. They stated that they had been promised to work as truck drivers, while instead they were

ordered to drive tanks. While they stated that food provisions were adequate, they complained that they received tinned rather than fresh meat. They also demanded simplified rules for a leave, though the soldiers had been recruited a month and a half ago.

There were more serious complaints, namely that their living quarters were badly heated and that hot water was scarce. While these were actual problems, it should be noted that the living quarters had been renovated, that the water supply was being installed, and that two weeks following the incident the situation had significantly improved.

Following this incident, nobody, except for the Public Defender's Office, visited the soldiers or expressed interest in their situation. 40 of those soldiers still serve in Mukhrovani, 20 in the Telavi division, seven in Guards Unit and four – in the 4th brigade. As a result of the incident, several of the officers of the brigade have been imposed financial sanctions, however the procedures of paying such sanctions were ambiguous.

I would like to mention several of our initiatives in the military sphere. In particular, the Public Defender's Office elaborated two draft laws. The first refers to an amnesty on deserters. However, it has not been finalized because the final number of deserters has not been identified, which is necessary for inclusion in the draft. The second law refers to compulsory civil service, which has been submitted to Parliament and was heard on the united session of the Committees of Defence and Human Rights.

A serious problem has been caused by mass dismissal of employees from public service and subsequent unemployment. However, I personally understand that reorganization and optimization of the public service is an inevitable process. In order to expedite the creation of employment, the Tax Code should be even further liberalized that will better facilitate the development of business. But this is certainly my personal opinion and not the recommendation of the Public Defender. Simultaneously, I would welcome the legislative amendments underway for the simplification of licensing and the facilitation of new businesses.

In regards to specific cases, we were able to assist a number of citizens whose rights had been infringed as a result of unlawful dismissal, such as 1600 of the former employees of the disbanded Abkhazian police, who we helped to receive their 4-month salary and allowance. At the moment, we are working to assist 400 policemen who claim they are eligible for pensions to receive them, but which were lost during the Abkhaz war.

Personal Immunity, Prohibition of Torture and Pressure

LEGISLATIVE BASIS

The Georgian Constitution prohibits torture. Article 17 of the Constitution specifies that the given norm is absolute and is not liable to any limitations during an act of war or a state of emergency. Article 18 of the Constitution states that "Physical or mental coercion of an arrested or a person otherwise restricted in his/her liberty shall be impermissible". Yet this prohibition may be limited during an act of war or a state of emergency, contradicting fundamental principles of international law on human rights.

Based on this fact, the recommendation of the Public Defender of Georgia is to initiate amendments to Georgian Constitution, eliminating the possibility of allowing the limitation of physical or mental coercion during an act of war or a state of emergency.

The most important document in regards to combating torture is the Criminal Code. The Criminal Code comprises 126 articles, defining the concept of torture as a criminal act, and listing the sanctions that may be imposed on a person for committing a crime. These norms do not coincide with principles of existing international acts. The same point is noted in the summary of the UN Human Rights Committee on political and civil rights about the Second Regular Report of Georgia on International Pact.

- The norm contradicts Article 1 of the Convention against Torture. Georgian Parliament joined the UN Convention against Torture in a resolution approved on December 22, 1994, thus taking the responsibility to harmonize Georgian legislation with the Convention. The traditional definition of torture contains three key elements: imposition of hard physical or mental coercion; special intention to obtain information or deposition (Dolus Specialist); and aa state servant as one of the principle subjects. The respective article of the Criminal Code of Georgia does not contain any of these elements.

- The definition of torture is placed in the Chapter titled "Criminal Acts against Human Health", but due to its importance, it should be placed in the Chapter on "The Crimes against Human Rights".

2004

- One of the requirements of the Convention against Torture is making effective the existing legislation and administrative and court decisions. Effectiveness rests on adequate sanctions for torture, which is not the case in the Criminal Code. The Criminal Code specifies three years of imprisonment for committing torture. The same sentence is used for negligence of official duties or for violation of the rule of the use of Legal Tender on the territory of Georgia. In Croatia, for example, the sentence for torture is imprisonment of up to 8 years, in Spain, from 2 to 7 years, and in Ireland, life imprisonment.

Based on these facts, the recommendation of the Public Defender is to change the concept of "torture" in the Criminal Code of Georgia and to harmonize its phrasing with the requirements specified in the key international documents on Human Rights.

In terms of procedures, investigation of torture should be based on the Criminal Procedure Code of Georgia. In this respect, violation of human rights not caused as much as a result of inadequate legislation but instead as a result of the absence of legislation focused on the protection of detained persons.

The amendments made to the Criminal Procedure Code of Georgia on August 13, 2004 by adoption of the law #398 can be considered a positive step in fighting against torture. The changes were envisaged in the resolution of January 29, 2003 of the Georgian Constitutional Court. The changes specified the constitutional basis for detention, and the status of a so-called "detainee" has been abolished. All procedural rights that, previous to the changes were only applied those with the status of "suspect", are now also applied to any detained person. Detained persons also have a right to medical examination upon his/her detention.

At the same time, there has not been any information or activities carried out in the country in support of these amendments. As a result, the general population is not aware of these changes, and even the regional staff of the Ministry of Internal Affairs does not have updated information. In this case, it is not reasonable to talk about implementation of positive changes.

The Public Defender recommends that the state support an extensive education campaign against torture. The procedural rights of detained persons should be disseminated in pre-trial cells and places of detention as well as in public spaces. The contact information for the Inspection General of the Ministry of Internal Affairs as well as the hotline for the Prosecutor's Office should also be disseminated. The Ministry of Internal Affairs should allocate funds and resources to educate and update staff on legislative information and should improve their qualifications on human rights and Georgian procedural legislation.

Unfortunately, a detainee's right to immediate medical examination has largely been unimplemented. The population's lack of awareness of this right is compounded by technical problems related to such examinations. In the regions particularly, it is very difficult to ensure immediate medical examinations, due to a lack of doctors on duty near the places of detention.

Recent amendments adopted by the Georgian Parliament to the Criminal Procedure Code, reducing the term of pre-trial detention from 9 months to 4 months, are also welcome. Also welcome are changes regarding the inadmissibility of evidence given by a suspect or prisoner during preliminary investigation, if a prisoner (accused) changes one's evidence during the court investigation. The reform will create a legal environment where the state's accusation against a defendant will rely solely on facts obtained using lawful and permissible methods.

In order to implement changes in a unified manner, and to avoid individual interpretations of legislative changes, The Public Defender recommends that there be nation-wide training for judges, employees of the Ministry of Internal Affairs, and the Prosecutor's Office.

STATE COMMITMENTS AGAINST TORTURE

It is common knowledge that state commitment against torture means the prohibition of torture or inhuman and degrading treatment of a person by public servants. Unfortunately, torture as well as inhuman and degrading treatment of detainees continued to occur in 2004.

Further examination of some of the widely-discussed precedents of the year will illustrate this point.

- Sulkhan Molashvili, the former Chairman of the Chamber of Control, was detained on April 23, 2004. The court decided to confine Molashvili to pre-trial detention. In June it was revealed that he had been tortured. On July 5, the Prosecutor's Office filed charges based on paragraph 3.b of article 322 on the abuse of official duties using violence or a weapon. Although the Prosecutor's Office charged the prison doctors, who, according to Molashvili's statement, failed to report his injuries when he entered the prison, the suspect of the offence himself has not yet been found.

  Furthermore, Molashvili was subjected to inhumane treatment by being placed in a cell at Prison #7, where conditions are intolerable, and where Molashvili received unequal treatment in comparison with other prisoners, not being allowed to receive any information or to watch television.

- On December 24, 2003, Davit Mirtskhulava, the former Energy Minister, was brought to the Prosecutor's Office. After interrogation, Mirtskhulava was detained, and at the same time had a heart attack and cerebral stroke. He was taken to special hospital. No charge was filed against him during the next 48 hours, as the resolution recognizing him as a suspect was invalidated. Based on the medical examination certificate dated January 16, 2004, Mirtskhulava suffered a heart attack and cerebral stroke and was not allowed to be taken to prison. On the same day, January 16, an accusation against Mirtskhulava was brought in his absence. At the time when the accusation against him was brought, Mirtskhulava was suffering from a heart attack. On January 17, the Mtatsminda-Krtsanisi District Court made a decision to give Mirskhulava pre-trial detention despite his bad health conditions. The Tbilisi District Court did not change the confinement measure as a result of the appeal. The same day, Mirtskhulava was taken to prison, and later to a prison hospital. About two months later, Mirtskhulava's bladder was operated on to extract cancer cells. The next day he was returned to the prison hospital, posing a threat to his health as he was not allowed a post-operation recovery period. On May 17, Mirtskhulava suffered another heart attack. The next day he was taken to prison # 6, where he was visited by Mathias Yorsh, representative of Council of Europe.

  In order to eliminate the improper treatment of prisoners, the Court of Human Rights of Europe adopted a resolution with respect to Georgia on pre-trial measures. The resolution included a note that Mirtskhulava should be taken either to a special hospital or to a penitentiary hospital with appropriate conditions to treat him. Georgian authorities did not meet the requirements of the resolution in a timely manner, and only after the second notice was Mirtskhulava taken to the Republican Hospital. Mirtskhulava's health condition remains very serious. He suffers from an oncological disease, the treatment of which is impossible in prison.

- The Criminal Department of Tbilisi Prosecutor's Office is investigating Case # 1004835. The case regards the attack and attempted premeditated homicide of Kakha Giuashvili, a Member of Parliament. The crime is specified by articles 179 and 19-109 of the Criminal Procedural Code of Georgia. Charges were filed against David Mindadze, who was detained on May 13, 2004 in the Varketili district of Tbilisi. Allegedly, Mindadze voluntarily admitted his guilt and named two brothers, the Nemsitsveridzes, who had ordered the crime. Mindadze was tortured, physically and mentally coerced by David Kekua, David Endeladze and others, all high officials of Tbilisi Department of Internal Affairs, as well as Petre Balakhishvili, the investigator. Mindadze was forced to sign a document that they requested.

Liberty Institute representatives and Mindadze's wife, Ketevan Meshveliani, appealed to Empatia, the Center for Victims of Torture, Violence, and Pronounced Stress Impact. The Center examined Mindadze's situation and issued a medical conclusion of #11/9, which stated physical and mental coercion and torture that aggravated Mindadze's psychological condition. However, other examinations and other evidences claim that Mindadze was not tortured.

On October 28 2004, on the results of the investigation on the basis of the application of Mindadze' wife, a ruling was made that rejected the institution of criminal charges. The Head of General Inspection cancelled a ruling to conduct additional inspection, however, as according to General Inspection, an additional examination did not provide any results and on November 17, 2004, the ruling rejecting the institution of a criminal charge was again pronounced.

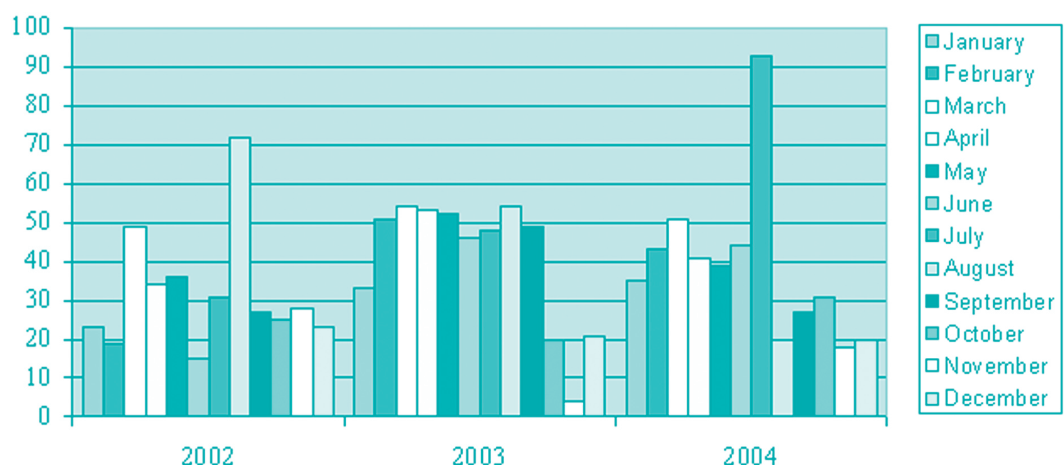
The ruling was first appealed in court, which returned the case to the Prosecutor's Office for looking into additional circumstances and to decide whether to institute charges or not. The later decision of the court was appealed in the Supreme Court, which decided that the lower court's decision was correct.

Although the Prosecutor's Office tried its best to avoid initiating the case, thanks to the persistent efforts of Minandze and upon assignment from the court, the General Prosecutor's Office instituted charges stating Mindadze's torture. This is the only case so far instituted with signs of an offence as stated by article 126.

In 2004, the number of people who were taken to penitentiary facilities with physical injuries remained relatively high.

According to the official statistics of Penitentiary department of the Ministry of Justice of Georgia, in 2004, 461 prisoners entered prisons with various injuries caused by the police, of which 263 prisoners came from Tbilisi police stations. (In comparison, in 2002, 382 prisoners entered prisons with injuries, and in 2003, 485 prisoners entered with injuries). However, these official statistics should be taken with caution, as other data suggests that the number of people who enter the penitentiary system with injuries is substantially higher.

Number of people who entered prisons with injuries by month



Public monitoring is one of the most effective tools for fighting against the torture of prisoners or inappropriate treatment in penitentiary/pre-trial facilities. The steps made by the state in this direction are unsatisfactory.

On August 3, 2004 a list of people was compiled that were allowed to enter penitentiary facilities without a preliminary permit. Based on this resolution by the Decree of the Minister of Justice, a Supervisory Board of the Penitentiary System was established and its charter was adopted. It should be noted, however, that the Board does not have any guarantee of independence. The organizational structure of the Board (it was established based on an act issued by the executive branch) and the status of its members do not include even minimum guarantees for its independence. In addition, the Board does not have either financial or organizational provisions, and therefore, the success of the Board depends only on the goodwill of its members. Thus, in order to ensure the effectiveness of Public Monitoring, it is important that the Board be ensured with both financial and legal independence.

The protocol adopted by the UN Convention against Torture specifies even greater measures to fight against torture. Protocol member countries make a commitment to create an independent national body, the main function of which is the monitoring of prisons and other confinement facilities and reporting on cases of torture. This national body is provided with institutional and financial independence and the power to effectively react cases of torture.

The recommendation of the Public Defender is that Georgia ratifies the additional protocol of the UN Convention against Torture in order to ensure the independence of the body monitoring human rights in confinement facilities.

It is a matter of concern that the Georgian authorities have not taken steps specified by the Georgian legislation to ensure public control over the penitentiary facilities. Article 98 of the Law on Imprisonment envisages the creation of public commissions for each penitentiary facility. The commissions are charged with monitoring human rights protections in prisons and responding to any violations. At present, the commissions have not been implemented, as the Minister of Justice has not yet approved the members of the commissions. As a result, public control of human rights in detention facilities does not yet exist in Georgia.

The recommendation of the Public Defender is that the Minister of Justice should ensure the immediate establishment of the Public Commissions.

Following the launch of the Public Defender's monitoring activities in police stations and in pre-trial cells, severe treatment of detained people has decreased. Extensive monitoring began in December 2004 on the basis of an agreement between the Public Defender and the Minister of Internal Affairs. The Public Defender's Trustees have the power to inspect police stations and pre-trial cells at any time, and in case of finding any infringement of human rights, can appeal to the Inspection General of the Ministry of Internal Affairs.

When, in fact, the Public Defender's Trustees reporting on beating of the detained, the police responded that force was used to stop the detained from resisting. In order to eliminate the possibility of using violence against the detained on the basis of resistance, it is important that the Inspection General conduct a thorough examination of each case based on Georgian legislation as well as on international standards of human rights, and to clarify whether violence was used during detention, and if so, whether it fit the perceived threat against the police official. Every case that deviates from the rules and shows excessive use of force, in particular beating, should be revealed and charges should be filed.

It is also noteworthy that a January 5, 2005 resolution by the Minister of Internal Affairs prohibits cameras and cell phones in pre-trial cells, impeding the disclosure of beatings and other forms of inhumane treatment.

The recommendation of the Public Defender is that Trustees should be allowed to use cameras and cell-phones in pre-trial facilities to facilitate disclosure of cases of torture and inappropriate treatment.

In order to eliminate inappropriate treatment of detained people, it is very important to fight and the so-called "impunity syndrome" in the violation of laws among law enforcement bodies. It is also very important to strengthen the role and function of the Inspection General on Supervising Lawfulness within each structure. At presently, the protocol for hiring Inspection General staff has not been determined. Inspection General units either lack charters regulating their activities or are equipped with a temporary charter. In addition, the role of human rights defenders within each organization or the Human Rights Department and its relationship to the Secretary General remains vague. It is important that the functions of these bodies be clearly defined, and relevant information distributed among the population.

POSITIVE COMMITMENTS

With respect to torture and inhumane treatment, the commitment of the state is that of timely disclosure of the facts of torture, objective and effective investigation of the case, and punishment of the responsible parties.

It can be stated that in 2004 the state did not meet its positive commitments.

Not a single charge of torture was filed in Georgia from January 1, 2004 to January 28, 2005.

In cases when the facts of torture were revealed, the Prosecutor's Office filed charges based on article 332 of the Criminal Code (malicious abuse of power), article 333 (abuse of power), and 335 (forcing to obtain explanation, deposition or conclusion), all charges that do not reflect the crime committed, torture.

Based on the information provided by the Prosecutor's Office, 329 charges have been filed with the above mentioned accusation from January 1 2004 to January 28, 2005. 141 of the total 329 were heard in court and 42 cases were suspended.

However, some criminal acts being investigated under above classification include the elements of torture as classified in the given Code. Since law enforcement bodies try to avoid filing charges with the accusation of torture, it is very difficult to identify from the data provided by the Prosecutor's Office how many cases of torture were responded to and how many of the filed charges represent crimes that are unrelated to torture.

As for specific cases, the ineffectiveness of the investigation process is obvious, as is the interest of the Prosecutor's Office not to admit crimes committed by employees of the Ministry of Internal Affairs. In this regard, our office has official statistics received from the Tbilisi Prosecutor's Office, according to which not a single charge was instituted against employees who had beaten or tortured detainees.

Beating and Torture of Giorgi Migriauli

On October 9, 2004, at the time of inspecting Gori temporary detention isolator of the Ministry of Iternal Affairs, representative of the public defender in Shida Karti, Giorgi Arakishvili, met with detainee Giorgi Migriauli, who had signs of physical violence on his face. According to the detainee's explanation, he was apprehended at night in his home in Kaspi and taken to the Gori Prosecutor's Office without any explanation. The regional prosecutor of Shida Kartli, David Tsituri, and a number of policemen detained him.

In the police station, Migriauli was taken to the office of Gori prosecutor A. Babajanashvili, where he experienced physical and psychological pressure. According to his statement, A. Babajanashvili, who was in a state of intoxication, personally participated in his beating.

G. Migriashvili had the following injuries: bruised eyes, swollen face, bruises on the right ear, cigarette burns in the abdominal area, numerous bruises on his hands and feet.

According to Migriauli's statement, he received much worse psychological pressure, when Babajanashvili put a gun in his mouth and fired. Since the gun misfired, he repeated his attempt several times.

Due to the complexity of the case, the Public Defender's central office and the general inspectorate of the General Prosecutor's Office were involved. In regard to this case, the Shida Kartli Prosecutor, the Gori Prosecutor and his deputy were dismissed from their positions. General inspection filed a case against them, but the accusation was brought only against Babajanashvili, and the investigation has continued for six months (though, in our opinion, there is nothing to investigate). It should be also noted that though the Prosecutor's Office applies the practice of confinement for any kind of offence, it was not used against Babajanashvili, despite the fact that he had tortured a man.

It should be noted that a unified methodology for the Ministry of Internal Affairs and the Prosecutor's Office to reveal and record injuries at the moment of detention does not exist. Methodology differs even among different units of the Ministry. The inspector on duty will sometimes register detainee's injuries upon arrival, or injuries will sometimes be recorded during detention protocol, and sometimes injuries will not be recorded at all, considered inconclusive without a medical examination.

In order to effectively investigate cases of torture and inappropriate treatment, it is necessary that we harmonize procedures and educate staff in implementing procedures in a unified manner.

When investigating cases of torture and degrading treatment, another factor should be taken into consideration. Such crimes are investigated based on procedures defined by the Criminal Procedure Code and established traditions. Yet the crime of torture is very specific and the use of standard methods of investigation is not acceptable. A special approach and evaluation is needed when reviewing the depositions of victims of torture, as they may have a limited ability of describing their experience as a result of psychological trauma. For this reason it is important to introduce the Istanbul Protocol on the Investigation of Crime of Torture (the protocol on the effective investigation and documentation of torture and other inhuman and degrading treatment, UN Human Rights Commission, Resolution 2004/43 and UN Assembly Resolution 55/89).

The recommendation of the Public Defender is that the Istanbul Protocol should be included in the training program for the staff of the Ministry of Internal Affairs, and cases of torture should be investigated based on the Istanbul Protocol as well.

RECOMMENDATIONS:

1. Amendments to the Constitution of Georgia should be introduced and the possibility of lifting the prohibition of physical and mental coercion during the act of war or a state of emergency should be eliminated;

2. The state should facilitate a comprehensive educational campaign against torture, e.g. the list of procedural rights of detainees, also hotline information in General Inspection of Internal Affairs and relevant Prosecutor's Offices should be disseminated and placed in a conspicuous place at preliminary detention and detention stations. Furthermore, the Ministry of Internal Affairs should allocate funds and resources to update staff about changes in legislation in order to increase their knowledge and competence in human rights and in the issues of procedural legislation of Georgia;

3. The meaning of the term "torture" in the Criminal Code of Georgia should be changed and formulated in compliance with the requirements of the fundamental international documents on human rights;

4. Georgia should ratify the Optional Protocol of the UN Convention against Torture to promote independence of the monitoring body on human rights set up in places of detention in Georgia;

5. Trainings and workshops for judges, employees of Ministry of Internal Affairs, and Prosecutor's Offices should be held statewide to implement amendments consistently and to avoid misinterpretation of legal amendments against the detainee;

6. Public commissions of penitentiary organizations should immediately be formed by the Ministry of Justice;

7. To reveal instances of torture and mistreatment, the trustees should be authorized to use videos and cellular phones in places of preliminary detention;

8. The programs for the employees of the Prosecutor's Office and Ministry of Internal Affairs should encompass the Istanbul Protocol, and torture offences should be investigated in compliance with this Protocol;

9. Criminal charges should be instituted against any law enforcement official who directly participates in beating and torture, and should be adequately punished.

The previous year was one of the most important in Georgia's modern history as a result of the radical reforms implemented in different spheres. Significant changes have been carried out in order to refine the activities of legislative and executive systems and to ensure their structural and functional reforms.

Unfortunately, this is not the case with the judicial system. Surveys and public opinion polls show that the population has a minimal level of trust in the judicial system.

While there is probably no country in the world where citizens would necessarily favor the judicial system, at the same time, in any democratic country the judicial system is one of the three branches with the highest authority in the state. In Georgia, unfortunately, the judicial system is perceived as an embarrassment, and authority and trust in the system do not exist. This is caused by a number of factors:

- High level of corruption in the court system;
- Different forms of pressure that judges experience when sentencing;
- High number of unqualified judges;
- Systemic problems related to material, as well as lack of procedural norms and disorganized structure of judicial system.

Before making a general evaluation and recommendation, we discuss several concrete examples that reflect the present status of the judicial system.

Judicial System and Issues of Justice

CORRUPTION IN THE JUDICIAL SYSTEM

The situation in this respect is quite alarming, and we refer to data from the end of 2004. Law enforcement agents arrested three judges from different courts and for different cases of taking bribes. When in three months three cases of bribery are revealed, we can easily make a guess about the actual scale of corruption in the judicial system.

Separate reports from citizens and civic organizations make the same claim, though it is often very difficult to confirm this information.

The cases of each of the judges are different, as are the details of the bribes. The investigation of the cases is still in process and, and it would violate the judges' presumption of innocence to discuss the culpability of the judges. In one of the cases, the judge asked for a bribe to change a ver-

2004

dict that had already been announced. In the other case, a bribe was given to the judge to give an acceptable verdict to a defendant on a criminal case. In the third case, a bribe was given to the district court judge to "clarify things" with the judge of the appeal instance court and to act as a "mediator".

There are different opportunities in the court system for the extortion of money which have probably been formed during years of the so-called 'impunity syndrome.'

Unfortunately, our citizens come across corruption in the courts on a daily basis, which is why their belief that the court can adequately address their problems is almost nonexistent.

ISSUING PRESSURE ON JUDGES WHEN SENTENCING

One of the important reasons for lack of trust in the judicial system is knowledge about pressure being imposed on judges during sentencing, though confirmation of this fact is very difficult.

We highlight a very public case from last year.

The Judge of the Supreme Court of the Autonomous Republic of Abkhazia changed a decision of the court on imprisonment with respect to the defendant who was accused of illegally storing and carrying a weapon. On the day of his release, the accused was again detained and charged with another crime. He was given pre-trial detention. No additional details were known about the case, but based on the information given, it seems that the court was pressured to give a guilty verdict, but when the court announced the verdict of not-guilty, law enforcement bodies decided to exhibit their authority by demonstrating "urgent responsiveness," a result of which the Court decision was ignored.

The same court changed the resolution on pre-trial detention for the same person, showing that such judges exist who have the ability to resist pressure and make just decisions based on their conscience and the law itself.

Putting pressure on the judges is related with the practice of pre-trial detention, a practice which has become ubiquitous in Georgia and which has been much discussed in the media and by non-governmental organizations.

In 2004, the Tbilisi courts of Krtsanisi-Mtatsminda, Gldani-Nadzaladevi, Didube-Chugureti, Vake-saburtalo and Isani-Samgori Districts received approximately 1540 solicitation from the Prosecutor's office on using pre-trial detention as a confinement measure. 1280 of those solicitations were met. The Tbilisi district court received 931 complaints from lawyers in 2004 about pre-trial detention, of which only 68 were met.

No developed country has such a statistic, and even in Georgia this number is overwhelming. No explanation could be found to explain such a severe position of the Prosecutor's office about the use of pre-trial detention. The courts, almost automatically meeting the demands of the Prosecutor's Office on issuing pre-trial detention, is also very surprising.

Restoration of the public's trust is directly related with changing the issuing of pre-trial detention. Society should see that the use of pre-trial detention is not a tool for the Prosecutor's Office to get evidences and depositions, but that the court will use the pre-trial detention as a measure of confinement only rarely, when it is absolutely needed.

On October 21, 2004, Mrs. Tamar Metreveli, the lawyer of Mr. Bidzina Zurabishvili, applied to the Public

Defender's Office. She was requesting a lighter confinement measure for the defendant before his verdict was read because of his dire health condition. Decree #72 of the Minister of Health, Labor and Social Security provided the basis for releasing him from being held in a pre-trial detention facility. Mr. Bidzina Zurabishvili has lower paraplegia and limited functioning of organs of small pelvis as well as upper-left paresis. The Public Defender applied to Mr. Sandro Giorgashvili, Judge of Gurjaani District Court, and Mr. Alexander Periashvili, the District Attorney who met the request of the lawyer. Taking into consideration the recommendation issued by the Public Defender, pre-trial detention was replaced by a lighter confinement measure – house arrest. After some period of time, the judge, Mr. Giorgashvili, resigned. Based on unconfirmed information Mr. Giorgashvili allegedly received a telephone call from Mr. Irakli Okruashvili, the Minister of Internal Affairs, followed by his resignation. The Public Defender offered Mr. Giorgashvili support in fighting to maintain his position, but the judge said that the decision was made based on his personal decision.

It is important to assess the reasons why pre-trial detention has become so popular. Previously the Prosecutor's Office more rarely requested pre-trial detention and the Courts more rarely issued such decisions. Of course, in both cases this was because of bribes from the defendants.

Currently, at a time when law enforcement bodies are more inclined to respond to corruption in the courts as well as in the Prosecutor's Office, employees of those bodies fear that if they issue milder punishment and confinement measures, they will become suspects in making corrupt deals with the defendants. It seems that one extreme has been changed for the other, meaning that there no longer exists the impunity syndrome but rather the "punishment syndrome" among law enforcement bodies and courts who fear that even a slightly milder decision can become a reason for the Prosecutor's or judge's punishment.

UNQUALIFIED JUDGES

Another factor explaining the low level of trust in the justice system is that of unqualified judges. Unfortunately, very often we come across a case when human rights are infringed due to an unqualified judge.

We will illustrate with some examples: employees of the Ministry of Internal Affairs detained a person, born on July 31, 1987, who was under the effect of marijuana. A protocol on administrative offence was issued. On October 20, 2004, the judge issued a court resolution of a five-day administrative arrest for an administrative offence based on article 45 of the Code on Administrative Offences.

In this case, the judge violated article 32 of the Code on Administrative Offences, as administrative arrest cannot be used against a person who is under 18. The court resolution was appealed in the appeal instance court and the administrative sentence was dismissed.

Another example to which the Public Defender's Office responded:

A judge of the district court met the complaint of the investigator of the district's investigating service, annulled the verdict against the defendant, which was confinement under police supervision, and announced a new verdict – pre-trial detention.

The judge violated paragraph 7 of article 243 of the Criminal Procedural Code of Georgia, which states that the judge shall have the right to change a previous verdict with a more severe verdict based only on a complaint issued by subjects of the plaintiff's party, i.e. the prosecutor, plaintiff, and his representative. According to the Criminal Code, an investigator cannot be considered in this case as the subject of the appeal.

The district court judge made his decision on pre-trial detention based on the appeal of an unauthorized person, which was a serious breach of the defendant's rights. Disciplinary punishment of the judge was discussed by the Supreme Board of Justice.

There are other cases when human rights were infringed as a result of the negligence of judges. A case of applying to the Supreme Court with an extension of the detention period is a good example. In this case, it turned out that the time had expired 45 days before submitting the case to the Supreme Court. There was no legal basis for the detention of the defendant for that period of time.

Failure to observe the time period of detention is one of the most important problems of the Court in failure to protect human rights. Recently, attention has been mostly focused on the violation of terms of detention.

Significant changes in this direction have been made to the existing procedural norms and terms specified in the legislation for pre-trial detention as well as for hearing cases in the courts.

Nevertheless, we suggest establishing correct court practices, using these norms, to avoid the previous situation of the last years in regards to violation of confinement and detention norms and terms.

Based on the norms of the Procedural Code, general pre-trial/court detention period is 24 months, which could be prolonged at the decision of the Supreme Court Chair. Very often, unclear wording of the norms becomes the reason for misunderstandings that results in the violation of human rights.

In this respect, the establishment of a sound court practice is fundamental, but unfortunately, the court practice began with the creation of precedents of human rights violation.

The following case is an illustration. Mr. V. Khrustal, an Acting Chair of the Supreme Court, practically acknowledged the violation of detention periods, even initiating procedures for disciplinary punishment against judges of the district and appeal instance courts based on a personal decree, While at the same time, Mr. Khrustal prolonged the detention period of a convicted person, though it was a violation to do so. The argument for this decision was that the accused was charged with a particularly heinous criminal offence. The Public Defender appealed to the Board of Justice as well as two Parliamentary Committees, the Legal Committee and the Committee for Human Rights Protection, to respond to the case. Unfortunately, disciplinary punishment of the judge has not been implemented and human rights continue to be infringed upon.

Similar precedents create significant threats to the rights and fundamental freedoms guaranteed by the Constitution. We believe that these and similar events should become subject to public discussions to prevent judges from circumventing the law and from making decisions based on political decisions.

SYSTEM PROBLEMS

Despite the fact that huge efforts have been made for the last decade to reform the court system, the problems that still exist create a negative environment that reduces the effectiveness of the administration of justice.

We have pointed out several times that the main goal that should be achieved at this stage is to increase the authority of the courts and judicial system and to create favorable conditions appropriate for effective administration of justice. For this reason, it is important that we make an evaluation of the problems in the system and their impact on the administration of justice.

We would like to briefly present some of the most important problems:

a. Procedural date/term

Procedural terms very much impact on the effectiveness of justice and very often create negative feelings in the public. The public will only accept the court system if it enables the public to solve their problems based in law.

Protracted cases are neither effective nor acceptable to society.

Very often the reasons for protracted cases are gaps in legislation and vague provisions.

Even the courts have not been in the position to introduce clarity to the issue of dates/terms. Different interpretation of the norms makes this chaotic situation even worse.

b. Specialization of Judges

Another condition limiting the quality of justice system is the lack of specialized judges. In accordance with the Organic Law on General Courts, adopted in 1997, it was specified that at the decision of the Board of Justice, specialized judges will be installed in districts where there are more than two judges. Despite this entry into the law, the system of specialization has not been put into operation and sufficient attention has not been paid to the issue.

Generally, judges of district (city) courts hear criminal, civil, and administrative cases, as well as cases of administrative offences and registration of legal entities.

Under such conditions, it is nearly impossible to ensure qualified administration of justice or qualified court decisions.

The lack of specialization does not allow the judges to deepen their knowledge of specific spheres of law, increasing the quality of their court decisions.

c. Hearings of Cases at the First Instance at the Supreme Court and Subjective Conduct of Proceedings

As a result of reforms implemented in the 1990s, the court system that existed under the Soviet regime was changed radically for an institution more characteristic of court systems of developed states. Despite such reforms, we still find remnants of the Soviet system in our present court system. Hearing a case at the first instance at the Supreme Court, i.e. when a case is heard in the presence of a judge and two jurors, can be considered as such a Soviet remnant in the present model.

Removing this practice of a case being heard at the presence of a judge and two jurors has been on the agenda for a long time, but no concrete steps have been made to change such a procedure. The former procedure for selecting jurors, however, is no longer in use.

Acceptance of the principle of “subjective conduct of proceedings” is also unreasonable, though it is envisaged by legislation. In accordance with the Procedural law “subjective conduct of proceedings” is defined as follows:

The Supreme Courts of Abkhazia and Adjara Autonomous Republics and a panel of judges on criminal

cases of the District Courts of Tbilisi and Kutaisi, shall conduct proceedings of cases related to the offences or crimes committed by employees of the Prosecutor's Office, investigators, members of local self-government bodies, city mayors, executives of the city or district, senior and junior officers of the Ministry of Defense, Ministry of Internal Affairs and the Department of the State Borders Defense under the Ministry, Security Ministry employees and employees of the External Intelligence Department under the Ministry, Financial Police employees of the Ministry of Finance and the Special Service of State Defense.

A panel on criminal cases of the Supreme Court conducts first instance hearings of cases related to the President, Georgian Parliamentary members, members of the Georgian Government, Georgian judges, members of Abkhazian and Adjaran supreme representative bodies and government, employees of the Public Defender's Office, Chair of the Chamber of Control, member of the NBG Board, Ambassador and Consul of Georgia, High officers of the Ministry of Internal Affairs and Department of State Borders Defense under the Ministry, Ministry of Security of Georgia and the Department of External Intelligence under the Ministry, Special Service of State Defense and Military forces, and members of the panel of the Attorney General of Georgia in case of indictment of a lawyer.

Conduct of proceedings in this should be considered unacceptable and should be reviewed with respect to its reasonability.

d. Court and Society

The most important problem that courts and the justice system face is that of trust and respect of for judges.

The alienation of Georgian society from the judicial system was established long ago, and has become an issue of discussion for lawyers and politicians. We think it is reasonable to introduce a jury institution in Georgia, which would promote the involvement of the public in the administration of justice. This will step serve to restore a level of trust in the court system. The introduction of a jury institution has already been reflected in the Georgian Constitution.

The Situation in the Penitentiary System of Georgia

The situation existing in the penitentiary system is truly alarming. Woeful conditions still exist in the prisons and penitentiary facilities are overcrowded. More than 3,000 prisoners are housed in Tbilisi's prison # 1, where there are only 1,500 beds. The cells are so overcrowded that the prisoners cannot sleep at night and have to take turns doing so. There are not even elementary living conditions in the cells. The space allotted per prisoner does not meet European standards, which specify a minimum of four square meters of space per prisoner.

Forty-three people died in the Penitentiary System in 2004 (In comparison, 52 people died in 2003) out of which 10 died as a result of violence (In 2003, 13 people died from violence).

International organizations frequently make note in their reports of the conditions existing in the Georgian penitentiary system. After reviewing the second periodic report of Georgia, the UN Committee against Torture noted that "unacceptable conditions exist in the prisons in Georgia; this violates the rights of prisoners, as guaranteed by article 16 of the human rights convention." The UN Human Rights Committee also mentioned the conditions in the Georgian Penitentiary System after hearing the second report in accordance with the International Covenant on Political and Civil Rights.

If we take into consideration the resolution of the Human Rights Court of Europe on the case Kalashnikov vs. Russia, we can easily state that prisoners in the prison # 1 are the victims of inhuman and disgraceful treatment.

The prisons are overcrowded, mainly as a result of the Prosecutor's Office demand for pre-trial detention as a preventive measure, even for small offenses. Such demands of the Prosecutor's Office are as a rule always met by the courts.

Accordingly, we have to educate our judges on the use of preventive measures and sanctions other than pre-trial detention, including the practice of European Human Rights Court. It is also important to holds training for investigators and prosecutors in the same field. Prison #1 should be urgently repaired and prisoners held there should be redistributed to different penitentiary facilities, including the newly-built one.

Prisoners' conditions have deteriorated as a result of malnutri-

2004

tion, as the food does not meet the standards of food allowance. According to a 2005 resolution jointly issued by the Ministry of Economic Development and the Ministry of Finance, the state should spend 23 lari and 50 tetri for food per prisoner per month. It should be noted that by the time the resolution was issued, the number of prisoners amounted to 6,000. Presently the number totals 9,000 but the amount allotted was not adjusted, which means that about 15-16 lari is spent per prisoner each month. Therefore, even the 23.50 lari per prisoner determined earlier is not allotted.

The situation in terms of medical care is also very dire in prisons and settlements. A total of 115,500 lari is allocated for medical care for all penitentiary facilities as a whole. If we divide this amount by the number of prisoners, i.e. 9,000, we will see that only little more than one lari is available per prisoner per month, which comes to three tetri per day. Each penitentiary facility has only one doctor and one nurse on duty. Very often, the surgeon performs the functions of the general practitioner and vice versa. Many of the prisoners who are seriously ill cannot manage to be moved to the Prison Republican Hospital as the necessary funds do not exist. Seventy percent of prisoners placed in the Prison Republican Hospital represent privileged prisoners. Only the minority consists of prisoners who really need medical care.

The Penitentiary Department does not appeal in a timely fashion to the court with motions to release prisoners whose health condition is very critical and who are legally required to be released. The delay in time very often ends with the death of the prisoners.

Very often it is only possible to isolate prisoners whose family members and close friends have to provide them with needed medications. Representatives of the Public Defender's Office witnessed first-hand a situation where one of the prisoners was operated on (she received a hysterectomy) and the Prison Republican Hospital did not have any antibiotics or painkillers; the doctor had to ask for help from a so-called "Thief in Law."

When the Public Defender's representatives asked about the case to the chief doctor, he said that for the past five days provision of medications by the Ministry of Justice had been suspended and the medical personnel had to buy medicines for their patients using their own money.

Norms of hygiene are not observed at the aid posts. The prisoners are not separated according to which disease they have, and at what stage it is at. Prisoners will often be living to next each with acute forms of tuberculosis, AIDS, different types of cancer, hepatitis, and other diseases. Presently, there are several very seriously ill patients at the Prison Republican Hospital, among them people with cancer who need special hospitals and treatment, but as the administration states, without funds to receive treatment.

There is no doctor in Prison # 3 in Batumi and the nurse takes care of all the prisoners. Representatives of the Public Defender witnessed first a situation where the nurse diagnosed a prisoner who had stomatitis as having a severe form of tuberculosis. The person was re-diagnosed and taken to a hospital after intervention of the Public Defender's representatives.

There are 170 prisoners in the Ksani medical institution for prisoners with tuberculosis. It should be noted that generally the same people – privileged prisoners – are treated at this institution, as the conditions and food are relatively better. Prisoners try to do their best to convince the doctors not to move them out of the facility.

The situation is very complicated in terms of mentally ill prisoners. In order for them to be moved to an asylum, their brains must be examined by computer, which is very expensive and accordingly, done very rarely. For this reason, dozens of mentally ill prisoners at Prison Republican Hospital can move freely throughout the hospital, without guarantee that they will not attack people in the hospital.

Very often the conclusion of the doctor in chief and the doctor in charge of determining the feasibility of moving a prisoner back to the prison is ignored by the administration of the Prison Republican Hospital and the Penitentiary Department. For example, a medical conclusion at the Public Defender's Office about Nodar (Marek) Dudaev that was signed by Asatiani, the chief doctor, and Tsetsvadze, the doctor in charge, stated that "the patient was moved from the hospital without the medical personnel being informed about it."

There are two two-floor buildings in Colony # 7 of Ksani. One building is residential, while the first floor of the second building houses a kitchen and bathroom and the second floor is where prisoners live. There are no separate wards. About 250-300 prisoners live in one big room. Living in a single room causes tension in prisoner relationships, who hang their bed sheets for privacy. There is a huge problem of unsanitary conditions: the room smells terribly and there is no potable water. The prisoners have to collect water and stand in line for hours, though the water is not good for washing, let alone drinking.

The electricity supply is also a very big problem for penitentiary facilities located outside of Tbilisi. When electricity is provided, at least the guard-posts should be lit in order to control the territory. Yet very often, fuel provided by the Penitentiary Department is not enough to fill the generator and to light the guard-posts, to say nothing of the wards.

There is a problematic situation that exists in prison #1, which is that it is impossible to meet with underage prisoners without visiting a special administration room in the company of an "eye" – an accompanying person who controls and directs the conversation. Nobody is allowed to meet with underage prisoners separately without such an accompanying person.

Situations encouraging corruption remain unchanged in the penitentiary facilities. Prison # 7, which was previously controlled by the Ministry of Internal Affairs and was moved to the Penitentiary System, is designed for extremely dangerous criminals. Despite this, there are many rich prisoners who are detained there. They pay substantial funds for their safety and protection, as thieves extort money from them. Instead, they prefer to pay money in advance to Prison # 7, in an amount of about 1,500-2,000 American dollars.

The Administration of the Penitentiary Department allows "privileged" prisoners to renovate their wards. Adjacent to renovated wards with modern equipment will be wards with sixty prisoners instead of twenty.

One of the most popular activities is money collection, called "obshchiak." Previously, the fee was set about 30 lari, while presently it amounts to 50 to 100 lari. A portion of the funds is given to "legal thieves", while the remainder is given to the administration and the department.

Transportation of prisoners from the Prison Republican Hospital to the prisons is a major source of income. The medical commission charged with examining the prisoners' health cannot change anything, as the prisoners who have already paid money know what kind of certificate to submit to the commission. Previously, moving to the Prison Republican Hospital cost three hundred American dollars, while presently it is five hundred dollars.

The administration of the Prison Republican Hospital makes a list of about one hundred people, telling them that they will be returned to their respective prisons. Prisoners pay to remain in the hospital. Those who cannot pay receive a through a medical examination and are then returned to the prisons. The list of one hundred prisoners reduced to a list of twenty-five to twenty-seven names. The list is then signed by Ramaz Guladze, the head of the Medical Department. Sometimes Guladze will sign the list, yet the prisoners listed, about 15 to 18 people, remain at the Prison Republican Hospital. The administration of

the Prison Republican Hospital explains this fact by stating that the prisoners began working for the Logistical Department. Working at the Logistical Department costs 300-400 dollars.

Money is also made when taking prisoners to court. Prisoners' family members and friends pay money the guard to meet with the prisoners. Often an intervention on the part of the Public Defender is necessary to take the prisoner to court. For example, a man named Mamedov was in a Batumi prison when his case was moved to Gardabani. The court hearing was postponed three times because the prisoner had not been taken to Gardabani for an entire month. After our intervention, Mamedov was taken to Gardabani and was released by the court. If not for our intervention, it is not clear how long Mamedov, who was innocent, would have remained in prison.

Money is also made in the penitentiary system by moving prisoners from one ward to another. If a prisoner wants to meet with a prisoner in another ward, he pays three to five lari for the meeting. It often happens that prisoners go from one ward to another in order to discuss a case, which they pay for as well. The administration also makes money by allowing prostitutes to visit the prisoners, which costs at least fifty dollars. There are set amounts to be paid to receive a letter of good behavior, early conditional release, or a reference to be submitted to the Pardon Commission.

Taking this information into account, we can conclude that family members have to pay approximately 350-500 Lari per month to support a prisoner.

I would like to note one incident of a prisoner being beaten. At the beginning of last August, Gela Kikilashvili, the director of Prison #1, beat three prisoners: Khvicha Shotashvili, Zviad Jangebashvili and Deniam Aliev. Independent experts confirmed the beating, though Gela Kikilashvili, rather than being punished, was moved from Prison #1 to Prison #7.

RECOMMENDATIONS:

- Shota Kopadze, the head of the Penitentiary Department, should be held responsible for the conditions and violations in the Penitentiary System and should be dismissed.

- Gela Kikilashvili, the director of Prison # 7, should be dismissed.

- Judges should be informed on different methods of pre-trial preventative measures and sanctions. The practice of the European Court on Human Rights should be introduced. Investigators and prosecutors should also be trained on the same issues. Prison #1 should be immediately repaired and prisoners held there should be resettled to different prisons, including the one recently built.

Recording Injuries of Detainees

At the beginning of 2005, the Public Defender's Office carried out research analyzing the records of injuries of detainees. Sources of information for the research were:

- The list of individuals who entered prisons with injuries, submitted by the Ministry of Justice in 2004.
- The list of detainees in Tbilisi, submitted by the Ministry of Interiors in 2004.
- Protocols drawn on the mentioned injuries, submitted by the Ministry of Interior.
- Injuries noted by the Ministry of Interiors and recorded in medical registers.

The information available on detainees was collected from two sources: the Ministry of Interiors and the Ministry of Justice.

The number of persons detained in Tbilisi and registered by the Ministry of Interiors in 2004 was 2694.

According to the official statistics of the penitentiary department of the Ministry of Justice, in 2004 461 prisoners entered prisons with various injuries inflicted by the police, of which 263 prisoners came from Tbilisi police stations.

As a result of the research conducted by the Public Defender's Office, it was possible to create a database of individuals who arrived in police stations or penitentiary facilities with various injuries in 2004.

The research showed that in Tbilisi alone, there were more than 1100 detainees with various injuries. We want to point out that the actual numbers of injuries exceed the government's official statistics by 400%.

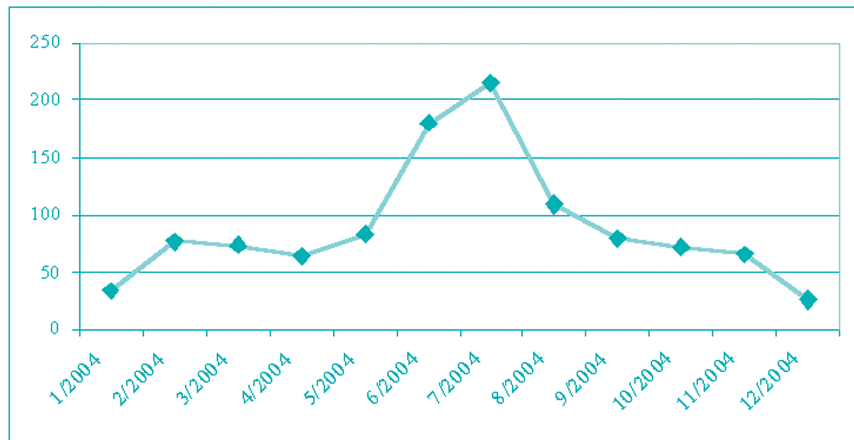
Taking into consideration inaccurate official statistics and general information, it is rather difficult to get a complete picture of the current situation, though we can make a guess that the infliction of injuries during 2004 at the preliminary detention level was systemic.

The police station in the Isani-Samgori district of the Ministry of Internal Affairs tops the list in total percentage of injuries of prisoners.

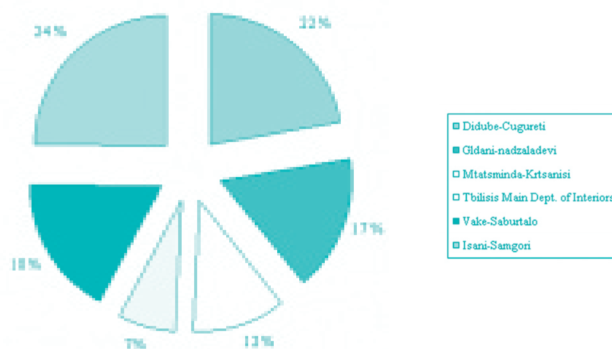
2004

Tbilisi Data Presented by the Ministry of Justice

Injuries of Prisoners in Tbilisi, by Month,
Prepared by the Public Defender's Office



Below are the police stations with the highest percentage of prisoner injuries, among 40 police stations of the Ministry of Interiors in Tbilisi, including the City Department: Isani-Samgori district (24%), Didube-Chugureti district (22%), Vake-Saburtalo district (18%), Gldani-Nadzaladevi district (17%). Mtatsminda-Krtsanisi district (12%), Main Department of the Ministry of Interiors (7%). (see diagram).



The Situation Related to Freedom of Religion

In 2004, the situation relating to freedom of religion, thought, and conscience changed, albeit very slightly. The arrest of radical defrocked Orthodox priest Basil Mkalavishvili was a clear sign for everybody that the state would no longer tolerate religious extremism. This action yielded a number of important results. Conflicts based on religion and the abuse of religious minorities have almost ceased. Allowing Jehovah's Witnesses to be registered could also be considered a positive change and included in the list of accomplishments of the past year (Jehovah's witnesses were registered as a Georgian branch of an organization existing in the United States). Open aggression from the police and local authorities against Jehovah's Witnesses and representatives of different religions has decreased. The current Georgian government, in contrast to previous administrations, has prevented religious extremism from flourishing. It should also be mentioned, however, that Basil Mkalavishvili was arrested with the use of excessive force. Moreover, on behalf of authorities the civilians also participated in his arrest.

As expected, problems that had emerged at every level were becoming more and more acute. In accordance with the results of sociological polling, the Georgian Orthodox Church has the highest trust of the public. Many people share the position of the Patriarchate, a fact taken into consideration by all the parties within Georgia's political spectrum. The Church receives unconditional support of the Georgian government. Out of all Confessions represented in Georgia, only the Georgian Orthodox Church has legal status and an agreement concluded with the state. The agreement is represented by a constitutional agreement that has almost the same status as the Georgian Constitution.

The preamble of the Constitutional Agreement states that: "Orthodoxy, which is one of the oldest religions in Europe, historically has been the state religion in Georgia and has formulated Georgia's culture, its national outlook and ideology as well as its values." It also states that: "The overwhelming majority of the Georgian population is Orthodox Christian." However, the Constitution of Georgia and the Constitutional Agreement declare the church independent from the state. Thus, whatever position the church takes in regards to religion, conscience, speech and freedom of expression and whatever position it has in terms of the state's liberal-democratic

2004

policy, it has major and very often even decisive significance for the creation of a lawful, equal and tolerant environment. It should also be mentioned that the processes taking place in the Church cannot be viewed separately from those underway in political and public life. Equally, we cannot view the political and social environment apart from the Church and in general religion and its influence. The role and function of the Church in the formulation of the public and state attitude towards different confessions is also very important.

The resonance existing between the position of the Patriarchate and the actual situation in the church has always evoked the interest of the public beyond the walls of the church. This allows us to speak about the processes going on in the church as on the issues related to the promotion of freedom of conscience and expression as well as freedom of religion and tolerant attitudes toward different confessions. The attitudes existing within the church in this respect and their reflection on the formulation of the policy of religion of the Georgian authority, as well as on public opinion, raise many questions.

We will discuss some of the cases that took place last year:

In the month of June a group of Anglican believers visited Georgia. While in Tbilisi, they attended a public worship at the Cathedral of St. Panteleimon. The next day, during the liturgy, an official representative of Patriarchate called and demanded that the priest stop the service. As the official representative explained, the reason for this was Anglicans' presence in the church the day before. He said that Anglicans profaned the church by entering it, just as dogs profane it, adding that it was necessary to consecrate the church again. Due to this fact, Steven Platen, the Bishop of the Anglican Church of England and Extraordinary Minister of the Canterbury Archbishop in Georgia, after having visited our country gave an interview to the English *Church Times* in August 2004 where he said that "Catholicos-Patriarch of Georgia is a very aristocratic, virtuous and decent person and he apologized for what happened, but he is surrounded by discredited churchwardens."

The demonstration of intolerance continued. On September 11 the first channel of Georgian TV was broadcasting a talk show on the threat related to terrorism and extremism. Goga Khaindrava, Georgian State Minister for Conflict Resolution, almost justified the insult of the representatives of Anglican Church saying: "Anglicans baptize whelps and conduct wedding ceremonies for homosexuals." We believe it is a mere coincidence, but the same phrase was stated by Mr. Basil Mkalavishvili when he tried to "condemn" the whole protestant world.

On June 4 of the last year, one more act of extremism was committed at midnight: this time a priest of the Orthodox Church was attacked because he had expressed his own position. It is very interesting that the attacker was also an Orthodox ecclesiastic. The fact was that the confessor of Saint Nino Church, David Kvlividze did not like the TV interview of Giorgi Chachava, the archpriest of Saint Panteleimon Church and waited for him at the building of the TV company *Rustavi 2* together with one of his flock and started to clarify what Giorgi Chahchava said and why. According to Chachava's words, he was abused and threatened that worse would happen. The archpriest tried to go away but Kvlividze followed him in his car and tried to hit Chachava's car and bump it off the road. The archpriest survived because he made it home and neighbors helped him out. The Patriarchate made a statement several days after, but there was nothing said about the attack. The statement contained condemnation of those ecclesiastics who, despite the warning from the Patriarchate, willfully continued to make slanderous and sacrilegious statements through the press and TV. Moreover, the statement said that "the Georgian Orthodox Church strictly warns all ecclesiastics and parish members that "all actions and public statements conducted and made without the consecration of the Catholicos Patriarch are absolutely unacceptable and represent an ecclesiastic offence. If similar actions continue, very strict ecclesiastic punishment shall be used against the people involved."

It should also be said that the statement the Patriarchate prohibited public speech not only for ecclesiastics but also for the constituency without the consecration of the Patriarch as well. This means that at least 80 percent of the Georgian population does not have the right to express their opinions through TV or radio, or give interviews to newspapers and journals, or participate in the assembly without the consecration of the Patriarch if the issue is related to religion, as the above percentage of the Georgian population affiliate themselves with Orthodoxy. It turns out that the Patriarchate limits the whole nation of one of its key constitutional rights – the right to free expression.

One more very significant fact: On November 8 twenty-three students of the Theological Seminary and Academy published a letter in the *24 Hours*, a national newspaper. The letter contained a critical evaluation of the situation in the church. The above publication triggered wide public discussions about the relationship between the society and the church and problems that are far from being problems only of the church; but on the other hand, the absolutely unjustified position of the authority and opposition parties towards the process of discussion transformed the issue into a political one, thus ending the discussions. From the very beginning, representatives of the opposition parties were trying to portray the students and their supporters as enemies of Orthodoxy and the Catholicos-Patriarch. Mr. Koba Davitashvili, a member of Parliament, announced that the students were acting on the order of the authority and namely, Minister of Security Vano Merabishvili. After such declarations, ecclesiastics also started to portray the students as enemies of the church and the nation, even literally cursing them. Even the Catholicos-Patriarch did not hesitate to use extremely unpleasant expressions. All the above resulted in opposition between the students who signed the letter and the other part of the students. Accordingly, physical abuse against the students who signed the letter took place several times. Insulting phrases and threats against them became routine.

The head of Theological Seminary and Academy first decided to expel the students, then to send them to a monastery, but in the end he took public opinion into consideration and limited himself to a final warning in regard to the violation of the regulations of the Theological Seminary. In accordance with the regulations, the students do not have the right to communicate with the mass media on religious issues without special permission or consecration. Later, four students that signed the letter were still expelled due to poor academic advancement and missing lectures.

The most alerting aspect of this whole situation was the attitude of the President himself. When meeting with representatives of non-governmental organizations, he mentioned absolutely fairly on the one hand that the state should not interfere in the internal affairs of the church. Although, on the other hand, he said that the press and TV should not cover debates on ecclesiastic issues. He said that it was a very sensitive issue that required a careful approach. The statement of the President was followed by a rapid succession of events, as it influenced the media and discussion about the students almost disappeared and was covered no more either by the TV or newspapers, and when such happened, in some rare cases, it took on a very "sensitive" tone. This event was evaluated in the US State Department report as media self-censorship. The president mentioned the issue two more times. The first time was in an interview given to *Kviris Palitra* (a national newspaper) on December 27, where he absolutely openly stated: "it is very improper to meddle in church affairs. We do not need such kinds of discussions" and a second time during his annual address to Parliament. He warned the politicians "without beating about the bush…to give up attacks on the Patriarch and trying to score political points by weaving plots within the Patriarchate."

His speech contained at least one inaccuracy: none of the politicians ever supported the students in the debates. Almost all of them, high-ranking officials, political parties within the Parliament or beyond it, strived to be noticed by the Patriarch and the Patriarchate. Almost all the highest officials expressed very similar positions related to the processes going on in the church. Then-Prime Minister Zurab Zhvania

stated the following: “It is absolutely revolting when either from the left or from the right different politicians or people having some link with politics try to judge church life using measures of political life. This is ignorance and total irresponsibility. These are the actions of people who do not even realize how dangerous this game is. The church and ecclesiastic life shall not be defined or shaped either by articles written by journalists or the ratings of politicians. It cannot be done through shouting from TV screens” (*Mteli Kvira*, 11.22.04). Speaker of the Georgian Parliament Nino Burjanadze stated: “There are some people who may benefit from a split within the church. The trace of special services of foreign countries is also noticeable. Malevolent people know how important the unity of Georgian Church is for our revival and that’s why they try to hit there” (*Kviris Palitra* 11.29.04).

Politicians attacked those opposed to the Patriarchate. They activated a so-called “black PR campaign” against the students and their supporters. The politicians accused them of Satanism, Freemasonry, plotting the abolishment of church autonomy, the removal of the Patriarch and his liquidation. Threats against them were heard from time to time. We would like to present one example: Mr. Gubaz Sanikidze, a member of Traditionalists’ Party, when asked by a journalist “What might be the end of the conflict between the students and the Patriarchate?” in the following manner: “The results will be extremely disastrous and especially for the authors of the above mentioned texts. They will even face physical threats and I will explain why: I and people like me have debates with them but there is a big number of parishioners who plan physical reprisals and not debates. That’s why they should use their brains and stop caviling” (*Akhali Taoba*, 12, 28.04).

It goes without saying that the Georgian Church has always had and still has the role of a consolidator; it contributed significantly to the formulation of Georgian culture and the spiritual lives of the majority of Georgian population. Unfortunately, the above statements and in general the hysterical background created as a result of the article published in the *24 Hours* make us think that the state considers the Orthodox Church as one of the most popular and highly prestigious institutions and based on this, is the most reliable ideological supporter. This means that in critical situations, such as the pre-election period, the authority will try to use the popularity of the Georgian Orthodox Church all the more so, as the opposition parties have the same interests. Moreover, according to President Saakashvili “today we have a unique situation – we need to move relations between the church and the government completely towards a new level” (*Sapatriarkos Utskebani*, 03.12.05).

But the Constitutional Agreement with the church, unprecedented all over the world (no traditionally Christian state has ever had such agreement with the church), is already in effect in Georgia. It is not clear what kind of new relationship the President refers to, as presently Orthodoxy in Georgia actually bears all the features characteristic to a state religion.

The Georgian Orthodox Church gets financial support from the state. The state only funds Orthodox education institutions and only the Patriarchate enjoys tax concessions.

Only orthodox clergymen have the right to conduct religious rites in state organizations and within their structures. However, in compliance with article 2 of the agreement concluded in 2002 between the Ministry of Justice and the Georgian Patriarchate, “the Georgian Orthodox Church assigns clergymen to every penitentiary facility, as well as the penitentiary police of the Ministry of Justice to execute the liturgy and other ecclesiastic rites. The Georgian Orthodox Church shall coordinate and ensure the invitation of clergymen of other confessions to meet the religious requirements of imprisoned people affiliated with other confessions.” The above article of the agreement is discriminatory, as it limits the possibility of entrance of clergymen of confessions other than Orthodoxy into penitentiary facilities due to the Patriarchate’s position.

There only exists one exception: though only the Catholicos-Patriarch takes ritual participation in the ceremony of the President's inauguration, leaders of other local confessions attend the ceremony in the status of invited guests. Only the Catholicos-Patriarch and persons accompanying him attend the opening of Parliament sessions or the president's address to Parliament.

The position of the church has always affected the position of the authority and continues to do so. Let us remember the incident related to the exhibition of Georgian Treasures of Art in the United States, or the agreement with Vatican revoked by the Georgian State or the memorandum concluded with the Ministry of Education in the current year. The position officially demonstrated by the Patriarchate with respect to the privatization of the Tbilisi Water Supply Company is also very significant, as well as resistance to education reform during the year.

The Patriarch considers that Orthodoxy should become the pillar of a national ideology that should oppose liberalism on the one hand and radical conservatism on the other. "Orthodox thinking is the keystone of our national ideology. Orthodoxy is not just knowledge, it is not just dogma, it not just enlightenment"(*Sapatriarkos Utskebani*, 12. 03.05)- says the Patriarch and formulates his view on liberalism, an ideology unacceptable for the national and Orthodox outlook, as follows: "We face a time when liberalism has been introduced in Europe and embraced by the whole world. A movement has arisen demanding 'equality.' This is very easy to state, but very difficult to implement. How can equality exist in the family? How can equality exist in society? The family should have its leader. Seniority and junior status should be differentiated in society, as well as everywhere (*Sapatriarkos Utskebani*, 3-9. 12.04). Conservatism, meanwhile, is considered by the Patriarchate as a source of fanaticism.

Liberalism and conservatism viewed separately are political ideologies and their existence creates favorable ground for democratic political processes. The desire to introduce Orthodoxy as a tool for balancing the above ideologies might at least denote that the church is entering the political arena. The following appeal of the Patriarch could also explain the above: "Do not affiliate yourselves either with liberalism or conservatism, just be a true Orthodox believer, find the golden mean..." These words are followed by the following phrase: "Earlier, people would get united under the king, church and culture. Presently only the church is left" (*Sapatriarkos Utskebani*, 3-9. 12.04).

RELIGIOUS MINORITIES AND PROBLEM OF REGISTRATION

In 2004 the key problem for religious organizations still remained registration. In the post-Soviet area, it was only in Georgia that different confessions had no right to be registered, import or export goods on their own behalf, carry out social or education activities because the issue of the creation of religious organizations in Georgia was regulated by article 1509 of the Civil Code requiring the status of a Legal Entity of Public Law for all religious organizations. The Law of Georgia "on Public Legal Entities" does not envisage procedures for creating public legal entities of religious organizations. Naturally, a religious organization cannot be founded based either on legislation or administrative act of the head of the government.

The best way to solve the problem might be a draft of amendments initiated by a group of Georgian Parliament members. The draft amendments make registration of religious organizations as legal entities of private - not public - law possible. Unfortunately, the problem cannot be fully resolved since some religious organizations, such as the Gregorian, Catholic churches and some others declare that they do not want to be registered as legal entities of private law because the possible forms of registration existing at the moment– union or foundation – do not fully reflect the specificity of a religious alliance.

Concerning registration, there is a way out: it is possible to sign agreements with those religious institutions that are willing to do so. Note that the agreement with Vatican drafted during Shevardnadze's administration that was not signed due to street demonstrations and the Patriarchate's position, has yet to be ratified. The Georgian state must sign this agreement on its own initiative, since the failure of the agreement was due to our state.

Due to the impossibility of the registration of churches, religious unions and organizations, also due to resistance on the part of the Patriarchate, Catholic and Armenian Apostolic Churches are unable to recover the temples historically belonging to them.

The Catholic Church of the Virgin in Kutaisi was announced as property of the Kutaisi-Gaenati Orthodox Eparchy on a ruling of the Supreme Court of Georgia (appeal of Catholic Union of Western Georgia *Savardi*) on April 27, 2004. The appeals court, as well as the primary court, expressed interest only in the issues of legal successor of the Catholics and did not look into whether today's owner of the church is a legal successor of "the twenty" who were given this Church in 1989 for management. This action amounted to a violation of the principles of legal hearings, since the appellant Savardi found itself in unequal and discriminatory conditions.

The bias of the Appeals Chamber was especially revealed by the main argument of the motivation part of the ruling, which was not presented by the interested party during the hearings in the primary court and hence not included in the trial materials. Therefore, the Appeals Chamber is not able to refer to the page where this evidence is placed in the ruling. We mean a document dated 2003 by which this debatable church was registered as the property of the Kutaisi-Gaenati Eparchy. This was a completely new circumstance requiring additional investigation, hence the appeals court did not have right to make a final decision on this case and it should have been returned to the Primary Court. Had evidence been presented, it should have been submitted to the interested party in the primary court. The court had enough time for that until June 30, 2003 (the final decision of the primary court), but the evidence was obtained through a violation of the law and was artificially created. The interested party did not present the "evidence" in the primary court, because the representatives of Savardi were participating in the court discussion then. The mentioned registration occurred during the hearings in the court (which is an infringement of the law) and on the basis of the motivated solicitation of Savardi representatives, the court should not have taken it into consideration as evidence because the interested party did not have right to submit it as evidence again. At the appeal stage, held in the absence of Savardi representatives, the interested party still presented it and the court accepted it as evidence without any criticism. However, this was a clear violation of the Civil Procedure Code of Georgia, Articles 380, 411.

Furthermore, the Appeals Chamber ignored a number of normative acts. This was mentioned in the appeal of Savardi and it should have been used during the hearings. It refers to the Law of Georgia "on Protection of Cultural Heritage," article 4 of the Administrative Code, article 19 of the Constitution, articles 6, 9 and 14 of the European Convention on the Protection of Human Rights and Fundamental Freedoms causing infringement of the demands given in part 2 of article 393 of the Civil Procedure Code of Georgia.

Hence, the ruling of the Supreme Court of Georgia of April 27, 2004 is not substantiated by the essence of the case; it is not justified and is unlawful.

According to the general opinion of experts interviewed by the Public Defender's Office, the intolerance of the community towards the people of other confessions still remains problematic. "The state does not do anything to change the climate in this sphere. The first steps made were of repressive character... Just apprehending and filing charges against extremists cannot change anything if we do not expand the area of our activities," said one of the respondents, thus expressing the opinion of the majority.

In Akhaltsikhe, a local Orthodox priest did not allow a local catholic pastor even to enter the Ivlita Catholic Church. No one was punished for insulting catholic icons and graves. While Tariel Sikinchelashvili, archpriest of the Orthodox Church, bravely made statements on TV saying: “let Armenians build Churches in Armenia.” (TV company *Rustavi 2*, February 2005).

According to Lutheran pastor Gari Azikov, everything has remained unchanged since the previous administration. Giuseppe Pasoto, a Catholic Church bishop, thinks that the problems that religious minorities face are not decreasing since the new authority has not formed a religious strategy (Forum 18).

Zurab Aroshvili, a priest of the “Truly Orthodox Church in Georgia” has a pessimistic attitude towards the issue. In his words “Nothing has changed with respect to religious freedom. It is still impossible to build churches.” According to his words, when he appealed to the authorities to have a church built in Kutaisi, he was recommended to address the Patriarchate for permission. “They do understand the conditions we are in, but cannot issue permits without the consent of the Patriarchate as they are afraid of loosing their jobs” (Forum 18). The issue of constructing new places of worship remains problematic for other confessions as well.

Today we could say that the mass media pursues a policy of absolute disregard towards religious minorities. Neither TV nor radio programs cover their religious life impartially. The situation is the same in the print media.

SCHOOLS AND RELIGION

The nature of religious education at certain schools also causes concern. A subject called “The History of Religion and Culture” is taught at schools, which very often is understood by the teachers as teaching the “Law of God.” The level of education of religion teachers at schools is very low. Praying before any classes start, as well as holding different types of religious-patriotic events at the initiative of school administration, and inviting Orthodox priests to recite the liturgy is a common practice. There are “Holy Corners” of icons in the classrooms and religious symbols are exhibited. Many of the teachers admit that their goal is making the children religious or “church-goers” i.e. indoctrination. This is the right of a teacher himself/herself, but it is not acceptable that teachers use school buildings or classes for liturgy, as it infringes upon the principle recognized by legislation on separation of religious associations and schools, as well as upon the rights of parents and schoolchildren to choose and define their own confession and lifestyle. In addition, the education process is funded by revenues generated from parents affiliated with different confessions, a fact which excludes any confession from having priority compared to others at schools, even at the level of exhibiting symbols and excludes any indoctrination or proselytization.

Teaching the history of religion at schools should have a neutral character. There are several problems here: first of all, we should know that not only one religion should be taught. Children should get objective information about all leading religions and especially about confessions existing in Georgia. It is also very important to find proper cadres and renew the existing pool of teachers. In addition, a new State Educational Plan aimed at the promotion of humanism and tolerance to different religions must be elaborated. A new textbook based on the above state program should be prepared. It is also very important to change the existing religious climate at schools. The main goal for state schools should be the non-promotion of children’s religious or atheistic interests and non-interference.

TASKS OF THE PUBLIC DEFENDER

Our tasks for the near future is to be responsive to concrete facts, conduct educational activities in this direction and elaborate legislative recommendations, including the creation of a Board of Religions and the elaboration of programs to promote tolerance. This program shall gather the representatives of almost all religious associations and organizations big and small and their interests. The implementation of the first multi-confessional project is planned within the framework of the program.

We would also like to monitor schools and mass media to define the level of "the language of hostility and violence."

PUBLIC DEFENDER'S RECOMMENDATIONS

- To create legislation enabling religious organizations wishing to acquire the status of Public Legal Entity to be registered the Supreme Court of Georgia must review the lawfulness of the ruling of April 27, 2004 (in regard to the appeal of Catholic Union of Western Georgia *Savardi*).

- The Ministry of Education and Science shall strictly control the protection of mutual independence between secondary schools and religious unions.

The Rights of National Minorities

Georgia a multiethnic state inhabited by members of various nationalities, the protection of which is not only a fundamental requirement and belief of the state, but also established by Georgia's the international commitments.

The current problems include:

- A low level of integration both vertically – between the center and the regions – as well as horizontally – between the regions – for the population of the regions with national minority groups and organizations.

- Some of the members of the national minority groups are not aware of the existence of legal mechanisms or a normative framework protecting their rights. This problem should by all means be resolved by the state.

- Even when the integration processes has been initiated, we often find unsuccessful and abandoned attempts at integration of national minorities into the executive, legislative and local government structures, which may result in mutual alienation, disintegration and distrust in the future. On the whole, the integration processes are being developed very slowly.

- The politicization and stereotyping of individuals based on their ethnic origin is frequent, though triggers unhealthy publicity. The individuals who publicly stereotype members of ethnic minorities attempt to discredit them in front of Georgians. The relations between national minorities and Georgians then suffer; as such an attitude makes national minorities feel like second-class citizens.

- As seen in all governmental structures, employment of national minorities into law enforcement structures is relatively low.

- National minorities are poorly informed about the current processes in Georgia, and the majority of the Georgian population is poorly informed about the problems, history, culture, and so on, of the national minorities. Lack of accurate information impedes the ability of Georgians to make objective opinion on national minorities. In place of objective information is rumor and cliché, an impediment for integration and the protection of human rights.

2004

- These problems are made more acute by the fact that the history and traditions of national minorities residing in Georgia are very little depicted in school manuals. This also creates a sense of alienation between Georgians and national minorities.

- National minorities are often removed from the state processes. This is particularly true for national minorities living in Samtskhe-Javakheti and Kvemo Kartli, who in addition to other problems, suffer from a lack of information in their own language on current events in Georgia.

- Not a single special state program to facilitate and encourage employment of national minorities in either central or regional governmental structures has so far been implemented.

- Lack of knowledge of the state language is one of the most serious factors hindering national minorities from fully participating in public life. This is in direct connection with the protection of the rights of the national minorities. Activities in this direction have not been fruitful so far. This problem should also to be resolved by the state.

- Possibly as a result of poor integration into Georgian society, national minorities involved in business tend to invest their capital either in the country of their origin or in third countries. This is further proof that minorities do not feel economically protected in Georgia.

- Civic identification for some national minority members is poorly developed as a result of official or unofficial barriers developed over the years. This is especially obvious in the areas where national minority groups live.

- Although this problem is widely recognized, media is not fully provided in a language understandable to minorities. The only exception is that of news broadcasting in the minorities' languages on public television, which was launched at the end of 2004.

- When the population of the neighboring villages to Ossetian citizens in the villages of Areshperon and Bolkva were given 1.25 ha land, Ossetians were given only 0,25 ha of land.

- Two major problems can be identified among the Greeks living in Tsalka. First is the crime rate and second – property problem. High crime rate in the region, certainly, is not the problem of only ethnic Greeks. But if we look at the statistics, we'll see that since they are the most vulnerable and few in number (according to statistic data out of 32 000 Greeks only 1 684 live in Georgia), they suffer most. In regard to the property, unlawful break into the Greeks' houses and getting hold of them are frequent that could not stay beyond the state's attention. Finally, I'd like to highlight one subjective factor: there are enough proofs that the criminogenic situation in Tsalka is in direct connection with negligence and sometimes even with criminal actions of the Head of Police of Tsalka Zurab Keshelashvili.

- In regards to Samtskhe-Javakheti, the problems can be divided into several parts: lack of knowledge of the state language, a common problem for ethnic minorities; the problem of integration with the rest of Georgia, requiring serious attention from the government; and poor administration. There is no clearance post on the Javakheti segment of the border between Georgia and Armenia, a result of which the population has to go to Borjomi to get their goods cleared. Considering the close relations between Javakheti and Armenia, it is obvious what serious problems it creates for the local population.

- Reimbursement of property and damage reparation caused to Ossetians and other nationalities at the beginning of the 1990s, and adoption of a Law of Restitution, is both problematic and deeply fundamental. The Public Defender's Office is very actively working in this direction, and the relevant draft law will soon be developed.

RECOMMENDATIONS

Education

- Everything should be done to encourage the national minorities to receive education in the Georgian language.

- Schools implementing bilingual educational should be supported.

- The history and traditions of national minorities should be reflected in the manuals of Georgian schools to eliminate grounds for alienation.

- In the secondary educational system, the state should fully provide civil education in both Georgian and the language of national minorities.

Efficient Communication

- To eliminate mutual stereotypes between minorities and Georgians, the state, together with the interested parties, should make efficient steps to remedy them;

- The state shall provide TV, radio, and print media both through official and central media in languages comprehensible to national minorities, so that national minorities can receive complete information on state processes.

- The state should provide translation of legislation in languages comprehensible to minorities, and its publication should be subsidized by the government

State, Justice, and Integration

- The state should create an environment conducive to the employment of minorities in the government in regions settled by minorities, other regions, and in the capital.

- It is important to support a new generation of national minority leaders in order to create more favorable conditions for their self-realization.

- Special educational programs should be created to support and encourage the employment of national minorities in governmental structures.

- The Framework Convention of the European Union on the Protection of National Minorities should be ratified. Effective steps to adopt a special law on the protection of national minorities should be made, and the ground should be prepared to allow regional languages and minority languages to be joined in the European Charter in the nearest future.

- Advisory bodies at the central and regional government structures should be set up that will establish a dialogue between minorities and governmental structures. These bodies should have relevant functions and authority to observe the situation, to draft proposals, to offer recommendations and opinions to the relevant authorities in a timely manner.

- Increase in the participation of national minorities in the general system of governance at the regional and national level should be one of the priorities of government policy in regards to the national minorities, particularly in the regions with few representatives of national minorities.

- Due to unfulfillment of his duties, the head Tsalka regional police division of the Ministry of Internal Affairs, Z. Keshelashvili, should be dismissed from his position.

Freedeom of Speech and Expression in 2004

The most alarming trend in the first half of 2004 against the Georgian media was the closure of a number of media outlets – TV-channels (9th Channel, Iberia), newspapers (Mtavari Gazeti - Main Newspaper, Dilis Gazeti - Morning Newspaper, Akhali Epoka - New Epoch, Tribuna Tribune), one magazine (Omega) and the information agency Media-News. The decision to close these outlets was made by the media owners themselves, and society was not aware of whether there was direct pressure from the authorities to do so. The closure of the TV company Iberia, the newspaper Akhali Epoka, and the magazine Omega, all well-known for their opposition stances, were preceded by serious clamors caused by indirect interference into their activities by the government. All three media sources belonged to the business-group "Omega," which the authorities accused of being involved in the smuggling of cigarettes.

At the same time, in 2004, new and liberal legislation was adopted that ensured guarantees for the protection of freedom of speech.

During the first months that followed the Rose Revolution, political debates gradually disappeared from television, and various TV companies ended their political programs. Only informational programs of three to four minute "soft" stories remained. The once-reliable program, 60 Minutes, was only aired a few times, and the topics covered were anything but daring.

During the first half of 2004, viewers interested in politics could only watch news basically covering activities of the government, and the list of the respondents were repeatedly only government representatives. Key news agencies would start their programs with words by the president and often finish with the city prosecutor or press-conferences and briefings; thus reducing themselves to a mere purveyor of live broadcasts of information needing to be disseminated by the President, Ministers, Governors, Mayors or Prosecutors. Journalists almost never went back to the facts or positions voiced at such meetings, however, and, respectively, the society knew only what the authorities tended to tell about themselves. Examination, critical review, commentary or evaluation of these facts seldom occurred. On the other hand, the authorities remained decent in front of the society – they were not hiding information, on the contrary they were inviting journalists for a talk and were not even banning

the acquisition of additional, more sensitive information. The fact remains that under these new conditions the press was not applying old methods – they were not searching for anything and were merely covering the material that was ready-made and hand delivered. Many journalists stopped attending press-conferences, as they were always broadcast live by several channels; and any sort of poignant or acute question were rarely ever asked and even more rarely answered.

This new system of information generation enabled the authorities to not only fill in the information space, but also to direct public opinion along the course it most desired. This policy was implemented by the Georgian authorities and was met with full agreement and support by the Georgian media.

Fortunately, this situation has partially changed since autumn, 2004. Competition once again forced TV company heads to try to attract viewers once again. Initially, programs of social color emerged on all the channels; they were further compounded by satirical shows and educational programs. Gradually, the variety of political topics increased. Debates were sparked up once again and political experts reappeared on the screen in an attempt to critically analyze the most pressing issues. On the other hand, these information programs have not acquired too much acuteness and they still tend not to stray too far from investigative journalism.

Resolution #1415 (2005) of the European Council Parliamentary Assembly assesses the media activities in Georgia by labeling them with the epithet "self-censored." The same word is used in regard to the Georgian media in the annual report released by the US State Department. The assessment, however, did not seem to cause any public protest from active journalists or the owners of the various Georgian media outlets.

WHAT DOES "SELF-CENSORED" MEDIA MEAN?

Since informational politics in Georgia is basically created by TV-companies, the concept of "self-censorship" refers to these companies first and foremost. It is well-known that the TV-companies Imedi (Hope), Rustavi-2 and Mze (Sun) have the best relations with the authorities. Moreover, these companies are part of the authorities proper, to a certain extent. Correspondingly the attitude of the Georgian media, which was so sharp during former President Eduard Shevardnadze's government, has completely changed. "Self-censorship" is a term that expresses the following conditions: the authorities, in agreement with the owners of the media organizations, create an acceptable framework and the journalists, fearing for their job, push aside their conscience and professional ethics and work within this accepted framework.

The essence of this framework can best be displayed in the form of a pyramid. At the pinnacle of the pyramid is the leader of the state – the President – and at the bottom of the pyramid the population of the country. Prior to the Rose Revolution the source of financing those decision makers who were in agreement with the leader of that time – Eduard Shevardnadze – was almost completely corrupt. The President's power rested solely on the power of those decision makers. This process developed at the expense of the people and the people themselves did not represent a supporting entity for the president. During the Revolution, the new leader Mikheil Saakashvili counted on the people and declared that the main support for his regime would always be the people. Later it turned out that the priorities selected by Mikheil Saakashvili – integration of the country, return of Samachablo and Abkhazia, recovery of borders – required centralized governing and more enforced politics.

Correspondingly, this political logic eventually forced the President to emphasize this vertical of power, i.e. a small group of decision makers, and not the people. But unlike his predecessors, Mikheil Saakashvili created new rules for this old game: the state would now finance and control its bureaucrats. This fact

naturally called for dramatic increases in the salaries of public servants, especially for those in high positions. However, the majority of the population actually retained their old income.

Such a tactic to fight against corruption – assigning high salaries to public servants and the desire to control the executive vertical from above – created a political will that weakens the controlling mechanisms of the authority in the hands of society. As a result, the non-governmental sector was also diminished and "silent" state policies were implemented against the media. Particularly: in 2004 the authors and programs that offered critical coverage that had previously been difficult to control disappeared from the screens. This disappearance was coupled with the eradication of sharp questions and, more importantly, the curbing of all investigative journalism. There has even been a case wherein on journalist, Revaz Orkruashvili – Editor and Chief of a Gori newspaper, was subject to direct violence. And while it is true that neither the media owners, nor the editors nor the employees publicly discuss the pressure they are receiving from the authorities, the internal politics of the country, its prioritizing of the enforcement of relations and analysis of the media space unanimously confirms just to what extent the media's freedom is repressed as a result of this editorial independence.

During the government of Eduard Shevardnadze, diachronic (vertical) cross-section vividly revealed three layers: authority, media owners, a journalist. Media owners and a journalist comprised a single team of vertical subordination and jointly opposed the authority. How intrepid and daring could a journalist be, s/he felt protected by the media owner. This was a joint team with common vision not requiring guarantees in the form of a contract.

During Mikheil Saakashvili's presidency, the above described conditions caused the change of links in the chart. Today authorities and media owners comprise a united team of the vertical subordination, as to the third member of the diachronic cross-section – a journalist - is not only alone and unprotected, but experiences a powerful pressure from the authority and media owners jointly.

Experts' in-depth interviews confirm that from the perspective of freedom of expression the most important problems for the country today are unlawful relations, on the one hand, between the authority and media owners, on the other, between media owners and hired journalists. Then comes another problem - deficit of professionalism among journalists, the third is – low level of the country's economic development. One factor is very characteristic: the way for protection of freedom of expression lies through the media space for the majority of experts and only very small part considers that the degree of freedom of expression without the will of the authorities could not go up. The experts we interviewed unanimously admit that Georgian journalist need improvement of their professional level, but the respondents again and again convey the responsibility of protection of freedom of expression on journalists and urge them to more vigorous activities to defend freedom of expression.

The anti-monopoly service's restriction to show the commercial against torture was the fact of restriction of freedom of expression. In December 2004 the anti-monopoly service, at the instruction of the Ministry of Interiors, banned transmission of video-clips on TV. Five video-clips shot by the order of the organization "Former Political Prisoners for Human Rights" was removed from the air.

The video-clips had been aired on TV since February 2004. The Ministry of Interiors made a special announcement in regard to the withdrawal of the video-clips. In the announcement it was said that such clips create syndrome of distrust towards the police in the society. The Deputy Minister of Interiors at that time Davit Mumladze demanded from the anti-monopoly service to block the clips. Acting in compliance with the directions from the Ministry of Interiors, the anti-monopoly service sent letters to the TV stations asking to suspend showing of the clips "until looking into the matter."

As to the clip presented by "Association of Legal Education ALPE", the anti-monopoly service refused to grant it the status of a social advertisement. the main reason for refusal was the position of the Ministry of Interiors, according to which the clip was damaging the image of the police. "Association of Legal Education ALPE" presented to the anti-monopoly service two clips to be assigned the status of social advertisement. The clip that appealed to the society to act vigorously against torture and cooperate with Councils of Public Supervision, was not granted the status of social advertisement by the anti-monopoly service.

It should be highlighted that "Association of Legal Education ALPE" received a letter signed by the deputy head of the anti- monopoly service in which the service substantiated its refusal by the position of the Ministry of Interiors and gave no personal argument in this regard. Only the position of the Ministry of Interiors was quoted in the letter according to which the clip allegedly discredited the image and authority of the police and, respectively, it was not expedient to air it on TV. In addition to the organization that ordered the clip, the anti-monopoly service sent out the letter to the TV stations. On the basis of agreement "Association of Legal Education ALPE" settled the problem. The clip was redone and the anti-monopoly service agreed to assign the status of a social advertisement to the clip.

Hence, we can conclude that we are facing "institutional crisis". The anti-monopoly service should not have followed the instructions of the Ministry of Interiors. It should have decided what status to assign to the clips.

LEGISLATION

LAW OF GEORGIA ON FREEDOM OF SPEECH AND EXPRESSION

(Explanation)

On 24 June 2004 the Parliament of Georgia approved the Law on Freedom of Speech and Expression. The Law has substantially changed the condition and created stable legal guarantees for the implementation of such liberal values as freedom of speech and expression.

In the first place it is worth to mention that the new law decriminalized defamation (libel). There is no relevant article (148) in the Criminal Code that envisaged sentence for the libel.

Another innovation is the fact that unlike the old law, the new law distinguishes a fact and a judgment. A judgment is determined as an assessment of a statement, view, comment, expression of an opinion in any way. By introducing such a norm Georgian legislation came closer to the prudential law of European court, which practically does not envisage any responsibilities for the assessment judgment (apart from a few exceptions).

The following innovation defines a defendant at court litigations. In compliance with article 25 of the Law On Press and other Mass Media effective before, the responsibility for dissemination of false data, for deliberate offence and libel of citizens and organizations lay on mass media, its management, editor (chief editor) and the authors of the stories who violated the law. In terms of the new law in case of lawsuits arisen as a result of an article or a story, the defendant is the media owner. Such a principle is recognized and implemented in most of the European countries.

One more innovation in the law is the fact that if an application refers to an indefinite group of persons, i.e. if a plaintiff is not unanimously identified, it cannot be the subject of the lawsuit. The lack of such a record in the old legislation had many times accounted for the court decisions against the media for "causing offence to the honor and dignity" of various ministries and state agencies.

Redistribution of judgment burden between the parties at the trial is one more innovation. According to the law any doubt during the trial shall be resolved against any restriction to the freedom of expression.

In compliance with article 18 part II of Civil Code of Georgia effective before, the judgment burden among the parties was distributed in the following way: the plaintiff was obliged to prove the act of dissemination of documentation offending his honor, dignity or business reputation, also the fact that due to the distributed information his honor, dignity or business reputation had suffered; the defendant had to prove the validity of the information distributed by him.

The new law placed the judgment burden completely on the part of the plaintiff: while filing a suit the plaintiff has to prove that:

1. the defendant disseminated a litigated statement;

2. the litigated statement caused offence to his honor and dignity;

3. litigated statement was wrong;

4. if a plaintiff is a public figure, he is responsible for proving that the defendant was aware of the falsehood of the disseminated information against him; or that the defendant showed obvious and rude negligence causing distribution of a substantially wrong fact.

As we see according to the new law there are two types of standards used in the cases of defamation: for private entity and public entity. Private entity is protected by the law, while the public servant is obliged to be very patient (that is obvious from point 4 of the previous paragraph).

The new law envisages an important innovation in regard to secrecy of a journalist; particularly, any person bears responsibility for giving away the secret that must be kept officially. Thus, if a journalist gets hold of information with inscription “Confidential”, not the journalist bears responsibility for its publication but the person who is responsible for safeguarding this information.

Thus, it can be said that by adopting of the law Georgia comes closer to the international standards in regard to the freedom of speech and expression. By adopting the Law of Georgia On Freedom of Speech and Expression the state expressed its will that a journalist attending to one’s activities shall be more protected than a public servant.

LAW OF GEORGIA ON BROADCASTING

Guarantees of freedom of speech are vitally important in the broadcasting. In this regard the legislative innovation in respect to the adoption of a new law regulating the field of broadcasting is worth mentioning. The Law of Georgia On Broadcasting adopted by Georgian Parliament at the end (23 December) of 2004 aims at formation of public broadcasting that will enjoy full independence from political and commercial influence and from this view point, shall be granted powerful financial guarantees. Formation of public broadcasting free from political situation and accountable to the public is very important to provide media pluralism and protect interests of the minorities in the field of broadcasting.

Community broadcasting also envisaged by this law aims at protection of interests of the minorities which will ensure participation of the local population in the broadcasting process. Community broadcasting shall ensure coverage of minorities opinion residing within the service zone.

The Law of Georgia On Broadcasting also aims at ensuring transparency of service and activities within the broadcasting area, encouraging free competitive environment among the broadcasters, also supporting the licensees in the field to work in terms of equality and independence and to provide efficient application of frequency ranges.

The law also arranges creation of an independent regulatory body in the field of broadcasting and the rules of their activities, its functions and guarantees of independence.

Freedom of Information

Pursuant to article 49 of the General Administrative Code of Georgia, every public organization is liable to submit to the President of Georgia and to Parliament a report on the provision of public information on December 10 each year.

Article 37 of the General Administrative Code states that: “Every individual may request public information irrespective of physical form or condition of storage of such information. Everyone may choose the form of receipt of public information, if there are various forms of its receipt, and gain access to the original of information. In order to obtain public information, a person should submit a written request. The applicant should not be required to specify the grounds or purpose for requesting the information.”

In compliance with article 36 of the same Code, a public agency is obliged to designate a public servant who will be responsible for ensuring the accessibility of public information.

The significance of the transparency of activities of public organizations and the importance of providing public information is shown by the fact that public organizations were required to submit annual reports. The report presents a general picture on the provision of public information in Georgia. The President and Parliament are able to monitor freedom of information as the implementation of the requirement of Chapter Three of the General Administrative Code.

In most of the cases, the requirement of article 49 of the General Administrative Code on submission of the report is not fulfilled by public organizations, while half of the submitted reports do not meet the norms established by the law.

The Public Defender’s Office, together with the UN Association, examined the reports of December 10, 2004 submitted by the public organizations to the President of Georgia and to the Parliament. On the basis of analysis of these reports, we can identify the most typical violations:

In most of the reports, the name of the public servant responsible for the provision of public information is not given, as stipulated in Paragraph “b” Article 49. Furthermore, very often Paragraph “c” of the same article is not fulfilled, i.e. information on the public database, as well as on collection, processing, storage and transfer of personal data by public organizations is not reflected

in the report. In some cases, the content of the information asked for is not given in the report at all. There are some particular examples when the employees of the public organizations do not understand the requirements of Article 49, and rather than analyzing their own data, they directly copy the sample instruction of the UN Association on executive summary at the end of the report (e.g. Report of December 10 2004 of municipal services of Poti local government; Report of December 10 2004 of local governance unit in one of the villages of the Gardabani region; etc). Furthermore, many organizations submit the report either to the President or to the Parliament, while Article 49 of the General Administrative Code demands submission of the report to both parties.

When the Public Defender Office's require submission of information, materials, papers and other documentation from government organizations, and when these requirements are ignored or are submitted with delay, it not only hinders the activities of the Office, but even paralyzes them. By creating impediments to the activities of the Public Defender, the requirements of the Georgian Constitution and the Law on the Public Defender of Georgia, the General Administrative Code of Georgia, the Code of Administrative Offence, and the Criminal Law are violated.

Many examples could be given in this regard, but we will mention only one which vividly reflects the problem. On November 10-11 of last year, we sent letters to all the departments and district divisions of the Ministry of Interiors and to the Prosecutor's Office asking them to submit information on the complaints of persons with physical injuries. For example, 45 letters were sent to the Tbilisi Gldani-Nadzaladevi Prosecutor's office, though responses were received only to 23 of them; 57 letters were sent to Vake-Saburtalo District Prosecutor's Office, with no replies so far; 76 letters were sent to Isani-Samgori Prosecutor's Office, with replies to only 9 letters; 8 letters were sent to the department of the Ministry of Interiors of Vake-Saburtalo District, and only three letters were replied to, and so on. Please see the table for more information.

	Number of letters sent	Number of letters received
Gldani-Nadzaladevi Prosecutor's office	45	23
Gldani-Nadzaladevi department of Ministry of Interiors	10	10
Vake-Saburtalo Prosecutor's office	57	0
Vake-SaburTalo department of Ministry of Interiors	8	3
Isani-Samgori Prosecutor's office	76	9
Isani-Samgori department of Ministry of Interiors	10	9
Didube-Tchugureti Prosecutor's office	43	34
Didube-Tchugureti department of Ministry of Interiors	6	3
Mtatsminda-Krtsanisi Prosecutor's office	28	28
Total	283	119

The situation is approximately the same in regard to the letters from the regions. Significant shortcomings are also observed in regard to answers of letters sent out from our Office during the review of letters sent by citizens.

APPLICATIONS OF CITIZENS WHO ARE NOT AWARE WHETHER THEIR LETTERS WERE REGISTERED

Every Georgian citizen has the right to address public organizations by request. Public servants are liable to respond to the citizens' applications in compliance with the law. It is not difficult to define how objective and controllable are the actions of key officers, who are able to ignore the applications of citizens. In order to have the applications under control, each letter must be registered and the citizen should be given a registration number of his/her application. In case of a delay, the citizen has the possibility to require a reply to his/her application.

The Public Defender's Office has witnessed more than one applicant demanding a response to his/her application submitted to a government organization in writing. If the claims are registered in the general office, they can be controlled, and in case of their loss or lack of response, it is possible to trace a responsible person and his/her amenability can be raised. Yet it is difficult to locate an application if the applicant is not aware of the letter's registration number. This is the case when citizens leave their claims in a so-called "claims box". From this moment, officers in charge have the possibility to avoid undesirable claims. Proving that they have been addressed by a citizen is almost impossible if the officer wishes to ignore the appeal.

Unfortunately we see such "claims boxes" in organizations that should be setting an example of precise and uniform execution of the law. These organizations are the General Prosecutor's Office of Georgia, the Tbilisi Prosecutor's Office, the Ministry of Interiors, the Tbilisi Head Office of the Ministry of Interiors, the State Chancellery, Tbilisi City Hall, and others.

Tbilisi City Hall has a citizens' reception area where the citizen can leave his/her application. The citizen does not know where his/her application will go or who will be responsible for its fulfillment. To find the result of the discussion of his/her letter, the citizen is required to return after ten days.

Note the example of the Vake-Saburtalo District Gamgeoba (council), which does have a general office; very often, the employees of the office deliberately reject to receive the letters from the citizens. Deputy-Gamgebeli N. Latsabidze confirmed this fact in an explanation given to the employees of the Public Defender's Office. According to him, they turned down the applications because of their sheer volume.

In the Prosecutor's Office of Georgia, the room where claims box was placed was to be repaired, and as a result the box was removed and the citizens did not have an opportunity to address the Prosecutor General.

The State Chancellery has many such boxes, and each agency has its own box. Citizens must select the box by the addressee, and to return in a week to find out the results.

RECOMMENDATIONS

In order to bring the December 10 Report format in compliance with the law, the following recommendations should be observed:

- A unified report model shall be introduced to eliminate misunderstandings in regards to its content. The unified report model should be distributed to all public organizations. Such an approach will certainly strengthen the responsibility of the key officers and to remind them of their liability to submit the December 10 report and all relevent information.

- In regards to officers of the public organizations who violate the requirements stipulated in Article 49 of the General Administrative Code, strict measures of administrative amenability should be raised. This will even further ensure fulfillment of the rules for provision of public information by public organizations.

- The persons responsible for providing the public information should be identified not only in the public organizations, but also in the Parliament and President's administration an individual should be identified responsible for conducting current monitoring on the fulfillment of the requirement of freedom of information.

Freedom of Movement

In October of 2004, the Russian Federation closed the main legal border between Georgia and Russia, the Larsi Pass. As a result, citizens of both Georgia and other countries who were traveling between Russia and Georgia were required to use the Roki Tunnel, located on the territory of South Ossetia. This was unacceptable for the Georgian government, as Georgia does not control this territory. There is not a border post in Kekhvi since the official border is near Roki and not Kekhvi. Though before the Larsi border opened citizens had to use the road via Kekhvi.

On 30th of October when the Larsi border was open, five buses entered Georgian territory from Russia via the Roki Tunnel, accompanied by representatives of the Russian Party of Liberal Democrats (Vladimir Zhirinovsky's party). Among others there were about 60 people deported from Russia on the initiative of the mentioned Party.

The bus drivers did not oppose to the use of Roki route since they had used it while traveling to Russia and did not expect any complications. They had traveled from Roki Tunnel to Village Kekhvi without any obstacles. They were stopped by representatives of the Ministry of Internal Affairs of Georgia who demanded that they reenter Georgia through the Larsi Pass. The President's repre-sentative in Shida Kartli, Mikheil Kareli, was the person who vociferously demanded them to do so.

This demand was illegal and anticonstitutional. Paragraph 2 Article 22 of the Georgian Constitution states that: "Everyone legally within the territory of Georgia shall be free to leave Georgia. A citizen of Georgia may freely enter Georgia."

Paragraph 3 Article 13 of the Constitution states that: "The expulsion of a citizen of Georgia from Georgia shall be impermissible." Paragraph 4 of the article states that: "The extradition/ transfer of a citizen of Georgia to a foreign state shall be impermissible, except for cases set by international treaty."

Protocol 4 of European Convention for the Protection of Human Rights and Fundamental Freedoms, particularly article 2 on freedom of movement directly states that "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. Article 3 states that: "No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national."

Return of the passengers stopped at Kekhvi was impossible as some of the passengers' visas had expired, some were deported, while others were sick or mothers with babies.

Vasil Maglaperidze, Chairman of the Parliamentary Commission on Restoration of Territorial Integrity of Georgia, witnessed this event the first to react to it. When he was not able to do anything, he contacted the Public Defender who immediately traveled to the place of the incident.

There was absolute lack of attention in the media to this event. The journalists did not have specific information, as they were not allowed to travel to Kekhvi. The Public Defender offered them to travel with him by car and together they tried to use a bypass route to get to Kehvi. When approaching the Georgian village, local law enforcement tried to deter them. It was an illegal action which contradicted the Organic Law On the Public Defender. The policemen forbade the journalists to enter the territory. Only as a result of the Public Defender did the law enforcement allowed the group to move.

The authorities seriously opposed their entrance in the area. Mikheil Kareli even arranged a special press-conference where he leveled unjustified accusations against the Public Defender. In spite of such pressure, the Public Defender remained in the area of the incident and for two days stayed outdoors with the people who were there.

From the beginning, the Public Defender's position was that the people, who are citizens of Georgia, had not violated the law. If they had, the government should have taken them to territory under state control. Leaving them on territory where their life was at risk was both unlawful and anti-constitutional.

On November 2, the citizens were removed from the conflict zone and were temporarily accommodated at the Gori Customs terminal, where the Public Defender's Office and the municipality service of social assistance delivered food and medications.

Freedom of Assembly and Association

Freedom of Assembly and Association is one of the most important human rights recognized by the Georgian Constitution. It is specified in Article 25 of the Georgian Constitution, comprising the following three provisions:

"1. Everyone, barring members of the armed forces, of the police, and of the security office, has the right to public assembly without arms, either indoors or outdoors, without prior permission.

2. The necessity of prior notification of the authorities may be established by law in the case where a public assembly or demonstration is held on a public thoroughfare.

3. Only the authorities shall have the right to break up a public assembly or demonstration in case it assumes an illegal character."

In 2004, freedom of assembly and association was violated on a number of occasions, both in regards to events in Adjara at the beginning of the year, as well as to other incidences throughout Georgia. We will pay less attention to restrictions of assembly and association in Adjara, as they were connected with Aslan Abashidze's regime, and are in the past. It should be noted, however, that violations under Abashidze were especially flagrant in comparison with violations of the previous periods. Beatings and arrests were common during the first months of 2004 in Adjara. We will recall only two cases.

On February 20, during a visit to Batumi of Walter Swimmer, the Secretary General of the Council of Europe, illegal armed groups formed by the authorities of the Adjara Autonomous Republic, the Ajarian Ministry of Internal Affairs and Ministry of Security, aggressively dispersed a peaceful demonstration organized by the united opposition of Abashidze and the Kmara movement. One of the participants was wounded, and dozens of peaceful participants received different injuries. Kmara's offices were also broken into. Mindia Sikharulidze, Jano Rizhvadze, Giorgi Charkviani, Tamar Gobronidze, Avto Beridze, Nodar Dumbadze, Irakli Chkhetia and other members of the Kmara movement were severely beaten up.

On March 23, Aslan Iremadze, a twenty three year-old member of the Kobuleti Office of the Kmara movement arrived in Batumi, and was on Tsereteli Street when seven or eight people attacked him. Aslan Iremadze heard them shouting: "He is a Kmara member,

kill him". When Aslan Iremadze tried to run, he was stabbed, getting one wound in his heart and three wounds in his back. The attackers ran away, leaving him in the street.

In 2004, freedom of assembly and association was often violated by the new authorities. On January 11, the police dispersed rallies in Terjola and Rustavi using excessive force. In Terjola, the participants of a rally blocked the central highway, giving the authorities lawful ground to open the road. In addition, there was no prior notification that the participants would block the road. But the violence used by the police was absolutely excessive, especially because the participants did not resist the police. After opening the road, the policemen chased the participants and passers-by into fields and throughways, severely kicking them and beating them with fists and batons. The police further infringed on the freedom of assembly and association when they arrested 7 people for participation. The Kutaisi primary and Tkibuli regional courts sentenced them to different periods of imprisonment, ranging from 6 months to 2 years in compliance with Article 226 of the Criminal Code of Georgia, while one of the participants was fined 4000 GEL. Article 236 of the Criminal Code of Georgia states that: "Organizing a group action or participating in the kind of actions that violate public order or are related to obvious non-obedience of the legal demands of the government, or if such actions result in suspension of transportation, of operations of enterprise, or of organizations, shall be followed by imposing penalty or work in favour of society from 120 hours to 180 hours, or correctional works of up to two years, or by imposing a penalty of confinement or imprisonment of up to three years).

On July 1 2004, special police forces broke up a peaceful demonstration of the victims of an earthquake in front of City Hall with special cruelty. Several of the participants were seriously injured, but neither the people who ordered the raid nor those who broke up the demonstration have been punished as yet. The raid was directly organized by the head of Special Forces, T. Mgebrishvili, as was justified by then-head of police, Irakli Kldiashvili.

Restriction of freedom of assembly and association continued in 2005. On February 19, the students of Akhaltsikhe University blocked the road at several points, calling for the release of Merab Beridze, head of the Akhaltsikhe branch of the State University. The police did not attempt to open the road. But on the following day, in the morning of February 20, ten students were arrested at their homes. After the Public Defender's intervention, the students were immediately released, though later they received administrative punishment: Eleven students received fines of 15 GEL each. The students' actions were not beyond that defined by the law and the Constitution in regards to freedom of assembly, while the action of the police and the court decision discregards this freedom.

RECOMMENDATIONS

- The incident in front of the City Hall of Tbilisi should be investigated and those that broke up the demonstration (Temur Mgebrishvili, Head Special Forces, among others) should be punished.
- The incident in Terjola should be investigated those that broke up the demonstration should be punished.

Social and Economic Rights

The Georgian government has taken the responsibility of improving the social and economic conditions of the country's population and in enhancing their wellbeing. However, the implementation of this responsibility has not proceeded in an efficient manner. In 2004, the minimum amount of money required for subsistence of an average man capable of work in 2004 was 139.5 GEL; for an average consumer 122.4 GEL; and for an average family, 242.6 GEL. Actual salaries were significantly lower than this the subsistence minimum.

LABOR RIGHTS

According to various data, between 700,000 and 1,000,000 Georgian citizens have left Georgia to seek illegal employment abroad. According to the data given by the State Statistics Department, the total number of people employed in Georgia has decreased by 232,000 over the last four years. The number of those hired in the workforce was reduced by 120,000, of which more than 90% were employed in the government sector (70,000 people) or in non-governmental enterprises (48,000 people).

Structural changes, including reorganization of government bodies, ministries and agencies, exacerbated the situation. As a result of reform within the government, tens of thousands of people were left without jobs, according to rough data.

Reforms and reorganization of the government is a fundamental process without alternative. However, it is imperative that the government takes into consideration the high level of unemployment in the country, as well as the general situation and future prospects in the country. In addition, the government should further liberalize the taxation system so that the recently unemployed citizens can have an opportunity to find new employment.

Dissatisfaction among the population due to bills received from the Tbilgazi joint stock company, relating to outstanding gas consumption, is on the rise.

After looking into the matter, employees at the company claimed a computer error resulted in incorrect information. Citizens wrote letters stating that their bills claiming outstanding amounts for gas consumption were wrong, though did not receive a response to their complaints.

OBSERVANCE OF LABOR LEGISLATION

The Labor Code, the Law on Public Service and other international normative acts aim at protecting workers' legal rights and labor interests in Georgia. In 2004, the Public Defender's Office examined some 300 claims regarding labor rights, which accounts for more than 10 percent of the total number of complaints received. These complaints helped to identify a number of violations. For example, a case involving the violation of labor law rights against a journalist from the newspaper Sakartvelos Respublika (Republic of Georgia) Ltd, Leila Koshkadze, resulted in concrete action. After looking into the case, former Public Defender Nana Devdariani sent her conclusions and recommendations to A. Saneblidze, the Chairperson of the Supervision Board of Sakartvelos Respublika Ltd and Editor in Chief of the newspaper. She suggested a recovery of Koshkadze's labor rights that had been violated. On June 13 2003 the directors of the newspaper, G. Gogiashvili and B. Guliashvili, regarded that the "conclusions prepared by the Public Defender did not reflect the reality of the situation and was libelous and legally groundless." However, the infringement of Koshkadze's labor rights was also confirmed by the courts as well. Therefore, in compliance with the decision of the Krtsanisi-Mtatsminda district court on December 19 2003, L. Koshadze's demands were met and she was allowed to return to her position as newspaper reviewer at Sakartvelos Respublika and was reimbursed the salary (170 GEL per month) for the period she had been forced to miss. This decision by the district court was appealed, but according to the ruling of March 12 2004 of the Chamber of Civil, Entrepreneurial and Bankruptcy Cases, and the Tbilisi Primary Court, the decision was reversed and remained effective in compliance with the ruling #as-514-794-04 made by the Supreme Court of Georgia on October 8, 2004. The court was absolutely fair in its decision to rule in favor of Koshadze. After the court's decision became effective, a writ of execution was filled out, although this decision has not been executed at present. Respectively, the Public Defender intends to address the Prosecutor's Office in this regard.

Another interesting case refers to a breach of the labor rights of L. Kvekveskiri. In compliance with Minister of Finance M. Gogiashvili's order #477-k of July 25, 2003, L. Kvekveskiri was appointed as deputy head of the Rustavi district tax inspectorate, where he continued to work until August 30, 2004. This appointment resulted from a court decision. However,as soon as he started to fight for the protection of his rights, persecution against him began. The tax department chairperson D. Galegashvili, then-Minister of Finance Z. Nogaideli, and then-Prime Minister of Georgia Z. Zhvania, were approached with recommendations regarding this situation. However, the Department still incorrectly considered L.Kvekveskiri's dismissal lawful, prompting Kvekveskiri to file an appeal in the courts. A ruling by the Tbilisi Vake-Saburtalo district judge, annulled the order #1550, given by the Finance Minister dated – August 30, 2004, and L. Kvekvekskiri was to be immediately returned to his position from which he was unlawfully dismissed. Despite this decision by the court, however, former Finance Minister Z. Nogaideli did not execute the court's decision, thus ignoring the law. Only after the new Minister, V. Chechelashvili, was appointed, was it possible for Kvekveskiri to resume his position.

Nana Tsindeliani, officer-programmer of a personnel division in the internal army at the headquarters Ministry of Internal Affairs, and mother of five children, addressed our office with her concerns. She was concerned about the possibility that she would unlawfully be dismissed from her post and asked for assistance in protecting her labor rights. Documents were produced showing the applicant gave birth to triplets on May 7, 2002. In compliance with Presidential Decree # 616 of December 27, 2004, the agency where Tsindeliani worked was restructured and merged with the Defense Ministry. The Labor code specifically defends the labor rights of all officers in the internal army. In addition, article 159 and 161 directly concern pregnancy and maternity. The articles detail eased working conditions, and additional concessions for employing or dismissing women. Furthermore, after childbirth, women are given additional maternity leave to take care of the child until the child reaches the age of three, all the while being guaranteed that their position will be reserved for them during the period of maternity leave. The law does not

allow the administration to dismiss an employee who has a child under three. In this particular case, the defendant had three children who were all under the age of three. According to the law, dismissal is allowed only in the event that the entire enterprise is completely liquidated. Even in that event, the employer is liable to provide the employee with alternative employment. As mentioned above, this case involved the Presidential Decree on measures to be taken in regard to the structural changes of the military forces of Georgia of December 27 2004, and resulted in the Internal Army (paragraph 1) merging with the Ministry of Defense, an action that cannot be considered as the basis for the dismissal of an employee, since the administration is required to offer the employee another position in the same organization (articles 96 and 97 of the Law On Public Service) in this situation. Despite the provisions in the current law, as noted by the applicant, the personnel department of the Internal Army explained that due to a potential lay off, Tsindeliani might be dismissed from her position, regardless of the fact that she was permitted maternity leave until June 9, 2005. Proceeding from this fact, within the competence stipulated in sub-paragraph "c," Article 19 of the Organic Law on the Public Defender of Georgia, the Minister of Defense (I.Okruashvili) as well as the Minister of the Police and Public Order of Georgia (V. Merabishvili) were asked to take adequate measures that would protect the rights of N. Tsindeliani.

Job-related problems are common for those people who are employed. Resulting from blatant disregard for labor protection rules, accidents occur frequently. A number of accidents have occurred at AES-Telasi, Tbilaviamsheni Ltd, Tbilisi #62 nursery and kindergarten, Tbilisi Institute of Isotopes, joint stock company Chaturmanganum, joint stock company Azoti, joint stock company Zestafoni Alloy Plant, and a number of enterprises run by the Georgian Railway Ltd, as well as others. Last year, 70 people were severely punished, 19 employees were fired, and charges were filed against 10 people, after several accidents resulted in serious injuries and even death. The reasons for industrial accidents are numerous: inadequate instruction on safety measures, lack of funds for labor security measures, inadequate control over the implementation of current labor laws, and so on. An employee at the Public Defender's Office officially addressed the Chairperson of the Georgian Railway Ltd, D. Onoprishvili, on December 2, 2004 in regards to injuries received by Z. Ivaniadze, employee of Samtredia Locomotive Depot, due to a breach of requirements of labor provisions defined by the Ministry of Labor, Health and Social Protection Act on August 6, 2004 by a metal worker at the manufacturing shop at the Samtredia locomotive depot. The injured person believes that the doctors at the railway hospital did not adequately carry out a full-fledged medical examination. Despite a constant push to discuss this matter with the organization, no progress has thus far been made.

PROTECTION OF PROPERTY RIGHTS

During 2004, the relationship between the state and the business sector was very complicated. The distribution of property to the Gori district Gamgeoba (Local Governmental Agency) is a perfect example of this relationship.

The process of property redistribution started in the district of Shida Kartli after the Rose Revolution. Despite pre-election promises made by President Mikheil Saakashvili guaranteeing of the strengthening the inviolability of private property, all significant enterprises in that region were given to the Gamgeoba. Because no formal law on de-privatization existed, this act of confiscation committed by the state was considered legal, as they fell under the category of "gifts."

The process of "dispossession of the kulaks," as the population of the city of Gori put it, began on the same day as when Micheil Kareli was appointed Governor of the region. Property previously registered as privately-owned was re-registered in the public register as the property of Mr. Nugzar Papunashvili, the Gori District Gamgebeli.

1. Jemal Tsiklauri is a businessman who presented his own legal, individual enterprise, "Liakhvi", to the Gori Gamgeoba. The entrepreneur's problems with law enforcement bodies started in January, 2004, and resulted in an absence of weight checker. Vakhtang Tskhomelidze, Tsklauri's lawyer, stated that the entrepreneur was illegally deprived of his property.

"There are no controlling scales in the market and therefore criminal charges should be filed against the director of the market," demanded Mr. Kareli on TV.

The Regional Tax Inspection in Gori started a dispute with Mr. Tsiklauri over tax evasion between 2002-2004 that amounted to 287,120GEL.

Jemal Tsiklauri was detained in March 2004, but an examination conducted by the Ministry of Justice revealed arrears in the amount of GEL 37,000 instead of GEL 287,120.

"While I was in prison, an additional examination revealed that GEL 37,000 was to be paid. GEL 58,000 was paid while I was in prison," says Tsiklauri. However, paying off of these arrears did not appease the Prosecutor's Office of the Gori District, and Tsiklauri remained in jail. As his lawyer states, pressure from the Governor continued even when Mr. Tsiklauri was in prison. "He was oppressed by the people from the Prosecutor's Office. Even the Governor, Misha Kareli, visited him. Kareli demanded that Mr. Tsiklauri hand over [his business]," says Vakhtang Tskhomelidze.

After four years of imprisonment, Mr. Tsiklauri was forced to sign a notary act on gratuitous transfer of property in exchange for his release. This action resulted in Tsiklauri presenting the Gamgeoba with his business, valued at GEL 228,000.

The criminal prosecution of Mr.Tsiklauri continued even after his release, and was only halted after the procedural deal had been concluded. In September, 2004 Mr. Tsiklauri "admitted himself guilty" at the demand of the Gori Regional Prosecutor and concluded a procedural deal. In addition to the GEL 58,000 and the transfer of his property he paid an additional GEL 2,000 as a penalty.

2. Another large property that was gratuitously transferred to the Gori Gamgeoba was the Gori market, LTD "Comercanti 95". The market was previously owned by twelve stakeholders.

The stakeholders purchased the market LTD "Comercanti 95" in 1995, after winning a privatization bid worth USD 66,000. According to the stakeholders, the buildings were renovated over five years and financed by bank loans. The market was put into operation in 2000 and in 2004 the market's worth was valued at GEL 197,000.

In June 2004 the Prosecutor's Office in the Gori district seized this enterprise and all of its documentations. Both the Director of the enterprise and Teimuraz Bluashvili, one of the enterprise's stakeholders, disagreed with the interim act drawn up by the Prosecutor's office. "I protested and demanded a thorough examination. I could see that the process was developing [with an insidious purpose], and they were artificially increasing the amount. They did not allow me to hire a lawyer, saying that a deal was being made with the Prosecutor's Office, and that there was nothing alarming in what was going on; also, only a penalty would have to be paid. But in the end they called me and said that we must transfer the property to them," states Bluashvili

A procedural deal was not completed with the Gori District Prosecutor's Office and Mr. Teimuraz Bluashvili was instead detained. After forty-eight hours of detention, Mr.Bluashvili, who suffers from heart disease, was taken to the Gori District Court. "I was taken from prison to the Court, in front of judge

Gochitashvili who made me admit that I was guilty. When I was taken to the Court from the prison, accompanied by the Police, I wanted to say that I am not guilty, but they wanted to take me back to prison. I was told to transfer 88% of my property. I asked who would own the remaining 12%. I was told that it was none of my business. They made me sign a transfer of 88% of the property. The Prosecutor's Office made me do this. I think that Prosecutor's Office just executed what they were told to do by the management of the region," concludes Bluashvili.

Tamaz Bluashvili was taken to Malkhaz Makharashvili, a public notary, and was made to sign a document certifying the transfer of 88% of his property. Neither the gamgeoba nor the notary took into consideration the fact that Mr. Bluashvili owned only 15% of the enterprise himself. In accordance with the notary act, Mr. Bluashvili transferred 88% of his property, valued at GEL 197,000 and co-owned by 12 stakeholders to the gamgeoba without any agreement or consent from the other 11 stakeholders.

3. The Gori District Gamgeoba received 22% of the joint-stock company "Gorkoni" as a "gift." According to Head of Gori District Gamgeoba - Mr. Nugzar Papunashvili Marine Kitiashvili transferred 22% of the company stocks to the state as a gift. However, during this process an act of purchase and sale was given to the Gamgeoba for GEL 19,300. In reality, though, the Gori Gamgeoba did not pay this amount. "You know what the situation is. I think you will understand the fact that I cannot tell you anything more," said Marine Kitiashvili, who did not feel at liberty to reveal the details of this "gifting" of the company's stocks.

4. The Gori central stadium is also on the list of properties that were given to the gamgeoba. In accordance with the notary act, Gocha Lomidze supposedly transferred the stadium, valued at GEL 56,425, at his own discretion.

5. The milling company, LTD "Forte," which is one of the largest enterprises in the district, was also transferred to the Gori Gamgeoba. Mirian Okroshashvili, the owner of the enterprise, purchased the company from a private owner. The tentative value of the enterprise was estimated at GEL 500,000. In accordance with a statement by Mr. Nugzar Papunashvili, the process of legalizing this gift is underway.

6. Nodar Maisuradze, an Associate Professor at Tskhinvali State University, teaches students Georgian History. At the same time, Maisuradze also worked for a long time as a lawyer for the Gori District Gamgeoba. Following the appointment of Mr. Kareli's as Governor, however, Mr. Maisuradze was forced to leave his job.

Along with being a lecturer, Mr. Maisuradze was also engaged in farming activities. He leased 230 hectares of land where he grew wheat together with other twenty-seven other families. After the new government came to power, the Gori Gamgeoba took away Mr. Maisuradze's land and yielded 72 tons of wheat harvest for themselves.

In the summer before the harvest, Giorgi Kereselidze, a relative of Mr. Kareli and the leader of the National Party in the village of Khvita, was sent to Mr. Maisuradze from the gamgeoba to give him the following warning: "If you do not give your harvest to us voluntarily, we will take it away. If we do not manage to do that, we will arrest you. If you want, go and talk to [Kareli] or Misha [President Saakashvili] can come here, and sit and talk." This threat against Mr. Maisuradze was fulfilled – he was arested.

* * *

Arrears seriously hinder the development of the business sector in Georgia. An example of this problem can be seen in the activities of Martvili Ltd. On the basis of an agreement reached with the food and product department of the Ministry of Defense of Georgia, Martvili Ltd agreed to provide the army units with bread. The Ministry, however, turned out to be insolvent and accumulated substantial arrears over the years. Because of this situation Martvili Ltd filed an appeal with the courts and the Tbilisi Vake-Saburtalo district court ruled in favor of the company on February 8, 2002. As a result of this ruling, the Ministry of Defense of Georgia was required to pay GEL 162,113.59 to Martvili Ltd. Since the Ministry of Finance did not finance the Ministry of Defense, the debtor could not pay its debt and the aggrieved party asked the court to distribute the debt on a monthly schedule. The Ministry of Defense did not support this demand, citing that the execution of the court's decision should have been conducted from the execution fund of the Ministry of Finance, which it was not. This same court, however, later upheld its ruling and agreed to the suggestion that the sum of 162,113.59 GEL be paid monthly from May 30, 2003 to September 30, 2003. Following this second ruling, only GEL 70,000 has been paid and GEL 92,113 remains as an outstanding debt. Former Chairperson of the Parliament of Georgia Z. Zhvania appointed Minister of Finance Z. Nogaideli to the case to resolve this situation, though it did not foster any results. In addition, a writ of execution was produced in this case and the Public Defender demanded that the Ministry of Justice of Georgia execute the enacted court decision immediately. However, the problem remains unsolved.

In a previous report by the Public Defender, the problem of a construction trust which was later transformed into joint stock company #13 was covered in detail. As a direct result of the position taken by the executive authorities towards this business, the business was forced into bankruptcy. By the Decree of the Cabinet of Minister of Georgia of February 17, 1992, Trust #13 of the Committee of Architecture and Construction Affairs was assigned to carry out the re-construction works on the damaged administrative building of the Supreme Council (Parliament). The Department of Economy of the State Chancellery of the Cabinet of Ministers and the Office of the Georgian Parliament were the agencies responsible for this order. Reconstruction works were being conducted by trust #13 conscientiously on the basis of an agreement concluded between the customer and general leaser. It was found that the State Chancellery and the Office of the Georgian Parliament had arrears owed to trust #13 totaling USD 1,878,620. And while the State Chancellery and the Ministry of Finance have been sent a number of recommendations regarding this case, the trust has ceased operations and a trial relating to this issue has been underway for years, but no final verdict has been given.

RECOMMENDATION:

- The inviolability of private property in Gori shall be investigated and in cases where culpability can be confirmed, responsibility of Gori district Gamgebeli Nugzar Papunashvili and the President's Representative in Shida Kartli region should be taken.

Review of the Conditions of Internally Displaced People and Refugees in Georgia

Internally displaced people face a large number of social problems, among them housing and other commonplace issues. Several families are often live in a single room which falls well below adequate living standards. IDPs have also been known to live in dugouts or in buildings that should be condemned. According to the data from the Ministry of Refugees and Settlement, 43% of the IDP population in Georgia has not been offered adequate accommodation. Another portion of the IDP population either rents apartments or live with their relatives. As of today, the Ministry of Refugees and Settlement has registered the applications of more than 3000 families, all demanding the allocation of accommodations in Tbilisi. This fact reveals the limited extent to which the protection of the social-economic rights of internally displaced people extends.

The only source of income for the majority of IDPs is pensions and allowances that amount to GEL 14 every month, an amount that cannot even meet the most basic of needs. Additionally, humanitarian aid to IDPs has been halted, which resulted in the further deterioration of their conditions.

The conditions where IDPs are concentrated are disastrous, as they have unreliable power, water, and utilities supplies. And while allowances are given to help with bills acquired for these basic needs, the allowance given for power consumption has been determined as GEL 14.80 in the winter and GEL 10 in the summer for those residing in Tbilisi, and GEL 10 in winter and GEL 6 for those living in the in the regions of Georgia. In compliance with information from the Ministry of Refugees and Settlement in 2004-2005, the IDPs were paid these amounts in a timely manner. Regardless of this expediency of delivery, problems with inadequate power supplies still exist for these displaced people. According to information provided by the Telasi power company management, IDPs residing in Tbilisi are subject to power loss resulting from over expenditure, which is the reason why they often do not get electricity. In regards to this loss of power supply, many IDPs suspect that the power consumption of various private and even industrial structures are being charged to their meters. This issue can be solved if IDPs directly receive the amount allocated for them, installing meters in each flat where an IDP lives. Close inspection of the power issue can also help to curb these concerns. Power that is supplied

to the displaced population residing in the Bagebi hostel is always seriously delayed and power is even often cut off for weeks at a time. It should be noted, however, that the funds allocated for displaced people living in the regions are provided for in the state budget, regardless of whether the individual consumes power equal to the amount given as their allowance. Furthermore, power in the regions is seldom supplied to the population there. Georgian citizens and IDPs alike are denied electricity. Despite this fact, the fixed cost for power is still paid by the government to internally displaced people.

Since there are problems in regards to power consumption by IDPs, and since various agencies blame each other for these problems, this issue requires a thorough examination by various governmental agencies, as all IDPs suffer collectively as a result of these problems.

Despite the fact that free medical service has been put in practice within the health care system, it mainly covers only doctors' visits and consultations, as well as different kinds of tests. Examinations that utilize medical equipment or hospitalization are sometimes payable, though often only a very insignificant discount is offered. As a result of these problems, IDPs often do not seek medical attention unless they are in critical conditions, when oftentimes it is too late.

In 2004, the Ministry of Internal Affairs of the Abkhazia Autonomous Republic was closed down and the 1600 people working for the Ministry at that time were first registered at the Personnel Department of the Ministry of Internal Affairs of Georgia before being fired from the Ministry, 4 months later, without receiving their salaries. Because of this event, B. Pipia, V. Kutsia, I. Barkaia and 14 others applied to the Public Defender's Office, asking for compensation for their breached labor and social rights. Presented documentation showed that pursuant to Paragraph 3 of Order #364 of July 10, 2004 from the Minister of Interior, officers of the city and regional departments and divisions within the Ministry of Internal Affairs of Abkhazia Autonomous Republic, approximately 1600 persons, were dismissed from their posts and put on the waiting list. In such cases, pursuant to Article 12 of the Charter On Service Rules in the Bodies of Internal Affairs of Georgia, approved by Order 147 of March 21 1997 from the Ministry of Internal Affairs, "persons under the prescription of the personnel department shall retain their monthly salary for two months, while during the following two months they will get compensation for special rank, welfare allowance and food." Despite this established norm, the applicants explained that they had not received either their salary or any other allowances for five months. After the 4-month period expired, they were dismissed entirely from the system but have not even received their pensions yet. Article 31 of the Law on Police unanimously determined the substantiation of social guarantees of police employees. Particularly, according to Paragraph 11 of this article, a police employee who is dismissed due to redundancy has the right to receive a pension and to enjoy other guarantees under the current law. This stipulation, however, has not been implemented so far. It should also be noted that these employees also sent the same letter to the Supreme Council of the Abkhazia Autonomous Republic, Council of Ministers, Parliament of Georgia, Government of Georgia, and management of the Ministry of Internal Affairs. But, as was stated in the Public Defender's Office, nobody has yet to meet with them and their lawful demands have yet had results. It should also be taken into consideration that many of these people are war veterans and their families live in very difficult social and economic conditions. As a result of the work conducted by the Public Defender and in cooperation with the Ministry of Internal Affairs, it was decided that in April 2005, repayment of the two-month salary and two-month allowance for all 1600 employees at the Ministry of Internal Affairs would begin.

Major Bondo Lukava, an employee at the Ministry of Internal Affairs of Abkhazia, committed suicide as a result of terrible social and economic conditions. After he was fired from the Ministry and could not receive an adequate response from the management of the Ministry, he committed suicide in the lobby of the Ministry. The problem of paying pensions to a portion of the people fired from the Ministry has also not been resolved, as a result of an absence of relevant documentation, as getting these documents from

Abkhazia is nearly impossible. The Public Defender's Office, together with the Ministry of Internal Affairs, is working on this issue. The confirmation of a legal fact through the court is one possible resolution of this problem.

HUMAN RIGHTS IN REGIONS NOT UNDER THE CONTROL OF THE GEORGIAN GOVERNMENT

One notorious practice that has persisted in Georgia up to now is that the representatives of military and law enforcement bodies of the Abkhazia Autonomous Republic and the criminal groups that are active on the territory of Abkhazia take hostages at any time and place on this territory, controlled by the Abkhazian administration and CIS peacekeeping forces. They may abuse these hostages, demanding ransom and infringing on their rights.

Within the conflict zone and the "security zone" that covers a 12 kilometer radius, robbery and discrimination along ethnic lines is commonplace.

On January 4, in the city of Gali in Abkhazia, an armed group led by Valmer Turanba took four Georgian hostages. The hostages were Kukuri Shonia, Guriel Mania, Kakha and Giorgi Gergedava, all of whom resided in the Muzhava village in the Tsalendjikha district. This armed group confiscated the group's car and placed them in a cell in the Gali Police Department, accusing them of illegally crossing of the Abkhazian border.

On January 7, an armed group led by Valmer Butba and Russian peacekeeping forces jointly searched two territories in the Gali District, Upper and Lower Bargebi, that are located within the borders of the 12-kilometer safe zone. This search resulted in the group's taking of two Georgian hostages, putting them in a cell at the Sokhumi Security Service offices.

On January 16, in the village of Chuburkhinji, an unidentified group of armed people attacked the home of the Rigvavas. Only 68 year-old Nutsa Rigvava, was at home during the attack. Not finding anything valuable to steal, the attackers instead beat Nutsa, abused and tortured her, and finally beheaded her.

On January 18, in the city of Gagra, four unidentified people destroyed the house of Tsiala Kakabadze, who resided at 218 Narta (former Rustaveli) Street, unearthing all the fruit trees in her garden. When the victim inquired about the reasons for such behavior, the perpetrators answered that they were hired by Vitali Chuanba, who claimed that the house and the plot of land both belonged to him. Tsiala Kakabadze sent a written statement to V. Gangba, head of the Gagra Administration, regarding these actions, but her statement was ignored by local authorities. The lawyer whom Mrs. Kakabadze appealed to for help had this to say to his client: "The case is lost, as you are Georgian." Mrs. Kakabadze was eventually evicted from her house despite the fact that she had all the legal documents certifying her rightful ownership of the house.

On January 27, two armed people took two people hostage: David Badzagua, the Head of Georgian and Abkhaz Artists Union, and Temur Kortua, a person who was with him in the village of Tagiloni in the Gali District. The attackers took Kotua's video and photo camera before freeing him. Badzagua, however, remained captive for 2 months until he was eventually released on March 27.

On January 27, about twenty young people between the ages of 20 and 25 were kidnapped by armed Abkhazians from the Tagiloni village in the Gali District. These kidnappers wanted to force the youngsters into the Abkhaz army. Negotiations began but the hostages were not released until their relatives paid GEL 150 per hostage.

On February 9, about 50 young Georgians between the ages of 18 and 25, were kidnapped from the villages of Upper and Lower Bargebi, Gagida, Otobaia, Promorskoe, and Okumi and taken to an unidentified location. Later, some of the hostages were released while others, namely Koba Laskhia, Tengiz and Djambul Mebon, who were all from the Gagida village, were taken to a jail cell in the Gagra Militia building.

On April 7, an illegal armed group consisting of about forty people attacked three passenger buses in the Repi village in the Gali District. The buses were traveling the Zugdidi-Gali route when the attackers forced the driver to drive to in the direction of Ochamchire. Some hostages were released, while some thirty others were taken further in the direction of Ochamchire. These hostages were only recently released after intervention by General Ashfack, the UN military observer, and Heidi Tagliavini, Country Representative of the UN Secretary General in Georgia.

On April 19, a group of Abkhaz held Gocha Lashkia and Kakha and Gogita Tsaava hostage in the village of Gagida, in the Gali District.

On May 2, a group of Abkhaz kidnapped Butkhuz Cherkezia, resident of the Chuburkhinji village in the Gali district.

On May 15-16, nearly forty Abkhaz militia members broke into houses populated by Georgians in the villages of Promorskoe and Pichori. Many of the victims were abused and insulted.

In May, a person residing in the village of Okumi in the Gali District was kidnapped.

On June 9, six masked and armed people attacked the Dzidzaria household in the village of Upper Bargebi, killing 25 year-old Eka Dzidzaria.

On June 15, an armed group comprised of about fifteen people and led by Valmer Butba attacked the Saberio village in the Gali District. They searched a number of houses occupied by Georgian families, held Demna Badzagua, Dato Gogokhia, Vakhtang Badzagua and Ianur Cholaria hostage, and eventually took them in the direction of Gali. These hostages were later taken to the Sokhumi prison.

On June 15, a male corpse was found at the Russian Peace Corps guard-station #302, near the Enguri dam in the Gali District. It was clear that the person had died as a result of torture, as his hands and legs were tied up and his teeth were broken. Forensics determined that the person was probably killed one month before the body was found.

On June 27, 25-year old Kakha Asatiani, who resided in the city of Gali, was detained near the bridge over the river Enguri by Besik Kirtadze, de facto military Commissar of the Gali District. The latter demanded that Asatiani either serve in the Abkhaz army or pay 2,000 rubles. The de-facto Commissar threatened to kill Asatiani and burn down his house if he did not comply with this demand. Asatiani eventually escaped the territory of Abkhazia.

On July 6, the authorities in Abkhazia handed over three Turkish citizens - Ali Khonja, Serkan Dileki and Murad Birinji – to the Georgian side. These three became ensnared in the territory controled by the Abkhaz authorities. Upon their arrival, their IDs were confiscated and they were put under constant observation. According to their own accounts, they were taken to work in Tkvarcheli every day, where they were treated like slaves and "were fed like dogs". Upon their release, they claimed that twenty-two other citizens of Turkey were still on the territory of Abkhazia and were also being subject to these unbearable conditions. This incident serves as confirmation that Turkish citizens are also victims of trafficking on the territory of Abkhazia.

On July 15, the married couple Mr. Alpenidze and Mrs. Shonia were kidnapped from their own house in the Sida village, in the Gali district. The kidnappers planned to ransom these hostages.

More than 70 people were kidnapped by criminal groups on the territory of Abkhazia during 2004. The reason in each case was to either for ransom or to extort money. Regardless, no one has yet to be punished for having committed these criminal acts. It is noteworthy that many of these crimes occurred in the 12 kilometer safe zone which is controlled by Russian peacekeeping forces. It is undeniable that Russian military people often participated in the aforementioned criminal acts, as many victims clearly recognized the well-known Russian insignia on the equipment being wielded by their attackers.

Ethnic discrimination in other districts of Abkhazia is also very prevalent. In the beginning of 2004, two residents of Gagra, Tariel Esartia and Galina Taganova, submitted petitions to the Public Defender of Georgia. These people were forced to leave their houses. While these issues were raised before the UN and Human Rights Protection Office in Sokhumi, they remain unresolved.

Despite the situation and conditions described above, no one has yet to be held responsible, neither by being sentenced nor otherwise punished for committing criminal acts nor for infringing on the human rights of many people residing in the Gali District.

A major factor hampering the protection of human rights in Abkhazia is the unwillingness and of the Abkhazian authorities to open a Gali Bureau of the Sokhumi Office of the UN Human Rights Protection Office. Moreover, representatives of the Civil Police, under the auspices of the UN observers in Georgia, are not able to enter Gali and to exercise their authority. This directly results in an increase in the number of human rights infringements as well as failure to punish those committing crimes.

CONDITIONS OF PRISONERS IN THE PRISONS ON THE TERRITORY OF ABKHAZIA

About Valeri Chkhetiani

Valeri Chkhetiani, born in 1973, died in the prison in Dranda, near the Gulripshi District in August of 2004. In 1993, after the Sokhumi surrender, Chkhetiani fled from his own land together with his family and settled in Kutaisi. In 1993, he began serving in the Tkibuli battalion under the Ministry of Defense of Georgia. He was taken captive in 2001 during events that took place in the Kodori Gorge and was subsequently arrested by the Abkhaz-Russian martial units.

Valeri Chkhetiani underwent terrible physical and psychological pressure in the prison of the Ministry of Security of the Abkhazia Administration. During his time there, Valeri was often beaten for several hours, until he collapsed. Following this, he would be hung by his feet. During his ordeal Valeri was only given 200 grams of bread and a glass of water per day. Chkhetiani was also held in solitary confinement for two months where he was not exposed to any light. This confinement was in the basement of the prison where the walls and floor were always wet, and where he had no bed. These conditions were accentuated by the cold winter weather that prevailed during his early capture. While his wife managed to send him parcels of food and clothes with the help of the Red Cross organization, Chkhetiani was not allowed to use the items in these parcels. When the Red Cross was present, Chkhetiani was allowed to receive his parcels, but following the departure of the Red Cross representatives, the authorities would confiscate the parcels. Russian and Abkhaz Security forces were trying to recruit Chkhetiani into their ranks, accounting for the physical and psychological pressure he was forced to endure. On August 4, Chkhetiani's family was informed that Chkhetiani was interrogated by the administration of the prison and representatives of the security service, and after several hours was brought back unconscious. When doctors,

including Red Cross representatives, demanded to see the victim, they were not allowed to him for several days. Later, he was placed in the Sokhumi's Republican Hospital, where he died on August 7 without ever regaining consciousness. The verdict of the Abkhaz court against Chkhetiani was enacted a few years ago, and he was serving a sentence as a result. Interrogating a prisoner regardless of the fact that he is serving a sentence is unacceptable.

According to the agreement between the government structures of Abkhazia and Georgia, the Abkhaz administration should have released Chkhetiani's corpse to his family on August 9, but the administration breached the agreement and the body was not given to them.

Instead, Chkhetiani's body was thrown nude into the woods in the Gali district. On August 10, the corpse of Chkhetiani was finally handed over to his family. By that time, the corpse was almost fully decayed. The family maintains their suspicion that Chkhetiani was poisoned, as the day before he was called to be interrogated, the family spoke with him on the phone and he said to them that he had felt fine.

The fact that the deceased was not handed over to the family on time, as was negotiated, should also be taken into consideration. Chkhetiani's corpse was thrown into the woods when the temperature outside was 30 degrees centigrade, which as a result of decomposition could likely have been done as to not allow an identification of the exact cause of death. As a result, Georgian experts were not able to identify the exact cause of death.

About Levan Mamasakhlisi

In August 2001, Levan Mamasakhlisi, a student of History and Law at the Sokhumi branch of the Tbilisi State University, went to visit his mother in Bichvinta. On August 7, Mamasakhlisi was seriously injured as a result of an ammunitions explosion. He sustained serious injury to his right hand, and three fingers of his left hand were blown off. He was immediately taken to the Gagra hospital on the day of the incident.

On August 13, Mamasakhlisi was taken to a preliminary detention facility in Sokhumi where he was subjected to interrogation, followed by his confession. On February 15, 2002, he was sentenced to 14 years imprisonment. He was not allowed to appeal this decision in the higher courts. Mamasakhlisi was even denied the lawyer of his choice, as the Abkhaz authorities assigned his lawyer.

After inquiring into the current health condition of L. Mamasakhlisi, the Chairperson of the Parliamentary Committee of Human Rights of the de facto Republic of Abkhazia, Executive Secretary of the Georgian-Abkhazian Coordination Committee Z.Lakerbai informed us that L.Mamasakhlisi shares a prison cell with prisoners of other nationalities. The cell is well aired, and is supplied with permanent running water, and the prisoner is taken to the bathroom as established by prison rules. Together with the other convicted people, he regularly undergoes medical examinations. The representatives of the Red Cross and the UN Mission on Human Rights systematically visit L. Mamasakhlisi.

This letter also included an excerpt from L. Mamasakhlisi's case history, dated March 18, 2005, according to which the prisoner is in satisfactory health.

However, Mamasakhlisi's family members, who reside in the hotel Amirani at present with many other internally displaced people, have different information. During his detention period, Levan Mamasakhlisi became gravely ill. According to the family, Mamasakhlisi has asthma, bronchitis, psoriasis, eczema, one of his lungs and his right hand do not properly function, his and he only has a thumb and half of his forefinger on his left hand. He has 36 wounds on his body as a result of the explosion and a fragment

from the explosive mechanism remains in his eye. As a result of this, his health condition is daily deteriorating. There is no way that he can be adequately provided with necessary and proper care and medication in the prison and he is unable to eat properly without fingers. For years, other prisoners have helped to feed him.

In order to draw adequate conclusions, representatives of international organizations should conduct an additional inspection of Mamasakhlisi's health conditions and current living standards in the prison.

According the most recent information, L.Mamasakhlisi is most likely in poor health and should be released as a result of this poor health condition.

About Giorgi Nanava

83-year-old Giorgi Nanava is a prisoner in Abkhazia. Giorgi's health condition were so poor from the beginning of his ordeal that he could not even read the documents he was to be familiar with during the investigation, as stipulated by law. Nanava was not allowed to have a Georgian lawyer to protect his rights. Due to Nanava's age and health condition, he must be released.

The rights of IDPs from Abkhazia and South Ossetia, as well as citizens residing in the territories not under the direct control of the Georgian government, are being infringed upon, including the rights of survival, personal immunity, property, family, freedom of movement, freedom of speech and freedom of expression, as well as other rights and freedoms granted by international legal acts and by Georgian law.

And while it is true that these violations occur in the territory not under the control of the Georgian government, according to Georgian legislation as well as international law, the Georgian Government must bear the responsibility and react to any infringement of human rights carried out against any citizen of Georgia. Here, however, it must be recognized that Russian jurisdiction is applied on both the territory of Abkhazia and South Ossetia. Russian military units are based in Abkhazia, namely in Ochamchire, Sokhumi and Gudauta – Bombora military airport. In the Abkhazian and South Ossetian conflict zones, peaceful missions are carried out by CIS peacekeeping groups, but these groups are completely comprised of Russian military units and are under the command of Russian military forces. In accordance with Article 1 of the European Convention on Human Rights: "The high contracting parties shall secure the rights and freedoms defined in Section 1 of this convention to everyone within their jurisdiction." Based on this, Russia is in no way less responsible for the protection of human rights in Abkhazia and South Ossetia. This must be recognized and taken into consideration by international organizations.

CHECHEN REFUGEES

In February 2005, 98 Chechen refugees residing in the Pankisi Gorge addressed the Public Defender's Office with a collective appeal. The appellants argued that their refugee status was illegally taken from them by the Ministry of Refugees and Settlement. To examine the matter further, the Public Defender and the employees of his office traveled to the Pankisi Gorge where a special commission was set up, in which a regional representative of the Public Defender in Kakheti would participate along with representatives of the non-governmental sector and the Chechen refugees themselves. As a result of this commission's work, it was decided that this rejection of refugee status by the Ministry of Refugees and Settlement was fair in regard to some of the refugees, but must be investigated further in 38 instances. The commission found that part of those people seeking refugee status had never been citizens of Georgia and another part had left Georgia during the Soviet period. Subsequently, these people were

rejected refugee status. Additional materials obtained by the commission will also be submitted to the Ministry of Refugees and Settlement so that the body can make a relevant decision.

Social issues, including healthcare, employment and education, are very problematic for Chechen refugees. The negative stereotypes created by the Russian media in regards to Chechen refugees play a large role in the formation of negative attitudes harbored by various bureaucrats. As a result of such attitude results the innocent refugees face problems in regard to the freedom of movement, housing, etc.

Protection of IDP rights in Georgia is one of the most complicated and difficult problems faced by the country at present. This issue requires special attention and a delicate approach. In order to protect the rights of Georgian IDPs and other refugees, the following recommendations should be considered at length:

RECOMMENDATIONS ON THE RIGHTS OF IDPS AND REFUGEES

1. A working group should be formed that will refine the Georgian Law on Internally Displaced People (IDPs)in order to include provisions that guarantee that the law will better protect the social rights of the IDPs. Particularly, this would be an increase in allowances, timely and efficient provision of medical aid, and better housing policy.

2. The executive and legislative authorities of Georgia, together with international organizations and friendly countries, should provide relevant consultations to help implement self-employment programs through the support of international organizations; correspondingly, displaced people and refugees should be granted access to credit in order to help launch small businesses or to develop agriculture.

3. The Law of Georgia on Refugees should also include Chechen refugees. Pursuant to Article 7 (paragraph "g") of the aforementioned law, which states that state authority bodies, local self-governments, and local governments are liable under the law of Georgia to grant refugees cash allowances from the budget. At present, this issue is not in total compliance with the law. The amount for Chechens should be the same as defined for the Georgian IDPs.

4. Additional funds should be allocated to protect the social and economic rights of the IDPs who are left without shelter and to provide them with temporary accommodations.

5. The current allowance allocated by the state, amounting to GEL 14, cannot satisfy even the most basic living requirements. The decision should be made to increase this allowance, and a single program of compensation for refugees should also be developed.

6. IDPs should have the right to receive their allowance for power consumption in cash so they can be the ones responsible for paying their bills accordingly.

Protection of Children's Rights

Analysis conducted during the period of the report showed that one of the most acute problems in Georgia, at the background of many other problems in the country, is that of children's rights. Articles in the UN Convention on the Rights of the Child and the decisions of the 1990 World Summit are being implemented in Georgia in a different special way. Problems that children experience in regards to health, malnutrition, inadequate education, and so on, do not stem from negative intent. However, Georgian society has been indifferent towards the problem of children.

The four main issues considered as priorities in regards to children's rights – that of survival, development, protection, and participation – are relegated to the background, and despite revenue growth, the budget is still unable to meet the vital requirements of the social sector.

The activities of both governmental and non-governmental organizations tend to be uncoordinated, resources are applied inefficiently, and activities are short term and discrete. The duties of the government at the central and local levels are not clearly defined. Furthermore, most government programs aiming at assistance of specific groups are the prerogative of the local authorities, since these local authorities are responsible for fulfilling state obligations. Local authorities tend to have a full composite of the people residing on the territory under their control, and are aware of the organizations functioning on the territory, as well as the strengths and weaknesses of their activities.

Although certain advancements are noticeable in the legislation (law on secondary education, the beginning of the process of deinstitutionalization), a systematic approach to child development has not yet been developed. To provide for the protection of children's rights in various fields, a number of relevant reforms should be implemented.

We focus on two directions:

- legislation which in many cases fails to provide adequate guarantees for children's rights;
- unified state policy and coordinated steps to protecting children's rights.

One problem of particular importance in the legislation remains unresolved. In the Convention on the Rights of the Child, which Georgia joined in 1998, a person of

18 years old or younger is recognized as a child. This is also the case in Georgia. Yet for medical institutions, a child is defined as a person under 15, a limit set during the Communist regime. This is a violation of children's rights, as children's state programs function only up to the age of 15. This shortcoming is reflected on the health of socially unprotected children, who do not have the right to use state programs up to the age of 18. The Public Defender's Office addressed this issue in writing to the Minister of Healthcare, who informed the Office that his Ministry is working on this issue will resolve it by next year, to be reflected in the 2006 budget.

The Law of Georgia on the Protection of Children's Rights also needs improvement, as it contains many shortcomings that significantly affect the protection of children. For example, a child who reaches the age of 16 must leave a shelter, in compliance with the current law. Most of these children will live in the streets.

The violation of children's rights in families and at schools is rather widespread in Georgia. The applications submitted to the Children's Rights Center at the Public Defender's Office refer to court decisions resulting from family conflicts which are very often inconsistent with principles of both international and domestic legal acts and do not protect children's rights and interests.

The Public Defender's Office has intervened in unusual situations in order to protect the rights and interests of an individual child. For example, in June 2004 the Public Defender's Office received an application from Makvala Valishvili, in which she stated that her 7 year-old son, Vladimer Mgeladze, was in Tashkent, Khamzi region, but that since he did not have a birth certificate, it was impossible to bring him home. For the Protection of the Children's Rights the Centre at the Public Defender's Office prepared relevant documentation, verified by the notary, which was sent to the Georgian Embassy in Uzbekistan. After resolving the legal issues, the mother addressed the Public Defender to assist her with money to get her son back. The Centre contacted the Director General of the Joint Stock Company "Tbilaviamsheni", N. Beridze, who took the responsibility of transferring the child from Tashkent.

2004 saw the following violations of children's rights in Georgia:

- social delinquency, alcoholism and drug addiction;
- abandoned children;
- exacerbation of the problem of social orphan hood;
- increase in juvenile delinquency;
- violence against children inside and outside the home;
- increase in the number of children who were victims of exploitation and sexual abuse .

Such conditions have created the following risk-groups:

- street children;
- children in conflict with the law;
- children with asocial and deviant behaviours;
- IDP children;
- children from indigent/socially vulnerable families;
- children with disabilities;
- children from institutions.

These problems were basically resulted from the state's incapability to develop a strategy, make actual efficient steps in the direction of protection of children's rights and create adequate infrastructure for the disabled and vagrant children.

"STREET CHILDREN"

In regards to the violation of children's rights, the most complicated situation is in regard to so-called "street children." In November 2004, a five-year-old child who used to eat in a garbage dump died in Gori. In November, the death of a 14-year old street child was also recorded in Tbilisi. The right to survival, the right to be raised in a family environment, health protection and access to education are rights which are systematically violated in regards to these children. Unfortunately, precise statistical data reflecting the number of street children does not exist. Street children exist not only in Tbilisi, but also in Gori, Kutaisi, Rustavi, Zugdidi, Batumi. Today the number of street children according to various data varies between 100 and 1200, however, the Public Defender's Office established that about 70-90 children regularly sleep in Tbilisi streets.

The basic activities of street children are vagrancy, begging, petty larceny, prostitution and substance abuse. They run a high risk of criminalization. They differ from their peers in their emotional and behavioral system, and in their interests, values, and perceptions.

In most cases, these children are not orphans, and very often they are in fact breadwinners. Forced to work full-time, causing them drop out of school, results in serious pedagogical and personal developmental lags. Most of these children are illiterate. The fact that parents push them into vagrancy and remove them from children's homes and shelters is problematic, since there is no effective mechanism in Georgia that would protect such a child from such parents or relatives.

CHILDREN'S HOMES AND SHELTERS

One of the most serious problems connected to children's rights is the introduction of norms of care into children's homes and shelters. Often shelters are unable to provide children living there with food, education and care. Moreover, frequent cases of abuse are recorded in these institutions. An institute under the subordination of the Ministry of Interiors, called the "Center of Reception, Prevention and Further Orientation of the Juvenile" had functioned in Tbilisi, where a several years ago more than one case of abuse was recorded. The organization later stopped functioning. Today, by the efforts of the Public Defender's Office and City Hall, plans to set up a rehabilitation center for street children are under way. The rehabilitation center will attempt to remedy the problem of orphaned children living on the streets.

Children's homes are another major problem. In 2004, several children's homes in Tbilisi were examined on site. In the micro-region 8 in Gldani Masivi is children's home "Rtsmena" (Faith). It is located on the ground floor of a former kindergarten building, which is absolutely inappropriate. It does not have a cafeteria, sports hall, playground or separate study rooms. Each age group eats and sleeps in a room allocated to them. The bed linen is soiled. The first floor of the same building is occupied by refugees.

The refugee problem also exists in the case of Digomi children's home #1. The director of the home addressed the Public Defender's Office in this regard. The Office submitted a petition to Minister of Refugees and Settlement, Eter Astemirova, to resolve this problem at her convenience. The Minister did not respond to the letter. Digomi children's home #1 is the only one in Tbilisi under the subordination of the Ministry of Education and Science. It is worth mentioning that after the replacement of the director, everything has been done in the children's home to improve both living and social conditions of the children deprived of care.

There are several children's shelters in Tbilisi, some of which are supported by City Hall, others which were set up by non-governmental organizations. Children's homes are another important problem. Dur-

ing 2004 a few children's homes functioning in Tbilisi were examined on site. In the Micro-region 8 in Gldani Masivi is children's home "Rtsmena" (Faith). It is located on the ground floor of a former kindergarten building, which is absolutely inappropriate. It does not have a canteen, sports hall, play ground and separate study rooms. Each age group sleeps and eats in a room allocated for them. The bed linen is soiled. The first floor of the same building is occupied by refugees.

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There are several children's shelters in Tbilisi, some of which are supported by City Hall, others which were set up by non-governmental organizations. Throughout 2004, the Children's Rights Protection Center at the Public Defender's Office continued random checks of children's homes.

Unfortunately, the reality is dire – barrack-type buildings in need of repair, bedrooms with 15-20 beds in each without closets to keep personal belongings, poor nourishment, and so on. The children obviously lag socially, and do not get professional education

The directors of these institutions also face certain problems. They complain about incompetent staff who cannot be dismissed for various reasons. Accommodations for children who have reached the age limit for placement is another issue of concern. Despite a number of petitions, the Ministry has not rendered any assistance.

JUVENILE DELINQUENCY

Many homeless children become involved in criminal activities resulting in imprisonment. Prison further deteriorates the life of homeless children and is psychologically harmful. The level of crimes committed by juveniles is high. During 6 months of 2004, 264 offences committed by the juvenile were registered in the country, of which 80 of these cases were committed by 14-15 year-old adolescents, and 184 of these cases by 16-17 year-old adolescents. Recorded crimes are highest in Tbilisi, followed by Imereti and Shida Kartli.

From this perspective, legislative shortcomings are obvious. In particular, the law does not envisage separate punishment for juveniles, and especially for such children, it is wrong that they be tried according to Criminal Code.

Juvenile offenders are charged at general courts as adults and under the same conditions, though international standards and practices recognize the importance of additional mechanisms for the protection of children's interests (psychologists, social workers, even special courts in many countries, and so on). Almost no such mechanisms exist in Georgia, and the specific case of a delinquent child is not considered, nor are the rights of the juvenile offender fully protected.

On March 17, 2005, the Prosecutor's Office addressed the district court with a demand to sentence a juvenile, 14-year-old Valeri A., to preliminary confinement with the charge of smoking marijuana. Judge Tinatin Paikrishvili accepted bail for the juvenile after being addressed by the Public Defender and a representative of the Liberty Institute. The child was transferred to Digomi children's home #1.

Furthermore, there is no policy or implementing mechanism for rehabilitation and social integration of juvenile offenders, which increases general criminal activity (convicted children in most cases commit crimes again) while also becoming a stigma for the child, hindering full psychological and social development.

Living conditions of the convicted in the reformatory institutions of the penitentiary system are close to the requirements stipulated in the Georgian legislation. Basic education for the convicted is provided at nighttime secondary school #39 with 11 teachers. Although the teachers are qualified, there are still problems in the teaching process – no funds have been allocated to purchase teaching materials or stationary for the last years. Earlier, 50 GEL were allocated per month for this purpose, which is now purchased by the institution. The institution is not provided with informational facilities either. It is expedient to offer professional education at the institute. Employment for juveniles at the reformatories is fundamental, as it will keep them busy during the day and provide them with income.

In addition to children's institutions, juveniles are also placed in jails where the situation is even more difficult. The living conditions of the juvenile prisoners are beyond comprehension. Sanitation and hygienic norms in prisons are violated, prisoners do not spend enough time in fresh air, are not provided with clothes, underwear, or bed linen. Nothing is found at first-aid except for a thermometer and a device for measuring blood pressure, and there is a shortage of medication. At the beginning of the year, 69 juvenile prisoners were kept in four cells of prison #1.

CHILDREN WITH DISABILITIES

According to the latest information, 199 200 people of all three groups of physical and mental disabilities are registered in Georgia, of which 7, 038 are children. The number of disabled children has grown and requires special attention. The main reasons for this are the deterioration of the ecological environment, worsening of women's working conditions, and a high number of diseases among parents, especially mothers. The measures taken do not resolve social, economic, educational and medical problems. Among the diagnoses of disability, the vast majority are those of congenital mental and physical defects (80%). A number of disabled children are placed in the institutions, very often in bad conditions, particularly in remote mountainous regions. Caretaking is very poor. Among children with physical and mental problems are those facing serious psychological problems. The conditions of disabled children brought up in families are better, but very few of them have an opportunity to get adequate treatment. Modern orthopedic facilities and means of travel are unaffordable for many.

The Convention on the Rights of the Child states that: "a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance, and facilitate the child's active participation in the community." The legal conditions of disabled people, among them disabled children, are established by the Georgian legislation. However, the implementation of lawful interests of the disabled persons, including children, faces a number of impediments.

Disabled children require special facilities, yet the number of medical-social organizations is inadequate and fail to meet the requirements. The issue of disabled children still remains a painful topic. Unfortunately, there is no adequate policy or system to carry out special care programs for invalid children.

At Tbilisi subsidiary school #1, where mentally retarded children study, there are no appropriate conditions for them, and they do not receive special educational methods. By permission of the director, a timber processing shop (sawing and drying) operates on one of the floors. The Public Defender's Office and relevant services of City Hall spent serious effort to strengthen the NGO Parents' Bridge, founded by

the parents of the school. With the assistance of international donors, this organization implements a program for mentally retarded children. The program includes art therapy, music therapy, drama therapy, and physical training. The organization needed additional space to involve all those interested in the program. As the success of the program is raised, so is the number of those who wish to participate in it.

In front of subsidiary school #1, even a speed bump was not installed despite a number of accidents. As a result of the Public Defender's direct intervention, City Hall installed a flashing traffic light at the location.

Violation of the rights of children in wheelchairs requires special address. Very often their universal right – the right to education – is breached. They cannot go to school or to universities because there are no special transportation or access ramps for them. Sometimes parents are given "friendly" advice not to torture their children and to give up taking them to school.

The rights of children with such limited access were not envisaged in the draft charter on unified national examinations. The Public Defender's Office addressed the Ministry of Education, and this shortcoming in the provision has been amended.

There is no health rehabilitation program for disabled children, which is very important for them.

Among the international conventions, the most interesting is that of the UN Convention World Action Plan, adopted by support of the Norwegian Council, which enables individual states to develop state policy on its basis.

CHILDREN FROM SOCIALLY VULNERABLE FAMILIES

Children are especially at risk among vulnerable social groups.

Statistics show that 50% of the total number of families with children belongs in the "poor" category. Surveys showed that in this category, families often have three or more children. Poor families with children belong to a particularly high risk group.

A significant share of family support rests on mothers and children, who have been able to find unqualified and random jobs comparatively easily. This has seriously undermined the child's environment during the most crucial period of his/her social development.

Difficult social and economic conditions have had serious impact on children's health. The health conditions of children are predominately (almost 80-85%) determined by social-economic, biological and environmental factors. Medical factors do not exceed 15% in their impact. The population's search for subsistence means and resolution of social-economic problems became more important, thus the healthcare drew back.

Child labor in Georgia has taken on an enormous scale. The number of the children without adequate food went up, and for many parents enrolment of their children into children's homes has become their only possibility to avoid starvation.

ETHNIC MINORITIES

With regards to children's rights of ethnic minorities, in addition to other factors, the problem of their socialization is very acute. Educational reform envisages certain measures for the integration of this group of children, however due to a lack of knowledge of the Georgian language, many of them will face serious problems in the educational sphere. The development of a new curriculum for all children in Georgia, including in the regions settled by ethnic minorities, has recently begun. Today, children residing on the territory of Georgia who are unable to read or write in Georgian suffer from problems of socialization and live in an isolated ienvironment.

In addition to the right to education, violation of children's rights among the population of ethnic minorities reveals cases of forced marriages of juveniles, often resulting in the deterioration of their health. This kind of problem is very sensitive to address, and direct intervention might cause ethnic conflict. Development of legislation addressing all the citizens of the country uniformly would be the best option for the resolution of such problems.

DEINSTITUTIONALIZATION

The Ministry of Education considers deinstitutionalization as a priority for the state. This means the return of abandoned and high-risk group children to their biological families or to placement with foster families (foster care). This priority is absolutely acceptable, as children's homes are one of the worst creations of the soviet system, and the number of homes should be reduced. For this purpose the Laws of Georgia on Adoption Rules and On Foster Care of Orphans and Neglected Children should be amended and the Public Defender is actively cooperating with the Georgian Parliament in this direction.

The Public Defender's Office drafted comments and suggestions on the draft laws on introduction of additions to the laws of the Georgia Civil Code of Georgia, on introduction of additions to Law of Georgia Code of Administrative Offences of Georgia, on introduction of additions to the Law of Georgia of civil Procedural Code of Georgia and introduction of additions to the Law of Georgia On Licensing of Medical and Pharmaceutical Activities submitted by the initiative rule of the Parliament Committees of Health Care and Social Issues and Legal Issues.

We also participated in the activities of the working group set up at the Parliament Committees of Human Rights protection and Civil Integration, where project appeal Support to Administrative Reform of Juvenile Delinquency was submitted by the initiative of the UN Children Fund.

The Ministry of Education and other international organizations are working on the implementation of a method of inclusive education. Inclusive education means education of disabled children at ordinary schools and their socialization in a normal environment, facilitating to the normal development of the disabled children, as well as the creation of tolerance and compassion. Incorporation of inclusive education into the national curriculum is being planned, and the Ministry of Education is closely cooperating with international organizations in this regard. Today a component of inclusive education has been introduced into twelve secondary schools of Tbilisi.

RECOMMENDATIONS:

- A Coordination Council on Children's Issues should be set up at the Parliament of Georgia, the main goal of which will be to support development of the policy in the field of children's issues, to analyze the current situation, to promote strategy, to coordinate the efforts of agencies and organizations, and to monitor and control the implementation of the adopted laws and decisions.

- Legislation should be analyzed and amendments should be introduced into the laws. If necessary, new laws shall be adopted in order for harmonization with international standards.

- The definition of the term "child" should be amended in all the relevant laws and bylaws of Georgia in compliance with the definition of the UN Convention of the Rights of the Child, in which a child is considered as such until s/he reaches the age of 18.

- An independent judicial system for the juvenile should be created, where trials of juvenile delinquent will be held by specially-trained judges.

- To fully protect children's rights, it is desirable to set up special Bar funded by the government, whose activities will be defined in compliance with the Law on the Treasury Bar.

- The procedures of depriving parents of their rights and control mechanisms protecting the child's rights and interests in the family should be simplified and improved.

- The law on child adoption should be improved, to meet children's rights and to control the provision of relevant factors, such as adoption abroad, adequate institutions to be developed; regular monitoring on the conditions of adopted children shall be conducted; and the responsibility of monitoring and control should be unambiguously defined.

- In regards to the children who leave the children's homes and shelters, a social reintegration policy of the child should be developed and a relevant action plan should be worked out. A special psycho-social network and transitional institution should be set up which would take responsibility of childcare after s/he leaves the shelter and help her/him to get adjusted to a new environment, and teach a skill so that such children can earn living with their own labor and master basic skills. Similar special centers should be established for disabled children as well.
- The process of deinstitutionalization shall be improved and made more efficient. Amendments and additions shall be introduced in the Georgian legislation to develop a legal basis to protect the best interests of a child.

- Measures ensuring the full protection of children's rights and interests at all levels of crime investigation, court appointments, and convictions, shall be developed.

The Conditions of Persons with Disabilities

Based on updated information provided by the World Health Organization (WHO), there are approximately 600 million people worldwide with different types of disabilities. Of these 600 million, 80% live in lower-income countries. Most are poor and, therefore, the main services, including employment, education and rehabilitation, are not available to them, thus making their participation and involvement in public and community life impossible. In cases of serious disabilities, the main goal of these disabled is mere physical survival and the procurement of food and shelter. In countries with transitional economies, such as Georgia, certain problems, such as identification (expertise), rehabilitation, education and employment, are very severe.

The responsibility of all states is to ensure equal opportunities for people with disabilities and to protect their rights.

The main activities for observing the above principles shall be:

- Early identification of the severity of the disability in order to ease the short-term and long-term effects;
- Availability of rehabilitation, employment and education;
- Integration of rehabilitation service into primary healthcare system;
- Development of community-based rehabilitation, education and employment services;
- Development of relationships among people with disabilities and the employees of healthcare, education and employment systems, professionals and community members;

Each agency responsible for the definition of the disability of an individual has its own definition or set of definitions of what constitutes a disability, which results from the fact that each entity defines "disability" differently, often as specified by different laws or of the application of one law under different conditions. Often a single law is modified or interpreted differently based on different rules or legal norms.

- **Standard Rules for Provision of Equal Opportunities**

On December 20, 1993, during Session # 48 of the UN General Assembly, a resolution on "The Standard Rules for Providing Equal Opportunities to People with Disabilities" (Resolution #48/96) was approved.

The rules were elaborated based on experience accumulated within the frames of “The Decade of People with Disabilities,” announced by different United Nations Organization. The International Human Rights Convention represents the political and moral basis for the standard rules that unites the Human Rights Declaration, social and cultural rights, the International Pact on Civil and Political Rights, the Convention on the Rights of the Child, the Convention on Women’s Discrimination of any Type, and The World Program on People with Disabilities.

These standard rules represent the spheres that are of significant importance for the quality of life of people with disabilities, as well as for their equal participation in public life. These standard rules are also recognized as the foundation on which governments and NGOs should elaborate policies and direct their activities. The key goal of the standard rules is to extend equal rights and to people with disabilities.

There are twenty-two standard rules elaborated for the provision of equal opportunities to people with disabilities. These rules regulate the following:

1. **Necessary preconditions for equal participation;**
2. **Target spheres, where equal opportunities should be created, include:**
    a. accessibility;
    b. education;
    c. employment;
    d. provision of income and social assistance;
    e. family life and personal freedom;
    f. culture;
    g. leisure and sport;
    h. religion;
3. **Activities for implementation:**
    a. survey and information gathering;
    b. policy formulation and planning;
    c. legislation;
    d. economic policy;
    e. coordination of activities;
    f. organizations for people with disabilities;
    g. procurement of specialists;
    h. national control and evaluation of programs for people with disabilities;
    i. technical and economic cooperation;
    j. international cooperation;
4. **Controlling Mechanisms**
    The existence of controlling mechanisms is necessary in order to make the implementation of standard rules more effective, helping states evaluate the process of implementation of these standard rules and to measure their outcomes. Once the controlling mechanisms are in place, problems in implementation are more easily noticeable. Information exchange between countries and other co-operative efforts represents a vital component of the process. To help facilitate this process, controls should be carried out during the session of the UN Commission on Social Development.

International Classification of Functioning, Disabilities and State of Health (ICF)

The World Health Organization has elaborated the International Classification of Functioning, Disabilities and State of Health (ICF). The goal of the classification is to “ensure the existence of a unified, standard language and to define the frames for indicators to define the state of health.” ICF is the classification of the state of health and all related terms, to be used in spheres such as insurance, social protection, employment, education, economy, social policy, legislation, and hygiene.

This classification was adopted by the United Nations to be used as one of the social classifications on which the standard rules for providing equal opportunities to people with disabilities be elaborated and implemented. ICF enables the identification of problems faced by patients with disabilities, an evaluation of the level of their functional independence, and analysis of their participation in community activities.

This classification does not function in Georgia; without it, it is practically impossible to properly identify the extent of the problems faced by people with disabilities or to provide solutions on related issues, including rehabilitation, education, and employment.

GENERAL SITUATION IN GEORGIA

People with disabilities in Georgia are easily one of the segments of the population most vulnerable and overlooked by the Government. Implementation of the standard rules, as well as standards for the equal participation of people with disabilities, is viewed as a necessary condition for the integration of the country into the European Union. At present, Georgia is very much behind other states striving to be integrated in the European Union in this regard. Along with other problems, the absence of a global policy targeting people with disabilities represents the main reason for the current situation.

By adopting standard rules, UN member states, including Georgia, replaced weak voluntary measures with serious moral and political responsibilities to ensure equal rights for people with disabilities. These standard rules define the principles of these responsibilities, cooperation and certain activities to be carried out.

In 1995, a questionnaire was elaborated by the board of experts of the UN to evaluate the level of participation of governments in the process of implementing the standard rules. In addition, the following directions for the implementation of the standard rules have also been elaborated for governments as well as for the NGO sector:

- presence of global policy;
- legislative basis;
- availability;
- NGOs and their role in policy formulation;
- coordination of activities;

Analysis of the present situation in Georgia was based on the above methodology. Additionally, the information utilized for this analysis was also based on the following:

1. Materials - laws, resolutions, bylaws, approved medical and social programs - provided by the Parliament of Georgia and relevant ministries (Ministry of Labor, Health and Social Welfare, Ministry of Education and Departments);
2. Experts' documents received from governmental and non-government organizations;
3. Results of meetings with government entities;
4. Programs implemented by different countries and the governments of those countries (the US, the UK, Czech Republic, Slovenia, Estonia, Latvia);
5. Study of the policy implemented by the UN;
6. Familiarity with the standard rules for the creation of equal opportunities approved by the Assembly of the UN;
7. Methodological recommendations for the effective monitoring of governmental activities adopted by the board of experts of the United Nations.

Global Policy for Disabilities

Evaluation of Global Policy means the following:

a. Was the policy on disabilities officially recognized?
b. Does a legislative basis exist?
c. Does the government have a guiding document?
d. Has the Coordinative Board on Disabilities adopted a guiding document?
e. Have the opposition parties officially declared their position about the policy on disabilities?
f. Has the NGO sector approved the political document?
g. What focus was given to prevention, rehabilitation, personal/individual assistance, availability or anti-discriminatory legislation?
h. What is the role of the government in the formulation of public opinion?

Conclusion: It must be recognized that the present situation in Georgia, in terms of implementation of global policy, is less than desirable. Out of eight issues that have been discussed, Georgia meets only one – it has adopted the legislation, quality of which will be discussed below. At present, governments of developed countries that are also the initiators of public participation generally pay special attention to the presence of global policy.

Legislation

Evaluation of Legislation means:

a. What kind of legislation does the particular country have? General? Specific? A combination of both?
b. What are the mechanisms for the protection of the rights of people with disabilities?
c. Is there legislation that regulates the right to education for people with disabilities?
d. Does legislation provide special allowances for people with disabilities in the sphere of healthcare?
e. Does legislation provide special allowances for people with disabilities in the sphere of rehabilitation?
f. Does legislation provide special allowances for people with disabilities in the sphere of employment?
g. Does legislation provide special allowances for those people with disabilities who live independently?

Conclusion: The present legislative basis in the country is weak and requires a number of serious changes. The problem begins with the term “person with a disability” itself. The term is impractical, and we can easily state that it will never be widely used by the public, only in official documents.

The definition of a “person with a disability” specified in Georgian legislation is similar to that used during the Soviet period, where the definitions on a number of issues were very vague. For example, definition of the terms “relative health disorder” and “significant worsening of every day life” is practically impossible. The same vagueness is found in the relationship between “disability” and “ability to work”. The definition does not allow the law on identification to function and to identify a person with disability.

As mentioned earlier, one of the reasons for the difficulty in defining the number of people with disabilities is the existence of multiple definitions on disabilities in different countries, often linked with the country’s level of socio-economic development. In Orthodox society, there are only four types of disabilities considered: physical injury, deafness, blindness, and mental retardation. In more developed countries, where human rights are better specified, the mechanisms of social welfare and allowances are improving, and disabilities are more broadly defined.

Currently, there are serious loopholes in the legislation regulating to identification. The law should define two types of disability. Practically, a law should also be totally re-drafted and be based on the above ICF classification.

Accessibility

Evaluation of access means:

a. Presence of officially adopted rules on access;
b. Access to public spaces;
c. Access to spaces outside of buildings;
d. Access of transportation;
e. Presence of supervising body for the accessibility at construction sites;
f. Government activities to install modified doors and lifts in structures for people with disabilities;
g. Installation of special equipment for blind and deaf people;
h. Transportation of people with disabilities to medical institutions in special transports;
i. Transportation of people with disabilities to educational institutions in special transports;
j. Transportation of people with disabilities to work in special transports;
k. Interest of media in people with disabilities;
l. Presence of publications and books in brail.

According to the Georgian legislation, namely the Code of Administrative Offences, ignoring the needs and requirements of people with disabilities during the planning and constructing of structures is liable to a fine (Article 1782: The Act of Ignoring the Requirements and Needs of People with Disabilities in the Process of Planning and Constructing).

The planning of settlements, the creation of dwelling districts, and the construction and renovation of buildings without meeting the needs and requirements and interests of disabled persons shall be liable to a penalty between GEL 500 - 800.

Article 1781 of the Code on Administrative Offences specified in the law should be enacted starting from December 1, 2004. Under this law, the Georgian executive authority is required to ensure the performance of activities necessary for the issuing of related licenses, permits and definitions of other standards.

When replacing traffic lights, the Tbilisi City Hall did not take into consideration the interests of people with disabilities, meaning that traffic lights still do not have voice alarms designed for blind people. It must also be noted that the refusal to install such a system was not related to budgetary concerns. In addition, the needs of people with disabilities were not taken into consideration when purchasing buses for Tbilisi; as a result, these buses lack equipment that would make them accessible for people with disabilities.

The absence of access ramps and other equipment in public structures limit the participation of people with disabilities in public life.

Often, society in general is not ready to consider the interests of people with disabilities. One example is shown in a letter written by Manana Nemsitsveridze and sent to the Office of the Public Defender. Nemsitsveridze's son, Levan Burjeliani, is disabled and can only move with the help of a wheelchair. Burjeliani attended Tbilisi school # 40, and his tenth grade classroom was located on the fourth floor, but the building was not appropriately wheelchair-accessible. Burjeliani's brothers carried him every day to the

fourth floor. Manana Nemsitsveridze wrote the Public Defender, urging that the classroom be moved down one flight of stairs and the gate to the street be opened. Only after the Public Defender intervened were these two requests satisfied.

There was a similar situation at the State Polytechnic University, where the rights of a student with a disability were infringed upon because the University's administration refused to relocate the classroom from the fourth floor to the first floor for a single person.

Conclusion:

The situation in the country is very poor in terms of availability and access for people with disabilities. Objective reasons, such as difficult economic conditions, difficult geographical landscape, difficult heritage along with subjective reasons, such as the lack of a responsible body as defined by legislation and a lack of legislation on access, result in a lack of real change. In general, activities by NGOs in this field have also been weak. Serious problems exist in the construction of houses or administrative buildings which, with few exceptions, do not have facilities designed for people with disabilities.

Conditions of NGOs Working on the Problems Faced by People with Disabilities

The evaluation includes:

a. Presence of an umbrella organization;
b. Inclusion of organizations in the policy formulation process;
c. Financial and organizational support from the government of the country;
d. Inclusion of the organizations in public life;

Conclusion: It is difficult to talk about the effectiveness of the work performed by the NGO sector, as a result of poor global policy in the country and weak overall coordination. There have been some attempts by the government to render financial and organizational support, but these attempts have failed, for a variety of reasons, and have not achieved results. The biggest problem faced by NGOs working on problems faced by people with disabilities is spontaneity and lack of civic education. In general, NGOs with foreign partners are the most effective in this sphere, as they tend to have deep knowledge and experience in this sector. In addition to financial support, such organizations have permanent organizational assistance that generally allows for their projects to become more sustainable and effective. It should also be noted that NGOs working in this field need to participate more actively in the formulation of global policy, as well as in all processes related to people with disabilities.

Coordination of Efforts

The evaluation includes the following:

a. Presence of a Coordination Committee.

Conclusion:

At present, there is no such committee in Georgia, explaining one of the main reasons for the difficult situation in the country. Such a body could work at the national level to formulate global policy.

It must be noted that such committees are present in 75% of the countries around the world.

As a result of various problems, such as medical rehabilitation, education, employment, and availability, and the necessity for coordinated activities between different bodies, such committees exist at the level of the Prime-Minister in the countries where the Cabinet of Ministers exists.

The representative structure of the Committee is as follows:

- Ministers on issues faced by people with disabilities;
- Representatives of NGOs working in the field;
- Representatives of other NGOs;
- Representatives of the private sector;

The most active section of the committee is the formulation of policy and overall management issues.

Georgia does not have a clearly-formulated concept at present and, as a result, certain problems can be addressed at the initial phase, such as the implementation of conditions necessary to achieve equal participation. Some of these problems include: lack of understanding of the issues and problems in questions; lack of definitions, evaluation and selection of conceptual models of disabilities, identification and statistics; a refined legislative basis; adequate structures; lack of consensus between the authorities and the NGO sector.

Owing to these problems, it is very difficult to talk about the effectiveness of social and social-medical programs that are being implemented in the country. Without priorities being defined, without coordination or properly-implemented monitoring activities, there is a high risk of ineffective programs being introduced at the misallocation of funds in the state budget.

There have, however, been certain positive experiences, including qualified individuals who have worked on the problems faced by people with disabilities for many years, pilot social and social-medical programs, and documents regarding children with disabilities which are based on correct principles adopted by the Parliament and submitted to the government. The experience of both Western and Eastern countries in the protection of the rights of people with disabilities also provides precedents and examples for Georgia. It is imperative that such experience be assessed by the authorities, interested organizations, and disabled individuals themselves.

RECOMMENDATIONS:

Structural Organization

Under the independent functioning of the Ministry of Social Issues, the Department of the Disabled was established in 1995 and was abolished when the Ministry of Labor, Healthcare and Social Welfare was created.

According to the Department's regulations, its responsibilities were to elaborate the global policy on disabilities, to draft and finance programs that would ensure the implementation of the standard rules, and to monitor the processes involved with these activities. Unfortunately, the Department failed to meet its responsibilities and was abolished after the amalgamation of several Ministries. Many feel it would have been better, though, to have merely reorganized the Department and staffed it with new and qualified personnel.

After these ministries were merged, a unit was set within the Ministry of Labor, Healthcare and Social Welfare that is still functioning and that deals with issues of people with disabilities. It is believed, however, that the unit has very limited and unclear functions at present.

The issues of identification are determined by the Unit of Expertise. Both units have supervisors, the latter being the Deputy Ministers. Presently, the activities performed by these units under the Ministry have received negative evaluations. The people responsible for the present situation in this sector possess low qualifications and irresponsible, created the serious problems in this sphere.

The implementation of structural reorganization which aims at the creation of policy and the management of issues at the state level, and that will result in serious work being coordinated with the NGO sector, is of vital importance.

As the problems faced by people with disabilities are closely connected to the issue of definition, it is reasonable to assume that the two units that exist at present would do better to unite, and that the structures at the central and regional levels be reorganized. The most effective measure would be the creation of a department that would include all of the aforementioned units.

A well-trained and professional individual should be appointed as the head of this newly-created department. The regulations of this department should also be elaborated.

Taking into consideration the specifics of the implementation of standard rules, the situation in the country, and international experience, it is necessary that a coordination board be created that would include the ministers whose work relates to issues on disabilities, the chair of the newly established department, NGOs working in the field, other NGOs, representatives of the private sector, experts, and businessmen. The regulations of this coordination board should also be strictly defined.

It is imperative that the Government and City Hall of Tbilisi begin working on the creation of appropriate infrastructure for people with disabilities. They should always take into consideration the interests of disabled people in their decision-making processes. To begin with, traffic lights with alarms and access ramps should be installed on sidewalks and in public organizations.

SHORT TERM ACTION PROGRAM – FIVE STEPS IN THE PROCESS OF GLOBAL POLICY FORMULATION

After a structural reorganization and the creation and review of regulations, the government should make the following steps:

- **Step One** – the government should adopt a guidance document that would officially declare:
  - a. Main directions of the global policy;
  - b. Conceptual model acknowledged by the state on the definition of disability;
  - c. Issues on which the country is focused on within the frames of the policy – prevention, rehabilitation, individual assistance, availability and anti-discriminatory legislation;
  - d. Rules and time-frame in accordance with priorities based on which changes shall be implemented.

- **Step Two** – The government should set up contacts with representatives from the UN Commission on Social Development who establish controls over the standard rules' implementation. By making such steps, Georgia would participate in the process of international policy on disability problems.

- **Step Three** – The Minister of Healthcare should officially apply to the Director General of the World Healthcare Assembly to render multiple assistances to Georgia in order to introduce and implement ICF.

- **Step Four** – Together with the ministries involved in issues related to disabilities and the coordination board, the process of creating a legislative basis based on the officially acknowledged guidance document (see step one), should begin.

- **Step Five** – Hold a conference to reach a consensus on the definition of terms such as “disability”, “limitation of opportunities“, etc.,

Situation regarding the Protection of Women's Rights

The situation regarding the protection of women's rights has not changed in 2004 compared to previous years. The problems that exist include disproportional representation of women in the government, lack of social protection, illegal and labor migration, trafficking, as well as domestic and general violence against women. New laws should be adopted to protect women's rights, and contradictions in the existing laws should be removed.

In comments made by the UN Committee in its latest reports on Georgia, it was noted that Georgia should abolish current conditions that directly or indirectly discriminate against women. It should be mentioned that the draft of the Labor Code of Georgia is being worked on too.

Despite a measure of equality that exists in the Georgian legislation in regards to women, there also exist discriminatory provisions. For example, while the Law on Public Service states that public service is equally available for citizens of Georgia based on their ability and professionalism and defines 65 as the pension age for public servants (for both males and females), article 235 of the Labor Code gives the pension age as 65 for men and 60 for women. The Labor Code also prohibits gender discrimination during the process of hiring or in defining salaries, and at the same time prohibits pregnant women, women with underage children, and nursing mothers from working overtime or night shifts.

Despite the fact that Georgia ratified the UN Convention on the abolishment of any type of female discrimination, there have not been any activities carried out to prevent discrimination in employment practices or in politics, though the government has recognized the lack of representation of women in these spheres.

A decade ago Georgia joined CEDAW Convention (Convention on the Elimination of All Forms of Discrimination against Women) but has still not met its responsibilities taken in the face of this commitment. Article 14 of the Convention specifically focuses on the conditions of women living in villages. The Convention also obliges the state to respond to any instance of a violation of women's rights.

Based on a study of women's activities in Georgia and on existing information, we can state that no special measures are used in support of women. Such measures could develop the level of equality between men and women in different spheres, particularly in politics and employment.

2004

It is important to mention that in order to address this problem, an Advisory Board on Gender Issues was created in November at the Parliament Chair of Georgia. The main goal of the Board is the development of policy on gender and its implementation in political, social and economic spheres.

Activities carried out by the Center of Women's Rights Protection at the Public Defender's Office revealed that special attention should be paid to different types of violence against women.

Poverty exacerbates violence against women. The tendency for domestic violence caused by the maldistribution of social roles in family is becoming noticeable. Increasing aggression was mainly caused by the extreme poverty and social vulnerability of the majority of the population. Looking to the patriarchal nature of Georgian families, in the majority of domestic violence cases the women do not come forward. Analysis based on statistical data from the Ministry of Internal Affairs and the Prosecutor's Office corroborates this point. Lack of awareness of domestic violence by the Georgian population is one of the reasons for this situation. Georgian legislation does not define domestic violence, nor does the Criminal Code of Georgia. As a result, domestic violence in Georgia is not legally liable to punishment.

It is important to implement mechanisms against domestic abuse, which necessarily means that the Law on Protection from Family Violence should be adopted. Yet making changes to the legislation is insufficient. It is important that employees of law enforcement bodies understand the problems of domestic violence and implement the law.

Low economic conditions, a high rate of unemployment and financial difficulties for many strata of the population has caused a noticeable increase of both legal and illegal migration.

Analysis of the data available at the Ministry of Security of Georgia states that illegal migration has increased and persons participating in the above process are being formed as the criminal structures with the perspective of going out to the international arena .

With such a background that exists in the country, visa dealers and employment mediators have been established. These institutions offer visas issued using illegal methods, for a fee. Using such brokers, thousands of Georgians leave annually for foreign countries, deceived by false promises and subsequently becoming the victims of trafficking. While economic hardship may be the main cause of illegal migration, ineffective legislation and insufficient border control exacerbate the problem and create conditions for the increase of trafficking.

The main factor impeding the fight against trafficking is the fact that the victims of trafficking avoid any contact with law enforcement bodies after returning to Georgia, as they do not want to create additional problems for themselves.

The majority of trafficking victims conceal their experience, as they are afraid of being isolated by society. In general, society blames women for trafficking, as for a large part of the population trafficking is equated with sexual exploitation, and many people view victims of trafficking as prostitutes. Prostitution is perceived as a deeply shameful activity in Georgia.

If it becomes known that a woman was a part of a sex industry (it is irrelevant whether or not it was voluntarily), she is persecuted by her family and society. Very often she may become the victim of domestic violence. Women in this situation apply to the Center of Protection of Women's Rights, and to different NGOs.

Trafficking is exacerbated by the following circumstances: the legislative basis needs to be improved,

there is no law on Labor Migration, absence of which encourages that the citizens are being illegally employed in foreign countries. There are no rules making it necessary to legalize contracts between citizens and tourist agencies, enabling citizens to file charges in case agencies breach obligations stated in their contract.

The Georgian Government does not have appropriate mechanisms to protect victims of trafficking and to give them assistance. Georgia is not a member of any international agreement that would regulate the issue of legal employment of Georgian citizens abroad. At the same time, the International Opinion Evaluation shows Georgia represented in all stages of trafficking – as a source of victims, as a transit country, and as a country of destination.

In 2004, the Working Group against Trafficking was created on the basis of the Center of Women's Rights Protection. NGOs, governmental and international organization representatives are members of the Group. The Group prepared the National Report on the situation regarding Trafficking in Georgia, that was sent to the US State Department.

The Center took part in the elaboration of the 2005-2006 Action Plan on Illegal Migration and Measures to Fight against Trafficking, as well as the draft law on Extermination of Trafficking, Fight against it, Protection and Rehabilitation of the Victims of Trafficking.

A temporary inter-institutional Commission on Combating Trafficking was established at the Council of Security, the aim of which is to implement measures to fight against trafficking. The President of Georgia approved by its resolution of the 2005-2006 Action Plan on the Fight against Trafficking.

We think it necessary that the Government allocate money in the budget and fund activities specified in the Plan, and to ensure publicity of the Plan in order to achieve increase the level of information for potential victims of trafficking.

It is important to create a network of organizations working this issue, including government, non-government, and international organizations, as it would be difficult to offer assistance to the victims without close cooperation at the international level.

The Public Defender's Office often responds to trafficking cases. For example, we received information that the Vake-Saburtalo district court reported fourteen victims of trafficking who are citizens of Uzbekistan. They were misled and brought to Georgia en route to Dubai, the capital of Arab United Emirates, to be sent to the sex industry there. As a result of our participation and the support of non-governmental organizations, the victims were brought to a shelter and were provided with legal advice and psychological assistance. They received thorough medical examination and free medical care. Two of the citizens had forged documents, making their repatriation to Uzbekistan problematic. After contact with the Embassy of Uzbekistan, the two citizens were identified and returned to Uzbekistan with the financial support of International Organization for Migration.

One of the important ways of preventing the trafficking of women in Georgia is to educate the population and to increase their awareness through informational activities in the media, informational leaflets and bulletins and distribution at embassies, airports, schools and universities as well as public places.

Under the existing conditions, it is difficult to limit violence against women and to protect their rights. Special attention should be paid to training policemen and employees of other governmental structures, especially court officials. Special training courses should be organized by independent state experts

focusing on the fight against violence against women. Every police unit should have specially-trained staff for violence against women and children.

The Public Defender's Office received information From Kvemo Kartli on the rape of a juvenile. Only after the Public Defender's interference was a medical examination of the victim and legal proceedings initiated. With the help of NGOs, the victim was placed in a shelter, was given a medical examination and psychological assistance. The proceedings have begun, though the suspect has been in hiding.

The Center of Women's Rights Protection closely cooperates with NGOs, and represents a member of national networks fighting against violence against women. On an as needed basis, NGOs render psychological assistance to the victims of violence. Medical assistance is not as readily available. It is necessary to implement active mechanisms to fight against violence against women, which means protection of victims and the provision of assistance to them. We think that the existence of a shelter for the victims of violence is fundamental.

The opportunity to move a victim to a shelter in order to receive psychological and social rehabilitation should exist. Regional networks are also important. Work carried out up to now shows that the situation in regions is especially serious and requires multiple interventions.

On the issues of female prisoners, the Center of Protection of Women's Rights actively cooperates with the administration of Penitentiary System facility # 5 in order to better understand and improve the existing conditions.

Despite the fact that the daily conditions in these institutions have improved, lack of employment for former prisoners remains a serious problem. Female prisoners tend to be from socially unprotected families, and employment will provide them with incomes to serve their basic needs.

Rendering social assistance after release of female prisoners is of special importance. With this purpose in mind, information on the released persons is sent to the Chair of the Penitentiary and Probation Department and to the Gamgebelis at the place of residence of the released prisoner. It is also fundamental to address the employment of the released prisoners and their integration into society, which remains problematic and, if sufficiently addressed, will decrease the number of recurrent crimes.

In February 2005, female prisoners from prison #1 were moved to the territory of prison #5.

Before then, in addition to prison, #5 female prisoners were also detained in other jail, where the conditions were terrible in comparison with prison #5. The prison was overcrowded and the conditions did not meet even minimum requirements specified by either Georgian or international legislation. The imprisoned women did not have any clothes, bed sheets, or mattresses.

1. During this period, a female prisoner with a three month-old baby applied to us, saying that a neighbor was taking care of the child. She asked that the child be moved to the father, and sewed her mouth shut as a sign of protest.

   The Georgian Law on Imprisonment states that female prisoners have the right to have their children up to three years-old with them.

Based on this legislation, we applied to the Penitentiary Department of the Ministry of Justice with the request to address this problem. The case was reviewed by the Social Service of the Department. Presently, the documents are being collected and the case is in effect.

2. Another female prisoner applied to us, stating that the court would not allow her to be transported to Gardabani for medical treatment, a serious violation of the Georgian legislation. The spouse of the accused woman was ready to pay the transportation expenses, which does not change the court decision. The accused woman needed medical treatment, was required to remain in bed with serious problems, but was never visited by the doctor.

   After the intervention of the Public Defender, the accused women was transported to the Gardabani Court and was released.

Concept for The Reform of The Public Defender's Office

What follows is the concept for the reform of the Public Defender's Office. The goal is to increase the efficiency of the Public Defender's Office, in order to implement the protection of human rights and freedom in the development of a democratic state.

GOAL

1. The goal is to present the reform plan of the Public Defender's Office and to carry out the reform of the institution in context of other legal reforms. The goals of the reform are:

- to establish the institute of the Public Defender's Office as an objective and impartial entity free from political influence;
- to increase the confidence of society in the Public Defender's Office and to enhance their recognition of the Office;
- to grant the Public Defender broad authority in the human rights protection and to introduce accountability of administrative bodies to the Public Defender;

ROLE OF LAW ENFORCEMENT

2. By law enforcement we mean the court, the prosecutor's office, as well as investigation, inquiry, and public order bodies. Of course, the role of law enforcement for human rights protection is substantial.

3. Lack of competence of law enforcement bodies, poor political control, and conflict of interests, are existing problems of the law enforcement system.

4. Law enforcement has not followed general development trends. This is reflected not only in the nature of the institution itself but also in the level of qualification of the staff. Law enforcement officials are unable to take into account norms of human rights, and as a result mass violation of human rights occur.

5. Political control over the law enforcement system is weak and rather than execute the law, the system has been used as an ally of the interests of the political elite. As a result, it is not surprising that the motivation to protect human rights has been diminished.

In order for the law enforcement system to be able to protect human rights, it is imperative than an impartial institution without personal interests be established.

PUBLIC DEFENDER

6. The legal status of the Public Defender is defined in article 43 of the Constitution. The Constitution states that the protection of human rights and freedoms in Georgia should be supervised by the Public Defender of Georgia. S/he is authorised to report on cases of human rights and freedoms violations and to relevant bodies and officials. Constitutionally, the Public Defender's rights are rather general and are defined as the report of violations. The Public Defender is elected for a 5-year term by the majority of the members of the Parliament of Georgia. Any attempted impediments to the activities of the Public Defender are punishable by law.

7. In our opinion, in order to strengthen the norms regulating the status of the Ombudsman and to grant the Office a strong legal force, the constitutional norms of the Public Defender should be expanded. Existing norms should also be expanded following the main principles of the Public Defender's activities, as should election rules and requirements. Such conditions might be well-served to be formulated in a separate chapter.

8. The Constitution of 1995 established the institute of the Public Defender or another body supervising the protection of human rights, which was granted the right to monitor activities.

9. The right to monitor by the Ombudsman applies to both government organizations and private individuals. The Ombudsman is given the power to request information, to provide recommendations in case of infringement, and to address the court.
10. In compliance with the law, the Public Defender possesses a mechanism of political pressure. The Public Defender submits an annual report to Parliament in which s/he addresses current problems and gives the names of institutions that breach human rights.

11. Yet it has unfortunately been the case that the current system is powerless to adequately address human rights violations. Political accountability has not been sufficient and the Ombudsman, whose function is limited to monitoring, has been less effective in the context of stronger institutions. In reality, the Ombudsman had failed to establish itself to Georgian citizens, which was reflected in its operations. As a result, citizens had become alienated towards the Office and failed to achieve society's confidence.

12. Before beginning a discussion on the reforms, we would like to briefly outline the main problems to be addressed by the reform:
    - 12[a]. Little and inadequate authorization;
    - 12[b]. Lack of financial independence;

13. In order to resolve these problems efficiently, we consider it expedient to implement reform in several directions.

14. An effective Public Defender's Office should be free from any political pressure, particularly from the influence of an organization which it monitors. In order to ensure political independence, the following legislative amendments should be introduced :
    - 14[a]. Terms of office to be changed

15. We suggest that the Ombudsman's term of office should be increased. This will facilitate institutional memory in the Ombudsman's Office, and will establish a sense of stability – an important prerequisite for effective activities. Taking into consideration international models, the term of office should be extended from 5 to 7-8 years, potentially.

a. Two terms of office to be abolished

16. We consider it expedient to give a candidate only one opportunity to be elected as the Public Defender.

b. Financial independence

17. The main guarantee of independence – financial sustainability – is not adequately reflected in the current law. When mentioning financial guarantees, we are speaking of guarantees as defined by legislation for judicial bodies and for public broadcasting. We think that the merging of these two systems will enable the Public Defender to make both policy and activities more efficient and consistent.

18. In this regard, we recommend that the financial guarantees established for the judicial authority also be assigned to the Public Defender in the Constitution, which will significantly assist the Defender in making independent decisions based on the priorities of the office.

19. To provide sustainable funding, it is would be expedient to define the amount to be allocated for the institute in the Law on the Public Defender of Georgia which would become the basis for allocation of funds for the Ombudsman. A similar model has already been introduced by the Law on Broadcasting and is an interesting precedent for the provision of financial sustainability.

20. We would like to suggest another provision that the Ombudsman's appropriation cannot be less than the previous year's appropriation. In our opinion, the inclusion of this provision in the law will facilitate stability in the Ombudsman's activities.

21. While reforming the system of funding, special attention should be paid to budgeting. We assume that budgeting should be headed by the Ombudsman. The Public Defender should identify and determine the office's priorities. In this case, only the president should have the right to change the Public Defender's budget. Participation of other government members in the budgeting process creates a conflict of interests and makes the Ombudsman dependent on bodies which it monitors.

POWERS

a. Right to investigate

22. An assignment of the right to investigate by the Public Defender is very important for external control. The right to investigate will enable the Public Defender to look into complaints more thoroughly and to present more competent evaluations. The Public Defender should have the right to look for evidence, to question the witnesses, and to take various procedural measures, i.e. to have the rights of law enforcement investigation bodies. The Public Defender should be able to carry out effective investigations and should be provided with adequate resources to do so. To avoid overlap, the authority of the Public Defender should only be valid with respect to offences committed by law enforcement employees.

23. The investigation process requires both time and resources. To simplify the process, we recommend the enactment of alternative mechanisms of investigation, such as that of an informal decision.

24. An informal decision is an effective method for investigating cases of lesser importance. It entails a negotiation between an injured party and employees of the body against whom the complaint was filed. The Public Defender takes the role of a mediator in the process. An Informal decision allows a citizen to make his/her problem the subject of discussion by key officers of law enforcement bodies. In addition, an informal decision is conducted in a shorter period, and with minimal resources. The procedure of informal decision should be applied only if the citizen who filed the complaint gives his/her consent. If an informal procedure is impossible, then a full-fledged investigation will be carried out.

b. Full-fledged investigation

25. If the case refers to an especially aggressive breach of human rights, the Public Defender carries out a full-fledged investigation. We consider it expedient to establish a time limit for an appeal by the victim. This is especially important in regards to crimes committed in the past. The time limit will enable the Public Defender to maintain its resources for current problems. However, if the case refers to an aggressive breach of human rights, and the possibility for investigation exists, we consider it expedient to assign the Public Defender discretionary authority to investigate old cases.

c. Initiation of investigation

26. An investigation can be initiated by a citizen's application, by information submitted by law enforcement bodies, and on the basis of the personal decision of the Public Defender. It is necessary to give the Public Defender the right to initiate the investigation himself/herself so that the Ombudsman has the right to address violations even when the victim does not address the office directly.

27. On the basis of the investigation, the Public Defender will work out recommendations that will be sent to the relevant body for response. If the relevant body does not agree with the Ombudsman's recommendation, that body will have to substantiate the reason for its disagreement. The Public Defender will have right to recommend punishment of the offender both by disciplinary rule and by initiating proceedings defined by Criminal Procedural Code.

POSSIBILITIES TO EXPAND COOPERATION WITH LEGISLATIVE BODIES

28. The current legislation grants the Ombudsman the right to address the supreme legislative body and to present his/her position on human rights issues. The Ombudsman has the right to lodge an appeal in the legislative body against acts adopted by Parliament. While the current system determines partnership with legislative bodies, partnership that is not fully incorporated will not bring effective results.

29. Proceeding from this, we think that the partnership between the Public Defender and Parliament should be expanded and the Public Defender should be given the right:

29[a]. to ask the committee to meet on issues of human rights. The committee's refusal should be substantiated;

29[b]. to be granted the right to initiate legislation on issues of human rights.

30. We suggest that recommended authorities should facilitate an expanded partnership between the Parliament and the Ombudsman, which should be reflected in Parliamentary policy. Norms of human rights should be taken into account during legislative activities. This will allow the Ombudsman to act independently in detailing shortcomings in legislation, and will facilitate the implementation of international norms of human rights in the Georgian legislation.

30[a]. Right to impose fine

POWERS OF THE PUBLIC DEFENDER IN REGARDS TO ADMINISTRATIVE BODIES BE EXPANDED

31. International experience shows that the Public Defender can play an efficient role in eliminating systemic problems in administrative bodies. Consequently, we consider it expedient to review and refine current practices. As stated in the Law on Public Defender – the authority to send recommendations on the redress of human rights and freedoms to those state bodies, public officials or legal persons being in practice so far, is not a sufficient mechanism for the accountability of government bodies. If administrative bodies reject the Public Defender's recommendations, they should be liable to substantiate their reason for doing so. Furthermore, the Public Defender should be granted the authority to impose a fine on government bodies in case of non-fulfilment of their duties. Consequently, we suggest widening the office's authority and allowing the Ombudsman to impose financial sanctions on administrative bodies.

32. This reform will facilitate a change of attitude of government bodies towards their duties and will encourage them to take their legal requirements seriously.

33. In addition, the ability to impose a fine will significantly reduce the period of time between lodging a suit and making a decision, and will enable the aggrieved citizen to receive compensation more in a more efficient and timely manner.

Structure of Office of Public Defender

The structure of Public defender's office of Georgia consists of several sub-offices, which are functionally divided. The core activities and maintenance of the Departments are covered by the state budget, while existence of Centers is dependent on availability of donor funding. The Centers are internal structures of the Ombudsman's Office however their activities and reporting is project based.

In 2004 on the basis of Organic Law on Public Defender and general will and new vision of functioning, the Office of Ombudsman of Georgia has undergone restructuring and at present it consists of several functionally divided sub-offices which, according to their mandate area, are unified in 3 Departments:

- Department of Monitoring and Investigation
- Department of Policy, Information and Education
- Department of Administrative and Financial Management

The Departments are supervised by the Heads of Departments who report to the Public Defender through the Deputy Public Defender who assumes the role of Chief of Staff. The Names of all three Departments reflect the Mandate Areas of the Office of Ombudsman of Georgia.

DEPARTMENT OF INVESTIGATION AND MONITORING:

The Department conducts enquiries, monitoring and investigation of cases related to Administrative, Justice and Law Enforcement Agencies, Social and Economic and Freedom and Equality Issues. In order to contribute to the development of internal policies, regulations and procedures for the effective monitoring and investigation and reporting of human rights violations within the competence the department prepares reports for the Ombudsman on the results of investigation and monitoring activities and elaborates recommendations for remedial action.

According to the above key areas the department incorporates following separate divisions:

- ***Division for Justice*** (monitoring and investigation of judiciary, prosecutor's offices, other investigative agencies, police, penitentiary system)

- ***Division for Social and Economic Rights*** (rights of IDPs, refugees, education, ecology, property, labour, business, consumer rights, medical, taxation)

2004

- ***Division for Freedom and Equality*** (civil and political rights, freedom of speech, freedom of religion, discrimination issues, rights of foreigners, rights to manifestations and assembly, rights of women, children, disabled, minorities)

- ***Division for Administrative Law*** (government agencies, local government, access to public information)

And 5 Specialized Centers:

- Center for Children's Rights
- Center for Women's Rights
- Tolerance Centre
- Centre for Rights of Military Personnel and Servicemen
- Centre for Patients' Rights

The principal role of each centre is rights based advocacy for the adoption of human rights standards through education, information, communication and monitoring of human rights violations or abuses in the respective subject areas that the centres are active in.

DEPARTMENT OF POLICY, INFORMATION AND EDUCATION

The department conducts systematic review of the Field of Human Rights, prepares projects for the Ombudsman's Parliamentary Reports, under supervision and together with the Public Defender and Deputy Public Defender works out Policy and Action Plan in the field of Human Rights, prepares systematic researches, evaluation and consultations, is responsible for the relations with International and Donor organizations, mass media and society. The Department prepares and disseminates information concerning the Human Rights and activities of Ombudsman in the field among different information, governmental and non-governmental agencies, prepares and uploads the materials on the web-site; works on raising of public awareness in the issues of Human Rights; prepares and conducts the educational activities i.e. training programs in police, prosecutor's, judicial and military structures.

According to the above key areas the department incorporates following separate divisions:

- ***The Division for Donor/Programs/Project Coordination*** (Preparing project proposals and program reports for donor organizations, conducting fundraising for activities in the field of Human rights, etc.)

- ***The Division for Regional Coordination*** (Responsible for relations with and collecting program and monitoring reports etc. from regional offices of Public Defender)

- ***The Division for Research and Evaluation Coordination*** (Conducts researches, evaluation and consultations, prepares recommendations)

- ***The Division responsible for Public Relations (incorporates 2 subdivisions): Media Coordination and Web-Site Development*** (preparation of press releases, dissemination of information, posting information on the web-site, web-site management)

- ***The Division for Civic Education*** (Educational activities, raising of public awareness in the field of Human Rights)

- ***Resource Centre and Library*** (collecting materials for raising of public awareness about human rights and the role and mandate of the Public Defender and ensuring public access to the full range of services for young scholars, professional lawyers and human rights activists.)

ADMINISTRATIVE AND FINANCIAL MANAGEMENT DEPARTMENT

Under the overall supervision of the Public Defender and Deputy Public Defender, the department is responsible for: managing and running all administrative and financial tasks of the office including Human resources management, procurement, financial planning and budgeting, accounting, etc.

According to the above key areas the department incorporates following separate divisions:

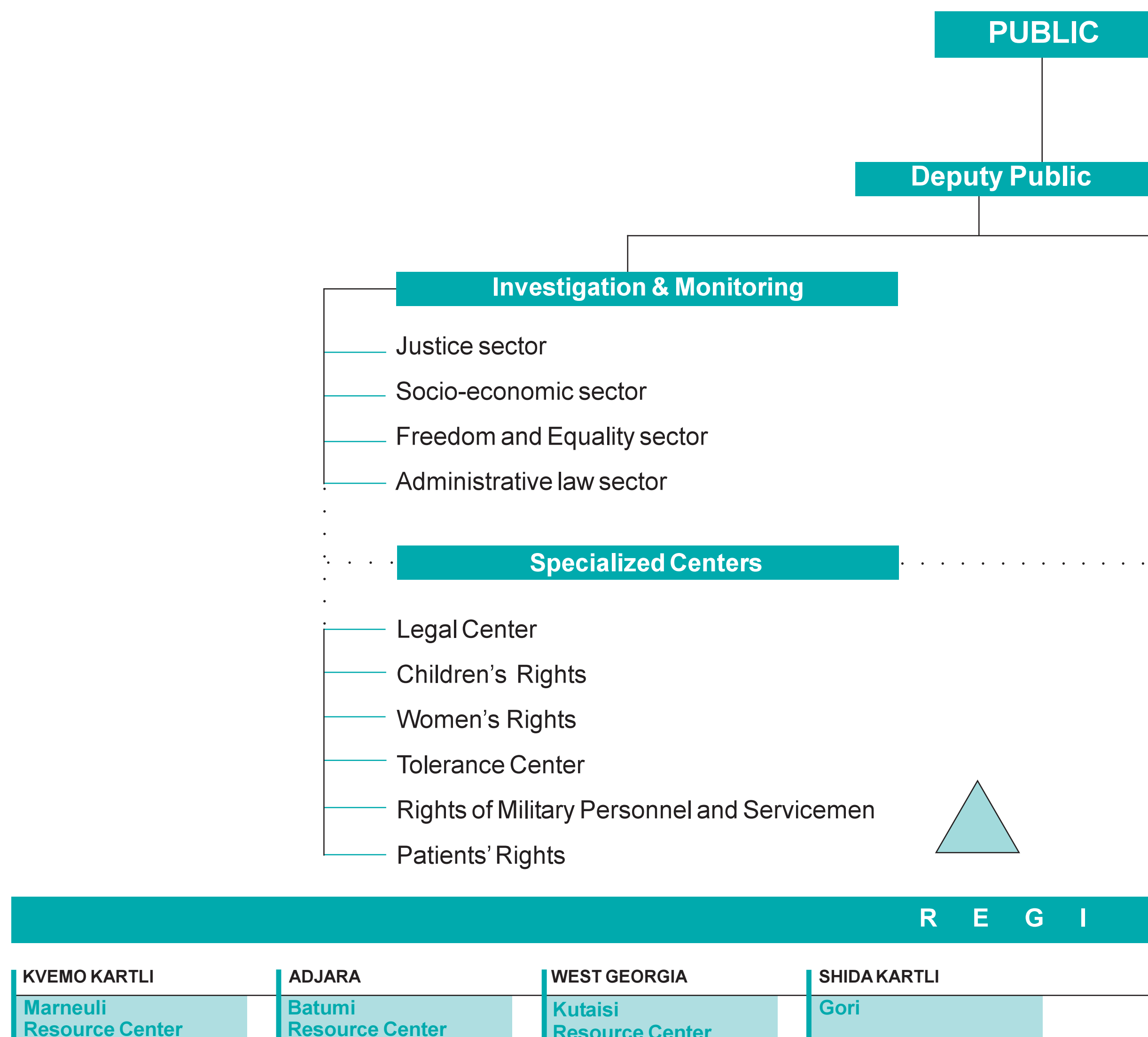
- ***Division for Office/Finance management*** (Procurement; Financial analysis and reporting; Budgeting; housekeeping; Logistics; Contracting)

- ***Division for Chancellery/HR*** (management of human resources; personnel practices ; professional development; staff appraisal and incentive schemes; Chancellery)

- ***Division for Accounting*** (Accounting and reporting to official bodies; Payments and cash disbursement)

- ***Division for Application and Clime Reception*** (receiving, dispatching and filtering incoming claims; monitoring of timely reaction upon claims)

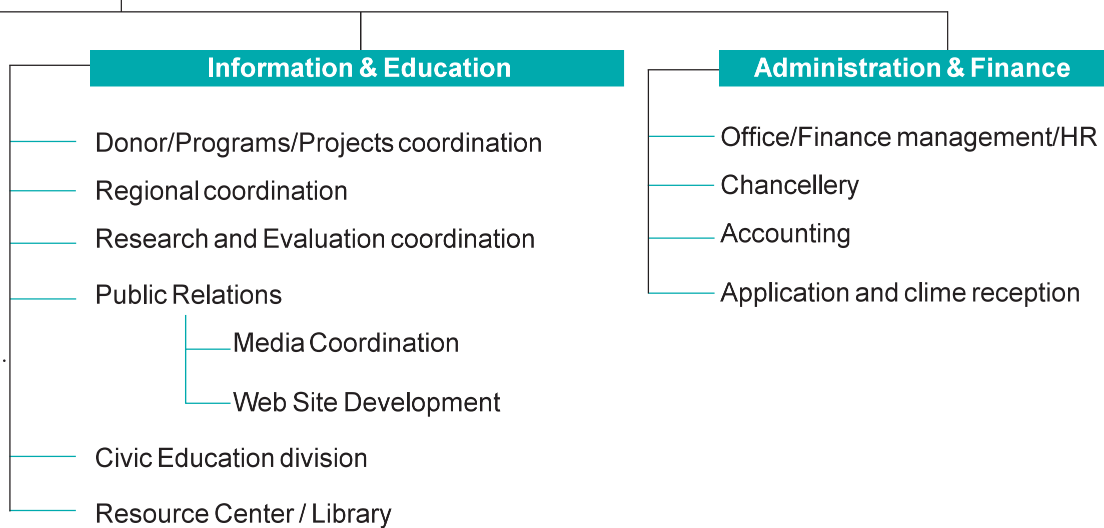
Organizational Structure of Office of Public Defender



DEFENDER

Advisor

Defender



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SAMEGRELO-Z. SVANETI
Zugdidi

SAMTSKHE-JAVAKHETI
Akhaltsikhe

KAKHETI
Telavi

2004

Draft Law on Compulsory Civil Service

The ability to reject being conscripted into military service is a vital aspect of freedom of expression, conscience, and belief adopted by the Universal Declaration of Human Rights and stated by other universal and regional institutions working in the field of human rights. During the last decade, advanced democratic countries that have drafts have enacted legislation replacing conscription with civil service.

International acts with legal force that enact alternative civil service do not exist on the universal or regional level. The UN and European Union have adopted more than one resolution and recommendation that has been considered by state parties as standards for the foundation of such a service on the national level (e.g. European Union Assembly Recommendations # 816 (1997) 1518 (The UN Commission of Human Rights of 1987, 1989, 1993, 1995, 2002 Resolutions).

The Recommendations are:

a) To provide all conscripts with information on the possibility of doing military service in the form of an alternative civil service, as well as with information on the rights of such conscripts;

b) Alternative service shall actually be that of civil service, and its intent is neither humiliating or punitive in nature;

c) Any differences in duration between military and alternative civil services in states where such a difference exists, shall not aim at the punishment of people who due to conscience or belief refuse to do military service;

d) The right to reject military service shall be granted to people before, during, and after conscription, as well as while doing military service;

e) Civil service shall have simple conscription procedures.

The Law of Georgia On Non-Military, Alternative Labor Service that establishes the right of Georgian citizens to reject conscription on the basis of conscience or religion, and to serve in an alternative, non-military capacity, was adopted in 1991, but not a single conscript has ever been conscripted in compliance with this law.

In 1997, a new law on non-military, alternative labor service was adopted, but it had not been enacted until 2001, when the Department of Non-Military, Alternative Labor Service was founded.

An analysis of the normative framework of non-military, alternative labor service enables us to conclude that the current law on non-military, alternative labor service is not in compliance with the appeals formulated in the resolutions and recommendations mentioned above (which has more than once attracted the attention of international organizations involved in human rights). There is a controversy between acts regulating military service and the alternative non-military labor service, as the law on alternative service is inadequate in its legislation, and specific articles are vague and allow for multiple interpretation. In addition, the procedures for alternative service envisaged by the law are inconsistent and incomplete.

The Public Defender's interest in this issue concerns the necessity of providing for the protection of the rights of individuals who on the basis of freedom of opinion, conscience, and religion, refuse military service, as well as by creating mechanisms for military service that meet the public's interests. Through a partnership project created with the Public Defender and the European Union, two draft laws and a number of amendments were drafted in this regard: one on compulsory civil service and another on the elimination of forced labor, and a package of amendments to be introduced into relevant bylaws envisaging the requirements and standards stipulated in the Universal Declaration of Human Rights, the Civil and Political Rights Pact, and the European Convention of Human Rights. The package of draft laws is in compliance with the appeals of the resolutions and the recommendations mentioned above, barring a paragraph referring to granting the right of an individual to reject doing military service. In our opinion, taking into consideration the problems in the army, the establishment of this right might threaten the unity of the army by encouraging people to move to the alternative civil service.

The package of draft laws envisages the following amendments:

1. CONCEPTUAL

Designing compulsory civil service as a form of military conscription
If the state decides to make compulsory civil service equal to conscription, an individual's service will be considered as the fulfillment of one's state duty. Otherwise there will be the threat of discrimination, and the effectiveness of such a service will be called into question.

Compulsory military service as socially beneficial
Currently, Georgian society as a whole does not benefit from the work of a person conscripted to this service. Taking into consideration the experience of western European countries, this service can substantially contribute to the creation of effective social services. The draft law envisages mechanisms providing the reduction of social costs through employment.

Defining evasion of civil compulsory service as an act punishable by criminal law
According to the current law, actions evading conscription to non-military, alternative labor service only qualifies as a disciplinary violation.

Protection of the regular labor market
Currently, the non-military, alternative labor service competes with the regular labor market.

Civil compulsory service (according to the current law) is 6 months longer than compulsory military service.
This provision will make prevent conscripts looking for an "easier" way out of military service, and will also, by serving for a longer period, prove the strength of the conscript's belief.

The conscript shall have to give a reason for choosing civil service.
As a person cannot 'prove' one's conscience, belief, or religion, the state will trust such conscripts unless

there is a reason to believe otherwise. This liberal approach is balanced out by the relatively longer period of civil service, its relative lack of prestige, and low pay.

2. PROCEDURAL

To simplify the process of conscription – by reducing the number of individuals conscripted, specifying the competence of the subjects participating in the conscription process and reducing the terms for application revision;

To improve the process of conscription – e.g. to regulate the reasons for refusal of service, define the rights and duties of employers, arrange the issues in connection with the lawsuits during the conscription period, establish criminal law sanctions, etc. (the procedures identified in the current law and charter in regard to the alternative service are not consistent and complete).

3. ORGANIZATIONAL

Regional (town) draft board – decisions in regards to drafting or refusal to conscription

Non-military, Alternative Labor Service State Commission
The implementation of the functions of the state commission as stated by law requires the existence of a permanent and efficient state body. This consulting body currently examines a personal file of a conscript. Yet according to the draft, the basic function of the commission is to define and support basic directions of the service policy.

Non-Military, Alternative Labor Service Department
According to the current law, the status of the department is vague. Though it was created to execute the commission's decisions and is under its subordination, the commission is also within the competence of the Ministry of Labor, Healthcare and Social Welfare. According to the law, the department is liable to fulfill the functions delegated both by the commission as well as by the Minister of Labor, Healthcare and Social Welfare.

4. LEGAL- TECHNICAL

To eliminate lack of coordination between bylaws regulating military service and those regulating the alternative labor service, and to bring them into compliance with the Constitution.
To improve the existing legislation on alternative service.

Appendix: Individual Cases of Freedom of Speech and Press

2004

THE CASE OF VAKHTANG KOMAKHIDZE

On the morning of March 5, Vakho Komakhidze, correspondent of the *Rustavi 2* program "60 minutes", was returning from Shuakhevi to Batumi in his car when at the traffic police station of Khelvachauri he was attacked by special assignment military men and was beaten in the presence of policemen. Komakhidze suffered a concussion and multiple bodily and facial injuries. He was taken to Batumi hospital No1. and was not allowed to leave the hospital. He was released and only after the intervention of the central government. One of the participants in the incident, policeman Revaz Gvarishvili, confirmed that the police were assigned to stop Komakhidze's car. The previous night, a *Rustavi 2* cameraman had his camera confiscated in Batumi.

THE CASE OF MZIA AMAGHLOBELI AND ETER TURADZE

On March 31, at 16:00 p.m. on the Batumi Boulevard, two journalists from the newspaper *Batumelebi*, Mzia Amaghlobeli and Eter Turadze, were detained. As the policemen declared, they were under the influence of drugs, which is why they were detained. The policemen decided to take them for a drug test, but the detained journalists demanded to take a witness with them when they were taken to the Ministry of Internal Affairs.

After the journalists' detention was covered on television and the central authority made a statement over this fact, in support of them, the journalists were released the same evening.

THE CASE OF JOURNALISTS OF *BATUMELEBI*

On January 25, 2004 the police physically assaulted journalists at the newspaper *Batumelebi*. The same day, after the President held a military parade in Batumi and left the city, there was a peaceful protest by supporters of the President, which later grew into a large demonstration.

The peaceful demonstration was attacked by special troops and was dispersed. Nevertheless, the demonstrators continued marching in the streets.

Journalists of the newspaper *Batumelebi* were in the center of the events in order to report on the events.

After the dispersal, the situation familiar to the journalists was created, which often had been taken before in response to people expressing opinions differing from those of the local authority, namely: several times the same group of law enforcers would issue orders to disperse protests and even to attack journalists physically.

On January 25, *Batumelebi* journalists were prevented by troops on special assignment from reporting. The troops insulted them, damaged their digital camera and took away the chip where they had recorded events and attack of the group.

In recent times, there have been numerous incidents of police verbally insulting journalists from *Batumelebi*, as well as physical assaults and damage to their equipment. The editorial staff applied to the Ministry of Internal Affairs of Adjara regarding these facts and demanded that they stop blackmailing and bullying journalists and instead provide them with normal working conditions.

THE CASE OF TELAVI TV COMPANY *TANAMGZAVRI*

Zurab Kumsiashvili, the founder and president of the independent TV company *Tanamgzavri* in Telavi, was forced out from his own company. A person - Luka Ramazashvili, known by the nickname “Feodali” (feudal lord) in Kakheti, together with armed security forces, burst into the TV company’s president’s office on March 2. Ramazashvili and his companions physically assaulted Kumsiashvili.

In Kumsiashvili’s words, the armed group immediately held a “founders’ meeting” attended by two founders of *Tanamgzavri* – Vano Akhalmosulishvili and Marieta Grishikashvili. Enri Kobakhidze, whose candidacy had been named by Luka Ramazashvili, was elected to the position of president, which since 1989 had been occupied by Zurab Kumsiashvili. The meeting was held under the personal supervision of Ramazashvili and his armed security members.

Zurab Kumsiashvili explained that his family had been under permanent threat and pressure for a few months. The president of *Tanamgzavri* even had to leave Telavi for some time and to stay in Tbilisi. Ramazashvili’s group is trying to get a hold of 40% of shares belonging to Kumsiashvili. Financial documentation has been removed from the TV company. Five employees, including those who supported Kumsiashvili, have been dismissed from the company. A trial is now underway.

Tanamgzavri has been broadcasting in Telavi since 1989. In 1994 it started to collaborate with *InterNews* and was a partner of the broadcasting company *Rustavi-2* in the Kakheti region.

THE CASE OF THE BROADCASTING COMPANY *HERETI*

A TV transmitter and copy desk computers were stolen from the office of the broadcasting company *Hereti* late at night on May 17 by unnamed people. The burglary apparently had occurred in order to disrupt the company, as much valuable property remained untouched. *Hereti,* which broadcasts over the entire Kaheti region, temporarily stopped functioning. The case was investigated by the Investigation Subdivision of the Investigation Department of the Lagodekhi region. The guilty party has not been arrested so far, but the lost equipment was found and returned.

THE CASE OF REVAZ OKRUASHVILI

In August 2004 the Regional Police of Shida Kartli apprehended the editor of the local newspaper *Khalkhis Gazeti* (People’s Newspaper) Rezo Okruashvili on charges of drug use and distribution. After searching the journalist, the police found drugs. Weapons and drug substances were also removed during the search of his car, flat and office.

Upon his arrest, NGOs protecting human rights stated that Rezo Okruashvili's arrest had been conducted in violation of the law and procedural norms. There also was a justified suspicion that the reason for his arrest was the publication of stories in *Khalkhis Gazeti* and a journalistic investigation conducted by Okruashvili.

The representatives of the Regional Police of Shida Kartli stated that Okruashvili is known as a drug addict in Gori and was apprehended for selling drugs, though the editor was not arrested during the act. Why did not the police wait for the moment when he transferred drugs? Why was he arrested during the journey ? These are questions the police are unable to answer. Regional police employees did not even have court permission to arrest Okruashvili and to conduct a search of his house. The police declare that Okruashvili's arrest was due to urgent necessity.

Neither newspaper employees nor independent witnesses attended the search in the newspaper office. The regional police did not submit search protocols even though the arrested person's lawyers maintained that the law so obliges.

The newspaper had been sharply criticizing the president's representative in the region, Mikheil Kareli, and wrote about violations and corruption in the police. In addition, Okruashvili irritated oowner of Gori TV company *Trialeti* and Parliament Member Badri Nanitashvili when the journalist inquired about information on spending resources from the President's Fund.

The trial against Okruashvili, which included a three-month preliminary detention, was also held with serious procedural violations. The trial was held behind closed doors. The entrance to the court was defended by security forces, as well as by the police. The unlawful closure of the court resulted in disorder at the entrance, where NGO representatives were injured and journalists' video and photo cameras were damaged.

The court decision was evaluated by organizations of human rights protection in Georgia as another example of the court's inadequacy. The release of Rezo Okruashvili became possible only through a procedural deal between him and prosecutor's office.

THE CASE OF *THE GEORGIAN TIMES*

On July 14, 2004 the Financial Police entered the newspaper *The Georgian Times* without a warrant and seized all financial documentation.

The Financial Police showed the newspaper employees a document signed by the head of the Operative Service of the Police, Irakli Pirveli, stating that on the basis of on-line information it was necessary to conduct an accounting audit of the newspaper. Head of the Financial Police Davit Kezerashvili stated that his structure did not have time to acquire a court warrant since it was urgent to audit the newspaper's documentation. In compliance with the law on cases of emergency, the Financial Police have the right to carry out such examination without a court resolution and acquire the warrant within 24 hours. However, the document presented to the editorial staff states that the timeframe of the audit is July 14 to July 29, 2004. "They rushed in as though we were going to destroy or hide those documents," says editor Nana Gagua. Kezerashvili says that the Financial Police entered the office on the basis of on-line information and aimed to examine the newspaper's settlement with the state budget. When Kezerashvili was asked as to whether they had had information on the intention of the staff to destroy the documentation, he answered that the Police did not have such information. "It was a usual examination. We could have brought policemen in masks to withdraw the documentation, but we did not do that," he said the. Kezerashvili's agency addressed the Mtatsminda-Krtsanisi Court for the warrant on July 15.

The newspaper's publishing house states that they do not have any outstanding debts to the budget and were expecting a planned tax inspection at the beginning of August. Both journalists and editors linked the entry of the Financial Police to the organizations associated with Tbilisi Prosecutor Valeri Grigalashvili,

who had been threatening the newspaper with closure for more than a month. A series of materials published in *The Georgian Times* had caused the irritation of Valeri Grigalashvili. As early as January the newspaper published information on the purchase of a Mercedes for the city prosecutor by City Hall, which was confirmed by the then-Mayor of the City, Vano Zodelava. Articles discrediting Valeri Grigalashvili had appeared in the newspaper several times over the previous month. Among them was an interview with prosecutor Lordi Lebanidze, who leveled accusations against Grigalashvili. The newspaper also addressed breaches in the property declaration of Valeri Grigalashvili and his brother Nodar Grigalashvili, and covered the case of Tbillitontsarmoeba (Tbilisi Metal Production), whose employees accused Grigalashvili of seizing the factory. In the words of the editor of *The Georgian Times*, Grigalashvili had been consistently threatening the newspaper and its founders. The Financial Police declare that the seizure of the documentation from the newspaper had nothing to do with Grigalashvili. Valeri Grigalashvili also denied having any connection with the audit of the newspaper. However, in an interview given to *24 Saati* (24 Hours), he stated that he would assign the Investigation Department of the Prosecutor's Office to examine the activities of *The Georgian Times*, in particular, some of the agreements concluded by the newspaper and in case of signs of crime, he would lodge charges against the newspaper. The list of suspicious agreements also included the name of former Georgian Railway head Akaki Chkhaidze. According to Valeri Grigalashvili, he wonders "what the conditions for concluding agreements with such odious figures were."

The employees of *The Georgian Times* call the July 14 audit "an attempt to terrorize and put pressure on the newspaper." The recent events developed in the Georgian media also cause concern among representatives of the independent media. "Has the turn of newspapers come?..." was the title of an article in *Resonance* in which the newspaper reflects on the events in *The Georgian Times,* and in the editorial postscript discusses the tendencies of pressure on the independent media in Georgia and the threat of the government imposing control on the press. "The implementation of punitive sanctions against the independent media is absolutely inadmissible," it stated in the editorial postscript, whose authors advise the authorities to fight against corruption in the government structures and law enforcement agencies.

The Financial Police did their examination of the financial documentation of *The Georgian Times* at the end of September. They did not find any violations, and the possibility of charges against the management of the newspaper was dropped. As stated at a press conference of the newspaper, the Financial Police assigned the newspaper to pay arrears of only 911 GEL, which has already been paid. Editor of the newspaper Giorgi Kapanadze declared that this amount was that of current taxes and would have been paid within the terms defined by the law without the forceful entry of the police.

As explained by *The Georgian Times* President Malkhaz Gulashvili, the allegation of concealing taxes from the budget was not proved and the attack of the police was a result of the fact that *The Georgian Times* had disclosed information about the activities of government officials. He also mentioned that together with other international organizations, this example of pressure on the mass media was condemned by *The Washington Post.*

GENERAL COURTS' PRACTICE IN THE FIELD OF FREEDOM OF SPEECH AND EXPRESSION

The renewal of the legislation regulating freedom of speech revealed both positive tendencies and ideological problems in court practices, which impede judges from adopting liberal values. A good example of this is the decision of the Gori Regional Court in which Judge G. Gochitashvili stated that the new Law "on Freedom of Speech and Expression" is unconstitutional and not in compliance with the European Convention on Human Rights. In the same decision, the obligation to apologize to the mass media should also be considered as a result of ideological conflict. This institution is unknown to the Civil Code of Georgia and the now invalidated law "on the Press and other Mass Communication Facilities" had no such provision either. Apology was foreseen in Soviet legislation, particularly, in the Code of Civil Law of Georgian SSR adopted in 1964. As of now, the introduction of direct prohibition on a court's forcing to express an apology on the basis of the Law of Georgia "on Freedom of Speech and Expression" is welcomed.

ZURAB ZHVANIA VERSUS *TAVISUPALI GAZETI* AND IRMA MESKHIA

Complaint: Zurab Zhvania lodged a complaint against *Tavisupali Gazeti* (Freedom Newspaper) and Irma Meskhia in the Didube-Chughureti District Court. The basis for the lawsuit was an article in *Tavisupali Gazeti* published on January 20-26, 2004 with the title *"What awaits Zurab Zhvania after the inauguration: will Saakashvili allow him to get away with hunting for bullions?"*

As the plaintiff stated, the defendant disseminated inaccurate information, in particular:

> *"Zurab Zhvania is behind the cases of the Football Federation, the Railway Department and Madneuli."*
>
> *"At one meeting Zhvania directly told Giorgi Lezhava that if he wanted to be the chief of the railway department, he would have to pay 2 million USD."*
>
> *"Zurab Zhvania holds talks with internationally wanted criminal George Curtis."*

According to the plaintiff, he had experienced significant moral damage due to the defamation of his honor, dignity and business reputation. In the opinion of Zurab Zhvania, the statements mentioned in the article were used in such a context that his reputation had been discredited (at the time he was State Minister of Georgia).

The defendant allegedly acted deliberately and wrongfully by disseminating the information, the goal of which was to accuse Zurab Zhvania of financial wrongdoings and to damage his public image as state minister and a politician, as stated by representative of the plaintiff, Dimitri Gabunia. To confirm this, the plaintiff referred to a commercial aired by the TV-Company *Rustavi-2* where information was provided on the details of the article. Zhvania's photo in the commercial was also displayed along with gold bullions.

As Gabunia explained, the European Court makes a distinction between two types of libel: the first is based on information that infringes upon the honor and dignity of a public servant, where public airing is considered libel; the second is considered a subjective judgment, which is not libel. In Gabunia's opinion, since the information disseminated by the defendant was about Zurab Zhvania, referencing concrete information, it could not be considered as subjective judgment but rather was libel.

The plaintiff pointed to the standards stated by the European Court, according to which judgments disseminated without double-checking and are based on examinable facts, damage a public servant's honor and dignity are not acceptable. The plaintiff also referred to the European Court's decision on the case "Thorgeyr Thorgeyrson versus Iceland," where the following is stated: "*In a case of a person who declares that his freedom of expression was restricted without any necessity, the mentioned right must have been executed in terms of democratic principles: he must have treated the lawfulness of his statement fairly to be formulated in compliance with democratic objectives. Furthermore, the claimant must have facilitated the mentioned objectives efficiently and have had a factual basis."*

In the opinion of the plaintiff, all the prerequisites to satisfy the suit are obvious: a) Zurab Zhvania's honor, dignity and business reputation were damaged; b) information damaging his honor, dignity and business reputation had been disseminated; c) the disseminated information did not represent the facts; d) the violation of personal non-property rights was caused by a wrongful deed. Proceeding from this, Zurab Zhvania demanded that the information be denied through the same media outlets and 5000 GEL be paid in compensation for moral damages.

The editor of the defendant newspaper Tamar Lepsveridze, journalist Irma Meskhia and their representative Paata Kiknavelidze did not recognize the suit as justified and pointed out the following circumstances:

According to them, the distributor of the commercial is *Rustavi-2,* and the plaintiff should have filed a claim against the TV station. That the article stated that Zurab Zhvania is behind the Football Federation and Railway Department is inoffensive, since the publication does not concretely name which case of the

Football Federation Zurab Zhvania is behind. According to the defendant, the information mentioned is not a judgment on a fact aimed at informing the society. While working on an article, nobody can limit the right of the journalist to express his or her imagination and nowhere in the article is the word "criminal" stated. To confirm that in this case the Civil Code does not apply, the defendant referred to the decision of the Constitutional Court of March 11 2001 in the case *"Akaki Gogichaishvili versus the Parliament."*

According to the explanation of the defendant, George Curtis represented an Australian Company connected with the gold business in Georgia. Hence, if the state minister had any negotiations with him, it is unclear what was offensive. And if the plaintiff considered talks with Curtis offensive, this, in the defendant's opinion, a priori confirms the opinion that Curtis was a felon and criminal.

In the opinion of the defendant, the case did not have enough material evidence to confirm the type of damage Zurab Zhvania had allegedly experienced.

Furthermore, allegedly Zurab Zhvania did not try to apply Part 4 of Article 18 of the Civil Code, according to which *"A person whose honor and dignity were damaged by information published in the mass media has right to the publish information in the same media outlet."* Instead, two months prior to bringing the case before the court, the editor of the newspaper was very strictly "invited" to the Chancellery.

The defendant also noted that the newspaper's interest was ignited by Giorgi Lezhava's statement that if such a person as Zurab Zhvania did not trust him, he would resign and leave Georgia despite the fact that he highly respects Georgian society. After this statement, the newspaper began to search for materials and recorded an interview with Lezhava himself. It was not specified in the article whether Zhvania accepted the sum or not, rather it stated that he had asked for it. The journalist said that he had not asked Zhvania to comment.

In regard to the photo published on the first page of the newspaper where Zurab Zhvania was depicted against a background of golden bullions, according to the defendant's explanation, the photo had not been edited and it was kept both in Levan Mamaladze's and Zurab Zhvania's houses.

According to the explanation of journalist Irma Meskhia, she obtained the information about the meeting that was conducted between Zhvania and Curtis from Curtis himself.

Decision: According to the decision of the Didube-Chughureti District Court (Judge S. Kvaratskhelia), the lawsuit was satisfied. The defendant was obliged to deny the information disseminated in the following way:

> *Information that Zurab Zhvania is behind Football Federation, the Railway Department and Madneuli cases does not represent fact.*
>
> *Information that at one meeting Zhvania told Giorgi Lezhava straightforward that "to become the chief of the Railway Department you will have to pay 2 million USD" does not represent fact.*
>
> *Information that Zurab Zhvania is having negotiations with internationally wanted criminal George Curtis does not represent fact.*

The defendant was also obliged to pay to compensate for moral damages in the amount of 5 thousand GEL.

Appeal: The above-mentioned decision was appealed by *Tavisupali Gazeti* and Irma Meskhia.

Zurab Zhvania refused to demand compensation for moral damages.

Decision: Consistent to the decision of the Appeals Chamber on Civil, Entrepreneurial and Bankruptcy Law at Tbilisi District Court (judges: L. Kobaladze, T. Devrisashvili, N. Nazgaidze), the part of the decision of Tbilisi's Didube-Chughureti District Court of March 23, 2004 imposing damages of 5 thousand GEL

was cancelled and case proceedings in this area stopped. The other parts of the decision of the court remained unchanged. The appeal of the *Tavisupali Gazeti* was not satisfied.

Motivation: The court considered it expedient to cancel the decision of the lower court in compensation for moral damages, while the rest of the decision remained unchanged due to the following circumstances:

International agreements signed by Georgia and acts of Georgian legislation state guarantees for expressing and disseminating judgments and information, also for protecting honor and dignity of persons.

Consistent to the chamber, this is a case where legislation envisages the intervention of the state in the implementation of freedom of speech, and the state conducts enforced measures to protect honor and dignity of persons. It is also to be taken into account that the range of criticism of the persons in political positions is wider than that of the private persons. However, the criticism shall be constructive and shall not be transformed into a criticism obviously irrelevant to the matter of discussion.

A sharp evaluation of the actions of persons in political positions shall be adequate to the facts available to the initiator of the suit, otherwise it can become the basis for the journalist's culpability.

The implementation of the freedom of expression is the goal of the Law "on Press and other Mass Media." In compliance with Article 21 of the law, during his/her activities a journalist shall observe the principles established by the International Federation of Journalists. A journalist is liable to double-check the validity of the information acquired. S/he is responsible for his/her article and in addition, responsibility shall also be borne by the editor's office in order to avoid the release of unspecified, distorted information or such piece thereof that deliberately misleads society.

In the opinion of the court, the defendant's party failed to prove the fact that Z. Zhvania directly told G. Lezhava that he had to pay 2 million USD to become the chief of the Railway Department. The chamber assumes that this information is beyond the limits of criticism defined by the legislation in regard to persons in political positions, because it shows an attempt on the part of the plaintiff to extort a bribe and demeans his honor, dignity and business reputation.

The chamber did not share the appellants' view that expressions – *"Zhvania is behind Football Federation, Railway Department and Madneuli cases," "Zurab Zhvania is having negotiations with an internationally wanted criminal George Curtis*" are evaluative judgments. Even if the facts are admitted to be a judgment, if it contains proof of violation of law or moral norms by a person on committing a dishonest act, it could become subject to Article 18 of the Civil Code.

When Zurab Zhvania was mentioned as being behind so-called "scandalous cases," when it was inferred that he was having talks with an internationally wanted person, in such cases the journalist's publication of such information abuses the person's honor and dignity.

MAMUKA NOZADZE VERSUS SABA TSITSIKASHVILI

Complaint: On March 2, 2004, Mamuka Nozadze applied to the Gori Regional Court and on the basis of Article 148 of the Criminal Code demanded bringing a criminal case against journalist Saba Tsitsikashvili.

The application was sent by the rule of principal challenge from the Gori Regional Court to the Tbilisi Primary Court and then by means of the same rule to the Kaspi Regional Court.

According to the complaint, Saba Tsitsikasvili's article entitled "*Lawyer Blackmails Judge*" and the subtitle "*The Big Triumvirate is Splitting: Intrigues and Contrivances*" was published in the 1-8 March 2004 issue of *Trialeti*. In the opinion of the applicant, this publication disgraced his character and is libelous, as it accuses him of blackmailing a judge.

In Mamuka Nozadze's opinion, the facts and events described in the publication do not represent the real facts, and the journalist disseminated hearsay and non-existent information in his participation in the offense in order to degrade his honor and dignity or to otherwise damage him.

The applicant also referred to another publication of Tsitsikashvili: "*Lawyer tries to Slender the Journalist,*" where it is said: "*Lawyer Nozadze was eager not to have his accusations presented to Mariamidze. He also knew that the judge never made comments and thought 'the journalist does not know anything and will not go to the Primary Court, cannott study all five cases and accordingly, will not be able to make conclusions.*" *Later he learned that I started to inquire about all the cases. Nozadze got in touch with me and said the following in a loud tone:*

> *"What materials do you need? I have already supplied you... you are an agent, you have told everything to Mariamidze. You write stories ordered by Kotiashvili... You are slenderer". Nozadze himself was trying to slender the journalist. Namely, he sent Judge Gochitashvili to Mariamidze demanding 500 USD or otherwise threatened to use a journalist to publish a letter. Nozadze also conveyed through Gochitashvili that if he were paid, he would call the journalist (Saba Tsitsikashvili) to make him* "*block*" *the story and so resolve the problem. This fact is denied by Gochitashvili. Who guaranteed Mamuka Nozadze that by his order the publication would be 'blocked?' Did the lawyer assume that if Mariamidze acted upon blackmail and paid money, he would give me part of that money to* "*block*" *the material? He could have been stingy and asked not to publish the material...*

According to Mamuka Nozadze's testimony, the facts depicted in the article do not represent reality and are the result of the journalist's imagination.

In his explanation, Saba Tsitsikashvili noted that he had met both lawyer Mamuka Nozadze and judges A. Mirianashvili and K. Sulaberidze. As the journalist stated, the fictitious facts and circumstances stated in the article are not factual, but rather material based on stories told by the persons mentioned above.

The journalist also referred to his article "*Who Disgraces the Authority of the Victorious Party?*" published in issue March 8-15 of *Trialeti*. In the publication he calls on the Prosecutor's office to institute criminal proceedings against Mamuka Nozadze for blackmail against judge Alex Mariamidze. According to the article, Mamuka Nozadze was extorting 500 USD from Alex Mariamidze.

Decision: Kaspi Regional Court Judge G. Miladze issued a resolution to institute criminal proceedings against journalist Saba Tsitsikashvili.

Motivation: The nature of article 148 of the Criminal Code is "*libel with accusation of offence.*" The mentioned offence could be committed only deliberately.

In the opinion of the court, the intention of the journalist Saba Tsitsikashvili was not the deliberate dissemination of false information, but the disclosure of an offense committed by lawyer M. Nozadze. So, his action cannot be considered illicit, hence, there are no signs of violation of article 148 of the Criminal Code.

Appeal: The decision of the Kaspi Regional Court was appealed by Mamuka Nozadze by the rule of private appeal. The Tbilisi Primary Court overruled the mentioned decision on July 21 2004 and returned the case to Kaspi Regional Court for retrial.

Decision: According to Kaspi Regional Court Judge M. Enukidze's resolution, criminal proceedings were instituted against Saba Tsitsikashvili.

Motivation: The court noted the circumstances that article 148 of the Criminal Code envisaged culpability for libel with accusation of offense. In compliance with the amendments introduced in the Criminal Code on June 24 2004, the mentioned article was deleted from the code, meaning that the law has abolished the offense of this act.

In compliance with Paragraph "c" Part one, Article 28, criminal proceedings shall not be instituted and those already instituted shall be stopped if a new law abolishes culpability. In the given case the Criminal Code does not envisage culpability for libel, hence, no criminal proceedings shall be instituted.

MAMUKA NOZADZE VERSUS *TRIALETI*

Complaint: Mamuka Nozadze filed a complaint in Gori Regional Court. The basis for this was T. Vachadze's article "*Mamuka Nozadze is summoned*" published in *Trialeti* (9-16 August 2004).

According to the plaintiff, T. Vashadze is engaged in biased coverage of facts and events. The journalist was not referring to the facts and was trying to disseminate damaging rumors and information. Mamuka Nozadze considered that the following passage from the publication could be assessed as such:

> *"When Laura Golijashvili published her last article in* Trialeti*, Mamuka Nozadze burst into her house and told her family members hearsay about her, as a result of which L. Golijashvili had serious conflict in the family."*

This information was evaluated by the plaintiff as a serious accusation, since he was accused of causing the split of the family.

Mamuka Nozadze also appealed to the placement of his photograph on the first page of the newspaper (with caption "*Story of Dollars Devoured by Mamuka Nozadze"*). According to the plaintiff, the media had no right to publish the photo without his consent.

According to Mamuka Nozadze's statement, due to the dissemination of libelous and disgracing information and the publication of his photo without his consent, his human, professional, and public servant's rights and reputation had been degraded. The plaintiff demanded to force the defendant to publicly apologize and to pay 10 thousand USD for causing moral and material damage.

The defendant did not acknowledge the charge and explained that information disseminated was not libelous and disgracing; the photo had been taken in the program Tema (Topic) of the TV company *Trialeti* in which Mamuka Nozadze was participating. He had been invited to that program as an official person – Chairperson of Election Commission in the Liakhvi Region. As the defendant stated, the image of the plaintiff is an inherent part of public information and on the basis of the second sentence of Paragraph 5, Article 8 of the Criminal Code, no consent is required for the publication of such a photo. To refute the suit, the defendant also referred to Subparagraph "a" Paragraph 2 of Article 3 and Part 5 of Article 6 and Subparagraph "a," Paragraph 1, Article 9 of the Law of Georgia "on Freedom of Speech and Expression."

Decision: The Gori Regional Court (Judge - G. Gochitashvili) partially satisfied the complaint. The newspaper *Trialeti* was forced to pay 300 GEL to the plaintiff to compensate the moral damages caused by the publication of the photo and to make an apology through the same newspaper. As far as material compensation was concerned, the complaint was not satisfied due to groundlessness.

Motivation: In compliance with Article 3 of the Law of Georgia "on Freedom of Speech and Expression" (June 24 2004), *"The state recognizes and protects the freedom of speech and expression as eternal and supreme human values. While executing governance the people and the state are limited by these rights and freedoms, as well as by the current law."* In terms of the same law, freedom of expression means absolute freedom of opinion and opinion is protected as an absolute privilege. Any restriction of the rights recognized and protected by this law shall be introduced only if it is so foreseen by a clear and predictable law and the virtue protected by the limitation is outweighed by the damage caused by the limitation. The interpretation of this law shall be made in compliance with the Constitution of Georgia, international legal commitments of Georgia, - among which are the European Convention on Human Rights and precedent law of the European Court of Human Rights," - it was stated as part of the decision.

The judge had also referred to Article 19, Paragraphs one and four; Article 24 and Article 17 of the Constitution of Georgia, also Article 18 of the Civil Code, which envisages protection of honor, dignity and business reputation by means of court. On the basis of Part 5 of the same article, the right to one's image is an independent non-property right of a physical person. The freedom of an individual is the object of right of one's own portrayal – that his/her picture be exposed publicly and be shown to society in the form s/he likes is an indispensable right of identity. Publicizing a picture of an individual upon the discretion of only the author is considered an exploitation of the identity of the individual depicted in the picture. Such exploitation of an individual could aim at discrediting of the person depicted in the picture (see comments of the Civil Code, Book One). Also while dealing with the lawfulness of the publication of the picture, a collision of individual and public interests could occur – the individual's interest could oppose the publicizing of his/her picture, on the one hand, and the interest of the public – to get information of public events, on the other. In such circumstances the public interest prevails over the individual's interest. The picture of a publicly recognized person is an inherent part of public information since an official person is involved in current events.

Furthermore, the judge noted that protection of the special interests of a person in some cases could become the basis to ban the publication of the picture of a person involved in current processes if the publication of the picture is beyond the interests of the public and, proceeding from personal relations, aims at achieving retribution and causes the discrediting of the individual's honor, dignity and public reputation.

The judge considered that in the given case the plaintiff, being a public servant, had ceased his commitment to the public good by attaching priority to personal interests rather than the public interest. The frames allowing limits on criticism had been infringed and the individual's rights to his own picture, since photo-video-shooting conducted publicly was used not for depicting a public event, but to discredit him. The disputed photo was used in regard to such a publication which, proceeding from its content, is a continuation of "some story" unacceptable for the plaintiff and is not connected with his public activities.

In the judge's opinion, the presentation of an identity – and not of a public servant – with intention to uncover his unacceptable, culpable behavior proceeding from non-public interest had gone beyond the limits of criticism of an individual and public servant determined by the law. Information not subjected to double-checking together with the publication of the photo had acquired irrelevant character towards the disputed subject. The defendant's action containing indirect, unverified evidence on the violation of the law or moral norms on the part of the plaintiff gave a basis for civil culpability of the defendant due to the publication of a picture. By his purposeful action, the defendant infringed upon the personal non-property rights of the plaintiff.

The judge referred to Article 10 of the European Convention on Human Rights and Freedom Protection and explained that in addition to freedom of speech and expression, it envisages a certain balance of commitments and liabilities; in case of violation of these conditions, the freedom of speech comes into conflict with the freedom of honor and dignity of a person.

> "*Proceeding from what was mentioned above*, the *Law of Georgia* "*on Freedom of Speech and Ex pression" establishes* "*absolute freedom of opinion," but according to the Constitution of Georgia, the Provision of European Convention of Human Rights and Fundamental Freedoms, freedom of speech and expression does not belong to the absolute freedoms that may not be restricted... it is restricted by the* "*rights and freedoms" of others – Paragraph 3, Article 19 of the Constitution of Georgia – value of freedom of expression is opposed by not the least important value of* "*honor and dignity of a person," stated in Article 17 of the Constitution, this Law of Georgia establishes a hierarchical equality of the normative acts effective in the country to resolve legal collision and define the legal strength of such acts, in this case the Constitution of Georgia prevails" (the style is retained)," –* is stated in the section on motivation.

The judge referred to Paragraph 2 of Article 44 of the Constitution according to which "*The exercise of the*

rights and freedoms of an individual shall not infringe upon the rights and freedoms of others” and defined this constitutional norm as follows: the freedom of each person ends where other’s rights and freedoms are infringed upon.

Hence, due to permanent disgrace, infliction of civil liability upon the defendant, in the judge’s opinion, shall not be considered as infringement of freedom of expression.

The judge referred to Parts 1,2, 5 and 6 of Article 18 and Part one of Article 413 of the Civil Code as the basis for the partial satisfaction of the claim. The claim for compensation of material damage was not satisfied by the court since the plaintiff failed to present relevant proof on the fact of material damage and the volume thereof as required by Criminal Code article 102.

DODO CHOKHELI VERSUS THE “INTELLIGENTSIA OF THE DUSHETI COMMUNITY” AND *AKHALI VERSIA* (NEW VERSION)

Complaint: Elnar (Dodo) Chokheli lodged a complaint in the Dusheti Regional Court against 41 people and the newspaper *Akhali Versia*, noting that the 41 individuals who call themselves the “Intelligentsia of Dusheti Community” disseminated against her and her family information that degraded them. Namely:

> *The appeal of the “Intelligentsia of the Dusheti Community” was published in “Akhali Versia” on June 7, 2004 with the title “Dusheti gamgebeli has been looking for the resolution to be endorsed on the application in the drawer.” In the mentioned appeal it is noted that “Dusheti is represented in the parliament by a veterinarian, a person with suspicious intellectual capabilities - Teimuraz Dolishvili, a typical “free eater” of the farm of the Soviet period, with a suspicious past and reputation. Dushetians remember trials where Dolishvili refused to give D. Chokheli’s (now his wife) child his surname on the basis that the child was not his!”*

The information disseminated was considered by the plaintiff as an offense not only against her and her child, but also against the Majoritarian deputy from the Dusheti region. According to Dodo Chokheli’s statement, the information disseminated does not represent the facts and was disseminated purposefully and culpably. The objective of the defendants was to offend the political views and status of the plaintiff’s family. As a result of the dissemination of the mentioned data, according to Dodo Chokheli, she had to call an ambulance.

Due to the infringement of honor and dignity, the plaintiff demanded a total of 21,450 GEL from the defendants for moral damage as well as for public denial of the disseminated information.

Some of the defendants (10 people) did not acknowledge the complaint and explained that the disputed appeal did not belong to them, as they had not even signed it and accordingly did not feel any responsibility for it.

Two of the defendants did not deny signing the appeal, though they added that in the version they had signed there was no information infringing upon the honor and dignity of the plaintiff.

Decision: Dusheti Regional Court (Judge – T. Jervalidze) partially satisfied the complaint: some of the defendants – S. Kbiltsetskhlashvili, D. Chikaidze-Vachadze, M. Zaridze, M. Veltauri, N. Lalialishvili, L. Buachidze and the Newspaper *Akhali Versia* was forced to deny publicly the information disseminated and pay a total of 700 GEL, including state tax.

Motivation: According to the court, the information disseminated was offensive for the plaintiff’s family as well as for her family members, as it does not represent the facts. To confirm this fact, the judge referred to the document presented, namely a copy of the birth certificate from a registry office proving the fatherhood of Temur Dolishvili towards his and Dodo Chokheli’s son, G. Dolishvili, which shows that fatherhood

was proved on the basis of the application submitted by Temur Dvalishvili on the day of the child's registration. According to the court, this fact proves that fatherhood was established due to the father's will. Dissemination of the wrong information infringed Dodo Chokheli's honor and dignity. On the basis of Parts 2 and 6 of Article 18 of the Constitution of Georgia, the court ordered the defendants to deny the information and to reimburse moral damage within justified norms. The judge considered that due to the dissemination of the mentioned information the plaintiff's health suffered, a fact confirmed by a certificate issued by the Dusheti regional hospital.

The court did not consider the application on the part of the defendants, stating that they were not guilty in the dissemination of the information because, though they did sign the letter, they were not aware of the content. Some of the defendants were not shouldered with any responsibility, since the documents proving their culpability were not submitted. These persons denied participation both in the preparation and the publication of the letter and did not admit to signing the document.

THE CASE OF AKAKI CHKHAIDZE, TV COMPANY *RUSTAVI-2*, AKAKI GOGICHAISHVILI AND A. MAGHLAPERIDZE

The decision on this case – the imposition of a financial sanction on the TV company – made by the Tbilisi Primary Court, actually put into question the existence of media. The decision is unprecedented and shall be evaluated as an attempt to infringe on freedom of speech – an indispensable right of a democratic society.

The journalistic investigation that became the subject of litigation referred to a problem of obvious interest of the public – the corruption. Furthermore, the Georgian Railway is the country's largest taxpayer. This fact increases public interest in the head of the organization even more. The status of Akaki Chkhaidze – former head of Georgian Railway is also worth mentioning – he is a public figure actively participating in the political process. Considering this information, society has a right to receive information on the activities of the railway and on its chairperson. Accordingly, the journalist had the legitimate goal to inform society on events within the Railway Department.

The journalist observed the principle of fair reporting, double-checking his information through various sources such as official documents and interviews people connected with the case. He also asked A. Chkhaidze for an interview, but was refused. In addition, the journalist appealed to the opinion of the public, the right granted by the Constitution of Georgia. For example, the phrase "Akaki Chkhaidze, known as a personal financier of the President's family..." was a statement reflecting the opinion of the public on the plaintiff. This statement was substantiated by the defendant by the fact that he gave a helicopter worth 7 million USD as a present to then-President Shevardnadze. But even without factual reason, the journalist had full right to convey the attitudes of the public. It is apparent that the attitudes existing in society may not infringe upon the honor, dignity or business reputation of a person.

The demand for the denial of the disseminated information or compensation of moral damage by a person is justified if his honor, dignity or business reputation is infringed. The plaintiff was unable to refer to any circumstance confirming the infringement of the honor, dignity or business reputation. Furthermore, since the plaintiff is a public servant he is obliged to more tolerant to claims about him.

The court incorrectly explained Paragraph 6, Article 18 and Article 413 of the Civil Code. The dissemination of wrong information itself does not allow the imposition of forced compensation for damages. Paragraph 2, Article 18 of the Civil Code effective then demanded that the plaintiff prove that as a result of the dissemination of information, he suffered moral damage, which was the consequence of the defendant's action and, and that amount demanded is comparable to the damage inflicted.

The plaintiff did not justify what physical consequences were triggered by the program and how moral damage was expressed. There is no proof in the case confirming the presence of moral damage.

The plaintiff did not name a single condition proving that wrong information was disseminated by the broadcasting company *Rustavi-2* or by A. Gogichaishvili. There is no evidence in the case proving the culpability of the TV company. Moreover, the program "60 Tsuti' (60 Minutes) took all prudential measures to avoid the transmission of wrong information on the air: all the information transmitted was either quotation of official documents or belonged to other persons. The culpability was not substantiated by the court in its decision either. In such conditions no responsibility for reimbursement of moral damage should have arisen.

The decision of Primary Court grossly ignored the European Convention of Human Rights in regard to the determining the amount for moral damage. One million GEL in Georgian reality is a huge amount. In this regard it is worth noting that the amount of the fine is disproportional to the goal – aiming at the restriction of freedom of expression in compliance with the interests of a democratic society.

Perhaps it is also characteristic that at the supreme instance at the appeal stage the plaintiff withdrew his complaint. It might have happened as a result of being detained in pre-trial detention, partly resulting from facts covered in the program.

THE CASE OF TEMUR SHASHIASHVILI, DAVIT KUPREISHVILI AND THE NEWSPAPER *AKHALI VERSIA*

The decision of Kutaisi Primary Court could be considered as one of the more curious events in modern Georgian court practice. In order to vouch for the honor and dignity of Temur Shashiashvili, David Mumladze, his successor as presidential representative in Imereti, was invited to the court. This fact is an obvious example that just as before the revolution, the court acts in compliance with political conjuncture rather than with the law.

When Temur Shahsiashvili was presidential representative in Imereti, businessman Davit Kupreishvili was imposed to pay the equivalent amount of 1,338,000 USD in favor of Shahsiashvili for the statements made by him towards Shahsiashvili, in compliance with the decision made by the Kutaisi Primary Court. This was the highest financial sanction imposed on anyone for libel in Georgia.

In 2004, on the instruction of the Supreme Court, the same panel of judges of the Kutaisi Primary Court had to review the decision. The Primary Court left the case unaddressed on the pretext that T. Shashiashvili's successor, D. Mumladze, did not appear at the trial and did not satisfy Shashiashvili's petition on the pretext that the latter was defending his own honor and dignity in the status of presidential representative, while he was in a different position when addressing the complaint.

The ruling is in absolute contradiction with the Georgian Civil Procedural Law. The claim is that T. Shashiashvili was actually printed on the form of the presidential representative, but T. Shahsiashvili was named as a plaintiff. The address of his place of residence was also stated. This condition from the very beginning eliminated the probability that the claim might have been lodged in the name of the presidential representative. Honor and dignity are not characteristics of a position; physical or spiritual pain due to disseminated of information can be experienced only by a physical person.

Proceeding from the decision, it remained ambiguous as to who was charged with the payment of state duty in the amount of 5 thousand GEL – Temur Shashiashvili or his successor Davit Mumladze, who was likely unaware of the content of the information disseminated by Temur Shashiashvili.

THE CASE OF VAKHTANG KHMALADZE, THE NEWSPAPER *THE GEORGIAN TIMES*, AND JOURNALIST EKA SEKHNIASHVILI

In this case, the court considered that a degrading statement was made with respect to nationality. The

media disseminated wrong information concerning the plaintiff's consideration of the change of a surname. Afterwards the media admitted that it had disseminated wrong information. Not only wrong information was the basis for culpability. According to acting legislation at the moment of the trial, the disputed information must also be considered offensive. The court was forced to answer how wrongly-disseminated information on change of surname in regards to nationality could infringe on the honor and dignity of a person. When the court decided that the information on the change of an Armenian surname into Georgian was offensive, the court showed a discriminatory attitude toward members of the Armenian nationality.

The court wrongly imposed culpability on the media for the general judgment in connection with the "implementation of anti-Georgian policy" on the part of some of the parliamentarians. Note that the plaintiff was not identified. This condition did not allow the person legal grounds to argue for the phrases in which he had not been identified. Even if he had been identified, the disputed phrase was an evaluative statement and not a statement of a fact. Correspondingly, even then the court did not have grounds to enforce culpability. Considering these conditions, the decision of the Primary Court grossly violated the law by imposing on the defendant the denial of the disseminated information and the payment of 1,000 GEL as moral compensation.

CASE OF S.S., THE NEWSPAPER *KVIRIS PALITRA* AND JOURNALIST MEGI TSANAVA

The case refers to the coverage of the topic of sexual harassment and the issue of privacy protection. The Vake-Saburtalo District Court did not satisfy the claim, and as the motive was named, the condition that the decision of any trial – whether open or closed, has finally been publicized.

On the basis of the petition of the parties, the court can decide to close a trial if it deals with issues of intimate life or the if case contains certain types of confidential information. Such a petition was submitted by S.S. to the court, since the trial she was participating in as an aggrieved party concerned sexual harassment. Hence, she had a prudent expectation that the details of her intimate life would not become "a matter of public discussion."

The court decision was publicly announced, but the court was liable to ensure the protection of personal data discussed at the closed trial and does not allow for the identification of the individual. As such, the decision to hold a closed trial should not have included data that allowed the journalist to name the person who was the victim of sexual harassment in the publication and to inflict emotional distress upon the aggrieved party.

In this case it is important to distinguish the culpability of media and the court. Taking into consideration the fact that the court was liable to protect personal data, culpability should also have been imposed on the court.

In regard to the Tbilisi Primary Court decision, unlike the district court, the superior instance considered it right that the article referred to the plaintiff's harassment. Nevertheless the court wrongly defined the issue - whose guilt was evident in the given case. The panel incorrectly named the party responsible for disclosure of the harassment. S.S. addressed the petition to the court and not to *Kviris Palitra* and to journalist Megi Tsanava to close the trial and to conceal the details of her personal life. So, she had reason to expect that the court would keep the details secret. Since the court failed to protect the aggrieved party from disclosure of the information entitled to be kept in secrecy, S.S. should have lodged the complaint against the court and moral compensations should have been imposed on the court.

CASE OF NUGZAR MAGULARIA, "BESNA AND GIORGI" AND GURAM KHIMSHIASHVILI

In this case, a complaint was made against one article of the journalist. The Batumi City Court offered a

public apology to the defendant, which was gross violation of the law, since it was not envisaged by the law then in effect. The Batumi Supreme Court overruled the part of the decision which envisaged the apology, thus recognizing its illegality.

In this case, the main violation of the law was in not satisfying the petition of the defendant to withdraw financial documents which in the article were referred to as forged. Since Part 6 of Article 18 of the Civil Code envisages imposing compensation of moral damage only in case of the presence of a culpable act, correspondingly, if the court is not certain of the culpable act of the defendant, it has no right to impose culpability for compensation of moral damage. It is clearly stated in the Civil Procedural Code of Georgia that the court shall seize documents from any person important for the given case if the party addresses the court with a petition.

Despite the fact that the Adjara Supreme Court reduced the amount to be paid for moral damage, the fact that the court refused to seize documents important for the case that would have helped to establish the truth, speaks to the unlawful decision of the court.

THE CASE OF THE ANTI-MONOPOLY SERVICE AND *RUSTAVI-2*

This case is a classic example of gross infringement on political expression. The court incorrectly explained the law on advertising, which caused interference on the freedom of expression of the media and public organizations.

The financial sanction determined by the Anti-Monopoly Service on political advertising in violation of a ban set by the service did not envisage the principle of proportionality, which is the violation of Article 10 of the European Convention of Human Rights and Fundamental Freedoms.

The court incorrectly referred to Paragraph 5 of Article 3 of the Law of Georgia "on Advertising," since it does not envisage any kind of restriction on advertisement content. The article gives only the definition of the terms used in the law, hence it could not be applied as a confirmation of the culpability of the TV company.

According to the law "an advertisement that uses offensive words and comparisons against the nationality, race, profession, social belonging, age, gender, language, religion, political and philosophical belief of physical persons and violates universally recognized humane and moral norms..." is unethical. Note that the advertisement against which the movement "Kmara" (Enough) is lodging a complaint does not contain any false facts on the persons named in the advertisement. In regard to the reference of political affiliation, it is clear that the advertisement was threatening the members of the Central Election Committee not because of their political belief, but in case of falsifying the election results, i.e. if they abused their authority.

Note also that in the motivation part of the court decision, there was an appeal to the letter of the committee's chairperson, since only the person whose right was infringed has the right to appeal to the court. In this case the committee chairperson was calling for the punishment of the TV company for insulting the committee members.

The court was also wrong while referring to Paragraph 8, Article 4 of the law, which contains a demand to prohibit the distribution and dissemination of an inappropriate advertisement. Taking this into account, the TV company has not disseminated the disputed advertisement, hence neither the distribution nor dissemination of the disputable commercial should have been prohibited.

While reviewing the decision, the Primary Court also noted gross procedural infringements that occurred in the case, which was reflected in the court's decision.

A. GOGICHAISHVILI VERSUS PARLIAMENT

On July 22 2003 Akaki Gogichaishvili filed a claim to the Constitutional Court and called for establishing the constitutionality of Part 2 of Article 18 of the Civil Code of Georgia and Paragraph 1 of Article 20 of the Law on Press and Mass Media.

The Constitutional Court recognized Part 2 of Article 18 of the Civil Code of Georgia and Paragraph 1 of Article 20 of the Law on Press and Mass Media as constitutional. The disputed norm, which was later invalidated by the Law on Freedom of Speech and Expression, was apparently in conflict with Article 19 of the Constitution.

Article 19 of the Constitution of Georgia states that: "*The persecution of a person on account of his/her speech, thought, religion or belief as well as the compulsion to express his/her opinion about them shall be inadmissible.*" A person's right not to be forced to disseminate a particular idea is an especially-protected right. Even in case of emergency or during an act of war, it is impossible to restrict this right.

Part Two of Article 18 of the Civil Code gives a person the right to demand through the court from the person who disseminated libellous information to refute the disseminated information, if that person fails to prove that they represented the facts. Obviously, if a person is forced to refute information, this does not mean that he/she does not believe that such information is true – i.e. despite a formal refutation, the person still holds his/her opinion. Correspondingly, Part Two of Article 18 of the Civil Code was in contradiction with Article 19 of the Constitution of Georgia of assigning a person to disseminate information against one's will.

The principle stated in Article 18 of the Civil Code of Georgia contradicts not only the Constitution of Georgia, but also the European Convention on Human Rights and Fundamental Freedoms and precedent law of the European Court of Human Rights.

In compliance with Part 3 of Article 19 of the Constitution of Georgia, the restriction of the rights listed in the article could be implemented only for a legitimate reason. This legal objective is the "protection of other people's rights," i.e. any interference in the expression of opinion shall aim at "protection of others' rights."

Imposing refutation of disseminated information does not have any legitimate objective, as it does not aim at the "protection of others' rights," i.e. the person against whom the wrong information was disseminated, as the defendant's refutation will not regain their honour and dignity. According to Georgian practice, when the one who disseminated the information fails to prove the truthfulness of the opinion expressed by him/her (whether offensive or libellous), the court imposes on him the refutation of the disseminated information through the same media and in commensurable form. It is dubious what the discredited person gained from such a forced manner of expressing one's opinion. When due to the court's decision the one who disseminated the information refuted his/her own opinion, society perceives such a move not that the person's opinion towards the plaintiff has changed, but as an enforced execution of the court's decision.

The court also infringed on the competitive principle of the parties by making the decision. Namely, in the court's contention, the defendant was not able to present any evidence or argument to show the inconsistency of the plaintiff's judgement. The opposite party incorrectly determined the proportionality of the disputed norms – as if proportionality meant only the refutation of the information by means of the same media as used for the initial dissemination of information. The party practically evaded justifying the expediency of the disputed norms.

Finally, despite the fact that the disputed norm remained effective by the decision of the Constitutional Court, the new law on freedom of expression stopped discussion on the issue given in Part 2 of Article 18 of the Civil Code, declared the law on press and Mass media invalid and abolished the institution of forced refutation of information.

* * *

In sum, it can be noted that 2004 yielded mixed progress on freedom of speech. On the one hand, legislation that fully meets the standards recognized by international law was developed and approved, which creates a stable legislative basis for the freedom of expression. On the other hand, the implementation of this legislation revealed a number of problems in practice. The problems were initially expressed by a lack of understanding of the law by the court authorities and their adherence to outdated ideology. The practice of the general courts in Georgia clearly shows that despite the introduction of the Law of Georgia on Freedom of Speech and Expression, many judges still used the previous version of the law. In addition, even the court decision, based on the new Law came into contradiction with the law and once more showed the confusion with the interpretation of the new law by the corps of judges.

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